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### Родителска отговорност — родителски права и право на лични отношения с детето

Родителската отговорност включва всички права и задължения, свързани с децата и тяхното имущество. Въпреки че това понятие се различава в отделните страни от ЕС, то обикновено включва правата на попечителство и посещения. Ако сте международна двойка с едно или няколко деца, която е в процес на разделяне, ще трябва да се разберете по отношение на родителските права.

#### Откъде да започнем?

#### Какво представляват родителските права? Какво представлява правото на лични отношения с детето?

Докато родителите живеят заедно, те обикновено упражняват съвместно родителските права над своите деца. Ако обаче родителите се разведат или се разделят, те трябва да решат как ще упражняват тези права в бъдеще.

Родителите могат да решат, че детето ще живее последователно с един от двамата си родители или само с единия от тях. Във втория случай другият родител обикновено има право да посещава детето в определено време.

Родителските права обхващат и други права и задължения, свързани с възпитанието и отглеждането на детето, включително правото на грижа за детето и за неговото имущество. Родителските права обикновено се упражняват от родителите, но те могат да бъдат възложени на институция, на която детето е поверено.

#### Кой решава относно родителските права и правото на лични отношения с детето?

Родителите могат да се споразумеят по тези въпроси по взаимно съгласие. Ако родителите не успеят да постигнат съгласие, може да помогне медиатор или адвокат. За да намерите медиатор, щракнете на връзката в долната част на тази страница.

Ако родителите не могат да постигнат съгласие, може да се наложи да се обърнат към съда. Съдът може да реши да предостави упражняването на родителските права на двамата родители (съвместно упражняване) или на един от родителите (самостоятелно упражняване). Ако само единият родител упражнява родителските права, съдът може да реши да предостави на другия родител право на лични отношения с детето.

Ако става въпрос за международна двойка, правилата на ЕС определят кой съд е компетентен да разгледа делото. За да намерите кой е компетентният съд, щракнете на връзката в долната част на тази страница.

Основната цел е да се избегне двамата родители да сезират съда в собствената си държава и по един и същи случай да бъдат постановени две различни решения. Принципът е, че компетентен е съдът в страната по обичайното местопребиваване на детето.

#### Решението ще бъде ли изпълнено в другата страна от ЕС?

Съществува механизъм за признаване и изпълнение на решенията, който гарантира, че след постановяването му решението на съда се изпълнява и в другите страни от ЕС. Това улеснява лицата, на които са предоставени родителските права, да ги упражняват.

По-конкретно, решение относно правото на лични отношения с детето ще бъде признато в друга държава – членка на ЕС, без да се изисква минаването през специална процедура, като по този начин се улесняват отношенията между детето и двамата родители.

#### Кои правила на ЕС се прилагат?

Правилата, уреждащи спорове по презгранични дела между децата и техните родители, са част от [Регламент „Брюксел IIa“](#). Тези правила се прилагат по еднакъв начин за всички деца, без значение дали те са родени от брака или не. Регламент „Брюксел IIa“ е основополагащият инструмент на ЕС за съдебното сътрудничество по брачни дела и дела, свързани с родителската отговорност. Регламентът се прилага от 1 март 2005 г. във всички държави – членки на ЕС, с изключение на Дания.

**Моля, изберете знаме, за да получите подробна информация за съответната страна.**

#### Връзки по темата

[Намиране на медиатор](#)

[Намиране на компетентен съд](#)

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## Parental responsibility - Belgium

### 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 authority is a legal mechanism for protecting and representing children until they reach the age of majority or become independent. It covers both the person and the property of the child. Parental authority is regulated by Articles 371 to 387 *ter* and 203 of the Civil Code (*Code civil*).

Parental authority is automatically exercised by the child's legal parents, i.e. those people who are regarded as such by the law due to a link of paternity, maternity or co-maternity established by blood, adoption or law. If the biological parents are not recognised by law as the legal parents, they do not hold parental authority.

Children remain under the authority of their father and mother until they reach the age of majority (18 years old) or become independent. Decisions regarding a child's living arrangements, maintenance, health, supervision, education, training or development are the responsibility of the parents (Article 203 of the Civil Code).

Among the various powers of parental authority, a distinction is made between authority over the person of the child, management of the child's property and certain prerogatives of parental authority. Authority over the person of the child can be subdivided into 'custody', which consists in 'living' with the child (i.e. taking care of the child, supervising the child, and taking educational decisions linked to the child's presence with the parent), and the right to education, which consists in taking decisions linked to the child's maintenance, education and training. With regard to managing the child's property, a distinction is made between the right to administer the child's property and the right to legally use that property. Special prerogatives are the parents' powers in relation to the child's marriage, adoption and independence.

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

Parental authority over the person of a minor child is normally exercised jointly by each of the child's two parents. Whether or not the parents live together and whether or not they are married, if the child's filiation to each parent is established, they (each) jointly exercise the various prerogatives of parental authority (Articles 373 and 374 of the Civil Code).

If the child's filiation to either the father or the mother is not established or if one of them is dead, absent or unable to express their will, the other exercises this authority alone.

With respect to third parties (acting in good faith), each parent is deemed to act with the agreement of the other when carrying out an act of parental authority alone (Article 373 of the Civil Code).

If the parents cannot agree on how to organise the child's living arrangements, on important decisions regarding the child's health, education, training and leisure time, or on religious or philosophical questions, or if any agreement appears to be contrary to the child's interests, the family court (*tribunal de la famille*) can entrust sole exercise of parental authority to one of the parents.

In this case, according to set arrangements, the other parent retains (1) a right of supervision, i.e. the right to be kept informed of the child's situation and to refer to the competent family court if he/she believes that the other parent has not acted in the child's interests, and (2) a right of contact. Such contact can be refused only for very serious reasons (Article 374 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?

If there is neither a father or mother to exercise parental authority, the child will be placed under guardianship (Article 375 of the Civil Code).

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

In principle, the parents' separation or divorce has no effect on the rules regarding exercise of parental authority. The legal principle is that each of the child's two parents jointly exercises parental authority (see point 2). This means that they each exercise, and continue to exercise, the powers of parental authority and that neither parent can make a decision on their own that prevents the other parent from exercising his/her own prerogatives. One parent must therefore obtain the agreement of the other parent, otherwise he/she cannot act. However, with regard to the child's living arrangements for example, the parent with whom the child lives will duly take decisions regarding daily routines, good manners, etc.

The parents can agree on the arrangements for exercising parental authority, provided that this is in the child's interests.

Otherwise, the matter must be referred to the family court, which can decide to entrust sole exercise of parental authority to one of the parents (see point 2).

The child's living arrangements, the place where the child is entered in the population register, and the arrangements for the parents' contribution to the child's maintenance, education and training must all be decided.

### 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 do not have to go before the family court and can conclude a private agreement resolving the question of parental authority over the child. To help them in this, parents can at any time, including during proceedings, have recourse to an accredited and duly trained mediator (lawyer, notary or other accredited mediator) (Article 1730 of the Judicial Code (*Code judiciaire*)).

If they want to be able to get this decision enforced if necessary, parents must refer this agreement to the competent family court, which will examine whether it is in the child's interests.

In the event of divorce due to irretrievable breakdown of the marriage (see 'Divorce - Belgium' fact sheet), parents can, at any stage of the proceedings, ask the family court to approve the agreement on the provisional measures concerning the children. The judge can refuse to approve this agreement if it is contrary to the children's interests.

In the event of divorce by mutual consent (see 'Divorce - Belgium' fact sheet), the parties must indicate, in their pre-divorce agreements, the measures in relation to parental authority (exercise of parental authority, right of contact, administration of the child's property) and the arrangements for each parent's contribution to the child's maintenance, education, health, training and development, both during the divorce proceedings and afterwards. The public prosecutor gives an opinion and the family court can remove or amend any provisions that are contrary to the interests of minor children. The family court grants the divorce and approves the agreements in respect of minor children.

### 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?

When an application is made, the court clerk informs the parties that they can have recourse to mediation, conciliation or any other form of amicable dispute resolution (Article 1253 *ter*/1 of the Judicial Code). In addition, the judge can propose to the parties at any time that they see whether conciliation or mediation is possible. If the parties agree, the judge can postpone the case so that the parties can examine whether agreements can be reached or whether mediation can offer them a solution, or the case can be referred to the amicable resolution section (Article 1253 *ter*/3 of the Judicial Code).

If the parties reach agreement, the court approves this agreement provided that it is not clearly contrary to the child's interests (Article 1253ter/2 of the Judicial Code).

Any party can also propose recourse to mediation regardless of any court proceedings (Article 1730 of the Judicial Code). Any agreement arrived at by an accredited mediator can also be approved under the conditions indicated above.

Lastly, the parties can always consult experts (social workers, psychologists, child psychiatrists) to obtain an informed opinion or ask for an expert to be appointed in the court proceedings. In those proceedings, the public prosecutor can ask social services for information on the children and the family court will take account of the children's views (Article 1253ter/6 of the Judicial Code).

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

If no agreement or only partial agreement is reached between the parents or if the agreement is contrary to the child's interests, the family court decides on the exercise of parental authority, taking into account the wishes expressed by the parents, and by the child if he/she is old enough, as well as the situation and circumstances of the case. Questions that can be submitted to the court include:

- the joint or sole exercise of parental authority (see point 2);
- the place where the child will be primarily entered in the population register (= domicile);
- the child's living arrangements (in the absence of agreement and in the case of joint parental authority, equality in the child's living arrangements is preferred if at least one of the parents requests this. If this is not the most appropriate solution, extended residential time or other formats may be envisaged. The family court will take account of the specific circumstances and interests of the child and parents);
- the maintenance contribution (to the extent of their ability, each parent must cover the costs of the child's living arrangements, maintenance, health, supervision, education, training and development).

The family court may also be required to decide on the child's education and training. The parties can also refer specific questions to the court, such as sharing holiday periods between parents, sharing certain costs, enrolment in a school, etc. This depends on each particular case.

#### **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 fact that one of the parents holds sole parental authority does not give him/her *carte blanche* to make decisions regarding the child. The agreements reached in each particular case must be taken into account. In addition (see point 2), the other parent retains the right to supervise the child's education.

Moving house with the child without informing the other parent can affect the child's living arrangements, right of contact, etc. In such a case, the party who has not been notified or who does not agree can apply to the family court (Article 374 and 387bis of the Civil Code) or, in an emergency and where absolutely necessary, to the judge hearing applications for interim measures (*juge des référés*) (Article 584, fourth paragraph, of the Judicial Code).

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

(See point 2). This means that they each exercise, and continue to exercise, the powers of parental authority ('custody' of the child, exercise of the child's right to education, exercise of the right to administer legally and use the child's property) and that neither parent can make a decision on their own that prevents the other parent from exercising his/her own prerogatives. One parent must therefore obtain the agreement of the other parent, otherwise he/she cannot act. However, with regard to the child's 'custody' for example, the parent with whom the child lives will duly take decisions regarding daily routines, good manners, etc. With respect to third parties (acting in good faith), each parent is deemed to act with the agreement of the other when carrying out an act of parental authority alone (Article 373 of the Civil Code).

#### **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?**

Under Article 572bis(4°) of the Judicial Code, the family court hears applications regarding parental authority, living arrangements or rights of contact with regard to minor children. The documents to be attached to the application depend on the action brought.

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

Some cases that fall within the jurisdiction of the family court, such as cases regarding parental authority, living arrangements or right of contact, are deemed to be urgent by law and can be brought by *inter partes* application, summons or joint petition. Such cases are decided by an interim ruling. If the case is brought by summons, the time-limit is at least two days (see Article 1035, second paragraph, of the Judicial Code). In other cases, the initial hearing must take place within a maximum of 15 days from the application being filed with the court registry (Article 1253ter/4(2) of the Judicial Code).

In all cases involving minor children, the parties must appear in person not only at the initial hearing, but also at hearings during which questions regarding the children are discussed and at hearings of oral argument (Article 1253ter(2), first and second subparagraphs, of the Judicial Code). Furthermore, any minor is entitled to be heard on relevant issues regarding parental authority, living arrangements and right of contact (Article 1004/1(1) of the Judicial Code).

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

The ordinary rules apply in this respect (see 'Legal Aid - Belgium' fact sheet).

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

In the case of a divorce by mutual consent, where the parties have agreed on the arrangements for exercising parental authority, where the public prosecutor has given an opinion and where the family court has approved the agreements and granted the divorce, there are, in principle, no grounds for lodging an appeal.

In other cases, a decision regarding parental authority can be appealed within a time-limit that is normally one month. This time-limit runs from service of the judgment or its notification (appeal against an order made on a unilateral application). Delivery of the judgment is sometimes delayed (for example, at the public prosecutor's request) in order to extend the time-limit.

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

The family court that has decided the schedule for a child to live with each parent or that has confirmed a parent's or even a third party's right of contact can subsequently add enforcement measures to its decision (Article 387ter(1), fifth subparagraph, of the Civil Code). The court specifies the nature of these measures and the arrangements for their implementation, taking into account the child's interests, and, if considered necessary, appoints persons authorised to accompany the court officer in enforcing the decision. The family court can set a periodic penalty payment to ensure that the decision is respected.

#### **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?**

Since 1 March 2005, pursuant to Council Regulation (EC) No 2201/2003, known as 'Brussels IIA', all decisions taken in a Member State (except Denmark) that concern parental responsibility are, in principle, automatically recognised. However, with the exception of decisions regarding rights of access and return of an abducted child, enforcement presupposes that an application for enforcement has been made to the family court, which will decide by an interim ruling. This simplified procedure does not, however, apply to decisions given before this date outside of divorce proceedings. In this case, it would be advisable to follow the usual procedure for recognition and enforcement.

## **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?**

Any interested person can apply to the family court to obtain non-recognition of a decision given abroad. The family court can suspend proceedings if the decision in question is under appeal in its country of origin.

## **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?**

The Belgian courts in principle apply the law of the child's habitual residence.

However, the law of the State of which the child has nationality applies if the law of the habitual residence prevents the child's person or property from being duly protected. Belgian law applies when it is materially or legally impossible to take the measures stipulated by the foreign law in question.

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### **Parental responsibility - Bulgaria**

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

The legal terms used in the Bulgarian legislation for parental responsibility and custody are 'parental rights and duties' and 'exercise of parental rights'. The concept includes all the rights and duties a parent has in relation to children under the age of majority.

Bulgarian law makes a distinction between minors under the age of 14 and minors who are between 14 and 18 years of age. Parental rights are exercised in relation to both age groups of children.

In the event of adoption, the rights and duties that apply to the adoptee and his or her descendants, on the one hand, and the adopter and his or her relatives, on the other hand, are the same as those between relatives of kin, whereas the rights and duties between the adoptee and his or her descendants and their relatives of kin are terminated.

In the divorce judgment, the court is also obliged to rule on the exercise of parental rights, personal relationships and maintenance of the children born of the marriage, and on the use of the family home, taking into account the children's best interests.

The court decides which spouse will be granted parental rights and orders measures in relation to the exercise of these rights, the personal relationships between the children and their parents and the maintenance of the children. When choosing which parent is to exercise parental rights, the court assesses all circumstances, with the children's best interests in mind, and listens to the parents and the children, provided they are over the age of 10.

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

The general rule is that both parents exercise parental rights jointly and severally.

The law contains explicit provisions on grandparents' rights to maintain contact with the child.

Children under the age of majority are obliged to live with their parents, unless important reasons warrant otherwise. In the event of deviation from this obligation, the court orders the child's return to the parents, at the request of the parents and after hearing the child if it is over the age of 10.

Each parent may represent children below the age of 14 on his or her own and give consent to legal action for children aged between 14 and 18 only in their best interests.

Immovable and movable property of children below the age of majority, except for perishables, may be alienated, encumbered with liens or, generally, disposed of with permission from the district court at their habitual residence only if necessary or obviously to the benefit to the children. Gifts, waivers, lending and securing other person's debts with a pledge, mortgage or guarantee given by children below the age of majority are null and void.

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

If a parent's conduct poses a threat to the child's person, upbringing, health or property, the district court takes the relevant measures in the child's best interests on its own initiative or at the request of the other parent or the public prosecutor, placing the child in appropriate accommodation, if necessary.

These measures are also taken if the parent is unable to exercise parental rights due to a persistent physical or mental illness, long-term absence or other objective reasons. The parent may be divested of parental rights in the following particularly serious cases: the parent does not take care of the child and fails to make maintenance payments on a long-term basis and without valid reason, or the parent has placed the child in a specialised institution and has failed to retrieve the child within six months of the date on which they were supposed to.

Court proceedings on the termination of parental rights are brought at the district court on its own initiative or at the request of the other parent or the public prosecutor. In all cases of restriction or termination of parental rights, the court also rules on the measures concerning the personal relationships between parents and children.

The court may reinstate parental rights in the event of new circumstances or at the parent's request.

The court notifies the municipality at the parent's place of residence *ex officio* of the termination of parental rights or their subsequent reinstatement for the purposes of appointing a custodian for minors aged between 14 and 18 or a guardian for minors under 14.

At the request of the Social Welfare Directorate the court may issue an order for a child to be housed outside the family if the parents are deceased, unknown, divested of parental rights, exercising restricted parental rights or failing to take care of the child on a long-term basis for objective reasons or without valid reason, where the child is a victim of domestic violence and there is a serious threat to his or her physical, mental, moral, intellectual and social development. The child is placed in a social institution or with a foster family, including in the cases under Article 11 of the 1996 Hague Convention on the protection of children.

The court may order a child to be placed with relatives or a foster family or in a specialised institution. Pending the court order, the Social Welfare Directorate covering the current address of the child places the child under a temporary accommodation administrative procedure.

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

If parents living together disagree on issues in relation to parental rights, the dispute is referred to the district court, where the parents and, if necessary, the child are heard. The court judgment may be appealed in accordance with the general rules.

If parents do not live together and cannot reach an agreement on who will take custody of the child, the dispute is settled by the district court of the area in which the child is habitually resident, after hearing him or her, provided that he or she is at least 10 years old. The court judgment may be appealed in accordance with the general rules.

#### **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 conclude out-of-court agreements on the granting and exercise of parental rights and the arrangements for contacts with the parent who does not have parental rights, but these agreements are not legally binding. Notwithstanding the existence of an out-of-court agreement, either parent may bring a case on parental rights or contacts with the child to the court and the court will rule on how parental rights will be exercised from that point of time onwards,

irrespective of the out-of-court agreement. The legal framework is also the same for the child's contacts with the parent who does not have custody and does not live with him or her.

**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?**

In accordance with the Mediation Act, family disputes may be the subject of mediation but the agreement reached on parental rights becomes legally binding only after its explicit approval by the court in accordance with the Code of Civil Procedure.

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

The judge may decide upon any issue brought to the court, including the place where the child is habitually resident, which parent will exercise parental rights, what arrangements will exist for contacts between the child and the other parent, the parent's rights to visit/access, the obligation to make maintenance payments for the child, the choice of school, the child's name, etc. See the answers to questions 3 and 4.

**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?**

Generally, the parent exercising parental rights makes decisions on the child's daily life, including, for instance, what school the child will attend. There are some cases in which the consent of both parents is required, for instance, where identity documents are issued for the child, or where he or she is leaving the jurisdiction, regardless of the duration or purpose of travel, including holidays.

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

When the parents do not share a residence, the court is obliged to issue an order on which parent will have parental rights and how contacts with the other parent are maintained. Without prejudice to the above, there are no restrictions on a court agreement between the parents on more extensive arrangements for contact between the child and the other parent over and above the usual practices. As agreed in case-law and generally accepted by parties to matrimonial cases, the usual arrangements for the child to spend time with the other parent are two or more non-working days per month and a fixed number of weeks during school holidays.

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

The competent court is the district court of the area in which the defendant is habitually resident. If the application is linked to a child maintenance claim, the claimant may also lodge the application with the court of the area in which he or she is habitually resident.

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

Cases concerning parental rights follow the general procedural rules.

If the matter is examined within the framework of a pending divorce case, parents may request the court to order temporary measures for the exercise of parental rights over the child and the arrangements for contacts with the other parent.

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

The parties to the case can obtain legal aid under the general terms and conditions for granting legal aid under the Legal Aid Act.

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

Decisions handed down by the district court are subject to appeal before the regional court in accordance with the general rules within two weeks of receiving a copy of the decision.

**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?**

Court judgments are enforced in accordance with the Code of Civil Procedure. It contains explicit provisions on the duty to perform or refrain from certain actions and on the duty to hand over the child. The judgment is enforced by a public or private bailiff chosen by the applicant.

**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?**

The applicable law is 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, and Article 621 of the Code of Civil Procedure (in force since 24 July 2007).

**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?**

The applicable law is 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, and Article 622 of the Code of Civil Procedure (in force since 24 July 2007).

General jurisdiction lies with the district court in the area in which the other party is habitually resident or, if the latter has no permanent address within Bulgaria, in the area in which the party concerned is habitually resident or, if the party concerned is not habitually resident in Bulgaria, Sofia City Court.

The application for recognition and enforcement of a judgment issued by a foreign court or a decision of another foreign authority on the exercise of parental rights or restoration of the exercise of parental rights in the event of wrongful removal of a child in accordance with the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, which was concluded in Luxembourg on 20 May 1980 (ratified by law, State Gazette (SG) No 21 of 2003 (SG No 104 of 2003) ('the Luxembourg Convention'), is filed with Sofia City Court. The Court holds a public session with the participation of the Ministry of Justice or the applicant, the parties to the foreign judgment or decision and a public prosecutor. The Court hears the child, if requested by the Social Welfare Directorate of the municipality of the current address of the child. The procedure for recognising and enforcing a foreign judgment or decision is suspended in the following circumstances: there is a pending court case on the merit of the dispute and that case was brought after the procedure in the State where the relevant judgment or decision had been issued. The same procedure applies when another judgment or decision on the exercise of parental rights is in the process of being recognised and/or enforced by the Bulgarian courts. The relevant court is notified forthwith and the judge must rule within a month of the notice.

The court judgment has to be issued within a month of the date of the application. It is subject to appeal before Sofia Court of Appeal, whose judgment is final.

The procedure also applies to applications for the recognition and enforcement of decisions issued after the removal of a child if the decision finds that removal to be unlawful. The recognition and enforcement of a decision issued in another State that is a party to the Luxembourg Convention is rejected under Articles 8 and 9 if the requirements laid down in Article 10(1) of the Convention are met and accepted only insofar as it is enforceable in the State where it was approved. The same procedure applies to the cases under the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children.

**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?**

The relationships between parents and a child are governed by the laws of the State of their habitual residence. If the parents and child do not share a common habitual residence, their relationships are governed by the laws of the State of the child's habitual residence or nationality, whichever is more

favourable to the child. Guardianship and custodianship matters are governed by the laws of the State in which the person under guardianship or custodianship is habitually resident. The relationships between the person under guardianship or custodianship and the guardian or custodian are governed by the laws that applied when the person was placed under guardianship or custodianship.

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## **Parental responsibility - Czech Republic**

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

The term "parental responsibility" is enshrined in the Civil Code (Act No 89/2012). This term includes a set of parents' rights and obligations, composed of: care for the child, including in particular care for his/her health and physical, emotional, intellectual and moral development, protection of the child, maintaining personal contact with the child, ensuring his/her upbringing and education, determining his/her place of residence, representing the child and managing his/her assets.

Parental responsibility originates with the birth of the child and ends when the child gains full legal capacity. The duration and scope of parental responsibility may only be changed by a court of law. Parental responsibility is exercised by parents in accordance with the interests of the child. Before making a decision that impacts the interests of the child, the parents will inform the child of everything necessary to enable him/her to come to his/her own opinion about the given matter and to inform his/her parents of it; this does not apply if the child is not able to properly accept the information or is not able to make his/her own opinion or is not able to inform his/her parents of his/her opinion. The parents will pay special attention to the child's opinion and take the child's opinion into account when making the decision. Parental responsibility relating to the person of the child is performed by the parents in a manner and in a scope corresponding to the child's developmental level. If the parents are making a decision regarding the education or employment of the child, they will take into account his/her opinion, abilities and talents.

Until the child gains legal capacity, his/her parents have the right to guide the child using educational measures appropriate to his/her evolving abilities, including restrictions directed towards protecting the child's morals, health and rights, as well as the rights of other persons and public order. The child must submit to these measures. Educational resources may only be used in a form and scope that is appropriate to the circumstances, does not endanger the health of the child or his/her development and does not prejudice the human dignity of the child.

It is understood that all minors who do not have full legal capacity are competent to perform legal acts appropriate to the intellectual and volitional maturity of minors of his/her age. Parents have the obligation and right to represent the child in legal proceedings for which the child is not legally competent. The parents represent the child jointly, however each of them may act separately; if one of the parents acts alone in a matter concerning the child vis-à-vis a third party, which is in good faith, it is understood that he/she is acting with the agreement of the other parent. A parent cannot represent a child if this could lead to a conflict of interests between him/her and the child, or between children of the same parents. In such a case a court will appoint a guardian for the child. If the parents cannot agree which of them should represent the child in legal proceedings, a court will decide – upon a petition by one of the parents – which of the parents will legally act on behalf of the child and in what manner.

The parents have the obligation and the right to manage the property of the child, in particular to administer it with due care. They must safely handle funds that may be considered not needed to cover expenditure connected with the child's property. During legal proceedings that relate to individual parts of the child's property, the parents will act as his/her representatives; a parent cannot represent a child if this could result in a conflict of interest between him/her and the child or between children of the same parents. In such a case a court will appoint the child a guardian. If a parent violates the obligation to care for the child's property with due care, he/she will compensate the child for the damage incurred jointly and severally. If the parents do not agree on essential matters relating to the management of the child's property, a court will decide upon a petition by one of the parents. The parents need the agreement of a court for legal acts that relate to existing or future property of the child or separate parts of such property, unless they are common matters, or even though exceptional they relate to negligible property values.

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

Parental responsibility is an obligation for both parents. Each parent has it unless he/she has been deprived of it. It is irrelevant whether the child's parents are married or not, and whether the child was born in wedlock or out of it.

Parents exercise parental responsibility in mutual agreement. If a delay in taking a decision regarding a matter concerning the child could be dangerous, one of the parents may make the decision or give his/her consent alone; he/she must however inform the other parent about the state of affairs without delay. If one of the parents acts alone in a matter of the child in relation to a third party, which is in good faith, it is understood that he/she is acting with the agreement of the other parent. If the parents do not agree in a matter that is important for the child, in particular with respect to his/her interests, a court will decide, upon a petition by a parent; this will also apply if one parent is excluded from the decision-making about an important matter for the child by the other parent. Important matters are considered to be in particular the determination of the place of residence and the selection of education or the employment of the child, but not normal medical and similar procedures.

A court may decide to suspend parental responsibility if the parents are prevented from exercising their parental responsibility by a serious circumstance and if it can be considered that this is necessary in the interest of the child. If a parent does not exercise his/her parental responsibility properly and the interest of the child requires it, a court may restrict his/her parental responsibility, or restrict its performance, and at the same time determine the scope of such restriction. If a parent abuses his/her parental responsibility or its exercise, and/or neglects his/her parental responsibility or its exercise in a serious manner, a court may deprive him/her of his/her parental responsibility. If a parent commits an intentional crime against his/her child, or if a parent uses his/her child – who is not criminally responsible – to commit a crime, a court will evaluate in particular whether there are reasons to deprive the parent of his/her parental responsibility.

If one of the parents is dead or is not known, or if one of the parents does not have parental responsibility or his/her exercise of parental responsibility is suspended, the other parent will exercise parental responsibility; this will also apply if the parental responsibility or its exercise by one of the parents is restricted. If neither of the parents has full parental responsibility, if the exercise of both parents' parental responsibility has been suspended, and/or if the parents' parental responsibility is affected in one of the indicated manners, but each differently, a court will appoint a custodian for the child, who will have the obligations and rights of the parents or will exercise these obligations or rights instead of the parents. If parental responsibility is restricted or its exercise is restricted, a court will appoint a guardian for the child.

If a child is adopted, the rights and obligations arising from parental responsibility are transferred to the adopter at the moment the legal decision on adoption comes into force.

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

If a court decides to restrict the legal capacity of a parent, it will also decide on his/her parental responsibility. The exercise of parental responsibility by a minor who is a parent but who has not yet acquired full legal capacity through a declaration or marriage, is suspended until such time as he/she acquires full legal capacity; this will not apply in relation to the exercise of the obligations and rights of care for the child, unless a court as regards the person of the parent decides that the exercise of this obligation and this right is suspended until such time as the parent acquires full legal capacity. The exercise of the parental responsibility of a parent whose legal capacity has been restricted in this area is suspended for the duration of the restriction of his/her legal capacity, unless a court decides that the parent, in view of his/her person, will retain the exercise of the obligation and right of care for the child and personal contact with the child.

In the absence of both the parents who should perform full parental responsibility vis-à-vis their child, a court will appoint a custodian for the child. A custodian has vis-à-vis the child fundamentally all the obligations and rights of his/her parent, yet does not have a support and maintenance obligation vis-à-vis the child. In exceptional cases the range of obligations and rights may be defined otherwise taking into account the person of the custodian or the situation of the child, as well as the reason why the parents do not have all the obligations and rights. A custodian must have full legal capacity and his/her mode of life must guarantee that he/she is capable of properly performing this role. A court may also appoint two persons – who are as a rule married – to the role of custodian. If this is not contrary to the interests of the child, a court will appoint a person designated by a parent as custodian. Otherwise a court will appoint a relative or a person close to the child or his/her family as custodian, unless a parent expressly excludes such person. If there is no such person, a court will appoint another suitable person as custodian. If no natural person can be appointed as custodian for the child, the court will appoint an authority for the social and legal protection of children until such time that the court appoints a different custodian for the child or until a custodian accepts the role. A custodian is subject to supervision by the court. He/she will prepare a list of property both at the start and at the end of the role. He/she will regularly submit to the court reports about the child, his/her development, and accounts from the management of the property. Each decision by a custodian in other than regular matters must be approved by a court.

Another possibility is to place the child in foster care. Fostering is personal care for another person's child; however, it does not involve accepting another's child as one's own as in the case of adoption. When bringing a child up, a foster parent exercises the obligations and rights of the parents within a reasonable scope. He/she is obliged and entitled to decide only about everyday matters concerning the child, to represent the child in these matters and to manage his/her property. He/she must inform the parents of the child about his/her important matters. If circumstances so demand, a court will determine additional obligations and rights of the foster parent. The parents of the child will retain their obligations and rights arising from parental responsibility, including the right to be in personal and regular contact, and the right to information about the child, with the exception of obligations and rights that the law determines for the foster parent, unless the court - for reasons worthy of special consideration – decides otherwise. A foster parent does not have a support and maintenance obligation toward the child.

A foster parent must guarantee proper care, be resident in the Czech Republic, and must agree with the entrusting of the child into his/her foster care. As a rule, he/she is a relative, but may also be another person from whom an authority for the social and legal protection of children has arranged foster care (for this purpose a regional court maintains evidence of applicants suitable to become foster parents). A court may entrust a child into foster care for a temporary period (for example for the duration of a parent's stay in a treatment facility) as well as for an unspecified period of time. Foster care may thus address a crisis in the family or ensure care in an alternative family environment. To reduce the number of children placed into institutions or institution-type facilities, foster care takes precedence over institutional care. A foster parent receives foster care benefits from the state (for example a contribution towards the payment of the child's needs, a contribution at the end of the foster care, foster parent remuneration etc.)

The Civil Code furthermore regulates the institute of custody of a child to another person in the event that neither of the parents or a custodian can personally care for the child. Such custody is not an alternative to foster care, or care that must precede adoption. It takes precedence over institutional care for the child. The carer must guarantee proper care, be resident in the Czech Republic and agree with the placement of the child into his/her personal care. The obligations and rights of the carer are defined by a court; otherwise foster care legislation is used as appropriate.

The parents, as the legal representatives, may – for handling the affairs of the child, unless these are matters of personal status – sign an agreement for representation by a person with expert knowledge, or for example by another suitable person. If the child signs an agreement for representation, this will have no influence on the legal representation of the child by the parents. If the legal and contractual representatives cannot agree, a court will decide in accordance with the interests of the child.

If the upbringing of the child or his/her physical, intellectual or mental state, and/or his/her proper development are threatened or disturbed to such an extent that is contrary to the interests of the child, and/or in the case of serious reasons for which the parents cannot ensure his/her upbringing, a court may order institutional care as a necessary measure. It will do so in particular in cases when earlier measures did not lead to remedy. During this, the court will always consider whether it is appropriate to give preference to entrusting the child to the care of a natural person. Institutional care can be ordered for a period of at most three years, while this may be extended (repeatedly) if the reasons for the ordering of the institutional care persist (always for a maximum of three years). If there are no longer reasons for which the institutional care was ordered, or if it is possible to provide other than institutional care for the child, the court will cancel the institutional care without delay and at the same time decide on who the child will be entrusted to next according to the circumstances.

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

A decision about care for the child is an essential condition for divorce of his/her parents. When making the decision the court will consider the interest of the child; the court will only deviate from the mutual assent of the parents if necessary in the interest of the child. A court may place the child into the care of one of the parents or into shared custody or joint custody; a court may also place the child into the care of a person other than his/her parents if necessary in the interest of the child. The court will take into account the personality of the child, in particular his/her talents and capabilities in relation to developmental possibilities, and the lifestyles of his/her parents, as well as the emotional orientation and background of the child, the ability of each of the parents to provide upbringing, the current and anticipated stability of the educational environment in which the child should live, and the child's emotional ties to his/her siblings, grandparents or other relatives and unrelated persons. The court will always take into account which of the parents has properly cared for the child so far and has properly heeded his/her emotional, intellectual and moral education, as well as which parent offers the child better opportunities for healthy and successful development. The court will also focus on the right of the child to care from both parents and to maintain regular personal contact with him/her, on the right of the other parent with whom the child will not be placed to regular information about the child, and the court will also take into account the ability of the parent to agree on the upbringing of the child with the other parent. The court may also decide to approve an agreement between the parents unless it is clear that the arranged method of performance of parental responsibility is not in accordance with the interest of the child.

If the parents of a minor who does not have full legal capacity do not live together, and if they cannot agree on the regulation of the care for such child, a court will decide on this without a petition. It will follow similar rules for decision-making on care for the child as in the case of his/her parents' divorce.

The parent who has the child in his/her care, and the other parent, will decide together how the parent who does not have the child in his/her care will be in contact with the child. If the parents cannot agree, or it is required in accordance with the interest in the upbringing of the child and the relationships in the family, the court will regulate contact between the parent and the child. In justified cases the court may determine the location of contact between the parent and child. If necessary in the interest of the child, the court will restrict the right of a parent to personal contact with the child, and/or forbid such contact. If circumstances change, a court will change the decision relating to the performance of obligations and rights arising from parental responsibility even without a petition.

**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 the case of divorce of the parents, the agreement between the parents on the method of performance of parental responsibility must regulate how each of the parents will care for the child after the divorce. In this agreement the parents may also regulate contact between the parents and the child. Such an agreement is subject to the agreement of a court, which will approve an agreement between the parents unless it is clear that the agreed method of exercise of parental responsibility is not in accord with the interests of the child. The same will apply for an agreement between the parents if the parents of the child do not live together.

**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?**

To protect the interests of the child, the court, during proceedings on care for a minor, will guide the parents towards finding a conciliatory solution. The court may impose participation in extrajudicial conciliation or mediation meetings or family therapy on the parents for a period of at most 3 months, or may impose on them meetings with an expert in pedopsychology.

Moreover, it is possible to use the services of so-called marriage and family counselling centres that provide help through qualified psychologists and social workers.

In addition, an authority for the social and legal protection of children may persuade or educate a parent who does not respect the rights of the child or the other parent (e.g., to care, to regular contact) about legislation and the consequences of his/her behaviour. An authority for the social and legal protection of children may also impose on the parents the obligation to use expert counselling if the parents are unable to resolve the problems connected with the upbringing of the child without expert counselling, in particular during disputes about modifying the child's upbringing or visitation rights.

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

On condition of compliance with the designated conditions a court may, at the request of the parents, decide in particular about the following matters relating to the relations between parents and children:

rights of a personal nature (e.g., the right to determine the name and surname of the child or the right to give consent to the adoption of the child)

care for the child and the regulation of contact with the child,

alternative forms of care for the child (e.g., custodianship, custody of another person, foster care, institutional care),

maintenance and support obligations,

representation and management of the child's property, consent to legal actions by the child,

on matters important for the child, where the parents cannot agree (important matters are considered to be in particular the determination of the place of residence and the selection of education or the employment of the child, but not normal medical and similar procedures).

Most commonly a court will decide to whom it will entrust the child, and potentially about regulation of contact with the child, and on maintenance and support.

**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?**

Care for the child is only part of the obligations and rights included in parental responsibility. If a parent who was not entrusted with the child's care was not deprived of parental responsibility, nor was his/her parental responsibility restricted or suspended, he/she still performs it in relation to the other components of parental responsibility and does not lose the right to decide on important matters concerning the child. Parental responsibility is performed by the parents in mutual agreement and in accordance with the interest of the child. If there is the danger of default during decision-making regarding a matter concerning the child, one of the parents may make the decision or give his/her consent alone; he/she must however inform the other parent about the state of affairs without delay.

If the parents do not agree in a matter that is important for the child, in particular with respect to his/her interests, a court will decide, upon a petition by a parent; this will also apply if one parent is excluded from the decision-making about an important matter for the child by the other parent. A court will also decide upon a petition of a parent in a case in which the parents cannot agree which of them will represent the child during legal proceedings or in important matters relating to the management of the child's property.

Parents must inform each other of everything important as regards the child and his/her interests.

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

The Civil Code differentiates between placing a child into the care of one of his/her parents, into shared custody or joint custody, or into the care of somebody other than his/her parents. When making a decision on entrusting a child into care, the court will decide in such a way as to meet the interests of the child. A court may waive a decision on shared custody or joint custody if the parents are able to communicate and cooperate together.

**Joint custody (joint upbringing)**

This form of regulation of care for the child means that here there is no specific decision on entrusting a child into the care of one of the parents. In practice this means that in joint custody one parent may e.g., secure the educational needs of the child and the other his/her sports activities and/or one parent focuses on the language studies of the child while the other parent focuses on other extracurricular activities of the child. Both parents share in the provision of health care and the material needs of the child (e.g., cooking, cleaning, clothing, etc.). If a child is to be entrusted to joint custody, it is necessary that the parents agree with it.

**Shared custody (alternate upbringing)**

Shared custody means that the child is alternately placed into the care of one of the parents for a precisely determined period of time. A court will also define the rights and obligations exercised during these time periods.

**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?**

A petition that relates to parental obligations and rights must be made at the district court (in Prague at a district court, in Brno at the Municipal Court) in whose jurisdiction the minor resides and, if he/she does not have a permanent address, then at the district court in whose jurisdiction he/she is living. The court may, in matters relating to minors, also make decisions without a petition.

The requisites of a petition depend on the type of petition. It is however always necessary to indicate the name, surname, and address of the participants, or the birth ID numbers of the participants and their representatives, a depiction of the decisive facts, indication of the evidence on which the petitioner relies, and it must be clear from it what the petitioner is seeking and to which court the petition is addressed.



A petition must contain all the important documents relating to the matter in question – e.g., birth certificate, marriage certificate, any previous court decisions related to the child and so on. The proposal should be submitted in paper form in the required amount of copies so that one copy remains at the court and each participant receives a copy, if necessary.

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

A court may commence proceedings in matters of care of a court for a minor even if no petition has been lodged.

Using a preliminary ruling a court may, even before the issue of a decision on the merits of the case, if necessary for the provisional regulation of the relations of the participants, or if there is concern that the enforcement of a court decision is threatened, impose on a participant to the proceedings the payment of essential alimony and/or entrust the child into the care of one of the parents, or a person determined by the court. A preliminary ruling is usually issued upon a petition, however, if it is possible to commence proceedings on the merits of the case (hence also proceedings relating to care by the court of a minor) without a petition, a preliminary ruling may also be ordered without a petition. The court that is competent for the proceedings in the matter is responsible for ordering a preliminary ruling, unless the law provides otherwise. A petition for the order of a preliminary ruling must contain the requisites under Section 42 (4) and under Section 75 of the Civil Procedure Code (Act No 99/1963, as amended), meaning in particular: information regarding the court to which the petition applies; who is making the petition and what it concerns, meaning an account of the facts that would justify such preliminary ruling as proposed; what the petition should achieve, meaning which preliminary ruling the petitioner is seeking; an account of the fact that it is necessary to provisionally regulate the relations of the participants or that there is concern that the enforcement of a court decision may be threatened, and also an indication of the date on which the petition was prepared and the signature of the petitioner or his/her representative. Documents that the petitioner refers to must be attached to the petition. Generally speaking, for preliminary rulings, the situation is that to secure compensation for damage or other losses that would occur because of the preliminary ruling, the petitioner must deposit, at the latest on the same day on which he/she submitted to the court the petition for the preliminary ruling, security to the determined amount. However, in the case of a preliminary ruling in the matter of maintenance and support or a preliminary ruling that a court may impose even without a petition, the deposit of security is not required. A court will decide on a preliminary ruling without delay. If there is no danger of default, a court may decide on a petition for a preliminary ruling within 7 days after it was submitted. A court will decide without hearing the participants. When ordering a preliminary ruling a court will impose on the petitioner that he/she must submit to the court a petition for the commencement of proceedings within a deadline imposed on him/her. It may also determine that a preliminary ruling will only last for a specific period of time. The Act on Special Court Proceedings (Act No 292/2013, as amended) regulates a special preliminary ruling for a case in which a minor is in a situation of a lack of proper care irrespective of whether there is or is not a person who has the right to care for the child, or if the life of the child, his/her normal development or other important interest is seriously threatened or has been disrupted. In such a case a court, through a preliminary ruling that the court may impose only upon a petition by an authority for the social and legal protection of children, will regulate the relations of the child for an essential time by ordering that the child be placed in a suitable environment indicated in the decision. Through such a preliminary ruling it is possible to place a child in foster care for a provisional time for which the parent cannot look after the child for serious reasons, or after its expiration the child can be placed into care before adoption, have the parents consent to adoption, or decide that the parents' consent to adoption is not needed. The court will decide on a petition for a preliminary ruling without delay, but at the latest within 24 hours of its submission. The decision will be enforced immediately after it is ordered, while the court will cooperate in relation to its performance with the applicable public authorities.

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

Under the Act on Court Fees (Act No 549/1991, as amended) proceedings relating to guardianship and custody of courts for minors are exempt from fees.

This means that a petitioner who submits a petition relating to parental obligations and rights is not obligated to pay court fees.

Under certain conditions it is possible to appoint a legal representative free of charge or for a reduced fee. A court will appoint a representative upon request from a participant regarding whom it can be anticipated that the court will completely or partially waive his/her court fees, if this is necessary for example to protect his/her interests. If required to protect the interests of the participant, he/she will be appointed a lawyer. The appointment of a representative must be justified by the situation of the participant (in practice this may be adverse financial circumstances or an adverse social situation, while it is always necessary to take into account the specific circumstances of the case) and there must be no arbitrary or manifestly unsuccessful enforcement or protection of rights.

The Act on Provision of Legal Aid in Cross-border Disputes within the European Union (Act No 629/2004, as amended) regulates access to legal aid for legal proceedings in a European Union Member State, in which a natural person resident in a different Member State takes part. This aid is related to legal proceedings in the trial proceedings and enforcement phases.

The Act on the Legal Profession (Act No 85/1996, as amended) determines the conditions under which it is possible to request the free appointment of legal counsel directly by the Czech Bar Association.

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

Yes, it is possible to appeal against a decision relating to parental responsibility. District courts are courts of first instance for the management of the rights and obligations arising from parental responsibility. Regional courts (or the Municipal Court in Prague) decide on appeals against decisions of courts of first instance. An appeal against a court's decision may be lodged within 15 days from receipt of the written decision by the court whose decision is being appealed and, unless prohibited by law (e.g., it is not possible to lodge an appeal against a court decision approving agreement between the parents on child care). An appeal is also considered to be lodged on time even after the expiry of the fifteen-day period if the appellant was following incorrect information from the court of appeal.

It should be emphasized that some decisions may be provisionally enforceable – they can thus be enforced even though was appeal has been lodged against them. Decisions imposing the performance of maintenance and decisions to extend the duration of an educational measure through which a child was temporarily taken from the custody of his/her parents or another person are provisionally enforceable.

#### **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?**

In the Czech Republic it is necessary to submit a petition for the enforcement of a decision relating to care for a minor at a court. The procedure applied for the enforcement of a decision is subject to the Act on Special Court Proceedings (Act No 292/2013, as amended).

The general court of the minor is competent for such proceedings, which is the district court (district court in Prague, the Municipal Court in Brno) in whose jurisdiction the minor is resident based on agreement between the parents or decision by a court, or other decisive facts. The petition must contain all the necessary information (the entitled and the obligated parties, the scope and content of the obligation of the obligated party and the deadline for compliance with the applicable obligation and specification of the so-called executionary title – the decision that will be enforced).

Before ordering the performance of a decision the court may, if it sees special reasons for doing so, and/or if the obligated party was not informed about the consequences of failure to comply with an obligation, call the obligated party to comply with the decision or agreement and inform him/her of the possibilities for the enforcement of the decision through imposing fines or the removal of the child. The court may also request the relevant authority for the social and legal protection of children to lead the obligated party to comply with his/her obligations without the need to order the enforcement of the decision.

If the person does not comply with his/her obligation even after instruction from the court, the court will order the enforcement of the decision through the imposition of a fine, and this may be done repeatedly. The amounts of the individual fines may not exceed CZK 50,000. Other measures that the court may order include a meeting with a mediator, a meeting with an expert in pedopsychology or the determination of a plan for an acclimatisation regime to facilitate gradual contact between the child and a person entitled to be in contact with him/her.

If, in spite of the implementation of the indicated measures, the obligations are not complied with or it is clear from the circumstances that this approach has not led to compliance with obligations, the court will order in exceptional cases the enforcement of a decision to remove the child from the person with whom the child should not be according to the agreement or decision. The decision through which the decision to remove the child was ordered will be delivered to the obligated party only during the enforcement.

#### **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?**

Decisions relating to parental responsibility issued by courts in European Union Member States are recognised in the Czech 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, repealing Regulation (EC) No 1347/2000 ("Regulation No 2201/2003"), without the need for special proceedings. However, any person with a legal interest may turn to a court with a petition for the issue of a decision on the recognition or non-recognition of the decision. In the Czech Republic district courts (district courts in Prague, the Municipal Court in Brno) are competent for such proceedings in the first instance. The competent court is the district court that is the general court of the petitioner, otherwise the district court within whose jurisdiction the situation for which recognition is important occurred or may occur.

Before a decision in matters of parental responsibility issued in a different Member State can be enforced in the Czech Republic, it must be declared enforceable according to a special procedure in accordance with Regulation No 2201/2003 indicated above. A petition for a declaration of enforceability is submitted in the Czech Republic to the locally competent district court (district courts in Prague, the Municipal Court in Brno). Local competence is determined in accordance with Regulation No 2201/2003 according to the usual place of residence of the person against whom the enforcement is sought, or according to the usual place of residence of the child; if neither of these places is found in the Member State where enforcement will take place, local competence will be determined according to the location of enforcement of the decision.

A decision on the right to contact with a child and a decision ordering the return of a child issued based on Art. 11 (8) of Regulation No 2201/2003 are, pursuant to Art. 41 and 42 of Regulation No 2201/2003, enforceable in a different Member State without the need for a declaration of enforceability and without the possibility of an objection against recognition of the decision, if the decision was certified in the Member State of origin using a standardised form contained in an annex to Regulation No 2201/2003.

It is necessary to attach to a petition for the recognition or non-recognition of a decision and a declaration of a decision as enforceable one copy of the decision that complies with the conditions necessary for the recognition of its authenticity (e.g., a duplicate or a certified copy of the decision), and certification pursuant to Art. 39, issued by the relevant authority of the Member State in which the decision was issued, on a standardised form contained in an annex to Regulation No 2201/2003. In the case of a judgment on default it is necessary to also submit the original or a certified copy of the document confirming that the party that did not come to the proceedings, the petition to commence the proceedings or another similar document was delivered or any document indicating that the defendant has accepted the judgment unequivocally. If the certification or required document in the case of a judgment for default is not submitted, the procedure adopted will be pursuant to Art. 38 (1) of Regulation No 2201/2003.

With compliance with the conditions indicated in the mentioned regulation, the procedure for the enforcement of a decision in matters of parental responsibility from a different EU Member State is the same as for the enforcement of national decisions. For more information, see the preceding question.

#### **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?**

A remedial measure (appeal) against a decision of a court is submitted to the court that issued the decision. A superior court will decide on the remedial measure.

#### **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?**

In proceedings regarding matters of parental responsibility the applicable law is determined pursuant to the 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. Any bilateral international agreement by which the Czech Republic is bound in relation to other states takes precedence over the Convention of 1996, unless a declaration has been made pursuant to Art. 52 (1) of the Convention of 1996 (such a declaration was made in relation to a mutual bilateral agreement by the Czech Republic and Poland, which ensured the precedence of the Convention of 1996).

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### **Parental responsibility - Estonia**

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

Parental responsibility signifies custody of a minor child, which involves the parent's obligation and right to take care of the child. Parental responsibility includes the right to take care of the person of the child (*custody of person*), the right to manage the child's property (*custody of property*) and the right to decide on matters related to the child. Custody of property includes the right and obligation to manage the child's property, and also to represent the child.

This does not preclude the right of the child to manage his or her property independently in the cases provided by law.

A parent has decision-making power in respect of his or her minor child, which consists of the right to decide on every day (usual care-related) matters concerning the child. As a rule, deciding on everyday matters means making ordinary decisions which occur often and which do not have a permanent effect on the development of the child. In addition to the decisionmaking power, a parent with the right of custody also has a right of representation with respect to his or her minor child. Parents who have joint custody have a joint right of representation.

Both parents have the right of parental contact with their children, which means the obligation and right of both parents to maintain direct contact with their children. The right of parental contact with their children does not depend on the existence of custody. Parents also have a maintenance obligation in respect of their minor children.

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

The mutual rights and obligations of parents and children arise from filiation, which is ascertained pursuant to the procedure provided by law. The woman who gives birth to a child is the mother of that child. The man by whom a child is conceived is the father of that child. A child is deemed to have been conceived by the man who is married to the mother of the child at the time of the birth of the child, who has acknowledged his paternity, or whose paternity has been established by a court.

Parents who are married to each other have joint parental responsibility, i.e. custody of their children. If the parents of a child are not married to each other at the time of birth of the child, they have joint parental responsibility unless they have expressed their wish to leave the parental responsibility to one of the parents when submitting the declarations of intention concerning the acknowledgement of paternity or maternity.

If neither of the parents of a minor child has the right of representation or if it is not possible to ascertain the child's parentage, the child is appointed a legal guardian. In this case, the legal guardian will have custody. The duty of the legal guardian is to ensure the upbringing and development of the child and the protection of the child's personal and proprietary interests.

An adult natural person with full active legal capacity (for example, the child's relative or a third party) or a legal person (a company or a local government) may be the legal guardian. A legal person is appointed as the legal guardian, if a suitable natural person is not found or if a parent has specified in his or her will or succession contract that a legal person should be appointed as the legal guardian. The legal person is required to systematically seek guardians who are natural persons for the persons under the legal person's guardianship, and to provide advice and training to such guardians.

Until the appointment of a legal guardian, the guardian's duties are temporarily performed by the rural municipality or city government of the child's place of residence entered in the population register, provided that the preconditions for the establishment of guardianship are met. In the performance of the guardian's duties, a rural municipality or city government has the rights and obligations of a legal guardian.

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

If the parents are unable or unwilling to exercise parental responsibility over a child, they can consent to giving the child up for adoption. The consent of a parent to adoption will not enter into force before eight weeks have passed from the birth of the child, and a petition for adoption cannot be filed with a court before entry into force of the consent of a parent. With the consent of a parent, a child may be given to the person who wishes to adopt the child to be cared for before entry into force of the consent granted for adoption.

If neither of the parents of a minor child has the right of representation or if it is not possible to ascertain the parentage of a child, a court decides on the appointment of a legal guardian on its own initiative or on the basis of an application of a rural municipality or city government or an interested person.

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

If the parents are divorced or separated, they must decide how to settle further custody issues. Parents who have custody may agree on the arrangements for exercising their joint right of representation. However, changing custody arrangements, including the termination of joint custody, may only be done through a court.

Each parent has the right to request from a court in proceedings on petition that custody of the child be partially or fully transferred to him or her. A court can also adjudicate a custody dispute in an action, if this is requested in conjunction with divorce or the payment of a maintenance allowance.

### **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 with custody may freely arrange the exercise of joint custody. However, changing custody arrangements, including the termination of joint custody, is possible only through a court. Matters related to custody are decided and determined in a legally binding manner by a court. When hearing any matter concerning a child, the courts are above all guided by the best interests of the child, taking into account all of the circumstances and the legitimate interest of the relevant persons. Custody disputes constitute family law matters, which are heard by courts on petition and adjudicated by an injunction. In order to have his or her rights in respect of a child be determined, a parent must file a petition with 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?**

Parents with custody may freely arrange the exercise of joint custody. However, changing custody arrangements, including the termination of joint custody, is possible only through a court. To come to an agreement, parents can use the family mediation service. The local government can refer them to the relevant service provider. For example, parents can agree on the procedure for access to the child on their own or with the help of a family mediator, but if the agreement is violated, they must go to court to obtain an enforcement instrument (i.e. an injunction).

In determining the procedure for access to a child, the courts also act as conciliation bodies in judicial proceedings, seeking to achieve an agreement between the parents on access to the child. Courts hear the parties as soon as possible and draw their attention to the possibility of using the assistance of a family counsellor, in particular to reach a common position on the care of and responsibility for the child. A court may suspend proceedings concerning a child, provided that the suspension will not lead to a delay harming the best interests of the child and if the parties concerned are prepared to be counselled outside the court or if, in the opinion of the court, the dispute could, for other reasons, be resolved by agreement between the parties.

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

The jurisdiction of courts includes matters related to the right of parental contact with children, changes in custody, reinstatement of custody, the obligation to pay the maintenance allowance and changes in the amount of the maintenance allowance at the request of a parent.

### **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 mutual rights and obligations of parents and children arise from the parentage of children, which means that the parent of whom a child is descended has a duty to care for the child. The mutual rights and obligations of a parent and a child depend on who has custody of the child, i.e. if only one parent has custody of the child, that parent can decide on all matters relating to the child without first consulting the other parent.

A parent can have sole custody of a child from the birth of the child, for example, in cases where the parents have expressed their wish to leave the parental responsibility to one of the parents when submitting the declarations of intention concerning the acknowledgement of paternity. One parent can also obtain sole custody, for example, in the following three cases.

A parent obtains sole custody if the parent has requested from a court, in proceedings on petition, that custody of the child be partially or fully transferred to him or her. A parent would normally request sole custody if parents who have joint custody live permanently apart or for some other reason no longer wish to exercise joint custody.

A parent may also exercise custody alone in cases where parents have joint custody, but one parent's custody has been suspended. If sole custody of a child granted to a parent on the basis of law or a court ruling is suspended and there is no reason to expect that the grounds for suspension will cease to exist, a court grants the custody to the other parent if this is consistent with the best interests of the child.

A court will also grant custody to the other parent if the parent with sole custody has died or has been deprived of the custody, unless this contradicts the best interests of the child.

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

If parents have joint custody, they exercise the joint custody with respect to their child and perform the custodial obligation on their own responsibility and unanimously, considering the child's overall well-being. Parents who have joint custody also have a joint right of representation.

If parents exercising joint custody fail to reach an agreement in a matter significant for the child, a court may, at the request of a parent, grant powers of decision in this matter to one parent. In the case of transfer of powers of decision, a court may restrict the exercise of the powers of decision or impose supplementary obligations on the parent exercising the right.

**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?**

Custody-related disputes are adjudicated by county courts. In the event of a custody-related dispute, the petitioner must file a petition with a county court for adjudication of the matter in proceedings on petition. The petition has to be filed with the county court of the child's place of residence.

The petition must state the name of the court, the personal data of the petitioner, the person concerned and their children, as well as the express request of the petitioner. In addition, the petition must indicate the facts, and the petitioner must list and present the evidence at his or her disposal. The petition must be signed by the petitioner or the petitioner's representative. In the case of a representative, a power of attorney or another document certifying the power of representation must be appended to the petition.

The petition and documentary evidence must be submitted to the court in writing in Estonian. If a petition, request, complaint or statement of opposition filed with the court by a participant in the proceedings is not in Estonian, the court will require that the person submitting such documents provide a translation by the date set by the court.

Matters involving the determination of a parent's rights in respect of a child and the arrangement of access to the child, i.e. custody-related matters, can also be adjudicated in an action, if this is requested in an action in conjunction with the divorce or the payment of maintenance allowance.

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

Courts hear custody-related matters on petition in accordance with the provisions concerning actions, considering the differences laid down in respect of proceedings on petition (see the Code of Civil Procedure [1]).

In an urgency procedure, a court can only adjudicate the claim for maintenance allowance from a parent who lives apart from a minor child. Custody-related matters cannot be heard in a simplified procedure. However, custody-related matters are matters heard on petition and therefore differ from an ordinary action. In a matter on petition, the court ascertains the facts and gathers the necessary evidence itself, unless otherwise provided by law. The court is not bound by the requests or facts presented by the parties to the proceedings or by their assessment of the facts, unless otherwise prescribed by law. The requirements for taking minutes of hearings and for service of documents are also less stringent. In custody-related matters, courts can also apply measures to regulate the exercise of custody or the access to the child during the proceedings or in order to secure future compliance with agreements.

The court may apply precautionary or interim measures if there is reason to believe that failure to apply the measures may render enforcement of a judgment difficult or impossible. In a family law matter adjudicated on petition, interim measures may be applied by each court within whose territorial jurisdiction the measures must be taken. Such measures include, for example, return of the child to the other parent or compliance with the legal maintenance obligation; among other things, courts can order the defendant to pay the maintenance allowance during the period of the proceedings or to provide security for compliance with the payment obligation.

[1] Code of Civil Procedure (RT I 2005, 26, 197; RT I, 21.06.2014, 58). Online: <https://www.riigiteataja.ee/akt/121062014058?leiaKehtiv>.

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

If the court concludes that a natural person is unable to bear the costs of proceedings due to his or her financial position, the court may release the person completely or partially from the costs of legal assistance and payment of the state fee.

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

A ruling made in proceedings on petition is an injunction to which the provisions concerning injunctions made in actions apply, unless otherwise prescribed by law. An appeal can be filed against an injunction on custody in accordance with the general provisions governing appeal proceedings, if the appellant finds that the ruling of the court of first instance is based on an infringement of a legal provision (for example, if the court of first instance has incorrectly applied a legal provision of substantive law or procedural law). For the above reasons, an appeal in cassation can also be filed with the Supreme Court.

**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?**

Custody-related matters are heard in proceedings on petition. In a family law matter adjudicated on petition, the court issues an injunction that is enforceable from the moment of its entry into force, unless otherwise prescribed by law. An injunction issued in a matter on petition is the enforcement instrument. In the event that a debtor fails to voluntarily comply with the injunction on custody, the injunction will be enforced in enforcement proceedings on the basis of the application submitted by the claimant. To this end, the claimant must submit an application to a bailiff in whose territorial jurisdiction the debtor has his or her residence or seat or where the debtor's assets are located. In a matter concerning access to a child, the bailiff will, in enforcement proceedings, work together with a representative of the local government of the place of residence of the child or, exceptionally, of the place of residence of the obligated person, who has expertise in interaction with children. If necessary, the bailiff may suggest to the local government that the child be temporarily placed in a welfare facility. If the obligated person impedes compulsory enforcement, he or she may be subject to a penalty payment.

**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?**

According to Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, a judgment given in a Member State is recognised in the other Member States without any special procedure being required. The Regulation applies to all Member States of the European Union, with the exception of Denmark.

A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served will be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. To this end, an application for a declaration of enforceability must be submitted to a court.

The court to which the application should be submitted can be found [here](#).

A party seeking or contesting recognition or applying for a declaration of enforceability must submit:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) the certificate concerning judgments on parental responsibility.

The form is available [here](#).

A judgment relating to parental responsibility is not recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;
- (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;

- (c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;
- (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;
- (e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;
- (f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought; or
- (g) if the procedure laid down in Article 56 of Council Regulation (EC) No 2201/2003 has not been complied with.

#### **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?**

The court to which the application should be submitted can be found [here](#).

A party seeking or contesting recognition or applying for a declaration of enforceability must submit:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) the certificate concerning judgments on parental responsibility referred to in Article 39 of Council Regulation (EC) No 2201/2003.

The form is available [here](#).

#### **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?**

According to the Estonian Private International Law Act [1], the relationships between a child and the parents are governed by the law of the country of residence of the child.

In addition, the Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children is applicable between the States signatory to the Convention.

The determination of the applicable law may also be subject to agreements on legal assistance. The Republic of Estonia has entered into agreements on legal assistance with the following countries:

- Agreement on legal assistance and legal relations between the Republic of Estonia, the Republic of Lithuania and the Republic of Latvia (1993);
- Agreement on legal assistance and legal relations in civil, family and criminal matters between the Republic of Estonia and the Russian Federation (1993);
- Agreement on legal assistance and legal relations in civil and criminal matters between the Republic of Estonia and Ukraine (1995);
- Agreement on legal assistance and legal relations in civil, labour law and criminal matters between the Republic of Estonia and the Republic of Poland (1999).

Since all the parties to the agreements on legal assistance concluded with Lithuania, Latvia and Poland are also parties to the Hague Convention of 1996, the parties have decided to apply the provisions of the Convention in determining the applicable law.

[1] Private International Law Act (RT I 2002, 35, 217). Online: <https://www.riigiteataja.ee/akt/13242136?leiaKehtiv>.

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#### **Parental responsibility - Ireland**

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

The legal term "parental responsibility" – referred to in Ireland as "guardianship" – refers to the possession of all rights and duties relating to a child which have been given under law or by the court, or by virtue of legal agreement. The holder of parental responsibility possesses rights of custody and access amongst others pertaining to the welfare of the child.

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

Generally, married parents of a child hold parental responsibility jointly over their child. Where parents are not married the mother is the general holder of parental responsibility but the natural father may be appointed as a guardian by agreement between the parents or by the court.

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

Yes. The Health Service Executive, through their Child and Family Service division TUSLA, can apply to the District Court for such care orders necessary for children under eighteen years. In exceptional circumstances, the court may appoint a guardian to exercise the functions of parental responsibility where a parent is unwilling or unable so to do. A Testamentary Guardian may be appointed upon the death of a parent where one has been elected by virtue of a will or codicil or may be appointed by the court. In the absence of such election, the Health Service Executive, through their Child and Family Service division TUSLA, can apply to the District Court for such care orders necessary for children under eighteen years if the parents of a child are deceased or incapable of taking care of their child.

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

Where the parents of a child divorce or "split up", custody and access arrangements can be decided by agreement by the parents. Where agreement cannot be reached, parents can apply to court where a judge can make custody or access orders. Where both parents are guardians of the child, this is not affected by divorce or splitting up, although the guardianship of a non-marital father may – in highly exceptional circumstances and only where the welfare of the child requires it – be terminated by the court.

##### **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 who conclude an agreement on the question of parental responsibility are required to put same before the court and obtain an order reflecting such to make the agreement legally binding. The court must be satisfied that the rights of the child are adequately protected by any agreement and can refuse to make an order where it is not satisfied that either or both parents are discharging their obligations towards the child. Such an agreement cannot terminate the guardianship status of either parent.

##### **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?**

Individuals can have recourse to non-legal methods of conflict resolution such as mediation or through counselling.

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

The judge may decide upon all such issues pertaining to the welfare of the child including but not limited to issues as to guardianship, custody and access. See also Q. 4 and Q. 5 above – the guardianship of married parents or a natural mother may not be terminated by the court although the court may place conditions on a person's exercise of their parental responsibilities.

**8 If the court decides that one parent shall have single 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?**

No. While the parent who has sole custody of a child has the ability to decide upon the day to day care and control of the child, a non-custodial parent who is the child's guardian possesses a right to be consulted on all matters affecting the welfare of the child including, but not limited to, where the child should be educated and where the child should live.

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

Joint custody is granted to parents in the absence of deep hostility between parties and enables them to mutually make decisions pertaining to the substantial welfare of the child and regarding its day to day care. This does not mean that each parent has a right to equal time with the child; rather, it ensures that both parents have corresponding duties and obligations to the child.

**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?**

Normally parties who wish to lodge an application on parental responsibility do so before the District Court; however, for certain applications ancillary to matrimonial proceedings it may be necessary to apply to the Circuit or High Court. The High Court has exclusive jurisdiction in issues pertaining to Child Abduction.

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

Yes. It is possible to apply to the court *ex parte*, which means without notice to the other side, where circumstances would place a child at risk should an applicant put the respondent on notice in the usual manner.

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

Yes. Legal Aid is obtained through the Civil Legal Aid Scheme. This scheme is means tested.

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

Yes. It is possible to appeal a decision of the court of first instance i.e. the court where the proceedings commenced; however, it is usually not possible to appeal the judgment of any appelland court.

**14 In certain cases, it may be necessary to apply to a court or another authority to have a decision on parental responsibility enforced. Which procedure applies in such cases?**

Individuals attempting to enforce a decision on parental responsibility should consult the rules of the respective courts or institution. Excluding *ex parte* applications, it is necessary to inform the respondent of your intention to take any procedure with a view to enforcing a judgment.

**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?**

Please see reply to Q. 14.

**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?**

The High Court, which has full and original jurisdiction.

**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?**

The *Protection of Children (Hague Convention) Act 2000* gives legal force to the 1996 *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* which applies in this area; further, *Council Regulation (EC) No. 2201/2003 concerning Jurisdiction and Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility (Brussels II bis)* is also applicable in this area.

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**Parental responsibility - Greece**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yes, under the general conditions applicable to legal aid.

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

A court judgment on parental responsibility can be revoked or varied if there has been a change in the circumstances that led the court to rule as it did. Otherwise a judgment on parental responsibility may be challenged by any of the ordinary judicial remedies (appeal on points of fact and law (*έφεση*), appeal on points of law only (*casation, αναίρεση*), application to set aside (*ανακοπή ερημοδικίας*), review (*αναψηλάφηση*)), in accordance with the usual requirements.

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

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

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

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

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

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

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

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

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## Parental responsibility - Spain

### 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 Spanish law, parental responsibility is usually referred to as 'patria potestad' (parental authority). It consists of the rights and duties of the individuals, normally the parents, or legal entities entrusted with the protection of the minor's person and property by law or by a court decision.

Parental authority must always be exercised for the benefit of the children, in accordance with their personalities, and with respect for their physical and psychological integrity. It includes the following duties and powers:

1. Looking after them, being with them, feeding them, educating them and ensuring that they receive a well-rounded education.
2. Representing them and administering their property.

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

Parents have parental responsibility for minors.

In the event that the parents separate, divorce, split up or do not live together, all the rights and duties regarding minors, in relation to their persons and their property, belong to both parents, except in exceptional circumstances.

If the parents live apart, parental authority will be exercised by the parent with whom the child lives. However, upon an application by the other parent, accompanied by supporting reasons, the court may, in the interests of the child, award him or her parental authority to be exercised jointly with the first parent, or may distribute between the mother and the father the functions inherent in exercising parental authority.

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

In Spanish law, other relatives, persons or institutions may be appointed, under judicial supervision, to exercise parental responsibility over minors, if the parents fail to carry out the duties of protection laid down by the law on the care of minors, or do not carry them out satisfactorily.

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

If the parents divorce or separate, parental responsibility may be determined:

At the request of both parents, in a Regulating Agreement (*convenio regulado*), which must be approved by the courts;

By a court decision, in adversarial proceedings.

Parental responsibility, as an institution for the protection of minors, lies with both parents.

The arrangements for the care and custody of minors may be summarised as follows:

Award to just one of the parents; this is the arrangement most frequently made, both in separations and divorces which are mutually agreed and in adversarial proceedings; visiting arrangements are usually made for the parent without custody.

Joint award, with alternating periods in which the minors are with one or the other parent.

On an exceptional basis, where circumstances so dictate and in the interests of the minor, a court decision may be issued awarding care and custody to another person, either following a proposal by the parents themselves or at the direct decision of the court.

In cases where the administration is responsible for the care of the minor, this situation is maintained, and custody is not awarded to either parent.

### 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 who reach an agreement on issues of parental responsibility must submit a signed Regulating Agreement containing all the points agreed on. This must set out expressly, in addition to other measures:

the care and custody of the minor;

the visiting arrangements with parents;

the exercise of parental responsibility;

the use of the family home;

the maintenance allowance for the minor.

The Regulating Agreement is submitted together with the application to the appropriate Court of First Instance. It must be ratified by the parents in court.

After hearing the minors - if they are old enough - and the public prosecutor, the judge assesses the agreements.

Unless they are damaging for the children, agreements by the spouses adopted to govern the consequences of annulment, separation or divorce will be approved by the judge. If the parties propose arrangements for visits and communication between grandchildren and their grandparents, the judge may approve them after having a hearing with the grandparents in which they give their assent.

If agreements are rejected, this must be done through a decision accompanied by reasons. In this event, the spouses must submit a new proposal for approval by the judge, if applicable.

### 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?

Family Mediation is the best alternative measure to a court decision for arriving at an agreement between the parties.

For any agreements adopted to be enforceable, they must always be approved by a court decision.

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

In the court decision the judge must always decide upon the following matters in the interest of minor children, avoiding the separation of siblings if possible, after hearing them if they are capable of judgement:

the judicial measures concerning custody and care, granted to one or both parents, and education;

the visiting arrangements, indicating the time, method and place when parents can communicate with their children and spend time with them;

exceptionally, these visiting rights may have to be limited or suspended if serious circumstances occur or if one of the parents seriously and repeatedly fails in his or her duties;

The award of parental authority, and, if necessary and if appropriate for the children, a decision as to total or partial exercise of such authority by one of the parents, including deprivation of such authority if there is good reason;

the maintenance to be paid by each parent to meet the needs of the child, having regard to the economic circumstances, and adopting the measures necessary to ensure the effectiveness of the maintenance;

allocation of the use of the family home and of commonly used items, in cases when there is no agreement between the parents, giving preference to the spouse with custody of the minor children.



**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 general rule, parental authority is shared by both parents. Both parents, therefore, share the power to decide upon and resolve all matters concerning a minor, even if only one of them has been awarded custody.

In the event of disagreement between the parents over decisions that can or should be taken concerning a minor child, for instance in relation to schooling and educational matters such as choosing a school or extracurricular activities, health care when choosing a doctor, personal matters such as the choice of a name or religious education, or choosing the place or country where the minors live, etc., and when mutual agreement has proved impossible, either of the parents may have recourse to the court to resolve the dispute.

After hearing both parents and the child (if he or she is capable of judgement), without further recourse the judge will award decision-making powers to the father or mother. If the disagreements recur or some other cause arises that seriously impedes the exercise of parental responsibility, the judge may assign decision-making powers totally or partially to one of the parents, or may distribute these functions between them. All these measures may be adopted for a maximum period of two years.

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

In cases where the custody of a minor is awarded jointly to both parents, in practice daytoday care of the minor by each parent alternates for predetermined periods, which usually coincide with specific school periods such as school terms or years.

All holiday periods are shared between both 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?**

In matrimonial proceedings for separation or divorce by mutual agreement, the competent court is the Court of First Instance within whose jurisdiction the last joint matrimonial home, or the home of either of the applicants, is located.

In adversarial matrimonial proceedings the competent court is the Court of First Instance in the location of the conjugal home, and if the spouses are resident in different judicial districts the plaintiff may choose between the court in the area of the last matrimonial home or in the area where the defendant is resident.

In proceedings that solely concern the care, custody and maintenance of minor children, in which the parents are not married to each other, the Court of First Instance which has jurisdiction is that in the location of the last shared residence of the parents. If they live in different judicial districts the plaintiff may choose between the court in the area of residence of the defendant or that in the area of residence of the minor.

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

The procedures applicable in these cases are the following:

in cases where there is agreement between the parties, the mutual agreement procedure established by Article 777 of the Law on Civil Procedure, for separation, divorce and the adoption of definitive measures on the care, custody and maintenance of minor children, when there is no marriage;

when there is no agreement between the parties, the adversarial proceedings governed by Articles 770 and 774 of the Law on Civil Procedure, which is also applicable to family proceedings and proceedings concerning minors, when the parents are not married to each other.

In urgent cases the adoption of measures under the following procedures may be requested:

Interim measures prior to the submission of the application for annulment, separation, divorce or in proceedings concerning the care and custody of minor children and maintenance. This is governed by Articles 771 and 772 of the Law on Civil Procedure.

It is expressly provided that if there are grounds for urgent action, the measures in the first decision issued may be adopted, with immediate effect.

Interim measures deriving from the acceptance of the application for matrimonial proceedings or proceedings relating to minors, as in the previous cases.

This is provided for in Article 773 of the Law on Civil Procedure.

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

Total or partial legal aid may be obtained, provided that proof is produced that the requirements for entitlement to legal aid are met, under the Law on Legal Aid. (See 'Legal Aid - Spain').

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

To know which decisions can be appealed, distinctions must be drawn between all the possible decisions relating to matters of parental responsibility, namely:

All decisions in adversarial proceedings may be appealed before a Provincial Court;

Decisions in mutual agreement proceedings may only be appealed, before the Provincial Court, when a measure is agreed which differs from the terms of the Regulating Agreement.

The law provides no recourse against decisions on prior interim measures or interim measures, or decisions on the exercise of parental authority.

**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?**

In cases when judicial decisions on parental responsibility are not complied with voluntarily, an application may be submitted to the Court of First Instance that issued them, by submitting a request for enforcement of the measure or measures not complied with.

The sentence or decision whose enforcement is sought, and the person against whom enforcement is to be carried out, must be identified.

**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?**

Decisions issued in a Member State on the exercise of parental responsibility in matrimonial proceedings concerning a child of the relationship, which were enforceable in the said Member State and which have been notified, shall be recognised in Spain at the request of any of the interested party without the need for proceedings, pursuant to the provisions of 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.

To request enforcement, an enforcement request must be submitted to the court of the place where the minor is located and where enforcement is requested. A copy of the decision whose enforcement is sought must be attached to the request and must meet all the requirements for determining its authenticity, in accordance with the standardised form set out in Annex V. A lawyer and legal representative are necessary.

**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?**

To oppose in Spain the recognition of a decision on parental responsibility adopted by another Member State, the party concerned must apply to the Court of First Instance to which the request for recognition has been made and plead the existence of any of the grounds for nonrecognition laid down in Regulation 2201/2003.

The grounds that may be pleaded are:

that the decision is manifestly contrary to public order, taking into account the child's best interest;

that the child was not given an opportunity to be heard (grounds not admissible in cases of urgency);

if the decision was issued in absentia, that the document instituting the proceedings was not submitted or notified, unless it is proven that the decision was accepted,

if the party opposing the recognition and alleging that the decision impedes the exercise of parental responsibility has not had the opportunity to be heard, or if it is incompatible with another decision issued subsequently.

## **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?**

The law applicable is that of the minor's usual place of residence, in accordance with the 1996 Hague Convention on the protection of the child.

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### **Parental responsibility - Croatia**

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

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

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

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

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

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

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

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

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

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

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

Measures to protect the child's personal rights and best interests will be taken based on an expert assessment if it is found that the child's rights and best interests have been violated, or that the child's rights, best interests and development have been jeopardised. The child's rights will be considered to have been jeopardised if care is inadequate, if the child experiences psychosocial difficulties (as manifested through his/her behaviour, emotional problems, problems at school or other problems regarding his/her growing up), or if it is probable that the above circumstances will arise. To protect the child's rights and best interests, a social welfare centre may: 1. take an emergency measure to separate the child and provide accommodation for him/her outside the family home; 2. issue a warning following a mistake or omission in the provision of parental care; 3. arrange for the parents to receive professional help and support regarding parental care; and 4. arrange for the parents to receive intensive professional support and for the parental care they provide to be

supervised. To protect the child's personal rights and best interests, a court may: 1. temporarily place the child in the care of another person, foster family or a social welfare institution; 2. issue a restraining order; 3. strip the parents of their right to live in a shared home with the child and place the child in the day-to-day care of another person, foster family or a social welfare institution; 4. provide support for the upbringing of the child, if he/she has behavioural problems, by placing him/her with a foster family or a social welfare institution; or 5. deprive the parents of their right to provide parental care. As part of the measures designed to protect the child's rights and best interests, the Family Act contains provisions to regulate the provision of temporary accommodation for the child or the temporary placement of the child in another person's care, to deprive the parents of their right to live in a shared home with the child, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Under Article 419 of the Family Act, the court may, in proceedings to determine the child's contact with the other parent, stipulate one or more measures to ensure the child's return or prevent the contact parent from abducting the child (for example, by ordering the contact parent to surrender his/her passport during contact time to the court that stipulated the measure, by ordering the contact parent to deposit a cash guarantee, by prohibiting any alienation of or

encumbrance upon the contact parent's property rights – details of such a prohibition being entered in public registers, by requiring the contact parent to regularly attend an authorised body, such as a social welfare centre, along with the child and in the location at which contact takes place, by determining the location at which contact is to take place, by prohibiting the child from leaving the country where contact is to take place, and by entering the details of such a prohibition in a national or transnational information system). When stipulating the above measures, the court must, in particular, take into account how the contact parent has behaved in the past.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

address, whether permanent or temporary. Mandatory counselling is a process that involves the personal participation of the family members (no representatives are allowed). Once the mandatory counselling process is over, the social welfare centre will prepare a report, which will remain valid for six months from the date of the end of the counselling.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For more information, please refer to:

The Family Act (NN No 103/15)

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

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

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

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

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

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### **Parental responsibility - Italy**

#### **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 Italian law, the concept of 'parental authority' (*potestà genitoriale*) was replaced by the concept of 'parental responsibility' (*responsabilità genitoriale*) by the law reforming parenthood (Law No 219/2012) and Legislative Decree No 154/2013, the provisions of which came into force on 7 February 2014.

Parental responsibility is the duty to maintain, bring up, educate and provide moral support to children, with due regard to their capacities, inclinations and aspirations.

Children also have the right to maintain a balanced and continuous relationship with both parents, to be cared for, brought up, educated and morally supported by each of them, and to maintain meaningful relationships with the ascendants and relatives of each parent.

Children themselves also have duties: to respect their parents and to play a part in the maintenance of the family for as long as they live within it.

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

Parental responsibility arises by operation of law when the parents are married to each other. In this case, both parents have parental responsibility for their children.

If the parents are not married to each other, it is the parent who acknowledges the child who has parental responsibility. If both parents acknowledge the child, they both have and exercise parental responsibility for the child, as if they were married. If the parents are not married to each other and do not acknowledge the child at the same time, the second acknowledgement cannot take place without the consent of the parent who has already made the acknowledgement.

Parental responsibility must be exercised by the parents by common agreement, taking into account the capacities, natural inclinations and aspirations of the child. In particular, the parents must establish the child's habitual residence by common agreement.

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

If the child temporarily lacks a suitable family environment, arrangements are made for the child to be fostered by another family.

Moreover, when parents do not demonstrate sufficient capacity to take care of their children's upbringing, for example when they are extremely confrontational, the courts often grant custody to the social services of the family's place of residence. This usually involves a limitation on the exercise of parental responsibility: normally, decisions concerning the child's health, education and upbringing are taken over by the social services of the family's place of residence. In such cases, the child often continues to live with his/her parents, or with one of them. In the most serious cases, the court orders the child's removal from the family home.

If a parent breaches or neglects his or her duties or abuses the associated powers, resulting in serious harm to the child, the court may order the withdrawal of that parent's parental responsibility.

If both parents are dead, have had their parental responsibilities withdrawn or are unable to exercise parental responsibilities for any other reason, a guardian is appointed. The guardian takes care of the child, represents him/her in all civil proceedings, and administers the child's assets.

The Civil Code also provides for the possibility of the court appointing a special guardian when the parents are jointly unable or unwilling – or when the parent exercising sole parental responsibility is unable or unwilling – to carry out one or more acts in the interests of the child, outside the scope of routine administration. In such cases, the special guardian is authorised to carry out those specific acts.

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

The parental responsibility of both parents does not end following separation, dissolution, cessation of the civil effects, annulment and nullity of the marriage.

The usual form of custody, which is capable of ensuring co-parenting, is joint custody whereby both parents exercise parental responsibility.

Decisions of the greatest interest for children concerning the education, upbringing, health and choice of habitual residence of the child are made by mutual agreement between the parents and in the child's best interests, taking into account his/her abilities, natural inclinations and aspirations; conversely, for any routine administrative matters, the parents may exercise their parental responsibilities separately (Article 337-ter of the Civil Code).

Shared custody does not necessarily imply that the child divides its time equally between each parent. Normally, the separation or divorce order determines who is the cohabiting parent – i.e. the parent with whom the child lives permanently – and the conditions under which the non-cohabiting parent can spend time with the child are then established. It is also possible for the time the children spend living with each parent to be divided equally, if the parents live close to each other and lead similar lifestyles, provided that such an arrangement will not have an adverse effect on the children's social or school life.

However, if joint custody does not meet the best interests of the child, the judge may grant sole custody to one parent, by a reasoned decision (Article 337c of the Civil Code).

The most common cases in which sole custody is granted are: 1. if one of the parents poses a risk to the physical and psychological wellbeing of the child (a violent parent, a parent with a significant criminal record, a parent who is a drug addict or an alcoholic); 2. if a parent is incapable of morally and materially supporting the child, or has not shown any interest in the child; 3. if a parent disparages the other parent in front of the child; 4. if the hostility between the parents is so bad that it could upset the child's equilibrium and psychophysical development.

In the case of sole custody, parental responsibility is exercised only by the parent with custody, but any decisions of the greatest interest for the child must be made by both parents, unless provided otherwise owing to particularly serious circumstances, for instance violent or abusive behaviour (Article 337c of the Civil Code).

A parent who does not exercise parental responsibility has the right and duty to monitor the education, upbringing and living conditions of the child (last paragraph of Article 316).

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

The agreement between the parents on how they will exercise parental responsibility following their separation must be submitted to the court with local jurisdiction, which will then ascertain whether or not the agreement will guarantee the rights and wellbeing of the children; if it does, the court will approve it.

If a married couple with children who are minors wish to separate or divorce and have also reached an agreement on the custody of the children and the exercise of parental responsibility, they may choose between two solutions:

a) they may submit a joint application to the court and have their agreement approved;

b) they may use 'lawyer-assisted negotiations' (Article 6 of Legislative Decree No 132/2014): these constitute an agreement through which the parties agree to cooperate in good faith and in a fair manner in order to amicably settle the dispute relating to their separation and custody of the children.

If there are children who are minors (but also adult children with an incapacity or who have a serious disability or are economically not self-sufficient), the agreement reached as a result of assisted negotiation must be forwarded, within ten days, to the Public Prosecutor at the court with jurisdiction, who will authorise the agreement if he or she considers the agreement to be in the interest of the children. If, however, the Public Prosecutor considers that the agreement is not in the best interest of the children, he or she will forward it, within five days, to the President of the court, who will set a date, within the following thirty days, for the attendance of the parties and will act without delay.

Once the agreement has been authorised, it is equivalent to the court orders made in relation to separation or divorce.

If the parents are not married, only the first solution is possible (i.e. agreement approved by the 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?**

To resolve any issues relating to the exercise of parental responsibility, the parents may turn to a family mediator. The aim of mediation is not to achieve a reconciliation of the couple, but to enable mutual agreement to be reached on the conditions for the exercise of parental responsibility, thereby avoiding and lessening any form of conflict. However, any shared solutions arrived at must be submitted to the court, which will assess whether child's interests have been respected.

If the dispute persists, it will be brought before the court with jurisdiction for separation, divorce and child custody proceedings.

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

Two scenarios need to be distinguished.

a) If the parents disagree on particularly important issues, they may bring the dispute before a court. In such cases, the court first of all proposes the solutions that best meet the interests of the child and the family unit. If the dispute persists, the court grants the power to decide on the specific question to the parent it considers most likely to take care of the child's interests.

b) The parents may bring an action before the courts seeking a decision on the custody of the children and their placement (normally when the parents are separating). In this case, the court decides on:

the custody of the children, choosing primarily the solution of joint custody (i.e. both parents),

the times and conditions of residence with each parent,

the amount of child support and, in general, the contribution of each parent to the expenses incurred for the children's care, education and upbringing.

Since the most important decisions must be taken by common agreement even when the parents separate or divorce, if the parents disagree on any individual issues, they may bring the dispute before a court as explained in point a).

**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?**

A parent who has been granted sole custody of the children has exclusive exercise of parental responsibility, unless the court orders otherwise. The parent in question can, in particular, also take non-routine administrative decisions independently.

However, even when one of the parents has been granted sole custody, decisions serving the best interests of the children (those relating to their education, upbringing and health) must be taken by both parents, unless the custody decision provides otherwise.

In general, judges rule that the agreement of the parent not having custody is not needed when that parent is absent, indifferent, unreachable or has behaved violently or abusively in the past.

The parent not having custody of the children has the right and duty to monitor their education, upbringing and living conditions, and may go to court when he/she believes that decisions have been taken that go against the children's interests.

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

If joint custody is granted, parental responsibility is exercised by both parents, who must agree on the direction of the children's lives and take decisions together concerning the education, upbringing, health and choice of usual place of residence of the children, ensuring that those decisions are in the children's best interests. With respect only to any decisions on routine administrative matters, as a rule the parents exercise parental responsibility separately, during the respective periods when the children are living with them.

**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 General Jurisdiction Court (*Tribunale ordinario*) has jurisdiction for all proceedings concerning the custody of the children and any associated issues relating to parental responsibility.

If a dispute relates to the withdrawal or restriction of parental responsibility or the reinstatement of parental responsibility, without involving any factors relating to the custody of the children, the court with jurisdiction is the Juvenile Court (*Tribunale per i minorenni*).

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

If the issue relating to the custody of and the exercise of parental responsibility over children born during marriage forms part of the separation or divorce dispute, the procedure is that set out in the section on [Divorce](#).

Measures concerning custody and the exercise of parental responsibility for children born out of wedlock are adopted by the court in closed session, having sought summary information and after having heard the public prosecutor and the parents; in an emergency, the court may order temporary measures in the interests of the child.

In both cases, the judge may order urgent temporary measures to protect the children. The proceedings differ depending on whether they relate to the children of unmarried couples or married couples, but the General Jurisdiction Court has jurisdiction in both cases.

As in all procedures relating to children, the child is heard by the judge if he/she is aged twelve or over or in any event is capable of discernment.

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

Legal aid can be obtained to cover the costs of separation, divorce and child custody proceedings, or proceedings restricting or removing parental responsibility.

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

Appeals against decisions on parental responsibility can be lodged with the Court of Appeal (*Corte d'Appello* - court of second instance).

**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 of the court concerning parental responsibility are enforceable.

**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 of a decision on parental responsibility of a court of another EU Member State is automatic. However, pursuant to Regulation (EC) No 2201/2003 of 27 November 2003, any interested party may apply for a ruling that the decision be or not be recognised.

For the decision to be enforced, the interested party must submit an enforcement application to the Court of Appeal with local jurisdiction. Once the decision has been declared enforceable, it is enforced under the same conditions that would have applied had the decision been made in that Member State.

**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?**

The competent judicial authority is the Court of Appeal with local jurisdiction (with reference to the place where the decision is enforced, in accordance with national rules). The legal action is conducted in the form of contentious proceedings and concludes with a declaratory judgment, against which an appeal may be lodged on a point of law (*ricorso per cassazione*).

## **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?**

Since Italy has ratified the Hague Convention of 1996, the provisions of that Convention apply. Thus, the attribution and extinction of parental responsibility, the exercise of parental responsibility and the withdrawal or restriction of parental responsibility are governed by the law of the State of the child's habitual residence.

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### **Parental responsibility - Cyprus**

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

The notion of "parental responsibility" covers giving a child a name, caring for the child, managing its property and representing it in any matter or legal transaction that concerns it or its property. In practice, it covers all issues relevant to a child (as an individual) and its property.

Parental responsibility is the duty and the right of the parents who exercise this responsibility jointly. Such responsibility must bear in mind the child's interests (Section 6 of Law 216/1990).

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

Parental responsibility of a child is exercised by both parents jointly.

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

Yes, in such cases, the Court can appoint a guardian with parental responsibility (Section 18(2) of the Parents and Children Relations Law, Law 216/1990).

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

In the case of a divorce or where a marriage is annulled or declared null and void, the question of parental responsibility is determined by the Court, which can award it to one of the two parents, or both jointly, or to a third person (Sections 14 and 15 of Law 216/1990). If the Court awards parental responsibility to one parent only, it can also decide about the other parent's rights of access to the child, bearing in mind the child's interest (Section 17 of Law 216/1990).

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

The Court needs to issue an order on the agreement for it to become legally binding.

#### **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?**

At present, there are no alternative means of settling a dispute other than court proceedings.

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

The judge can regulate any issue relating to the child, including the question of parental responsibility, access rights, education, health, management of property, name, maintenance, travel abroad and abduction.

#### **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?**

No, because there are issues, such as the management of the child's property, which are not covered by "custody" in the narrow sense.

#### **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 the parents must decide together on issues relating to their child. It usually means that the child will live equally with both parents.

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

The court with jurisdiction is the Family Court in the district in which the minor is habitually resident. Proceedings are started by filing an initiating application without an affidavit. No accompanying documentation is required at this stage.

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

The application is served on the other side who is asked to appear before the Court on the date specified in the application, in order to state his/her views. In cases involving a child, there is no emergency procedure apart from child abduction cases. Having said that, because of their nature, courts do make sure that priority is given to these cases. In addition, Article 6 of the European Convention on Human Rights and Article 30 of the Constitution of the Republic of Cyprus apply to all these proceedings; the said provisions state that all proceedings before a court must be completed within a reasonable time.

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

Yes, provided you meet the criteria laid down in law and you have obtained a court order on that matter under Law 165(I)/2002.

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

Yes. It is possible to appeal to the Appellate Family Court.

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

The court with jurisdiction to enforce a parental responsibility order is the court which issued that order. Proceedings are initiated by filing an application by summons without an affidavit, using the Type I form referred to in Procedural Regulation 2/90.

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

You need to register the application for recognition and enforcement in accordance with Article 21(3) of Regulation (EC) No 2201/2003. The application should be registered with the Family Court in the district where the child lives, or where the respondent lives if the child lives abroad.

#### **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?**

The court with jurisdiction is the Family Court in the district where the child lives, or where the respondent lives if the child lives abroad.

When the application mentioned above is served on the respondent, he/she is entitled to appear and register a defence as specified in Law 121(I)/2000. Those proceedings fall within the scope of Regulation (EC) No 2201/2003.

#### **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?**

The law of the Republic of Cyprus applies, and, in particular, Law 216/1990. Where none of the parties lives in Cyprus, Law 216/1990 states that the Family Courts of the Republic have no jurisdiction to try the case.

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## **Parental responsibility - Latvia**

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

The child is under parents' custody until attainment of majority.

Custody means parents' right and obligation to take care of the child and his property and represent the child in his/her personal and property relations.

Caring for a child means his/her care, supervision and the right to determine his/her place of residence.

Childcare means his/her maintenance, i.e. providing food, clothes, housing and health care, caregiving and his/her education and upbringing (ensuring mental and physical development, considering his/her personality, abilities and interests to the extent possible, and preparing the child for socially useful work).

Child supervision means taking care of the child's safety and preventing any danger from third parties. The right to determine the child's place of residence means the geographic choice of the place of residence and the choice of housing.

Caring for the child's property means maintaining and using the child's property for its preservation and enhancement of its value.

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

Parents living together exercise parental custody jointly. If parents are separated, joint parental custody continues. The childcare and supervision are exercised by the parent with whom the child lives. Parents make decisions jointly in matters that can have a significant impact on the child's development.

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

If the child's health or life is endangered due to the parent's fault (due to a parent's intentional behaviour or neglect) or the parent abuses their rights or fails to provide child care and supervision thus endangering the child's physical, mental or moral development, the court may deprive the parent of the right of custody.

When depriving one parent of custody, the court transfers the child to the separate custody of the other parent. If the custody exercised by the other parent cannot adequately protect the child from danger or if the both parents are deprived of custody, the court tasks the family court with ensuring out-of-home care for the child.

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

If parents are separated, joint parental custody continues. The childcare and supervision are exercised by the parent with whom the child lives. Parents make decisions jointly in matters that can have a significant impact on the child's development. Parents' disagreements are resolved by the family court, unless otherwise stipulated by law. Parental joint custody ends when separate custody of one parent is established according to an agreement between the parents or a court ruling.

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

If the parents agree on the matter of parental responsibility and execute it willingly, it is not necessary to obtain approval from any authority or 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?**

In case of a dispute, disagreements are resolved by the family court. If the family court is unable to resolve disagreements between the parents, or if the family court's ruling is not executed, the parents apply to the district (or city district) court.

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

If parents apply to court, they require joint custody or separate custody. In addition, if necessary, the judge decides on matters of maintenance, place of residence, etc. A parent with a separate custody right exercises custody of the child, which includes the right to act on behalf of children in their personal and property relations and the right to establish the child's place of residence. Each parent has the obligation and the right to maintain a personal relationship and direct contact with the child. This provision is also applicable if the child is separated from the family or does not live with one or both parents. The parent who does not live with the child has the right to receive information about him/her, especially information about his/her development, health, academic achievements, interests and living conditions. A parental dispute over custody should be decided considering the child's interests and seeking the child's opinion, if he/she is able to express it.

### **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?**

A parent who has separate custody of the child has all the rights and obligations arising from the custody. Parents have an obligation to support their child according to their abilities and financial situation. This obligation rests with the father and mother until the child is able to provide for himself.

The obligation to support the child does not end if the child is separated from the family or does not live with one of the parents.

The courts, when deciding on the establishing of separate custody, consider the circumstances of the case, that is, which parent the child lives with at the moment the action is filed and which parent exercises the child's daily custody. The child has the right to maintain personal relationships and direct contacts with any parent (access rights). Each parent has the obligation and the right to maintain personal relationships and direct contacts with the child. The parent who does not live with the child has the right to receive information about him, especially information about his development, health, academic achievements, interests and living conditions. Granting separate custody of the child to one parent does not mean that the other parent is deprived of the right of custody.

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

If children are under both parents' joint custody, both parents can act on behalf of their child in their personal and property relations. Parents make a joint decision on all matters regarding the child's development.

### **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?**

Claims arising from custody and access rights are brought in court at the child's place of residence. The registered place of residence of his/her parents is deemed to be the child's place of residence in claims arising from custody and access rights. If the registered places of residence of the child's parents are located in different administrative territories, the child's place of residence is deemed to be the registered place of residence of the parent he/she lives with. If the child's parents or the child have no registered place of residence, the child's place of residence is considered to be the parents' place of residence.

The statement of claim should be filed pursuant to Article 128 of the Civil Procedure Law. Article 129 of the Civil Procedure Law applies in terms of the documents to be attached to the statement of claim.

A family court opinion on the matter can also be attached to the statement of claim.

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

Judicial proceedings in civil cases are governed by the provisions of the Latvian Civil Procedure Law. Cases relating to the protection of the child's rights and interests are considered by court out of turn. The court requests the family court's opinion in matters relating to the granting of custody, child care and the procedure for exercising the right of access, and invites a representative to attend the court hearing and find out the child's opinion if the child is able to express it considering his/her age and degree of maturity.

The court considers civil cases in open sessions, except, for instance, cases of custody and access rights. Similarly, the court may declare the session, or part of it, as closed in the interests of minors upon the substantiated request of the case participants or at the discretion of the court.

The parties have the right to make a substantiated request to the court to determine a faster consideration of the case. The court then examines this substantiated request.

At the request of one of the parties, a court judgement may state that judgements or parts thereof on child maintenance and in cases relating to custody and the right of access are enforceable without delay.

Upon the request of one of the parties, the court passes a ruling which temporarily establishes child maintenance until the judgement is made.

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

Low-income or deprived persons who have been assigned such status pursuant to the procedure stipulated in legislation, and persons who suddenly come into such a position and financial situation that prevents them from protecting their rights (due to natural disasters, circumstances of force majeure or other circumstances beyond the person's control), or are fully in the care of the state or municipality (hereinafter referred to as a 'special situation') have the right to request financial support for legal assistance.

At a person's substantiated request, the court or the judge considers the financial situation of an individual and fully or partially relieves him/her of payment of legal expenses into the state budget and suspends the imposed payment of court expenses into the state budget or divides them into instalments.

In accordance with the Civil Procedure Law, claimants are exempt from payment of court expenses into the state budget for claims relating to maintenance recovery for a child.

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

A judgement can be appealed against under the general procedure, i.e., by filing an appeal (in the Regional Court) or a cassation appeal (in the Supreme Court).

#### **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?**

Court rulings are executed once they enter into effect, or immediately if they are declared as enforceable immediately.

Court rulings are enforced by a sworn bailiff.

#### **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?**

Rulings of foreign courts are recognised and enforced by Latvian courts.

Rulings of foreign courts are recognised and enforced pursuant to the procedure established by the Civil Procedure Law and pursuant to Council Regulation No 2201/2003 on jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No 1347/2000,

An application for a declaration of enforceability is submitted for consideration to the district (or city district) court at the permanent place of residence of the person against whom the enforcement is sought or at the permanent place of residence of the child to whom the enforcement relates. A ruling on a declaration of enforceability or a ruling rejecting the declaration of enforceability is made by the judge at his sole discretion on the basis of the submitted application and the documents attached thereto within 10 days of the day the application is filed without inviting the parties.

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

In a case for the recognition of the decision of a foreign court, an individual complaint on the ruling of a first instance court may be submitted to the district court, and the ruling of the district court on the individual complaint can be appealed against before the Senate by submitting an individual complaint.

A case participant whose registered place of residence or usual place of residence is in Latvia may submit an individual complaint within 30 days of the date when a copy of the ruling was issued, while a case participant whose registered place of residence or usual place of residence is not in Latvia may submit such a complaint within 60 days of the date when a copy of the ruling was issued.

#### **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?**

Latvia is bound by the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, and bilateral agreements on legal assistance concluded between the Republic of Latvia and the Russian Federation, Ukraine, the Republic of Belarus, the Republic of Uzbekistan, the Republic of Kyrgyzstan and the Republic of Moldova  
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### **Parental responsibility - Lithuania**

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

The rights and duties between children and parents are regulated by the provisions of Part IV of Book III of the Civil Code of the Republic of Lithuania (*Lietuvos Respublikos civilinis kodeksas*, hereinafter 'the Civil Code'). Article 3.155 of the Civil Code provides that children shall be cared for by their parents until they reach the age of majority or emancipation. The parents shall have a right and a duty to raise and educate their children to be honest, look after their health and, having regard to their physical and mental state, create favourable conditions for their full and harmonious development in order to prepare them for an independent life in society. Chapter XI of Book III of the Civil Code sets out parental rights and duties in respect of their children and Chapter XII stipulates property rights and duties between parents and children.

Article 3.227(2) of the Civil Code states that adoptive parents are to be treated as a child's parents under the law from the day on which the court judgement on adoption enters into force, save in exceptional cases provided for in Article 3.222(4) of the Civil Code.

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

Article 3.156 of the Civil Code provides that a father and mother shall have equal rights and duties in respect of their children. Parents shall have equal rights and duties in respect of their children irrespective of whether the child was born to a married or unmarried couple, after divorce or annulment of marriage or separation.

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

If the parents are unable or unwilling to exercise parental responsibility over their children, another person can be appointed in their place. For that purpose, the Civil Code establishes the institution of guardianship and curatorship of minors. The basic rules governing the placing of a child under temporary and permanent guardianship/curatorship are laid down in Articles 3.254 and 3.257.

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

If parents divorce, future parental responsibility is determined according to the type of divorce.

If a marriage is dissolved by mutual consent between the spouses, they are required to present to the court an agreement on the consequences of the dissolution of marriage (separation of property, maintenance payments for the children, etc.). Article 3.53(3) of the Civil Code provides that, when granting a divorce decree, the court shall approve an agreement on the consequences of the dissolution of the spouses' marriage governing maintenance payments for children of minor age and each other, the place of residence of their minor children, the spouses' involvement in their children's education and other property rights and duties. The content of this agreement is incorporated in the divorce decree. When there is a significant change in circumstances (illness or incapacity for work of one of the former spouses, etc.), the former spouses or one of them may petition the court to modify the terms and conditions of their agreement on the consequences of the dissolution of marriage.

If a marriage is dissolved on the basis of the application of one of the spouses, the application presented to the court must also indicate how the applicant will perform his or her obligations towards the other spouse and their minor children. In granting a divorce the court must resolve the matters relating to the place of residence and maintenance of the minor children, the maintenance of one of the spouses and the separation of the spouses' jointly owned property, except in cases where the property has been divided according to a mutual agreement between them certified by a notary (Article 3.59 of the Civil Code). A divorce based on the fault of both spouses has the same consequences as the dissolution of marriage by mutual consent between the spouses (Articles 3.51 to 3.54 of the Civil Code). Divorce proceedings based on the fault of one of the spouses are subject, *mutatis mutandis*, to Article 3.59 of the Civil Code.

On the matter of separation, one of the spouses may apply to the court for separate living arrangements to be established if he or she can no longer tolerate living with his or her spouse or this has become impossible or may seriously prejudice the interests of minor children owing to specific circumstances which may not depend on the other spouse, or the spouses are no longer interested in living together. When granting legal separation, the court must designate the spouse with whom the children are to live and resolve the issues relating to the maintenance of the children and the involvement of the separated father (or mother) in the children's education. Both spouses may jointly apply to the court for the approval of their separation if they have reached agreement on the consequences of their separation in terms of the place of residence, the maintenance and education of their minor children, the division of their property and maintenance of each other. Where the spouses have reached agreement on the consequences of their separation, the court will approve the agreement provided that it is consistent with public order and does not harm the rights and legitimate interests of their minor children or one of the spouses. Having approved the agreement, the court incorporates it into the judgment on legal separation.

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

If the parents live together, the arrangements and form of maintenance are determined by the mutual agreement between them. There is no special model for such an agreement or procedure for concluding it. Article 3.193 of the Civil Code provides that, in case of divorce by mutual agreement (Article 3.51 of the Civil Code) or separation (Article 3.73 of the Civil Code), the spouses shall conclude an agreement setting out their mutual duties in maintaining their minor children as well as the means, amount and form of such maintenance. The agreement shall be approved by the court (Article 3.53 of the Civil Code). Parents of minor children may also conclude an agreement on the maintenance of their children if their divorce is based on other grounds. If one of the parents does not comply with the agreement on the maintenance of their minor children as approved by the court, the other parent acquires the right to apply to the court for the issue of the writ of execution.

### **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?**

Mediation services as an alternative means for resolving conflict without going to court are available to the parents. Judicial mediation is available at all ordinary courts. Judicial mediation is free-of-charge. It is a cheaper and quicker way of resolving disputes. It should be noted that judicial mediation guarantees confidentiality, and any party may withdraw from judicial mediation without giving reasons. The referral of a dispute to judicial mediation may be initiated by the judge (chamber) hearing the civil case or any party to the dispute. More information on mediation and a list of mediators can be found on the Lithuanian courts' website <http://www.teismai.lt/>.

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

If parents go to court, the judge can decide upon all issues relating to their children, including their place of residence, the parents' visiting/access rights, the maintenance of minor children, and any other issues indicated in the application submitted to the court.

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

Article 3.156 of the Civil Code provides that the father and the mother shall have equal rights and duties in respect of their children. This applies irrespective of whether the child was born to a married or unmarried couple, after divorce or annulment of the marriage or separation. The parents have a right and duty to bring up their children, be responsible for their education and development, look after their health, and provide spiritual and moral guidance. In performing these duties, the parents' rights take precedence over the rights of other persons. The parents must create conditions for their children to attend educational institutions until they reach the age prescribed by law.

The sole custody of one parent may be determined only in cases where the parental authority of the other parent is restricted. Where parents (the father or the mother) fail in their duties to bring up their children, abuse their parental authority, treat their children cruelly, have a harmful influence on their children as a result of immoral behaviour or do not take care of their children, the court may deliver a judgment to temporarily or indefinitely restrict their parental authority (that of the father or the mother). When delivering such a judgment, the court will take into account the specific circumstances on which the application for a restriction of parental authority are based. The parents, however, retain the right to have contact with their child, except where this is contrary to the child's interests. Where parental authority is restricted for an indefinite period, the child may be adopted without the parents' specific consent.

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

Parents decide all issues relating to the education of their children and to other matters of parental responsibility by mutual agreement. If they do not agree, any disputed matter is resolved by the court.

The child's father, mother or the parents (guardians/curators) of legally incapable minor-aged parents may apply to the court regarding parental contact with the child or involvement in the child's education. The court determines the arrangements for a separated father's or mother's parental contact with a child taking into consideration the child's interests with a view to enabling the separated father or mother to enjoy maximum involvement in the child's education. Minimal contact with the child may be ordered only in cases where constant maximum contact is prejudicial to the interests of the child.

**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?**

If a person wishes to lodge an application regarding parental responsibility, he or she must apply to the district court. The formalities which must be respected and the documents to be attached to the application depend on the requirements set out in the application and the rights and duties which are contested or must be resolved or determined (as to what parental responsibility involves).

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

The main disputes and issues of parental responsibility are examined according to a simplified procedure.

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

The availability of legal aid free-of-charge is governed by the provisions of the Law on State-Guaranteed Legal Aid (*Valstybės garantuojamos teisinės pagalbos įstatymas*). The possibility of obtaining State-guaranteed legal aid depends on a person's financial situation.

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

Yes, it is possible to appeal against such a decision to the higher court in accordance with the general rules of civil procedure.

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

The decision of a court is enforced by bailiffs.

**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?**

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility is applied without any special procedure by recognising a judgment issued by the court of another EU Member State in Lithuania. This Regulation is applied to all EU Member States with the exception of Denmark.

Judgments on access rights and judgments requiring the return of the child issued by the courts of the EU Member States are subject to enforcement in accordance with the rules laid down in Part VI of the Code of Civil Procedure of the Republic of Lithuania (*Lietuvos Respublikos civilinio proceso kodeksas*, hereinafter 'the Code of Civil Procedure').

Applications for jurisdiction to be taken over from a court of a foreign country and applications for jurisdiction to be transferred to a court of a foreign country, as referred to in Article 15 of Council Regulation (EC) No 2201/2003 (and Articles 8 and 9 of the Hague Convention of 19 October 1996), are considered by the Court of Appeal of Lithuania (*Lietuvos apeliacinis teismas*).

The said applications are considered in accordance with the procedure laid down in Chapter 39 of the Code of Civil Procedure, provided Council Regulation (EC) No 2201/2003 does not provide otherwise. Such applications are not subject to court fees.

Applications lodged with the Court of Appeal of Lithuania must comply with the general requirements for procedural documents (Article 111 of the Code of Civil Procedure). In compliance with Article 15 of the Council Regulation (EC) No 2201/2003, the application and any accompanying appendices must be submitted in the state language, or translations of them into Lithuanian must be attached. Where the applicant resides outside the Republic of Lithuania and has not appointed a representative for the case or an authorised person to obtain procedural documents who resides/has a professional office in the Republic of Lithuania (Article 805 of the Code of Civil Procedure), the application must indicate an address in the Republic of Lithuania or the address of a telecommunications terminal device, to which the procedural documents will be served on the applicant. However, these requirements do not apply to applications lodged with the Court of Appeal of Lithuania by a court of a foreign country.

Where appropriate, the Court of Appeal of Lithuania may charge the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour of the Republic of Lithuania (*Valstybės vaiko teisių apsaugos ir įvaikinimo tarnyba prie Lietuvos Respublikos socialinės apsaugos ir darbo ministerijos*) with submitting an opinion on the expediency of taking over or transferring jurisdiction. The Court of Appeal of Lithuania sets a time limit within which this opinion must be submitted.

An application must be considered by the Court of Appeal of Lithuania not later than within six weeks of the date of receipt of the application by the court. After having considered an application for jurisdiction to be taken over from a court of a foreign country and adopted a decision to grant the application, the Court of Appeal of Lithuania, having regard to the circumstances of the case, will appoint a competent Lithuanian court to consider the case in Lithuania. The proceedings instituted in the court of the foreign country are transferred to the competent Lithuanian court for an examination of the merits of the case. In this case, the provisions of Article 35 of the Code of Civil Procedure apply *mutatis mutandis* and the proceedings continue at the competent Lithuanian court. Where appropriate, the competent Lithuanian court establishes the position of the parties in the proceedings and takes measures to eliminate any shortcomings affecting the procedural documents.

**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?**

An appeal must be lodged with the Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*). It will be examined as an appeal in cassation in accordance with the provisions of the Code of Civil Procedure.

**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?**

The law applicable to relations between parents and children is determined under Article 1.32 of the Civil Code. Personal and property relationships between parents and children are governed by the law of the state where the child is habitually resident. If neither parent is habitually resident in the state where the child is habitually resident and the child and both parents are citizens of the same state, the law of the state of which they all are citizens is applicable.

In matters concerning parental responsibility, the competent court is determined in accordance with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. The law applicable to the protection of minors, their guardianship and curatorship is determined pursuant to the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants.

Maintenance obligations (alimony) within the family are governed by the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.

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**Parental responsibility - Luxembourg**

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

On a point of terminology, in Luxembourg the term 'parental authority' is used in preference to 'parental responsibility'. This concept encompasses all the rights and obligations assigned by law to parents in respect of the person and property of their dependent minor children for the purpose of fulfilling their duties of protection, upbringing and maintenance.

Both parents have parental authority with a view to protecting their children's safety, health and morality, to ensuring their upbringing and permitting their development with the respect due to their person. Parents have the right and duty to supervise their child's maintenance and upbringing. Parental authority is not an absolute and discretionary right of parents: it must be exercised in the best interests of the child.

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

In principle, if filiation has been established in respect of both parents, they exercise parental authority jointly, whether or not they are married, in a civil partnership, separated or divorced. If filiation has not been established in respect of one of the parents or if one of them is deceased, absent or unable to express his/her wishes, the other exercises parental authority alone.

#### **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 die or are unable to take care of their children, a guardian (*tuteur*) must be appointed. The last surviving parent can choose the guardian. If no such choice has been made, a guardian is appointed by a formal meeting of the family (a 'family council', *conseil de famille*) or, failing that, by the family judge (*juge aux affaires familiales*).

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

In principle, the separation or divorce of the parents does not alter the arrangements for the exercise of parental authority, which continues to be exercised jointly by the two parents. Following their separation, they must continue to act together to make any important decisions relating to the child's life. With respect to third parties acting in good faith, each parent is deemed to be acting with the agreement of the other when carrying out alone an ordinary act of parental authority relating to the person of the child.

It is only when it is in the best interests of the child that the court may entrust the exercise of parental authority to just one of the two parents. In this case, the parent designated to assume parental responsibility makes the decisions concerning the child alone. However, the other parent nevertheless retains the right to be informed and to monitor the child's maintenance and upbringing. Subject to exceptions for serious reasons, he/she also has access and residence rights.

In exceptional circumstances, the court can decide to place the child with a third party who will exercise parental authority over him/her.

When the child has, with the agreement of the parents, been placed with a third party, parental authority continues to be exercised by the parents. However, the person with whom the child has been placed carries out all the ordinary acts relating to the child's supervision and upbringing. The court may place the child with a third party temporarily and decide that this third party must apply for guardianship.

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

Any agreement between parents on the question of parental authority is legally binding only if it is approved by the competent 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?**

Parents can have recourse to family mediation.

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

The family judge can decide on the following issues:

Applications relating to the exercise of parental authority, excluding those relating to the withdrawal of parental authority: this includes the arrangements for the exercise of joint parental authority by the parents, whether or not they are married, separated or divorced. Only when it is in the best interests of the child will the court entrust the exercise of parental authority to just one of the two parents.

The exercise of the access and residence rights of a parent deprived of parental authority: this right can be refused only for serious reasons.

The right of the child to maintain contact with his/her relatives in the ascending line: this right can be disregarded only in the best interests of the child. In that case, the arrangements for contact between the child and the relative are determined by the court.

The access and residence rights of other persons, whether or not relations: the court awards such rights in exceptional circumstances.

The obligation to contribute to the child's maintenance and upbringing while the parents are living together: in the event that the parents separate, this obligation can take the form of a child support payment, determined according to the child's needs and the ability of each parent to contribute; it can continue after the age of majority if the child is unable to support himself/herself.

#### **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?**

In principle, the separation or divorce of the parents does not alter the arrangements for the exercise of parental authority, which continues to be exercised jointly by the two parents. They must continue to make any important decisions relating to the child's life (maintenance, upbringing, education, etc.) together.

It is only when it is in the best interests of the child that the court will entrust the exercise of parental authority to just one of the two parents. In this case, the parent designated to assume parental authority makes the decisions concerning the child alone. However, the other parent nevertheless retains the right to be informed and to monitor the child's maintenance and upbringing. Subject to exceptions for serious reasons, he/she also has access and residence rights. Thus, in the event that the parents separate, each of them must maintain a personal relationship with the child and respect his/her relationship with the other parent.

If a parent deprived of parental authority believes that the other parent is not exercising parental authority in the interests of the child, he/she can refer the matter to the appropriate court to resolve the dispute. In this case, the court can, if necessary, make a change to the award of parental authority or to the arrangements for exercising it.

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

Joint parental authority presupposes, in the event that the parents separate, that there is a broad understanding and consensus to ensure continuous and constructive cooperation in the parents' decisions relating to the exercise of parental authority and to the child's maintenance and upbringing. The decisions of the family judge are always guided by the best interests of the child.

#### **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 applicant can bring the matter before the family judge, by means of an application to the district court (*tribunal d'arrondissement*). The application must state the date and purpose of the request, the surnames, first names and addresses of the parties, and their dates and places of birth. If the applicant does not live in Luxembourg, the application must indicate an address for service there. The parties do not have to be represented by a lawyer. The court registry (*greffe*) summons the parties within 15 days, except if the time limit is extended on account of distance as provided for by the New Code of Civil Procedure (*Nouveau Code de procédure civile*).

As an exception to the general rule, actions for the total or partial withdrawal of parental authority are not dealt with by the family judge, but fall within the jurisdiction of the district court sitting as a civil court. Such actions have to be brought by the public prosecutor before the district court of the address (*domicile*) or residence (*résidence*) of one of the parents. If the parents have no known address or residence in the country, the action is brought before the court of the district in which the children are located. If the children are not all located within the same district, the action is brought before the district court of the district of Luxembourg (rather than the district of Diekirch). The public prosecutor has an investigation carried out into the situation of the minor's family and the good character of his/her parents. The parents are given notice to submit to the court any comments and objections that they consider appropriate. The application for the withdrawal of parental authority sets out the facts and is accompanied by supporting documents. The court clerk (*greffier*) notifies the parents or relatives in the ascending line against whom the action has been brought and summons them to appear. They do not need to be represented by a lawyer. In any event, the court can, of its own motion or at the request of a party, adopt any interim measures that it considers desirable relating to the exercise of parental authority over the child. The court can also revoke or change those measures. If a parent or guardian wants to recover rights that have been withdrawn from them, they must submit an application to the court of the address or residence of the person to whom these rights have been entrusted.

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

Actions before the family judge are brought by means of an application to the district court by one of the parents or by a minor capable of forming his or her own views acting in accordance with Article 1007-50 of the New Code of Civil Procedure. The parties do not have to be represented by a lawyer, except when the application is submitted in divorce proceedings brought on grounds of irretrievable breakdown of marriage or in legal separation proceedings. In these cases, representation by a full lawyer (*avocat à la Cour*) is obligatory.

The application must be submitted on ordinary paper to the clerk of the district court with territorial jurisdiction, namely:

1. the court of the place where the family has its address;
2. if the parents live separately, the court of the address of the parent with whom the minor children habitually live, in the case of joint exercise of parental authority, or the court of the address of the parent who exercises parental authority alone;
3. in other cases, the court of the place where the person who did not initiate the proceedings resides.

In the case of a joint application, the competent court is the court of the place where one or other of the parties has their address, as they prefer. For further details, please consult Article 1007-2 of the New Code of Civil Procedure.

When the application is submitted in divorce proceedings brought on grounds of irretrievable breakdown of marriage or in legal separation proceedings, the court with territorial jurisdiction is the court of the place of the spouses' joint address or, failing such an address, of the address of the defendant spouse.

Hearings relating to applications for the determination of or changes to the exercise of parental authority and access and residence rights are held within one month from the summons.

Hearings before the family judge are not public. They take place in chambers. In principle, the judge rules alone, but can refer the dispute to a bench of several judges if the case is particularly complex. The family judge also deals with applications for interim measures.

The family judge personally hears each of the parties and must attempt to reconcile them. He/she can propose a mediation measure. He/she can order an investigation into the family situation (*enquête sociale*) or any other measure of inquiry. When the family judge rules on the arrangements for the exercise of parental authority, he/she can take into consideration among other things the practice previously followed by the parents, any agreements previously reached, the feelings expressed by the child, the ability of each parent to perform his/her duties and to respect the other, and the outcome of the investigations or inquiries carried out.

In the case of an application for a child support payment or an application for a contribution to the child's maintenance and upbringing, the family judge may order the parties, and even third parties, to provide information or to present books of account or accounting documents that establish the amount of the parties' income, debts or earnings.

Any appeal against a decision delivered by the family judge must be brought within 40 days. The application lodging the appeal must be signed by a full lawyer.

Where the family judge is already considering an application on the merits of the case, and there is absolute urgency, which must be properly substantiated in the application, an application seeking interim measures (*mesures provisoires*) can be brought before him/her in exceptional summary proceedings (*en référé exceptionnelle*). The application for interim measures must be submitted to the clerk of the district court with jurisdiction to try the case on the merits.

The parties need not be represented by a lawyer.

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

People whose income is regarded as insufficient under Luxembourg law can receive legal aid (*assistance judiciaire*). To receive this aid, they must complete a questionnaire that can be obtained from the Central Social Assistance Department (*Service central d'assistance sociale*) and send it to the chairman of the bar association (*Bâtonnier de l'Ordre des avocats*) of the place, who will take the decision.

Legal aid covers all costs arising from the applications, proceedings or actions for which it is granted. In particular, it covers stamp duties and registration costs; clerks' fees, lawyers' fees, bailiffs' fees and expenses, notaries' fees and expenses, technicians' fees and expenses, witness allowances, and translators' and interpreters' fees; fees for certificates stating the position in foreign law (*certificats de coutume*); travelling expenses; duties and fees relating to formalities for registration, mortgage and pledge; and where necessary costs for notices in newspapers.

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

A decision on parental authority can be appealed before the Court of Appeal (*Cour d'appel*). In principle, the time limit for appeal is 40 days. However, the time limit is 15 days in the case of an appeal against a decision of the family judge ruling on interim measures in divorce proceedings brought on grounds of irretrievable breakdown of marriage, in legal separation proceedings, or in exceptional summary proceedings.

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

A family judge that has decided the schedule for a child to live with each parent or that has confirmed a parent's or even a third party's right of contact can subsequently add enforcement measures to the decision. He/she specifies the nature of these measures and the arrangements for their implementation, taking into account the child's best interests. He/she can set a periodic penalty payment to ensure that the decision is respected.

Luxembourg law provides for several ways to enforce a decision on parental authority in the event of systematic refusal to comply.

Firstly, there is a civil penalty, namely a periodic penalty payment (*astreinte*), set by the family judge, to force the recalcitrant parent to meet his/her obligation. An action seeking to have a periodic penalty payment imposed has to be brought before the district court for the child's place of residence.

In the case of repeated failure of one of the parents to comply with court decisions on rights of access and residence or alternating residence, the family judge can propose family mediation. If non-compliance continues, the judge can, at the request of the wronged parent, make a change to the award of parental authority or to the access and residence rights in favour of the other parent.

Secondly, there are criminal penalties in the event of failure to produce the child. The public prosecutor's office can prosecute the case of its own motion or in response to a criminal complaint submitted by the victim. The district court, sitting as a criminal court, imposes criminal penalties and, where applicable, sets the damages to be awarded to the victim. The parties do not have to be represented by a lawyer.

#### **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?**

Under [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, repealing Regulation (EC) No 1347/2000 (the 'Brussels IIa Regulation'), any judgment on parental authority given by the court of another country of the European Union (except Denmark) is in principle recognised in Luxembourg by operation of law. In other words, such judgments will be recognised without any special procedure being required.

However, a judgment given by the court of another EU country on the exercise of parental authority with regard to a child of both the parties concerned, which is enforceable in that country and which has been served or notified, will be enforced in Luxembourg only when, on application by any interested party, it has been declared enforceable in Luxembourg. An application for a declaration of enforceability must be submitted through a lawyer to the presiding judge of the district court. The decision of the presiding judge of the district court can be appealed before the Court of Appeal. An appeal on points of law against the decision of the Court of Appeal can be brought before the Court of Cassation (*Cour de cassation*).

It should be noted that judgments relating to access rights and those relating to the return of a child can, under certain conditions, be recognised and enforced without it being necessary to go through the procedure described in the preceding paragraph.

#### **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 the Brussels IIa Regulation, any interested party can apply to the presiding judge of the district court for a decision that a judgment relating to parental authority given by a court in another EU country should not be recognised. The party must be represented by a full lawyer.

Recognition can be refused only on one of the following grounds:

it would be manifestly contrary to public policy;

the child has not been heard;

the rights of the defence have not been respected;

it would be irreconcilable with a judgment in related proceedings.

Either party may appeal to the Court of Appeal against the decision of the presiding judge of the district court. The decision of the Court of Appeal can be appealed on points of law before the Court of Cassation.

#### **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?**

The question of the law that the court will apply is distinguishable from the question of which courts have jurisdiction. The courts with jurisdiction in matters of parental authority are the courts of the habitual residence of the child: Article 8 of the Brussels IIa Regulation and Article 5 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. The applicable law is also defined by the same Hague Convention. The nationality of the child is irrelevant. Jurisdiction to take measures for the protection of the child's person and property lies with the authorities of the contracting state of habitual residence of the child, the authority in Luxembourg being the family judge. The exercise of parental responsibility is governed by the law of the state of the child's habitual residence or, if the child's habitual residence changes, by the law of the state of the new habitual residence.

#### **Further information**

Brochure: [L'autorité parentale au Grand-Duché de Luxembourg](#)

[Legilux](#)

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#### **Parental responsibility - Hungary**

##### **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 practice parental responsibility (parental custody) involves determining a minor child's name, caring for and raising the child, determining his or her residence, managing his or her assets, the rights and obligations of his or her legal representation, and the right to appoint a guardian or exclude someone from guardianship.

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

In the absence of an agreement between the parents or any provision by the guardianship authority or the court to the contrary, the parents have joint custody whether they are living together or no longer live together.

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

In Hungary, guardianship is a legal arrangement ensuring the care of minors, their representation and the management of their assets through a guardian appointed by the guardianship authority in the absence of a parent with parental custody. The necessity of appointing a guardian may be reported to the guardianship authority by anyone. A close relative of a minor child or the person in whose care the child lives is obliged to notify the guardianship authority of the need to appoint a guardian, as is the court or other authority.

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

In the absence of an agreement between the parents or any provision by the guardianship authority or the court to the contrary, the parents have joint custody even if they no longer live together. Separated parents may agree on dividing the rights and obligations of parental responsibility, but they must ensure a balanced lifestyle for their child (alternating placement of the child is not possible, for instance, if the parents live too far from each other and this would place too much of a burden on the child.). The parents' agreement is approved by the court. If the parents are unable to reach an agreement on the issues of the rights and obligations of parental custody, the court decides on which parent will have custody. When taking a decision, the court assesses where the child's physical, mental and moral development is better ensured.

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

Where a marriage is dissolved by the spouses' common declaration of will and intent to dissolve the marriage submitted to the court in writing, the application includes the parents' agreement concerning the issue of custody. The court approves the agreement by definitive ruling in the course of the divorce proceeding, as the marriage cannot be dissolved by mutual consent without such agreement.

If necessary, the court has to take a decision concerning parental custody when a marriage is dissolved, even if no application is made to that end. The judgment of the court of first instance, in the absence of an appeal, becomes final only after the fifteenth day following the deadline for submitting an appeal has passed.

**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 spouses may turn to [mediation](#) before initiating divorce proceedings or during the proceedings, voluntarily or at the initiative of the court, in order to settle by mutual consent any disputes related to their relationship or the dissolution of the marriage, such as the issue of parental responsibility. They may draw up their agreement reached as a result of mediation for inclusion in court settlement proceedings. In order to ensure that parental responsibility is exercised properly and with the necessary cooperation of the parents, the court and/or the guardianship authority during its own procedure may (on request or at their own initiative in matters referred to their competence) order the parents to take part in mediation to work out suitable co-operation between the parent with custody and the parent living separately from their child and to ensure the rights of the parent living separately.

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

In cases of dispute, the court decides which parent is to have parental custody by hearing both parents and, in justified cases, the child. The court may decide to grant full custody to one parent or for one parent to exercise certain rights and obligations of parental custody and the other parent to exercise other such rights and obligations. The court may authorise the parent living separately from his or her child to carry out certain tasks related to the care and raising of the child or, exceptionally, to fully or partially manage the child's assets and to act as legal representative in matters related to the child's assets. If it is in the interests of the child, the court may restrict or remove the right to decide on a fundamental issue affecting the future of the child. However, the court cannot order joint parental custody, as this can only be instituted through the parents' agreement, which may be approved by the court.

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

No. If the court grants custody to one parent, the parent living separately from his or her child may continue to exercise parental responsibility rights in fundamental issues affecting the future of the child. Determining and changing the name of a minor child, determining the residence of the child, if other than the residence of the parent, [determining the residence of the child abroad for the purpose of a long term stay or settlement](#), changing the child's nationality and choosing the child's school and career are deemed to be such fundamental issues.

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

The court cannot order joint custody, merely approve the parents' agreement to that effect in the course of the matrimonial proceedings, taking into account the child's interests. A condition for such approval is that the separated parents must ensure a balanced lifestyle for their child while they exercise joint custody. If the court does not deem this to be feasible, the court may deny approval of the agreement. However, in situations requiring immediate action one parent may decide independently and must notify the other parent without delay (for instance concerning an urgent medical intervention).

**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?**

You may turn either to the guardianship authority or to a court in matters of parental custody, depending on whether you, as parents, have a dispute concerning the exercise of joint custody or whether custody is to be settled by the court.

The suit must be filed with the court where the respondent's residence is located (or, in the absence of such, the respondent's place of stay), or where the last shared residence of the spouses was.

The suit must be filed by written application to the competent court. Please also see the topic on [How to proceed?](#) with regard to filing the proceedings and the content of the application. In addition to generally required information, details on the contracting of the marriage and on the birth of children born to the marriage and still alive must also be indicated and the children's birth certificates must be attached in matters related to parental responsibility.

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

*Judicial proceedings in a suit to settle parental custody rights and the placement of the child with a third person :*

If the separated parents have not reached an agreement, the court decides, upon request or at its own discretion, which parent will have custody. When taking a decision, the court takes into account the interests of the child and assesses where the child's physical, mental and moral development is better ensured.

Legal action to settle who should exercise parental responsibility, custody or changes in individual custody rights, the placement of the child with a third person or changing such placement may be brought by a parent or the guardianship authority. The action must be brought by one parent against the other or by the guardianship authority against both parents. An action to change the placement of the child with a third person must be brought against the person with whom the child was placed.

In the course of the proceedings the court must hear both parents, and in justified cases – or if requested by the child himself or herself – the child must also be heard. If the child is at least 14 years old, the court may only decide on the child's parental custody and the child's placement with his or her consent, unless the child's choice jeopardises his or her development.

The court may oblige the parents to turn to mediation to ensure that parental responsibility is properly exercised and that the parents co-operate as necessary to ensure this.

*The guardianship authority's procedure in a dispute related to joint custody:*

If the parents are unable to reach an agreement on issues related to joint custody (whether they are living together or separately), either parent may request the guardianship authority to take a decision, except on issues concerning freedom of conscience or freedom of religion.

If separated parents entitled to jointly exercise parental custody agree to divide between themselves the related rights and obligations, or to custody rights being exercised by one of them in the future, the guardianship authority, at their request, records this agreement in the minutes. The minutes must also record the agreement as to which parent will raise the child and the fact that they will jointly exercise parental custody rights on fundamental issues affecting the future of the child, unless the court has provided otherwise.

The parents must be informed that they may change their agreement and that the agreement does not have the same force as a decision of the court taken in matrimonial proceedings or proceedings brought for the settlement of parental custody.

In matrimonial proceedings the court provisionally rules at its discretion on issues concerning the placement of a minor child and the place of stay of the child with either parent or a third person, the extension or limitation of parental custody rights or contacts between either parent and the child.

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

Please see also the topic on [How to proceed?](#) regarding this question.

In proceedings to remove or restore parental custody and those concerning the placement and transfer of a child or access rights, parties are granted a *right to the deferral of payments* regardless of their income and financial situation. The right to the deferral of payments means that any fees and other costs incurred in the course of the proceedings are advanced by the State instead of the parties, but the costs advanced must be repaid by the losing party to the State at the end of the proceedings.



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

Yes, proceedings related to parental custody are subject to appeal according to the general rules. An appeal may be filed by a parent or the child. The deadline to submit an appeal is fifteen days following the date the decision was notified.

### **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?**

In order to enforce a decision related to parental responsibility, an enforcement order is issued by the *court at first instance* or, in the case of a foreign decision (court settlement) certified in accordance with Article 42 of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Regulation (EC) No 2201/2003), by the *district court operating at the seat of the regional court of the habitual residence of the child or the person subject to the enforcement decision* or the Buda Central District Court (*Budai Központi Kerületi Bíróság*) in Budapest.

When a court decision (agreement approved by the court) concerning the handover and placement of a child is enforced, the court calls upon the person subject to the decision to meet his or her obligation voluntarily, setting an appropriate deadline, failing which the court orders the handover of the child with the assistance of the police.

The child must be handed over to the person seeking enforcement or, in the absence of that person, to his or her representative approved by the guardianship authority, or to the guardianship authority. When the child is handed over, the person under the obligation to hand over the child must inform the person taking over the child of the child's state of health and any other circumstance a lack of knowledge of which may jeopardise the child's life or physical integrity.

### **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?**

A decision handed down in a Member State in the matter of parental responsibility is recognised by the courts in Hungary without any special procedure. The substance of the decision cannot be reviewed under any circumstance.

Nevertheless any interested party may apply for a decision to recognise or not to recognise a decision at the competent court.

#### *Enforcement:*

A decision concerning the exercise of parental responsibility taken in a Member State which is enforceable in the given Member State and which has been served will be enforced in Hungary if it is declared enforceable in Hungary at the request of any interested party.

The court or authority competent in the Member State where the decision was handed down issues a certificate in accordance with Article 42 of Council Regulation (EC) No 2201/2003 at the request of any interested party.

The district court operating at the seat of the regional court of the habitual residence of the child or the person subject to the enforceable obligation, or the Buda Central District Court in Budapest, issues an enforcement order on the basis of a foreign decision (court settlement) bearing such a certificate.

The decision of the foreign court is enforceable if, depending on its nature, the decision complies with the following: it is the judgment of a court finding infringement in civil proceedings; in criminal proceedings it is the part of the judgment of the court finding infringement in the related civil claim; or it is an agreement approved by the court.

On the basis of the enforcement order, the enforcement procedure takes place according to Hungarian enforcement legislation.

### **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?**

A decision handed down in a Member State is recognised by the courts in Hungary without any special procedure. The substance of the decision cannot be reviewed under any circumstance.

Nevertheless, any interested party may apply for a decision to recognise or not to recognise a decision at the competent court.

Any party may appeal a decision taken in the matter of an application for a declaration of enforceability.

The appeal must be adjudicated according to the rules governing legal proceedings.

Appeals against a declaration of enforceability must be submitted within one month of the declaration being served. If the party against whom the enforcement is requested is habitually resident in another Member State (not in Hungary), the deadline for the appeal is two months from the date of service either in person or at his or her residence. No extension of the deadline may be granted on account of distance.

### **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?**

Hungary is party to 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*, which includes rules concerning applicable law, and certain bilateral mutual assistance treaties also include such rules.

Under Hungarian national law the personal law applicable to the child governs relationships between the parent and the child under family law, thus in particular the naming, placement, care and legal representation of the child and management of the child's assets, with the exception of maintenance obligations. With regard to the child's family status and the child's relationship with his or her parents under family law, Hungarian law must be applied to a child who is a Hungarian national or lives in Hungary (with the exception of maintenance obligations), if this is more advantageous to the child.

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## **Parental responsibility - Malta**

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

The term comprises all duties and obligations of a parent towards the minor as per Maltese Civil Code, Cap. 16 Laws of Malta. The term "parental responsibility" which in Maltese legislation is referred to as "parental authority" comprises custody and access, decisions about issues such as place of residence, travel, maintenance obligations, education, major health related decisions and administration of property belonging to children.

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

The birth parent or in case of adoptions, the adoptive parents upon finalisation of the adoption procedures. Furthermore, a single mother has parental responsibility unless the father registers the birth jointly with the child's mother.

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

When a child is placed under a care order or a court order, the care and custody is vested in the Minister according to the Children and Young Persons (Care Orders) Act Cap. 285, Laws of Malta.

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

In case of divorce or separation, it is determined by a court decision or settled through mediation. It may also be determined through a legally binding enforceable document between the parties signed in the presence of a notary.

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

If such agreement is concluded outside separation proceedings for it to be legally binding, it has to be ratified in Court and filed in the Public Registry. On the other hand, if an agreement on parental responsibility is reached during separation or divorce proceedings, the agreement is presented before the court hearing such proceedings and a court decree is delivered, approving or otherwise the agreement.

**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?**

An alternative mean in such instances is the process of mediation. If the parents still do not reach an agreement during this process, proceedings will be instituted before the Civil Court (Family Section).

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

The judge can decide on all major decisions considered important for the child's welfare, for instance, residence of the child, which parent is to have custody, visiting and access rights, and the obligation to pay maintenance for the child.

**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 court rarely grants full care and custody to one parent but this depends on a case by case. Having said that, in case the court grants full care and custody to one parent some matters still have to be discussed with the consent of the other parent, in particular matters relating to access or removal of minor to a third country which would directly involve the access rights of the non-custodial parent.

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

It means that both parents discuss and take decisions related to the child jointly. This would not include day to day activities but only the major decisions involving place of residence, education and health issues. Article 136 (3) of the [Civil Code](#) makes reference to acts of extraordinary administration, whereby such acts require the consent of both 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?**

Where mediation is not successful, an application is filed before the Civil Court (Family Section). There is no formal list of required documents thus any pertinent documentation and certificates can be attached to the application, in particular, those providing proof of parental authority, including any agreements on care and custody, or decrees given.

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

The application is set for hearing on a particular date. During the hearing of the case the judge will hear the parties and other witnesses the parties summon. The Court may also appoint social workers and psychologists to draw up a report on the child if it recognises such need. A report will be drawn up by the experts appointed by the Court after they consult the parents, the child and other professional persons connected in some way with the case. Emergency procedures are resorted to if the party submitting the application indicates sufficient valid reasons which show urgency. If it is in the interest of the minor, an interim decree is given of the issue calling for urgency, for instance an impediment of departure, care and custody, etc.

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

Yes, one can apply for legal aid, however the applicant has to undergo a means test as per Title X of Book Third of the Code of Organisation and Civil Procedure ([Cap 12](#) of the Laws of Malta). Further detail on legal aid can be obtained from the [section on legal aid](#).

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

It is only possible to appeal if a point of law is involved, that is for example one of the parties is not given the right to produce a witness without the court giving a valid reason. In such cases, an appeal can be lodged before the Court of Appeal.

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

A decision by the Civil Court (Family Section) is automatically enforceable however in cases where such a decree is not followed by one of the parents, the parent being restricted the parental authority can file a report before the police who will subsequently proceed with criminal proceedings before the Court of Magistrates to effect enforcement together with a fine (multa) and/or imprisonment. Furthermore, an application may be lodged in front of the Civil Court (Family Section) asking for the alteration of the court decree.

**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?**

The applicable procedure to be followed is that which is found in Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II bis) namely that a certificate is filled in by the competent judge which together with the court sentence and an application asking for the recognition and enforcement of such a decision is filed before the Civil Court (Family Section). An address for notification purposes must also be identified. All documents are to be translated into Maltese or English.

**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?**

An opposition can be made before the same court and in the acts of where the application for enforcement and recognition has been filed. The opposition will contain reasons why such recognition and enforcement should be withheld and this is done by a reply to the application.

**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?**

The applicable law is 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, repealing Regulation (EC) No 1347/2000.

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**Parental responsibility - Netherlands**

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

The term 'parental responsibility' means having the authority over a minor and responsibility for raising and caring for that child.

Article 247 of Book 1 of the Civil Code (*Burgerlijk Wetboek*) stipulates the following on this subject:

1. Parental authority shall comprise the duty and right of parents to care for and raise their minor child.
2. 'Care for and raise' shall include caring and taking responsibility for the mental and physical welfare and safety of the child and promoting the development of the child's personality. The parents may not use mental or physical violence or any other humiliating treatment in caring for and raising the child.
3. Parental authority shall include the obligation of the parent to promote the development of the bond of the child with the other parent.
4. A child over whom the parents exercise joint custody shall remain entitled to be cared for and raised in an equivalent way by both parents after dissolution of marriage other than by death, after legal separation or after dissolution of registered partnership other than by death, or after termination of cohabitation if an annotation was made as referred to in Article 252(1).
5. For the implementation of paragraph 4, parents may take account in an agreement or parenting plan of practical obstacles that may arise in connection with the dissolution of marriage other than by death, after legal separation or the dissolution of registered partnership other than by death, or the termination of cohabitation if an annotation was made as referred to in Article 252(1), but only if and as long as the relevant obstacles exist.

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

The parents have the authority and the responsibility for caring for and raising their child. However, there are exceptions to this rule.

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

If the parents are unwilling or unable to exercise parental authority or responsibility, parental authority can be transferred to another person by the court.

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

Following a divorce, both parents retain parental authority over their children. Both continue to be responsible for raising and caring for the children.

However, there are exceptions to this rule. It is possible in certain cases that, on application, the court assigns custody to one parent. Parenthood (which by definition is not equivalent to parental authority) and the associated rights and duties can also be regulated differently in the parenting plan, which is drawn up in the case of divorce.

### **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 cases of divorce, the agreed arrangements are laid down in a parenting plan that is reviewed by the court. The court pronounces the divorce.

Also see: <http://www.rijksoverheid.nl/onderwerpen/scheiden/vraag-en-antwoord/scheiden-en-kinderen.html>

### **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?**

Mediation is a possibility to resolve parenthood disputes.

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

The court decision covers all elements of the parenting plan, including custody, the division of tasks with respect to caring for and raising the child, and the principal place of residence of the child.

### **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?**

No. The parent with custody of the child is obliged to keep the parent without custody informed of important issues regarding the person [HM-B1] and the assets of the child and to consult the latter parent on decisions concerning the child. However, the parent with custody ultimately decides.

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

This means that both parents have the same rights and duties as belong to a parent with custody (see question 1), if the parents have agreed a different division of tasks with respect to caring for and raising the child in the parenting plan.

### **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?**

To obtain custody of a child, an application must be made to the court with jurisdiction for the place of residence of the child. The documents to be submitted depend on the situation of the parent and the child. Information concerning the necessary documents can be found at [www.rechtspraak.nl](http://www.rechtspraak.nl) in the [Rules of procedure \(procesreglement\)](#) Custody and access (*Gezag en omgang*). A lawyer can help with this.

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

There are no particular procedures for the situations mentioned. Yes, proceedings for interim measures are possible.

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

Yes, legal aid is possible, although it is subject to certain conditions. [More information](#) can be found on this subject on the Legal Aid Council (*Raad voor Rechtsbijstand*) website.

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

Yes, appeals can be made to the Court of Appeal (*gerechtshof*).

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

The ordinary court procedure applies in this case.

### **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?**

In principle, no action needs to be taken. This occurs automatically if the Member State is a party to the Brussels IIa Regulation. This Regulation is applicable in all Member States of the European Union, with the exception of Denmark.

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

Appeals must be lodged with the court in the country in which the decision was issued.

An appeal in a family matter in the Netherlands requires the assistance of a lawyer. The lawyer can lodge the appeal with the Registry of the Court of Appeal. After the court has ruled in a family case, the lawyer has three months in which to appeal. The Court of Appeal applies this time limit strictly. The date on which the Registry receives the application to lodge the appeal is the official date on which the appeal has been lodged.

### **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?**

The Dutch courts apply only Dutch law.

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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?**

Custody (parental responsibility) is the duty and right of parents. It includes caring for and raising the child, managing the child's property and representing the child, in addition to other matters (Section 158 of the Austrian Civil Code – *Allgemeines Bürgerliches Gesetzbuch*).

According to Section 160 of the Austrian Civil Code, caring for a child means primarily looking after his/her physical wellbeing and health and directly supervising the child, and raising a child includes, in particular, ensuring the child's physical, mental, emotional and moral development, and promoting the child's talents, abilities, preferences and development potential and his/her schooling/vocational training. Care also includes children's medical treatment and raising the child also includes deciding on the child's place of residence (Section 162 of the Austrian Civil Code) and therefore also, for example, taking decisions on foreign travel, selecting schools and choosing or changing the child's religion. The right of the parents to raise the child also implies the right to name the child.

Management of the child's property includes, for example, maintenance of the child (determination, modification, receipt, collection and use thereof). Section 164 of the Austrian Civil Code states that parents shall manage the child's property 'with the care of decent parents'.

'Legal representation' of the child is defined as the right and obligation to handle legal matters for the child. This includes representing the child in cases where rights or obligations are assigned directly to the child or granting consent on behalf of the child. Legal representation can refer to caring for and raising the child and managing the child's property in the 'external' sense (e.g. concluding a medical treatment contract with a doctor, agreeing to curative treatment for the child) as opposed to actually performing these tasks 'internally' (e.g. administering medication, changing a baby's nappy, monitoring the completion of homework). Legal representation also applies outside of these areas (in the 'pure' sense of the term), such as when changing the child's name or nationality, requesting recognition of extramarital paternity and exercising the child's personal rights.

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

As a rule, if the child is born in wedlock or if the parents marry one another subsequent to the child's birth, both parents will have custody of the child (Section 177(1) of the Austrian Civil Code). If the child is born out of wedlock, by law only the mother will have custody of the child (first sentence of Section 177(2) of the Austrian Civil Code).

The second sentence of Section 177(2) of the Austrian Civil Code states that unmarried parents may, after being informed of the legal consequences, declare in person before the registrar that they are both responsible for the child's custody, as long as custody has not already been settled in court. If the parents do not live in a single household, they must come to an agreement on which parent will be the child's primary carer. Alternatively, the parents can enter into an agreement before the court or submit such an agreement to the court (Section 177(3) of the Austrian Civil Code). The court can also grant custody to both parents (Section 180(2) of the Austrian Civil Code).

Joint custody can only be terminated by means of a court decision. The court must then seek an amicable settlement. If this is unsuccessful, the court will grant custody to one parent or again to both parents (Section 180 of the Austrian Civil Code). If the court awards joint custody, it must also stipulate the household in which the child will primarily be cared for. In these decisions the court will always prioritise what is in the child's best interest.

If only one parent is awarded custody, the other will be granted the right to personal contact with the child and the rights to information, expression and representation as defined in Section 189 of the Austrian 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?**

If both parents are prevented from exercising custody, the court must decide which grandparents (or, failing that, grandparent), or which foster parents (or foster parent) should be awarded custody of the child. If the grandparents or foster parents are to be granted custody, a couple will generally take precedence over one grandparent or foster parent, unless this is not in the child's best interest. If both parents are prevented from providing some aspect of care, this will apply accordingly. The child's wellbeing is always the primary criterion when custody is being awarded.

If the parent with sole custody is prevented from exercising custody, the court must decide whether in that case full or partial custody should be awarded to the other parent, to grandparents or a grandparent, or to foster parents (or a foster parent). The other parent will take precedence over grandparents and foster parents as long as the child's wellbeing can be guaranteed with that parent.

If there are no parents, grandparents or foster parents who can be awarded custody, another suitable person can be awarded custody of the child (Section 204 of the Austrian Civil Code). The wellbeing of the child is the decisive factor when choosing this person; the child's wishes and those of the parents must also be taken into consideration (Section 205(1) of the Austrian Civil Code). Relatives are the first to be considered, followed by other persons close to the child, and finally other suitable persons, such as child or youth welfare organisations (Section 209 of the Austrian Civil Code).

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

Joint custody continues to apply following divorce or the annulment of a marriage. However, if the parents wish to maintain joint custody as before, they must submit an agreement to the court within a reasonable period of time specifying the parent with whom the child will primarily reside. The court must approve this agreement if it is in the best interest of the child. Parents are not allowed, however, to share custody in a way which would mean, for example, one parent being solely responsible for caring for and raising the child, while the other only deals with managing the child's property and representing the child; the parent with whom the child primarily resides must always have full custody. If such an agreement is not submitted within a reasonable period of time following the dissolution of the marriage, or if it is not in the best interest of the child, the court must decide, if an amicable agreement cannot be reached – where necessary after mediation, which parent will have sole custody of the child in the future.

The parents can also specify that only one parent should retain custody of the child after the dissolution of the marriage. An agreement stipulating the parent with whom the child will primarily reside is clearly not needed in such cases. This not only applies to cases in which the marriage is dissolved, but also to instances in which the parents of a child are still married but live permanently apart. In such cases the court will only decide at the request of one of the parents.

The above information on custody following dissolution of the parents' marriage also applies to cases in which life partners separate. The parents of a child born out of wedlock can therefore be awarded joint custody by the court if the joint household has been abolished or even if such a household never existed, provided that there is an agreement on residence in place which is in the child's best interest.

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

See question 4.

### **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?**

Parents can contact child welfare or youth services (family counselling) or private organisations for advice. Alternatively, parents can attend mediation, couple's counselling or parental counselling or make use of other counselling services.

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

The judge in the Guardianship Court (*Pflegschaftsgericht*) is only able to officially initiate and adjudicate in proceedings relating to custody and access rights. If there is an acute risk to the child's wellbeing, child and youth welfare services must be notified. If the child is in imminent danger, they can take appropriate measures, including the withdrawal of custody in the most serious cases.

Child maintenance can only be decided at the request of the child's legal representative or the person of legal age entitled to maintenance, it cannot be decided by the court of its own motion. Child maintenance must be claimed as part of non-contentious legal proceedings (*Außerstreitverfahren*). This also applies to children of legal age. Judicial officers (*Rechtspfleger*) are responsible for this.

**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 parent without custody has the right to be informed in a timely manner of important matters affecting the child and planned measures which require collective representation in the case of joint custody (Section 167(2) and (3) of the Austrian Civil Code) by the person with custody and to comment on this information (right to information and expression). The comments should be taken into consideration if the wishes expressed better serve the interests of the child. These rights also extend to less important matters (provided they are not merely everyday matters) if, despite the willingness of the parent without custody, he/she does not have regular face-to-face contact with the child, for example because circumstances do not allow this or because the child refuses contact (Section 189(3) of the Austrian Civil Code).

If the parent with custody persistently fails to comply with these obligations, the court can issue appropriate injunctions upon request and, if the child's wellbeing is at risk, of its own motion (Section 189(4) of the Austrian Civil Code). The court can, for example, issue specific orders to the parent who is failing to comply, or authorise the parent without custody to obtain information himself/herself from the doctor or school. If the behaviour of the parent with custody puts the child's wellbeing at risk, custody may be withdrawn either partially or in full pursuant to Section 181 of the Austrian Civil Code.

The right to information and expression can be restricted or withdrawn by the court if the exercise thereof seriously endangers the child's wellbeing. The same applies if the parent concerned abuses these rights or exercises them in a way which is unacceptable to the other parent. They also cease to exist if the parent himself/herself refuses contact with the child without justification (Section 189(2) of the Austrian Civil Code).

Custody must always be exercised in a manner which best serves the interests of the child. When determining what the best interests of the child are, the child's personality and needs, especially his/her talents, abilities, preferences and development potential, and the living conditions of the parents should be taken into account.

All persons with custody (parents, grandparents, foster parents, others) and persons who have other rights and obligations in relation to a child (e.g. access rights) must, in order to safeguard the wellbeing of the child, refrain from anything which could undermine the child's relationship with other persons who have rights and obligations in relation to the child or which could make it more difficult for such persons to perform their duties (good conduct requirements [ *Wohlverhaltensgebot*], Section 159 of the Austrian Civil Code).

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

The principle of sole representation applies to legal representation, i.e. each parent is entitled and obliged to represent the child alone. Legal action taken by one parent is therefore still legally valid even if the other parent does not agree with it (Section 167(1) of the Austrian Civil Code). The agreement of both parents authorised to represent the child is only required in the cases listed under Section 167(2) of the Austrian Civil Code (e.g. when changing the child's first name or surname, choosing or changing the child's religion, transferring the child to outside care, etc.)

The approval of the other parent authorised to represent the child and consent of the court are required when the child is represented or consent is given on behalf of the child in property-related matters not subject to ordinary enterprise (Section 167(3) of the Austrian Civil Code). These include, for example, the divestment or mortgaging of property, the waiver of a right to inheritance, the unconditional acceptance or waiver of succession, and the acceptance of gifts with encumbrances.

In civil proceedings each parent is entitled to represent the child on his/her own. If the parents cannot agree or the court has not designated either of them or a third party as the child's representative, the representative will be the parent who completed the first procedural step ( *Verfahrenshandlung*) (Section 169 of the Austrian Civil Code). Parents must observe the good conduct requirements (see question 9).

**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?**

According to Section 109 of the Act on court jurisdiction (*Jurisdiktionsnorm* – JN), the competent court is the District Court (*Bezirksgericht*) of the district in which the child has his/her habitual residence or, in the absence of such a residence in Austria, his/her (actual) residence. If the child has no residence in Austria, the competent court is that of the district in which the legal representative has his/her habitual residence. If there is no such residence in Austria, it is the court of the district in which one parent has his/her habitual residence, otherwise it is the Vienna Inner City District Court (*Bezirksgericht Innere Stadt Wien*). The habitual residence differs from the (simple) residence in that it is usually the place of residence for a specific, continuous period of time (approximately six months).

Applications for the transfer of sole custody or participation in custody can be made in writing by post or in person at the District Court on what are known as 'office days' (*Amtstages*), which take place at least once a week, usually on Tuesday mornings. The parties do not need to be represented by a lawyer. If they do wish to be represented, however, they may only be represented by a lawyer ('relative requirement for legal representation' [*relative Anwaltpflicht*] under Section 101(1) of the Act on non-contentious proceedings).

The application must contain a description of the case, the names, surnames and addresses of the applicant and his/her representative and, if necessary, the names and addresses of the other parties known to him/her, and in matters pertaining to civil status also the date and place of birth and the nationality of the parties (Section 10(3) of the Act on non-contentious proceedings).

If the form or content of the application is incorrect or incomplete in a manner which hinders further procedural steps, the Court must not dismiss or reject it immediately but should first seek to have it rectified (Section 10(4) of the Act on non-contentious proceedings).

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

The non-contentious procedure applies in these cases, in accordance with the Act on non-contentious proceedings.

In accordance with the best interests of the child, the Court must award or withdraw custody and the right to personal contact, especially in order to maintain reliable contact and to establish legal clarity, and must sometimes do so on a provisional basis as part of an emergency procedure. This may be necessary, in particular, after the dissolution of the parents' marriage or joint household (Point 1 of Section 180(1) of the Austrian Civil Code). This decision is provisionally binding and enforceable, unless otherwise decided by the Court.

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

In accordance with Section 63 to 73 of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO), legal aid is granted in civil proceedings on request if a party is unable to meet the costs of the proceedings without finding himself/herself below the necessary subsistence level. In accordance with Section 7(1) of the Act on non-contentious proceedings, these provisions must be applied accordingly in non-contentious proceedings (such as in proceedings relating to child maintenance).

The necessary subsistence level, in abstract terms, lies between the statistical average income of an employed person and the minimum subsistence level. It is deemed to be at risk if the party and his/her family entitled to maintenance would be unable to lead even a modest life, taking into account any usable assets or the possibility of accumulating savings during longer proceedings. Partial legal aid may also be granted.

Legal aid will only be approved if the intended legal action or defence does not appear to be manifestly frivolous or futile. Legal aid can be granted to both natural and legal persons. The nationality of the party is irrelevant.

Legal aid includes in particular a provisional exemption from the payment of court fees, and fees for witnesses, experts, interpreters, as well as payment of the party's travel costs if he/she needs to appear in person. If representation by a lawyer is required by law (such as in disputes involving amounts over € 5000 or in proceedings before regional courts [*Landesgerichte*]) or if it appears necessary in the light of the circumstances of the case, the party will be provisionally provided with an Austrian lawyer free of charge. The lawyer will give the party legal advice prior to the proceedings with a view to settling the dispute out of court.

Section 71 of the Code of Civil Procedure stipulates that parties receiving legal aid will be required to repay part or all of the amounts from which they were provisionally exempt and which have not yet been repaid. Furthermore, they will have to pay the lawyer assigned to him/her the established rates if and as soon as they are able to without risking their necessary subsistence. After a period of three years following the conclusion of proceedings the repayment obligation can no longer be imposed. In order to check whether the conditions for repayment have been met, the court can ask the party to submit a new declaration of assets (*Vermögensbekanntnis*) together with reasonable evidence within an appropriate period of time.

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

Decisions by the court of first instance on parental responsibility can be appealed against (Section 45 of the Act on non-contentious proceedings). The deadline for the appeal is 14 days from the date on which the written copy of the decision is served (Section 46(1) of Act on non-contentious proceedings). As a rule, it is the court of second instance that will decide on the appeal.

In certain cases, appeals on a point of law (*Revisionsrekurs*) can be filed with the Supreme Court (*Oberster Gerichtshof*) against a decision issued by the appeal court (*Rekursgericht*) as part of appeal proceedings (cf. Section 62 of the Act on non-contentious proceedings). Such appeals are only permissible if they resolve a legal question of considerable importance for the maintenance of legal unity, certainty or development. On some matters, however, such appeals are not admissible, such as on matters relating to legal aid, costs and fees. The deadline for appeals on a point of law is 14 days from the date on which the decision of the appeal court is served (Section 65(1) of the Act on non-contentious proceedings). The appeal must be signed by a lawyer or notary (Point 5 of Section 65(3) of Act on non-contentious proceedings).

### **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?**

Under Section 110(2) of the Act on non-contentious proceedings, decisions cannot be enforced in accordance with the Enforcement Code (*Exekutionsordnung*). According to Section 79(2) of the Act on non-contentious proceedings, the Court must order appropriate binding measures upon request or of its own motion. These measures include fines, detention of up to one year, compulsory attendance, inspection of documents, information and other moveable goods and the appointment of trustees who must take reasonable action at the expense and risk of the person in default. Rulings concerning personal contact must also be enforced against the will of the parent who does not live in the joint household with the child. The court can also enforce rulings concerning custody using appropriate direct force.

According to Section 110(3) of the Act on non-contentious proceedings, the court can, of its own motion, only refrain from pursuing enforcement if and as long as it jeopardises the wellbeing of the child. In addition, when enforcing custody rulings by the court or approved by the court, the court may seek assistance from child and youth welfare services or from the Family Court, especially in relation to the temporary care of the child if this is required in order to ensure his/her wellbeing. However, only judicial bodies may use direct force to enforce court rulings. They may request assistance from the police.

### **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?**

According to Article 21 of the Brussels IIa Regulation, decisions from other Member States will be recognised without any special procedure being required. A procedure for the endorsement of a decision taken by a foreign court (*exequatur* procedure) is required for the enforcement of custody decisions (Article 28 et seq of the Brussels IIa Regulation); the details of the procedure are left to the Member States to regulate under Article 30 of the Regulation. In Austria this is governed by Section 112 to 116 of the Act on non-contentious proceedings.

### **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?**

Requests for the non-recognition of a custody decision taken in another Member State (Article 21(3) of the Brussels IIa Regulation) fall – like the *exequatur* procedure – under the competence of the District Court in whose district the child has his/her habitual residence or, in the absence of such a residence, his /her residence in Austria. If the child does not have a residence in Austria, the competent Court will be the one in the district in which the legal representative has his/her habitual residence or, in the absence of such a residence in Austria, and as long it relates to a child, the Court in whose district one of the parents has his/her habitual residence. Otherwise, the competent Court will be the Vienna Inner City District Court (Section 109a of the in Act on court jurisdiction in conjunction with Section 109 of this Act).

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

If Austrian courts are deemed competent under the Brussels IIa Regulation or the 1996 Hague Convention on protection of children, they will primarily apply Austrian law.

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## **Parental responsibility - Poland**

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

No definition of parental responsibility is contained in the Polish Family and Guardianship Code. In Polish legal literature, parental responsibility is understood to cover a set of obligations and rights of parents with regard to a child for the purpose of the proper care of the child and his or her assets.

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

Both parents have parental responsibility over a child.

Where one parent is dead or does not have full legal capacity, the other parent is the holder of parental responsibility. The same applies in the event that the parental responsibility of either parent has been suspended.

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

In the event that the parents are unable to exercise parental responsibility, they may apply to the court dealing with guardianship matters (*sąd opiekuńczy*) or another public authority to have the child placed under foster care. In cases of extreme urgency, at the request or with the consent of the child's parents, the child may be placed under the care of a foster family on the basis of an agreement between the head of a district (*starosta*) and a foster family or persons running a family foster home (*rodzinny dom dziecka*).

Where the parents are unwilling to exercise parental responsibility over a child, they may consent to his or her adoption. There are three forms of adoption under Polish law: complete, complete and irrevocable (also known as 'full adoption'), and incomplete.

Should the child's interest be jeopardised by parents duly exercising parental responsibility, their parental responsibility may be restricted by decision of the court dealing with guardianship matters and the child may be placed in a foster family, in a family foster home, under institutional foster care, in a care and treatment centre, in a nursing care centre, or in a therapeutic rehabilitation centre.

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

When delivering a judgment on divorce, legal separation or marriage annulment, a Polish court is required under the Family and Guardianship Code to resolve the question of parental responsibility over a child unless it has no jurisdiction with regard to parental responsibility in a specific case. There are three ways in which the question of parental responsibility may be resolved by the court: 1) it may take into account a written agreement between the spouses concerning the manner in which parental responsibility is to be exercised, providing that it is in the best interest of the child, or where no agreement is reached between the parents, it may take into account the child's right to be brought up by both parents; 2) it may decide upon joint exercise of parental responsibility; 3) it may grant parental responsibility to either parent and restrict the other parent's parental responsibility to specific obligations and rights with regard to the child.

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

While no form is specified by law for such agreement, it should be noted that an agreement between the parents concerning the manner in which parental responsibility is to be exercised has no legal effect and may be regarded merely as a basis for the judgment of the court in that respect.

#### **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 parents may be assisted by a mediator. Mediation services are provided on the basis of a mediation agreement or a decision of the court referring the parents for mediation. The agreement may also be concluded through the consent of a parent to mediate where the other parent has requested mediation. However, a settlement before a mediator does not have the legal force of a court settlement until it is approved by the court.

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

The parents may go to a court in Poland dealing with guardianship matters in relation to various issues concerning parental responsibility over a child, such as:

- 1) the manner in which parental responsibility and rights of access to the child are to be exercised in the event that parental responsibility is shared by both parents who live apart;
- 2) resolution of a dispute concerning important matters in respect of the child in the event that the parents are unable to agree on how such matters are to be resolved, including the determination of the place of residence, choice of school, choice of name and surname, decisions concerning medical treatment, travel abroad, etc.
- 3) legal transactions between a child and a parent where such legal transactions go beyond the ordinary management of the child's assets.

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

Under Article 58(1) of the Family and Guardianship Code, a judgment on divorce (legal separation or marriage annulment) may not grant parental responsibility to either parent while depriving the other parent of all rights in that regard. That possibility, in turn, is provided for under Article 112 in conjunction with Article 111 of the Family and Guardianship Code; in the event that parental responsibility cannot be exercised due to a permanent impediment, the parents abuse their parental responsibility, or they grossly neglect their obligations vis-à-vis the child, the court dealing with guardianship matters will terminate the parents' parental responsibility. The court may terminate the parents' parental responsibility in the event that they show no interest in the child on a permanent basis despite having been offered assistance.

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

Granting joint custody to the parents means that they may and must exercise the same rights and obligations vis-à-vis the child. This means, inter alia, that important matters concerning the child will be resolved jointly by the parents, or by a court dealing with guardianship matters where they are unable to reach an agreement.

#### **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?**

Parental responsibility cases are heard by the family and minors divisions of district courts (*sądy rejonowe*) (courts dealing with guardianship matters) with jurisdiction over the child's place of residence. Where there is no such basis, jurisdiction lies with Warsaw Capital City District Court.

An application must be submitted together with the child's birth certificate, the parents' marriage certificate (when married), other documents supporting the application, such as medical certificates, school certificates, educational assessments etc.

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

Parental responsibility cases are heard in what is known as a non-contentious procedure, which is less formal than a contentious procedure.

At the request of a party to the proceedings, the court dealing with guardianship matters may grant a security in the manner it considers suitable under specific circumstances. Decisions in that regard become effective and enforceable when issued.

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

Parties to proceedings concerning parental responsibility are required to pay the fees and expenses provided for in the Act on Legal Costs in Civil Cases. However, under Article 102(1) of the Act, a party to court proceedings may request exemption from legal costs by filing a statement that they are unable to bear such costs without hardship to themselves or their families. The application for exemption from legal costs should be accompanied by a statement detailing the applicant's family status, assets, income and livelihood. A party to proceedings may be partially exempted from legal costs by the court in the event that such party is in a position to pay only a part of such costs (Article 101(1)).

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

Yes. An appeal against any decision may be lodged before a higher court. Judgments on parental responsibility delivered by a regional court (*sąd okręgowy*) in proceedings concerning a divorce, legal separation or marriage annulment are subject to appeal to a court of appeal (*sąd apelacyjny*).

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

The court's enforcement body in cases concerning the return of a child is a court-appointed guardian (*kurator sądowy*). In the event that a court judgment ordering the return of a child is not complied with, the person entitled to have the child returned should request the court which has issued such decision to order a compulsory removal of the child by a court-appointed guardian. In the event that the whereabouts of a person subject to parental responsibility is unknown, the court conducts an investigation in order to establish their whereabouts. The order is issued by the court to a court-appointed guardian in the form of a decision, which may be issued in closed session. No appeal may be brought against such decision. The court-appointed guardian sets the date for the removal of the child and notifies the entitled person. The court-appointed guardian may remove the child from any person with whom the child is staying. For that purpose, the court-appointed guardian may seek the assistance of police officers, psychologists and so on.

A different procedure is provided for in the Code of Civil Procedure with regard to judgments on access. In that case, at the request of a person entitled to access in respect of a child, the court dealing with guardianship matters will threaten to issue an order against the person who has custody who fails to fulfil obligations arising from a judgment or settlement with regard to access to the child, requiring the payment of a specific amount to the entitled person for each infringement of obligation. In the event that a person entitled to access to a child or a person prohibited from such access infringes the obligation imposed by the decision, the court dealing with guardianship matters will threaten to order that person to pay a specific amount to the person in custody of the child.

In the event that a person ordered by the court dealing with guardianship matters to make a payment continues to fail to fulfil their obligation, the guardianship court will order such person to pay a due amount, which is laid down in accordance with the number of infringements.

An enforceable judgment or settlement concerning access to a child must be attached to the application referred to above.

### **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?**

The relevant provisions applicable are those of Chapter III of 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. An application for recognition or enforcement should be made to the court. The regional court is also competent to examine an application for a declaration of enforceability. In both cases, the application should meet the criteria of a procedural document, which means that it should specifically set out the request, the facts justifying such request, and whether or not the parties have tried to mediate.

### **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?**


An application not to recognise a decision issued by a court in an EU Member State should be made to a regional court. The application should meet the criteria of a procedural document.

### **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?**

The applicable law in matters concerning parental responsibility and rights of access is laid down in the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children done at The Hague on 19 October 1996, or in bilateral agreements to which Poland is a party. Where none of those instruments is applicable, the provisions of private international law apply, which also include references to the provisions of the Hague Convention of 1996. In the event that the child's habitual residence changes to residence in a country which is not a party to the Convention, the law of such country governs from then on changes in the conditions of application of measures adopted in the country of the child's former habitual residence.

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## **Parental responsibility - Portugal**

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

#### *Meaning of parental responsibilities and their duration*

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. The age of majority is age 18. Minors who have reached the age of 16 may become emancipated by marriage.

#### *Rights and obligations of a holder of parental responsibilities*

Parental responsibilities include the following powers and duties of parents in relation to their children:

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.

Conversely:

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.



The following are valid in exceptional circumstances:

Acts of administration or disposal of assets that a child aged over 16 has acquired through their work;

Legal transactions specific to the minor's daily life that, while being within the scope of their natural capacity, only involve expenditure or disposal of assets of minor importance;

Legal transactions relating to the profession, art or trade that the minor has been authorised to perform, or those practised in the performance of such a profession, art or trade.

(For acts relating to the profession, art or trade of the minor and for acts practised in the performance of such profession, art or trade, only assets that the minor has free disposal of are eligible).

Assets owned by the parents:

Parents have ownership of assets that the minor living in their company accrues through work carried out for their parents, and using means or capital belonging to the parents;

Parents must give the child part of the assets accumulated, or otherwise compensate them for their work; fulfilment of this duty may not, however, be demanded in court.

Income from the child's assets

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;

In the event that only one of the parents exercises parental responsibility, use of their child's income falls to them, under the terms permitted by law;

The use of income from assets that the child may legitimately acquire by inheritance (reserved share of the estate) cannot be excluded by the donor or testator.

*Limitations on parental responsibilities*

Parents do not administrate:

Assets of the child that derive from succession, from which the parents have been excluded due to disqualification through conduct or disinheritance;

Assets that have been given to the child by donation or succession against the parents' will;

Assets that have been left or donated to the child, excluding administration by the parents;

Assets acquired by a child aged over 16 years of age from their work.

As representatives of the child, parents may not, without authorisation from the court:

Transfer or encumber goods except in the case of transfer for valuable consideration of items liable to loss or deterioration (this restriction does not include use of the minor's money or capital in the acquisition of assets);

Vote at company general meetings on deliberations that require such companies' dissolution;

Acquire a commercial or industrial establishment or continue to utilise what the child has received by succession or donation;

Invest in a company as an ordinary partnership, or a partnership limited by shares;

Engage in foreign exchange obligations or those resulting from any title transferable by endorsement;

Guarantee or take on the debts of others;

Engage in credit facilities;

Engage in obligations whose performance must take place after the age of majority;

Assign credit rights;

Disclaim inheritance or legacy;

Accept inheritance, donation or legacy with costs, or agree to extrajudicial partition;

Lease goods for a term exceeding six years;

Agree to or request in court the division of property in indivisible co-ownership, or the liquidation and distribution of company assets;

Negotiate a transaction or enter into arbitration agreements in relation to the acts referred to in the preceding paragraphs, or negotiate an arrangement with creditors.

The parents may not, without court authorisation:

Take out a lease or acquire, directly or through an intermediary, even at public auction, assets or rights of the child subject to parental responsibilities;

Become assignees of credits or other rights in respect of the children, except in cases of legal subrogation, of procurement in the inventory process, or of court-authorized grant of partition.

End of administration

Parents must transfer to the child, as soon as the child reaches the age of majority or becomes emancipated, all assets belonging to them.

When parental responsibility or administration ceases for other reasons, the assets must be transferred to the child's legal representative.

Movable assets must be returned in the condition in which they were found. If these do not exist, the parents must pay their respective value, unless they have been consumed in common use by the child or have perished for reasons not attributable to the parents.

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

*Parental responsibilities within marriage*

Within marriage, the exercise of parental responsibilities falls to both parents;

Parents exercise parental responsibilities by mutual agreement. If there is no agreement on matters of particular importance either of them may appeal to the courts, which will attempt conciliation;

If the conciliation referred to in the preceding paragraph is not possible, the court hears the child before deciding, except where serious circumstances advise against this;

*Acts performed by one of the parents*

If either of the parents performs an act that forms part of the exercise of parental responsibilities, it is assumed that they are acting in accordance with the other parent, except where the law expressly requires the consent of both parents, or where it is an act of particular importance;

Lack of agreement is not enforceable against a third party acting in good faith;

The third party must refuse to intervene in an act performed by one of the parents in cases where agreement cannot be presumed, or when the other parent is aware of the other parent's opposition;

*Joint exercise of parental responsibilities by the child's sole parent and by their spouse or civil partner*

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, whenever possible, hear the minor.

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

Yes, as follows:

#### *If one or both parents are unable to exercise parental responsibilities*

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:

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.

#### *Death of a parent*

On the death of one of the parents, the exercise of parental responsibility falls to the surviving parent.

#### *Cases where the minor is subject to mandatory guardianship:*

If the parents have died;

If the parents are prohibited from exercising their parental responsibilities with respect to governance of the child;

If the parents have been prohibited from exercising parental authority for more than six months;

If the parents are unknown.

**Note:** prohibiting the exercise of parental responsibility may relate solely to the guardianship of the child themselves or to the administration of their assets, or cover both aspects.

#### *Cases where the system of administration of the child's assets is established:*

Where the parents have been excluded, prohibited or suspended from administration of all of the minor's assets or from some of them, by another title or if the administrator has not been designated;

When the competent entity for designating the guardian entrusts the administration of the minor's goods in whole or in part to another.

#### *Guardianship and administration of assets of the court's own motion:*

Whenever one of the situations indicated above, which constitute grounds for establishing guardianship or the administration of assets, applies to the minor, the court must, of its own motion, establish guardianship or administration of assets.

Any administrative or judicial authority, or civil registry officials who are aware of such situations in the exercise of their duties must notify the competent court thereof.

#### *How guardianship and administration of the child's assets is exercised*

Guardianship is exercised by a guardian and by the family council. The guardian has the same rights and obligations as the parents, albeit with the amendments and restrictions set forth by law.

The administration of assets is exercised by one or more administrators and, if guardianship is established, by the family council.

Guardianship and administration of assets are both exercised under the supervision of the court.

It is the responsibility of the court to confirm or appoint guardians, administrators of assets and members of the family council.

#### *Who can be a guardian*

Parents can appoint a guardian for their children. The appointment must be confirmed by the court. When parents have not appointed a guardian, or the appointment has not been confirmed, it falls to the court, after hearing the family council, to appoint the guardian.

Before appointing the guardian, the court must hear the minor.

The court must choose the guardian from among:

Relatives or family members of the minor;

Persons who have de facto care of the minor, or are providing care for the minor;

People who have demonstrated affection for the child.

#### *Who cannot be a guardian*

The following people cannot be guardians:

Minors who have not become emancipated, who are disqualified or prohibited;

Those who have been declared mentally incompetent, even if they are not prohibited or disqualified;

Persons of bad conduct or who have no known source of livelihood;

Those who have been barred or fully or partially suspended from parental responsibility;

Those who have been dismissed or suspended from another guardianship or from the position of family council member due to failure to fulfil their obligations;

Those divorced or legally separated from persons and property owing to their fault;

Those who have a claim pending with the minor or their parents, or who have had such claim within the past five years;

Those whose parents, children or spouses have a claim with the minor or their parents, or have had such claim within the past five years;

Those who are personal enemies of the minor or of their parents;

Those who have been disallowed by the mother or father of the minor, under the same terms as they would appoint a guardian;

Officers of the court or prosecution office (*Ministerio Público*) who perform functions within the district where the child's registered address is located, or where their assets are situated;

Those disqualified by profligacy, bankruptcy or insolvency, as well as those barred or suspended from parental responsibility or dismissed from guardianship with respect to the administration of assets, may be appointed as guardians provided they are only in charge of the custody and governance of the minor as an individual.

#### *Who can be an administrator*

The rules referred to above with respect to the choice of guardian, and prohibition from exercising this role, also apply to the administrator, unless otherwise specifically provided for by law.

Additionally, the following persons may not be administrators:

Those disqualified by profligacy, bankruptcy or insolvency, as well as those barred or suspended from parental responsibility or dismissed from guardianship with respect to the administration of assets;

Those convicted as perpetrators or accomplices of the crimes of theft, robbery, fraud, abuse of trust, bankruptcy or fraudulent insolvency and property-related offences in general.

#### *Allocation of parental responsibilities due to de facto inability of the parents to exercise parental responsibilities*

Where the parents are de facto unable to exercise parental responsibilities, the prosecution office must take the necessary measures to protect the minor and may, for this purpose, appoint a person who, on behalf of the minor, may enter into legal transactions that are urgent or of clear benefit to that minor.

#### *Limitation of the exercise of parental responsibility in situations of danger to the minor that do not entail barring from the exercise of parental responsibility*

When the safety, health, moral teaching or education of a minor is at risk but it is not necessary to go so far as to bar the exercise of parental responsibility, the court may, on the application of the prosecution office or any other person, take appropriate measures to protect the minor.

The care and protection measures provided for in law to avert high-risk situations for the minor are as follows:

Joint support of the parents;

Joint support of another family member;

Being entrusted to a person of good repute;

Support for independent living;

Foster care;

Residential care;

Being entrusted to a person selected for adoption, foster family or institution with a view to adoption.

When there is consent from the parents and no opposition from the minor, the child and youth protection committees (*comissões de protecção de crianças e jovens*) are competent to apply the child protection and assistance measures referred to above, without the intervention of the court, with the exception of the final measure listed (being entrusted with a view to adoption), which only the courts may apply.

Child and youth protection committees are financially autonomous, non-judicial official institutions that seek to promote the rights of children and young people, and to prevent or end situations that may affect their safety, health, teaching, education or development as a whole.

When one of the measures referred to above has been enacted – by the court or by the committee for the protection of children and young people – the parents retain the exercise of parental responsibility in everything that is not incompatible therewith.

If the minor has been entrusted to a third party or an education or care establishment, a parental visitation system will be set up, unless, in exceptional cases, the child's interests advise against this.

#### *Limitation of the exercise of parental responsibility in situations dangerous to the minor's assets, that do not entail barring from the exercise of parental responsibility*

When maladministration by the parents endangers the assets of the child, but it is not a case of barring the exercise of parental responsibility, the court may, on the application of the prosecution office, or any relative, order such measures as it deems appropriate.

Taking into account the value of the assets, the court may, in particular, demand the following from the parents:

The provision of accounts;

Information about the administration and status of the child's assets;

and, when these measures are not sufficient:

The provision of surety.

#### **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:

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**

###### *Principle of voluntary mediation*

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

Portugal applies the principle of voluntary mediation. 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 to it, or object.

###### *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.

Actions on family matters that fall within the competence of the civil registry registrar require the prior agreement of the parties, otherwise they fall within the competence of the courts.

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 use private mediation, they must pay the mediator's fees. The cost of such fees, the rules and the timing of the mediation are set out in the mediation agreement signed by the parties and the mediator when mediation commences. The Ministry of Justice organises a list of mediators that the parties may consult in order to choose a private mediator, at <http://www.dgpi.mj.pt/sections/gral/mediacao-publica>.

#### *Public mediation*

To use public mediation, the parties should contact the alternative dispute resolution office of the General Directorate for Justice Policy (*Direcção Geral da Política de Justiça*) and request the scheduling of a pre-mediation session. They can do this by phone, *email* or electronic form. At the public pre-mediation session, the mediation agreement between the parties and the mediator is signed. The duration is fixed, the sessions are scheduled and the procedure's rules are explained. The cost of public family mediation is EUR 50.00 for each party, regardless of the number of sessions scheduled. This fee of EUR 50.00 is paid by each of the parties right at the beginning of the public mediation. The fees of public mediators are not borne by the parties. They are paid by the General Directorate for Justice Policy according to a table laid down by law.

The public mediation sessions may take place at the premises of the General Directorate for Justice Policy or at facilities made available in the municipality where the parties have their residence.

In public mediation, the parties may choose a mediator from among those who are selected for the public system. The list of public mediators can be found on the website referred to above. If the parties do not choose a mediator, the alternative dispute resolution office of the General Directorate 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 general rule, this appointment is made by computer.

#### *Legal aid*

If the parties receive legal aid, this may cover the costs of mediation.

### **Mediation and specialist technical hearings in the course of legal proceedings**

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.

When 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). 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.

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.

### **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, the decision on the exercise of parental responsibility must always be taken on the basis of three fundamental aspects: the custody of the minor, the visitation regime and the maintenance due to the minor. 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 decide on the following matters:

To establish guardianship and the administration of assets;

To appoint a person who conducts business on behalf of the minor and, in addition, to appoint a trustee who represents the child subject to parental responsibilities out of court;

To regulate the exercise of parental responsibilities and to be aware of the issues related thereto;

To 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;

To order the judicial surrender of a child;

To authorise the legal representative of the minor to perform certain acts, to confirm those that have been performed without authorisation, and to make arrangements for the acceptance of donations;

Decide on the security that parents must provide in favour of their children that are still minors;

Decree full or partial barring, and establish limitations on the exercise of parental responsibilities;

Carry out a verification of maternity and paternity of its own motion;

Decide, in the event of disagreement between the parents, on the name and surnames of the minor child;

Establish the relationship of civil custody and decree its revocation;

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 who represents the minor in any 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 such exercise falls exclusively to one of them.

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?**

**Procedural methods for bringing action 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 authority 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 committees 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):**

*Care and protection procedure initiated at the committee for the protection of children and young people*

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.

*Care and protection procedure in court*

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 person with custody for them; 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*

The procedure begins at 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 to 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.

*Procedures within the competence of 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 (*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 effects as court rulings.

**Entities to which the interested parties must refer (depending on the case, the courts, child and youth protection committees and civil registry offices):**

*Jurisdiction and competence of the courts*

On the matter of regulating parental responsibility, the family and minors division of the central instance court (*instância central*) at the district court (*tribunal de comarca*) is the competent court. In areas not covered by the family and minors division, the local instance court at the district court, the division with generic competence, or civil division in which it is processed, is competent.

The following rules on jurisdiction apply:

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 (*Instância Central 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.

Jurisdiction and competence of the child and youth protection committees

The child and youth protection committees 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 protection committee of the minor's place of residence at the time notification of the situation is received is competent for the application of care and protection measures.

The following rules on jurisdiction apply:

If the residence of the child or young person is not known and cannot be determined, the protection committee of the place where the child is located is competent;

Without prejudice to the provisions of the preceding paragraphs, the protection committee of the place where the minor is located shall take the steps considered urgent and the necessary measures for the child's immediate protection;

If, after the application of a non-protective measure, the minor changes their residence for more than three months, the case is referred to the protection committee 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 protection committee with territorial jurisdiction in the area of the foster municipality or district of the child or young person will cooperate with the committee 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.

Competence and jurisdiction of the civil registry offices

Depending on the matter, 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.

#### Competence in related actions

If, in relation to the same child, a civil guardianship procedure and care and protection procedure, including procedures before the child and youth protection committee, or educational guardianship procedure, are instituted separately, these must be processed as joined case, irrespective of their status, and the competent judge 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.

Where the civil guardianship procedure concerns more than one child, 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 justify this.

#### **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:

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 addition, the following non-judicial emergency proceedings are provided for:

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 committees, takes appropriate measures for the immediate protection of the minor and request the intervention of the court or police;

The intervening entity immediately notifies the prosecution office or, if this is not possible, as soon as this 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*

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;

Order a fine of up to 20 units of account (in 2015, the value of a unit of account was 102.00 euros);

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 has been imposed and it is not paid within 10 days, enforcement will take place, joined to the respective procedure.

##### *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*

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*

In the event that maintenance is due to minors, the maintenance creditor may, alternatively, bring special enforcement action for maintenance, as provided for in the Code of Civil Procedure (*Código de Processo Civil*). 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 of which the other party is in receipt; or a pledge 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 application requests a pledge of income, they must specify the property to which this relates, and the enforcement agent will order that the property considered is sufficient to meet maintenance that is overdue and will become due be pledged.

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.

### **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 Regulation No 2201/2003 of 27/11/2003 (hereinafter, the 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 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 40 of the 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 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 Brussels IIa Regulation as follows: the application must be filed before 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 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 II to the Brussels IIa Regulation; in the case of a decision pronounced 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 Brussels IIa Regulation*

The applicable procedure is governed by the rules laid down in the 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 Brussels IIa 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 in the Brussels IIa Regulation. 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 division of the central district court. Where there is no family and minors division, the application must be submitted to the local instance court at the district court, to the division with generic competence, or the civil division in which the latter operates.

The action is in the form of common declarative action, as provided for in the Portuguese Code of Civil Procedure (*Código de Processo Civil*), with the specifications set out in the 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:

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 professional registered address of the legal representative;

Indicate the form of the proceedings;

Set out the essential facts constituting the cause of action and the points of 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 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 address <https://citus.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 clerk, with the date of its delivery being valid as the date of the procedural act;

Remittance by registered post, with the date of its registered postmark being valid as the date of the procedural act;

Delivery by fax, with the date of sending being valid as 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 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 of a decision on parental responsibility issued by a court in another Member State? Which procedure applies in these cases?**

Article 21 of the 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 this 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 discharge of a debt. This has consequences with regard to the rules of the burden of proof, since under Portuguese law, in actions for discharge of a debt, it is for the defendant to prove the facts constituting the right claimed.

#### **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:

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.

Personal law is that of the individual's nationality. 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.

#### **Note:**

**The information contained in this factsheet is not binding on the EJN-Civil Contact Point or the courts or other entities and authorities. Furthermore, the factsheets are not a substitute for reading the prevailing legal texts. They are regularly updated, subject to evolving interpretation of case-law.**

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#### **Parental responsibility - Romania**

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

The Romanian Civil Code (*Codul Civil*) uses the concept of **parental authority**. **Parental authority means** all the rights and duties concerning both the child and his/her assets. The rights and duties belong equally to both parents and are exercised in the best interests of the child. Parental authority shall be exercised until the child reaches full legal capacity.

The parental rights and duties (provided for in Article 487-499 of the Civil Code and Law No 272/2004 (*Legea nr. 272/2004*) on the protection and promotion of children's rights) with regard to the child include:

the right and duty to establish and preserve the child's identity. The child shall be registered immediately after birth and shall have the right to a name and citizenship. Parents shall choose the first and last name of the child.

the right and duty to raise the child. Parents have the right and duty to raise the child, to care for the health and physical, psychological and intellectual development of the child, of his/her education, studies and professional training, according to their own beliefs, characteristics and needs of the child.

the right and duty to provide child supervision.

the right and duty to provide child support. Parents are obliged, jointly and severally, to provide maintenance for their minor child. Parents are obliged to support their grown-up child until graduation if s/he is pursuing his/her studies but no later than by the age of 26 years.

the right to take certain disciplinary measures against the child. It is forbidden to take certain measures, such as some physical punishment that would impair the physical, mental or emotional state of the child.

the right to ask for the return of the child from any person who holds him/her with no right.

the right of the parents to reunite with their child. This right is correlated with the right of the child to not be separated from his/her parents other than for exceptional and temporary reasons (e.g. placement measures).

the right of the parent to have personal links with his/her child. The methods of having personal links with the child are, e.g.: visiting the child in his/her home, visiting the child while s/he is in school, the child spending holiday with each of his/her parents.

the right to determine the child's home. The minor child shall live with his parents. If the parents do not live together, they shall decide the child's home by mutual agreement. In case of disagreement between the parents, the Guardianship Court (*Instanța de tutelă*) shall decide.

**the right to consent to the engagement and marriage of the child in the case of minors who have reached 16 years of age; the right to consent to the adoption of the child.**

## **the right to appeal against the measures taken by the authorities with regard to the child and to make requests and actions in their own names and on behalf of child**

The parental rights and duties (provided for in Article 500-502 of the Civil Code) as regards the child's assets may include:

**management of the child's assets.** The parent has no right over the assets of the child, nor has the child over the assets of the parent, apart from the right to inheritance and maintenance. Parents have the right and duty to manage the assets of their minor child and to represent him/her in legal civil acts or to give their consent to these acts. After the age of 14, the minor shall exercise his/her rights and shall execute his/her duties alone, however, with the consent of the parents and of the Guardianship Court, where appropriate.

the right and duty to represent the minor in civil acts or to give one's consent to such acts. Up to the age of 14, the child shall be represented by the parents in civil acts as s/he lacks legal capacity entirely. From the age of 14 to 18, the child shall exercise his/her rights and shall execute his/her duties alone, however, the prior consent of the parents is required as s/he has limited legal capacity.

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

The rights and duties belong equally to both parents (Article 503(1) of the Civil Code): if the parents are married; after divorce (Article 397 of the Civil Code); to the parent whose filiation has been established if the child was born out of wedlock, and to both parents if the parents live in domestic partnership (Article 505(1) of the Civil Code).

Parental authority shall be exercised unevenly by (separated) parents: in the case of the dissolution of marriage by divorce if the Court considers that it is in the interest of the child for parental authority to be exercised by one parent only (Article 398 of the Civil Code); in the case of the dissolution of marriage (Article 305(2) of the Civil Code); if the child was born out of wedlock where the parents do not live in a domestic partnership (Article 505(2) of the Civil Code). Parental authority shall be exercised by one of the parents according to Article 507 of the Civil Code when the other parent is deceased, or has been deprived of his/her parental rights, or is placed under interdiction etc.

Parental authority shall be exercised by the parents in part when the rights and duties belong to a third party or to a care institution (Article 399 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?**

A minor parent who reached the age of 14 has only personal parental rights and duties with regard to the child. The rights and duties with regard to the assets of the child belong to the guardian or to another person.

The guardianship of minors shall be established when both parents are deceased, are unknown, are deprived of the exercise of parental rights or have been charged with criminal penalty to deprive them of the parental rights, are placed under judicial interdiction, are missing or are declared dead, and the Court decides upon the termination of the adoption that it is in the interest of the minor to establish a guardianship.

Guardianship is established if the child lacks the care of both parents, after they have been deprived of the exercise of parental rights.

Exceptionally, the Guardianship Court may decide on the placement of the child to a relative or to another family or person, with their consent, or into a care institution.

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

In principle, parental authority lies with both parents jointly after divorce, or with one of the parents only if there are well-grounded reasons, regarding the best interest of the child. The other parent shall retain the right to watch how the child is raised and educated, and the right to consent to his/her adoption.

Exceptionally, the Guardianship Court may decide on the placement of the child to a relative or to another family or person, with their consent, or into a care institution. They shall exercise the rights and duties of parents with regard to the child (Article 399 of the Civil Code).

When a child is born out of wedlock whose filiation was established to both parents, parental authority shall be exercised jointly and equally by the parents if they live in a domestic partnership. If the parents of the child born out of wedlock do not live in a domestic partnership, parental authority shall be exercised by one of the parents only.

Divorce with the consent of the spouses may be established by a notary public even if there are minor children born in wedlock, out of wedlock or adopted, or if the spouses agree on all the aspects regarding the surname used after divorce, the exercise of parental authority by both parents, the establishment of the home of the children after divorce, the method of how personal ties are preserved between the separated parent and each child, as well as the establishment of the parents' contribution to the costs of child rearing, the education, studies and professional training of children. If the report of the social inquiry shows that the agreement of the spouses on the joint exercise of parental authority or on the establishment of the children's home is not in the interest of the child, the notary public dismisses the application for divorce and guides the spouses to address to the Court.

### **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 the exercise of parental authority or as regards the measures taken to protect the child with the consent of the Guardianship Court, if it is in the best interest of the child (Article 506 of the Civil Code).

The Parties may appear at any time during judgement, even without having been summoned, in order to request a ruling that legalises their transaction, by giving a consent judgement. The consent judgement is final and shall be 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?**

Mediation is optional before the referral to the Court. During the resolution of the trial, the judicial authorities are obliged to inform the Parties about the possibility and advantages of using mediation. If mediation does not result in an agreement, the disputed issues shall be settled in Court.

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

See the answer to question 1.

### **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 Court decides that parental authority shall be exercised by one of the parents only, that parent shall decide alone on all the matters related to the child. The other parent shall retain the right to check how the child is raised and educated, as well as the right to consent to his/her adoption.

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

Parents shall exercise parental authority jointly and equally. With regard to third parties in good faith, if either of the parents carries out an everyday legal act on their own for the exercise of parental rights and fulfilment of parental duties, it is presumed that s/he also has the consent of the other parent.

### **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 applications for the protection of individuals in the competence of the Guardianship and Family Court (*the District Court or, where appropriate, the Tribunal specialised for minors and families*) are settled by the Court in the territorial jurisdiction of which the protected person has his/her domicile or residence (Article 94 of the Code of Civil Procedure (*Codul de Procedură Civilă*)).

The Court at the plaintiff's domicile is competent for the petitions regarding the establishment of filiation, the Court, in the jurisdiction of which the plaintiff resides, is competent for the petitions regarding maintenance duties (including state allowances for children).

The documents required to be attached to the application for summons are the copy of the minor child's birth certificate, the copy of the identity card, the copy of the judgement of divorce, the mediation agreement (if any) and any other documents deemed useful in settling the case. The petition is exempt from stamp duty.

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

The Court may take provisional measures by presidential order throughout the whole divorce process (special procedure with shorter settlement terms) on setting the home of the minor children, on the maintenance obligation, on the collection of state allowance for children and on the usage of the family home (Article 919 of the Code of Civil Procedure).

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

Legal aid may be sought under Emergency Order No 51/2008 (*Ordonanța de Urgență nr. 51/2008*) on public legal aid in civil matters, approved with amendments by Law No 193/2008 (*Legea nr. 193/2008*), as subsequently amended.

Legal aid may be granted separately or cumulatively in the form of assistance by a lawyer; by the payment for an expert, translator or interpreter; the payment for the bailiff's fee; for the exemptions, reductions, rescheduling or delays in payment of the Court fees.

Those persons benefit fully from the legal aid whose monthly net income per family member was below RON 300 in the last two months prior to the petition. If the income is below RON 600, legal aid shall be covered at a rate of 50 %. However, the established conditions do not prevent applicants whose resources exceed the quota from benefiting of legal assistance if they prove that they cannot meet the judicial costs due to the difference between the living standards of the state of domicile or habitual residence and the forum State.

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

The judgement in the cases related to exercising parental authority (ancillary matters to the divorce or by primary route) is subject to an appeal only, within 30 days from the judgement, or to judicial review only, in the case of a consent judgement that confirms the agreement of the Parties.

#### **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?**

If the person under an obligation does not meet the obligation voluntarily, the person claiming entitlement must notify the bailiff. The bailiff will call on the executing court to consent to enforcement. It is settled in a closed session without summoning the parties.

If the request for enforcement is accepted, the bailiff sends a warrant and a summons to the parent or person with whom the minor is staying, informing him/her of a date on which to appear with the minor in order for the minor to be taken into the charge of the person claiming entitlement, or ordering him/her to allow the other parent to exercise their right to personal relations with the minor.

If the person under the obligation does not meet the obligation, the bailiff will proceed to a forced enforcement in the presence of a representative of the General Directorate of Social Assistance and Child Protection and, if necessary, in the presence of a psychologist and police officers. No one is allowed to bully the minor or to put pressure on him/her to allow the enforcement to be carried out.

If the person under the obligation fails to meet the obligation, the penalty determined by the court lasts until enforcement, and the bailiff will notify the prosecutor to commence prosecution.

If the minor refuses this, the bailiff will communicate the official report to the representative of the General Directorate of Social Assistance and Child Protection, and the competent court will order the minor to undergo a counselling programme, which is followed by a report by the psychologist. If the minor refuses this after enforcement has resumed, the person claiming entitlement may ask the court to apply a penalty.

#### **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?**

For the recognition of a decision on parental authority, the provisions of Regulation (EC) No 2201/2003 shall apply. The petition is addressed to the Tribunal at the domicile of the defendant or at his/her residence in Romania. The recognition may be appealed at the competent territorial Court of Appeal (*Curtea de Apel*), or challenged by a request for judicial review at the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*).

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

In order to oppose the recognition of a decision on parental authority, the interested person may address to the Tribunal of the defendant's domicile or his/her residence in Romania.

#### **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?**

Article 2611 of the Civil Code states that the law applicable to parental authority and the protection of children is determined under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of parental authority and Measures for the Protection of Children, adopted in The Hague on 19 October 1996, ratified by Law No 361/2007.

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### **Parental responsibility - Slovenia**

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

Parental responsibility is a legal relationship governed by **family law**. Relations begin with the birth of a child or the determination of paternity and maternity. In the Slovenian legal system, children born to unmarried parents have the same rights and duties as those born to married parents. Slovenian legislation had adopted a 'full adoption' system, which means that adopted children are treated the same as biological children.

The legal basis is provided by **Article 54 of the Slovenian Constitution (*Ustava Republike Slovenije*)**, according to which parents have the right and duty to maintain, educate and raise their children. This right and duty may be revoked or restricted only for reasons set out in law in order to protect the child's interests. Children born to unmarried parents have the same rights as those born to married parents.

Parents have the right and duty to ensure, by means of direct care and the work and activities they carry out, the successful physical and mental development of their child. Parents have the right and duty to safeguard the life, personal development, rights and interests of a child who has not reached the age of majority in order to ensure that they enjoy healthy growth and balanced personal development, and are subsequently able to live and work independently. The **parental right** comprises these rights and duties. (Article 4 of the Marriage and Family Relations Act [*Zakon o zakonski zvezi in družinskih razmerjih*])

Parents must safeguard their child's interests in all activities and procedures pertaining to the child. Parents are deemed to be working in their child's interests if they meet the child's material, emotional and psychosocial needs by means of conduct that meets acceptable standards and that is required to ensure their care and responsibility for the child, with due regard to the child's personality and wishes. (Article 5a of the Marriage and Family Relations Act)

Parents must provide their child with the conditions for healthy growth and balanced personal development, and help them to develop the ability to live and work independently. They must maintain and raise their child, and safeguard the child's health and life. They are responsible for ensuring, to the best of their ability, that their child is educated and professionally trained in line with the child's abilities, inclinations and wishes. A child has the right to have contact with both parents and both parents have the right to have contact with the child. (Articles 102, 103 and 106 of the Marriage and Family Relations Act)

Parent's **legal liability** for their child is laid down in Article 142 of the Code of Obligations (*Obligacijski zakonik*). Parents are liable for damage caused to a third party by a child who is under seven years of age, regardless of whether they are responsible for the damage caused. Parents are liable for damage caused to a third party by a minor child who is over seven years of age, unless they can prove that they were not responsible for the damage caused. Article 107 of the Marriage and Family Relations Act regulates **representation** of a child in the child's relations with the outside world. Minor children are represented by their parents. If something must be formally served on or delivered to a minor child or inform them of something, either parent may take delivery. If the parents do not live together, this is done by the parent with whom the child lives. If both parents are engaged in caring for and raising the child, they must agree on the child's place of permanent residence and which of them is to take delivery of any correspondence for the child.

A child's **assets is managed** by the child's parents and in the child's interests until the child reaches the age of majority. (Article 109 of the Marriage and Family Relations Act)

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

The parental right is exercised by both the father and the mother. (Article 4 of the Marriage and Family Relations Act)

Parents exercise their parental right by common consent in accordance with the interests of the child. When the parents do not live together and do not have joint custody of the child, they both decide, by common consent and in accordance with the interests of the child, on issues that have a significant bearing on the child's development. The parent who has custody of the child is the one who decides on issues relating to the child's day-to-day life. When one of the parents is prevented from exercising their parental right, it is exercised by the other parent on their own. (Article 113 of the Marriage and Family Relations Act)

If one of the parents is no longer alive or is unknown, or if they have had their parental right or legal capacity removed, the parental right shall be exercised by the other parent. (Article 115 of the Marriage and Family Relations Act)

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

A child may be cared for by other persons or by an institution. A social services centre (*Center za socialno delo*) may remove a child from their parents and place them in the custody of **another person** or **institution** if the parents have neglected to raise and provide care for their child or if this is in the child's interests for other important reasons. (Article 120 of the Marriage and Family Relations Act)

A social services centre can place a child in **foster care** if they have no family of their own, or who, for various reasons, is unable to live with their parents, or a child whose physical and mental development is threatened by the environment in which they live. (Article 157 of the Marriage and Family Relations Act)

Foster care is governed in more detail by the Foster Care Act (*Zakon o izvajanju rejniške dejavnosti*).

An **adoptive parent** may care for a child. A child may only be adopted if their parents are unknown, if their parents' residence has been unknown for one year, if their parents have agreed, before a competent authority, to give their child for adoption, or if their parents are deceased. (Article 141 of the Marriage and Family Relations Act)

A minor child who has no parents or for whom the parents do not provide care shall be placed in the care of a **guardian** by a social services centre. The guardian of a minor child is responsible for caring for the child as if they were a parent. (Articles 201 and 202 of the Marriage and Family Relations Act)

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

Parents who do not live together or who intend to separate must come to an agreement on the custody of the children they have together, and do so in the interests of those children. They may agree to retain equal custody of their children, to give custody to one of the parents or to split the children between them. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. If the parents are unable to come to an agreement on the custody of their children even with the assistance of a social services centre, a court may agree, at the request of one or both parents, to custody being given to one of the parents or to the children being split between the parents. The court may also, of its own accord, rule that custody of all or some of the children is to be given to a third person. Before the court gives its ruling, it is obliged to seek the opinion of a social services centre regarding the child's interests. The court also considers the child's opinion if it is expressed by the child themselves or by a person whom the child trusts and who has been chosen by the child themselves, provided the child is capable of understanding the significance and consequences of the opinion. (Article 105 of the Marriage and Family Relations Act)

When a court annuls a marriage, it also rules on the custody and maintenance of any children the spouses have together and on their contact with the respective parents. (Article 78 of the Marriage and Family Relations Act)

When the parents do not live together and do not have joint custody of the child, they both decide, by common consent and in accordance with the interests of the child, on issues that have a significant bearing on the child's development. The parent who has custody of the child is the one who decides on issues relating to the child's day-to-day life. (Article 113 of the Marriage and Family Relations Act)

## **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 who do not live together or who intend to separate must come to an agreement on the custody of the children they have together, and do so in the interests of those children. If the parents reach agreement on the custody of the children, they may propose that the court issue a decision thereon in a non-litigious procedure. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If the parents are unable to reach agreement on the matter themselves, a social services centre assists them to do so. If the parents are unable to reach agreement even with the assistance of the social services centre, the court produces a ruling at the request of one or both parents. (Article 105 of the Marriage and Family Relations Act)

Parents who do not live together or who intend to separate reach agreement on the maintenance of the children they have together. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. If the parents are unable to reach agreement on the maintenance of the children they have together even with the assistance of the social services centre, the court issues a decision at the request of one or both parents. (Article 105a of the Marriage and Family Relations Act)

A child has the right to have contact with both parents and both parents have the right to have contact with the child. Such contact shall ensure primarily that the child's interests are met. The parent with whom the child lives and who has custody of the child, or a third person with whom the child lives, must refrain from all conduct that hinders or prevents the child from maintaining contact with the other parent or their parents, and must endeavour to encourage the child to adopt an appropriate attitude towards contact with the other parent or their parents. The parent who has contact with the child must refrain from all conduct that hinders the care and upbringing of the child. If parents reach agreement on contact, they may propose that the court issue a decision thereon in a non-litigious procedure. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If the parents are unable to come to an

agreement on contact even with the assistance of the social services centre, the court issues a decision at the request of one or both parents. (Article 106a of the Marriage and Family Relations Act)

A child also has the right to contact with other persons who are family relations and who have a close personal bond with the child, unless this is contrary to the child's interests. Such persons are deemed to be, in particular, a child's grandparents, brothers and sisters, half-brothers and half-sisters, former foster parents, and a former or present spouse or extra-marital partner of one or the other parent. Agreement on contact shall be reached by the child's parents, the child (if they are capable of understanding the importance of the agreement) and the persons with whom the child has a personal bond. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. The extent to and manner in which contact is maintained must be in the child's interest. If the child's parents, the child and the persons with whom the child has a personal bond come to an agreement on contact, they may propose that the court issue a decision thereon in a non-litigious procedure. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If they are unable to come to an agreement even with the assistance of the social services centre, the court decides on contact. (Article 106a of the Marriage and Family Relations Act)

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

If the parents are unable to come to an agreement themselves, a social services centre assists them to do so. If they are unable to come to an agreement even with the assistance of the social services centre, the court decides on the matter.

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

The court may decide that one of the parents is to have custody of all the children or that the children are to be split between the parents. The court may also, of its own accord, rule that custody of all or some of the children is to be given to a third person. (Article 105 of the Marriage and Family Relations Act) The court also rules on maintenance of the child and on contact. (Articles 105a, 106 and 106a of the Marriage and Family Relations Act)

In reaching a decision on contact, the court is mainly guided by the child's interests. The proposal or application for a decision on contact must be accompanied by proof from a competent social services centre stating that the parents attempted to come to an agreement on contact with its assistance. The court may remove or restrict the right to contact insofar as this is necessary to safeguard the child's interests. Contact is not in the child's interests if it imposes psychological pressure on the child or if it jeopardises the child's physical or mental development. The court may rule that contact is to take place under the supervision of a third party, or that it should not involve personal contact and association (i.e. that it should take place in another way) if this would otherwise not be in the child's interests. (Article 106 of the Marriage and Family Relations Act)

Maintenance is determined with due consideration for the needs of the claimant and the material and earning capacities of the person required to pay maintenance. When calculating the maintenance due to a child, the court must act in the child's interests, setting a level that is adequate to ensure the child's successful physical and mental development. (Articles 129 and 129a of the Marriage and Family Relations Act)

**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 parents do not live together and do not have joint custody of the child, they both decide, by common consent and in accordance with the interests of the child, on issues that have a significant bearing on the child's development. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. The parent who has custody of the child is the one who decides on issues relating to the child's day-to-day life. If the parents are unable to come to an agreement on issues that have a significant bearing on the child's development even with the assistance of the social services centre, the court issues a decision in a non-litigious procedure at the request of one or both parents. (Article 113 of the Marriage and Family Relations Act)

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

It means that both parents are equally responsible for the child's upbringing and development and that both must continue to care for the child.

**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?**

District courts (*okrožna sodišča*) are the courts with **subject-matter jurisdiction** in such cases. (Article 32 of the Civil Procedure Act [*Zakon o pravdnem postopku*])

The court in which the defendant has their permanent residence has general **territorial jurisdiction**. If a court in Slovenia has jurisdiction because the defendant has temporary residence in Slovenia, the court covering the area in which the defendant has temporary residence has general territorial jurisdiction. If in addition to their permanent residence the defendant also has temporary residence in another locality and it can be assumed, owing to the circumstances, that they will live there for an extended period of time, the court covering the area in which the defendant has temporary residence also has general territorial jurisdiction. (Article 47 of the Civil Procedure Act)

If in a dispute over legal maintenance the plaintiff is the person requesting maintenance, the court covering the area in which the plaintiff has permanent or temporary residence has jurisdiction, in addition to the court of general territorial jurisdiction. If in a dispute over legal maintenance with an international element a court in Slovenia has jurisdiction because the plaintiff is a child with permanent residence in Slovenia, the court covering the area in which the plaintiff has permanent residence has territorial jurisdiction. If in a dispute over legal maintenance a court in Slovenia has jurisdiction because the defendant has property in Slovenia from which maintenance could be paid, the court covering the area in which that property lies has territorial jurisdiction. (Article 50 of the Civil Procedure Act)

Parties to and other participants in the procedure have to file actions, appeals and other applications in the **Slovenian language or in the language of a national community** in official use at the court. (Article 104 of the Civil Procedure Act)

An **action** must include a specific request setting out the main subject of the case and the side claims, the facts supporting the plaintiff's claim, evidence substantiating those facts, and the other information that every action is obliged to contain (Article 180 of the Civil Procedure Act).

According to the act, an application is an action, a response to an action, legal redress and other statements, proposals or communications submitted outside of proceedings. Applications must be comprehensible and include everything required for a judicial hearing. They must include the following in particular: a reference to the court, the names and places of permanent or temporary residence or the place of establishment of the parties, the names of their legal representatives or proxies, the subject of the dispute and the content of the statement. The applicant must sign the application, unless this cannot be done because of the form of the application. The applicant's original signature shall be deemed to be their handwritten signature, as well as a secure electronic signature verified by means of a qualified certificate. If the statement includes a request, the party must state in the application the facts on which the application rests and, where required, the evidence. (Article 105 of the Civil Procedure Act)

**Court fees** must be paid when an action is filed. Court fees must be paid no later than by the deadline set by the court in the order for the payment of court fees. (Article 105a of the Civil Procedure Act)

Applications must be filed **in writing**. A written application is an application that has been handwritten or printed and signed in the applicant's own hand (application in physical form) or an application in electronic form that has been signed using a secure electronic signature verified by means of a qualified

certificate. A written application is submitted by post, electronically, using communication technology, delivered directly to an authority or delivered by a person engaged professionally in submitting applications (commercial provider). Electronic applications are submitted electronically to the information system. The information system automatically confirms to the applicant that the application has been received. Applications can also be filed on the prescribed or otherwise prepared form. (Article 105b of the Civil Procedure Act)

Applications that have to be delivered to the opposing party must be submitted to the court in as many **copies** as are required by the court and the opposing party, and in a form that enables the court to deliver them. This also applies to enclosures. Applications and enclosures that are submitted electronically and that have to be sent to the opposing party are sent in the form of a single copy. The court makes as many electronic copies or photocopies as the opposing party requires. (Article 106 of the Civil Procedure Act) Documents enclosed with the application may be **originals or copies**. (Article 107 of the Civil Procedure Act)

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

A district court rules in a civil procedure, unless the law stipulates that it should do so in a non-litigious procedure. Courts resolve matters governed by the Marriage and Family Relations Act as a matter of priority. (Article 10a of the Marriage and Family Relations Act)

During proceedings in disputes involving relations between parents and children, the court may, at the proposal of a party or acting on its own accord, issue interim measures (temporary injunction) on the custody and maintenance of children, as well as interim measures on the removal or restriction of the right of contact or on the method by which contact is to take place. Interim measures are issued under the procedures of the Enforcement and Securing of Claims Act (*Zakon o izvršbi in zavarovanju*). (Article 411 of the Civil Procedure Act)

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

Yes, legal aid may be obtained to cover the costs of the procedure. The presiding judge of the district court decides on the allocation of legal aid. (Article 2 of the Legal Aid Act [*Zakon o brezplačni pravni pomoči*])

Legal aid may be approved for legal advice, legal counsel and other legal services determined by law, for all forms of judicial protection before all courts of general jurisdiction and specialised courts in Slovenia, before the Slovenian Constitutional Court (*Ustavno sodišče Republike Slovenije*) and before all authorities, institutions and persons in Slovenia competent for extra-judicial settlement of disputes, and for the waiving of the payment of the costs of a judicial procedure. (Article 7 of the Legal Aid Act)

Those entitled to legal aid under this act are: 1. citizens of Slovenia; 2. foreign nationals with permanent or temporary residence in Slovenia and persons without citizenship (stateless persons) lawfully residing in Slovenia; 3. other foreign nationals under conditions of reciprocity or under conditions and in cases defined in international treaties binding on Slovenia; 4. non-governmental organisations and associations that operate on a non-profit basis and in the public interest, and that are registered in the corresponding register in accordance with the applicable legislation, in disputes connected with the performance of activities in the public interest or with the intention for which they were established; 5. other persons for whom the law or an international treaty binding on Slovenia prescribes an entitlement to legal aid. (Article 10 of the Legal Aid Act)

A person entitled to legal aid may request legal aid during any stage of the proceedings. In deciding on requests for legal aid, the applicant's financial status is established, as are other conditions defined in the act. (Article 11 of the Legal Aid Act)

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

Yes, the competence to rule on appeals against a decision on parental responsibility made by a district court is held by a higher court (*višje sodišče*). (Article 35 of the Civil Procedure Act) An appeal may be filed with the court that passed the judgment of first instance, in a sufficient number of copies for the court and the opposing party. (Article 342 of the Civil Procedure Act)

#### **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?**

Enforcement proceedings are laid down in the Enforcement and Securing of Claims Act. Unless the law determines otherwise, the local court (*okrajno sodišče*) has subject-matter jurisdiction to permit enforcement. (Article 5 of the Enforcement and Securing of Claims Act)

The court with territorial jurisdiction to decide on a proposal to enforce a judicial decision on the custody of a child and for enforcement itself is the court covering the area in which the person who has been given custody has permanent or temporary residence or the court covering the area in which the person against whom the proposal for enforcement has been filed has permanent or temporary residence. The court covering the area in which the child is located is also the court with territorial jurisdiction over direct enforcement. (Article 238a of the Enforcement and Securing of Claims Act)

Under an enforcement order, the obligation to deliver a child is imposed on the person to whom the enforcement instrument relates, the person on whose will the delivery of the child depends and the person with whom the child is at the time the order is issued. The court announces in the enforcement order that the duty to deliver the child is also effective against any other person with whom the child is at the time the enforcement is carried out. (Article 238c of the Enforcement and Securing of Claims Act)

Taking all the circumstances of the case into consideration and in order to protect the child's interests, the court decides whether to enforce the decision on the custody of the child by imposing a fine on the person to whom the enforcement order relates or by removing the child and delivering them to the person to whom custody of the child has been given. (Article 238č of the Enforcement and Securing of Claims Act)

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

A court decision on parental responsibility is recognised and enforced in accordance with Council Regulation (EC) No 2201/2003. The court applies a non-litigious procedure under the provisions of the Non-Litigious Civil Procedure Act (*Zakon o nepravdnem postopku*).

#### **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?**

All district courts are competent to handle requests to declare enforceability.

The court that declared a judicial decision to be enforceable is the court competent to handle legal redress against a judicial decision declaring enforceability. The court applies a non-litigious procedure under the provisions of the Non-Litigious Civil Procedure Act.

[List of District Courts](#) (244 Kb) 

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

Under the Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*), relations between parents and children are assessed under the law of the country of which they are nationals. If the parents and children are nationals of different countries, the law of the country in which they all have permanent residence is applied. If the parents and children are nationals of different countries and do not have permanent residence in the same country, the law of the country of which the child is a national is applied. (Article 42)

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## Parental responsibility - Slovakia

### 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 on changes and amendments to certain acts) and case-law, parental responsibility (i.e. parental rights and obligations - custody) comprise, in particular, care of the child, maintenance, representation and administration of the child's property.

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

Both parents jointly share parental rights and obligations towards a child, irrespective of whether the child is born in or out of wedlock or whether the parents live together or not (are married, separated or divorced).

A parent may be deprived of their parental rights and obligations (or have them restricted) by the court in serious circumstances, as provided for in Section 38 (4) of the Family Act.

A court may recognise the parental rights and obligations of a minor parent over the age of 16 for the personal care 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 legal capacity, have been deprived of their parental rights and obligations, or are dead, the court must appoint a guardian who is to personally bring up the minor child, represent it and administer the 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 agree an arrangement for the exercise of their parental rights and obligations at any time. 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 custody (*osobná starostlivosť* – personal care) of a 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?

An agreement between parents regarding their parental rights and obligations must be approved by the 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 disputes arising from relationships governed by family law. Mediation is an out-of-court procedure in which the parties concerned use the assistance of a mediator to resolve a dispute arising from their contractual or other legal relationship. Any agreement reached through mediation must be 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 award sole custody (personal care) to one of the parents. Only if one parent is deprived of their parental rights and obligations, can a single parent have sole custody of a child. In practice, however, the court will decide which of the parents is to have personal care of the child, who is to represent the child and administer the child's property. The court will also decide how the parent who was not awarded custody of the child is to contribute to the child's maintenance or will approve 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 translate well in the context of Slovak family law. Slovak family law recognises the term 'parental rights and obligations', which are always shared jointly by both parents (so there can never be 'sole custody' unless the other parent is dead, does not have legal capacity or has been deprived of their parental rights and obligations). A distinction needs to be made between these cases and entrusting a child to someone's 'personal care'. If a child is entrusted to the personal care of 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, granting consent to health care being provided, preparation for a future occupation) require the consent of the other parent. If the parents are unable to agree on a decision, the court decides 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 award alternating personal care (i.e. joint custody) to both parents if they are both fit to raise the child and are interested in the child's personal care, and if this arrangement is in the child's interest to better meet his or her needs. If at least one of the parents agrees with shared personal care of the child, the court is obliged to find out if joint personal care 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. No formalities need to be respected and no documents need to be attached, since this is a procedure which the court may start by its own motion. Submission of documents depends on the content of the application; usually the child's birth certificate is needed.

### 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. The court 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 if doing so would not be an arbitrary or evidently unsuccessful exercise or an obstruction of justice. 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 Centre provides the legal aid and security system for natural persons who are unable to make use of legal services in order to exercise and protect their rights owing to their economic circumstances. The extent of legal aid provided is governed by Act No 327/2005 on the provision of legal aid to persons in adverse economic circumstances.

### **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?**

An application for enforcement of a decision is lodged with the child's general court. The procedure applied in enforcement of a decision is governed by Act No 99/1963 - Civil Procedure Code.

The regular enforcement procedures apply (court enforcement) with the exception of enforcement of decisions on personal care (if a child is to be returned to the parent who under the decision has the right of personal care). In such cases the procedure is stricter (financial penalties and possible involvement of the police or other competent enforcement authorities).

### **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 of a decision on parental responsibility issued by a court in another Member State? Which procedure applies in these cases?**

Appeals are always lodged with the District Court that issued the original decision but appeals are decided by the Regional Court. Appeals against recognition of decisions on parental rights and obligations are processed and decided in accordance with the Code of Civil Procedure.

### **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?**

The Slovak courts will only decide in proceedings on parental rights and obligations 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 where there is a significant link with the matter at hand 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 did not possess any of the parental rights and obligations that are recognised under Slovak law, those rights and obligation commence when the child is habitually resident in the Slovak Republic. The exercise of parental rights and obligations is governed by the law of the country in which the child is habitually resident.

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 20.1.1964, Decree No 207/1964)

Hungary: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Hungary on legal assistance and regulation of legal relationships 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, 21.12.1987, 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, 25.10.1958, Decree No 31/1959)

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търсите, в момента се подготвя от нашите преводачи.

## Parental responsibility - Finland

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

The holder of parental responsibility has a duty to ensure the balanced development and wellbeing of the child in accordance with her or his individual needs and wishes. Thus the purpose of parental responsibility is to secure close and affectionate relationships, especially between children and their parents. Children must be assured of good care and upbringing, as well as the supervision and protection that correspond to their age and stage of development. Children should be brought up in a secure and stimulating environment and receive an education that corresponds to their inclinations and wishes. Children must be brought up with understanding, security and affection. They must not be subject to corporal punishment or otherwise treated in an abusive manner. Children should be supported and encouraged to reach independence, responsibility and adulthood. (Act on Child Custody and Right of Access 361/1983, section 1)

The holder of parental responsibility must ensure the well-being and development as described above. For this purpose, she or he has the right to make decisions on the child's care, upbringing, place of residence and other personal matters. When making a decision, the child's opinion should be taken into account.

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

If the parents of a child are married at the time of the child's birth, they both have parental responsibility. If the parents are not married at the time of the child's birth, the mother has parental responsibility. The parents can agree on who has custody in connection with the confirmation of paternity. If one of the parents has sole custody of the child and the parents then marry, both parents assume parental responsibility.

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

A court can assign custody of the child to one or more persons, with their consent, in addition to or instead of the parents. The decision must be based on the child's best interests and only if there is a compelling reason from the child's point of view for assigning custody to a person other than the parents. If the parents are deceased, the social welfare board must take action to assign custody of the child.

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

Custody and access rights must always be arranged with the best interests of the child in mind and so that these rights can be exercised in the best possible way in future. The parents can make a parental responsibility agreement. If the parents cannot reach an agreement, the dispute must be taken to court.

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

The agreement on child custody and access rights must be drawn up in writing and submitted for validation to the local social welfare authority. The social welfare authority must ensure that the agreement is in the child's best interest. An agreement validated by the social welfare board is valid and enforceable similarly in the same way as a final court decision.

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

If the spouses cannot reach an agreement, they can request assistance from a municipal child welfare officer or a family mediator. Child welfare officers provide guidance to parents and have the power to validate agreements between them. An agreement confirmed by a child welfare officer is regarded as equivalent to a final court decision. Family mediators assist parents in resolving their disputes through negotiation, and can also provide assistance in drawing up agreements. Family mediators must pay special attention to securing the best interests of any minors in the family.

The court's power of decision covers child custody, living arrangements, access rights and maintenance payments. (Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts 394/2011, section 10). Court mediation is a separate procedure from judicial proceedings. It can commence when a case pending in court is referred to court mediation or by direct request of the parties to the dispute. The mediator is a judge assisted by an expert, usually a psychologist or a social worker. A confirmed agreement is regarded as equivalent to a court decision. If an agreement cannot be reached, it is returned to court proceedings or the court closes the case.

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

The court's power of decision covers child custody, living arrangements and access rights. If necessary, the court can also rule on the custodian's rights and duties as well as on the sharing of duties between custodians. When ruling on access rights, the court must provide detailed provisions on the conditions for visiting and on who the child will live with. The maintenance payments can also be determined in conjunction with determining custody.

### 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?

In the case of a single custodian, she or he alone makes all decisions related to child care. However, the court ruling may include stipulations on the rights and duties of the single custodian, including the right to change the child's place of residence.

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

Joint custodians share responsibility for all issues related to the child. If the custodians are separated, they make everyday decisions related to the child depending on which parent the child lives with. However, the consent of both custodians is needed for major decisions. These include, for example, changing the child's church or place of residence, passport issues, educational decisions and healthcare or hospital care issues.

### 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?

A written application for custody or access rights should be filed with the district court (*käräjäoikeus*) of the child's place of residence. The application can be made by one or both parents, by the custodian or by the social welfare board. A claim and the grounds for the claim should be presented in the application. Any documents to be used as evidence must be enclosed. The application must be signed and submitted to the district court either in person or by an authorised representative. The application can also be sent by post or by fax. The case becomes pending when the application is received by the district court.

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

In custody cases, the Act on Child Custody and Right of Access is applied. According to this act, the court must give the parents and the custodian the opportunity to speak when hearing a case on custody or access rights. The child can be heard in court, if there are compelling reasons that make this necessary in order to resolve the case. The court usually also obtains a report on the child's circumstances from the social welfare board.

When the case is pending, the court can issue an interim order on who the child should live with and on access rights and related conditions. In special circumstances, the court can assign temporary custody until the final decision is reached. An interim court order cannot be appealed. It is valid until the court reaches a final decision.

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

Legal aid is available in custody cases. Access to legal aid depends on personal income (See page [Legal aid – Finland](#))

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

A decision by a district court can be appealed in the court of appeal (*hovioikeus*).

#### **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 responsibility are enforced as provided in the Act on the enforcement of decisions on child custody and right of access (*laki lapsen huoltoa ja tapaamisoikeutta koskevan päätöksen täytäntöönpanosta* 619/1996) You must apply for enforcement in writing at the district court of the place of residence of the child or the opposing party. Enforcement of a decision on parental responsibility can, however, be requested from a bailiff if the decision was issued less than three months earlier. The decision must be enclosed with the application.

Upon receiving the application and a statement from the other party, the court will usually assign a social welfare board mediator to handle the case. The mediator contacts the parents and discusses the issue with them and, if possible, with the child. The mediator also tries to arrange a joint meeting with both parents. The mediator then reports to the court, after which the court rules on the case. The court can also order that the child be examined by a doctor.

If the court decides that the decision on parental responsibility must be enforced, the other party is obliged to surrender the child. The decision can be reinforced with a conditional fine. As a last resort, the child can be forcibly separated from the party refusing to comply with the decision.

If a district court has ordered a child to be forcibly taken away, mediation may still be continued at the request of the bailiff.

#### **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?**

[Council Regulation \(EC\) No 2201/2003](#) is applied in the recognition of decisions on parental responsibility issued in another Member State that fall within the scope of the Regulation. (See page [Parental responsibility - Community law](#)). The Regulation does not apply in Denmark.

According to the Regulation, a judgment concerning the dissolution of marriage must be recognised by other Member States without any special procedures. Any interested party may, however, apply for a decision that the judgment be or not be recognised. The application for recognition is filed in Finland with the district court of the child's place of residence.

Decisions on parental responsibility issued in Denmark and decisions issued in Sweden, other than those issued by virtue of the abovementioned Regulation, are enforced on the basis of the 1977 Act on the recognition and enforcement of Nordic judgments on civil law claims (*laki yksityisoikeudellista vaatimusta koskevien pohjoismaisten tuomioiden tunnustamisesta ja täytäntöönpanosta* 588/1977). No separate confirmation of the recognition of a decision is provided. Requests for enforcement are lodged with the district court.

All other foreign decisions on parental responsibility are recognised in Finland without any specific confirmation. Upon application, the Helsinki Court of Appeal (*Helsingin hovioikeus*) can, however, confirm the recognition or non-recognition of a decision in Finland.

The application for the enforcement of an enforceable custody decision is filed with the district court of the child's or opposing party's place of residence or temporary place of residence. (See section 14 above for further information about enforcement procedures.)

#### **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?**

Same procedure as specified in section 15.

#### **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?**

Finnish legislation is applied in proceedings on parental responsibility that are dealt with in Finland.

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### **Parental responsibility - Sweden**

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

'Parental responsibility' covers, among other things, rights and obligations in connection with taking care of the child's physical person and property and includes questions relating to custody of the child, where the child lives, contact with the child and guardianship.

Custody refers to the legal responsibility for the child's physical person. The person with custody has a right and an obligation to take decisions concerning personal matters in relation to the child, such as where the child is to live and which school he/she is to attend. The person with custody is responsible for ensuring that the child's needs for care, security and a good upbringing are met. The person with custody of the child is also responsible for ensuring that the child receives the necessary supervision in consideration of his/her age, development and other circumstances and must monitor whether or not the child is receiving satisfactory support and education. As the child grows and develops, the person with custody of the child must increasingly take account of the child's own views and wishes.

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

Usually, the person with custody is the child's parents, or one of them. If the child's parents are married to one another when the child is born, the parents automatically have joint custody of the child. If the parents do not marry until later, they automatically gain joint custody through marriage. If a child's parents are not married to one another when the child is born, it is the mother who has custody of the child. However, the parents can easily obtain joint custody by means of registration. The father may also go to court to obtain joint custody or sole custody of the child.

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

In certain cases the custody of a child may be transferred from the child's parents, or from one of them, to a specially appointed guardian. A transfer of this nature may become relevant if a parent is guilty of abuse or neglect or otherwise fails in his/her care of the child in a way that poses a permanent risk to the child's health or development. A transfer may also become appropriate if one or both of the parents are permanently prevented from exercising custody of the child.

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

If the parents get divorced, the joint custody continues without the court's needing to take any decision on this in connection with the divorce. If either of the parents wants a change in the custody, they must apply for the joint custody to be dissolved.

If either of the parents wants a change in the custody, the issue of custody may be settled in court. If the parents are in agreement about a change, they can settle the matter in an agreement, without the involvement of a court. Such an agreement must be approved by the social services committee (*socialnämnd*) in order to be valid. The same applies to questions concerning which of the parents the child should live with and how contact with the other parent should be arranged.

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

The agreement must be in writing and must be signed by both parents. Furthermore, it must be approved by the social services committee of the municipality where the child is registered.

**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 municipality has an obligation, through the social services committee, to offer parents professional mediation with the aim of reaching agreement in matters relating to custody, residence and contact. Mediation is voluntary. It therefore requires both parents to jointly ask for mediation. If the parents can agree in matters relating to custody, residence and contact, they may sign an agreement which, once it is approved by the social services committee, will have the same effect as a court judgment.

If the parents go to court, the court can refer them to the social services committee for mediation, if such mediation has not previously taken place and the court considers the conditions to be in place for reaching agreed solutions. If the parents have undergone mediation but have not reached an agreement, the court may instead appoint someone to mediate between the parents. The court has a general duty to work towards agreed solutions in cases of custody, residence and contact.

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

The court can decide on

custody (sole or joint custody),

the child's residence (which of the parents the child should live with or whether the child should live with each parent alternately), and

contact (the child's right to contact with the parent with whom he/she does not live).

**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 parent who has sole custody of the child has the right to make decisions alone concerning personal matters in relation to the child. The person with custody does not have to consult the other parent or have their approval in such matters. However, the child has the right to have contact with the other parent, and the person with custody has a duty to provide for that right. The person with custody also has a duty to provide the other parent with information to facilitate contact with the child.

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

Joint custody means that the parents must take decisions about the child's personal affairs together. The starting point is that the parents must agree on all matters relating to the child. However, disagreement on matters relating to contact and the child's residence can be decided by a court (see above).

**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?**

In matters relating to custody, residence or contact, a parent can bring an action before the district court (*tingsrätt*) where the child has his/her domicile. If there is no competent district court, Stockholm District Court (*Stockholms tingsrätt*) has jurisdiction. Matters relating to custody, residence and contact can also be addressed in divorce proceedings.

An application for a summons must be in writing and must be personally signed by the applicant or his/her representative. The application must contain information about the parties, a specific claim (i.e. what matter the court is being asked to decide on), the background to the claim, information about the evidence relied on and what each piece of evidence is intended to prove, and information about the circumstances through which the court has jurisdiction.

The written evidence relied on should be submitted together with the application.

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

Matters relating to custody, residence and contact are non-discretionary.

In general, matters relating to custody, residence and contact must be considered promptly. The court may take an interim decision on custody, residence or contact. An interim decision may, for example, concern where the child is to live while the dispute is in progress and apply until the matter has been decided by a decision which has gained legal force.

Although there is no special formal procedure to expedite consideration of matters relating to custody, residence and contact, an assessment is made in each individual case of how urgent the matter is.

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

In cases concerning custody, residence and contact, the general rule is that each party bears its own legal costs.

Legal aid may be granted if the relevant conditions are met.

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

A district court's judgment or decision regarding custody, residence or contact may be appealed to the court of appeal (*hovrätt*). However, for the court of appeal to consider the appeal, leave to appeal must first be granted.

A judgment or decision of the court of appeal may be appealed to the Supreme Court (*Högsta domstolen*). For the Supreme Court to consider the appeal, leave to appeal is required.

**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?**

It is possible to enforce judgments, decisions or agreements about custody, residence or contact. Enforcement is sought in the district court in the place where the child has his/her domicile. If there is no competent court, the matter of enforcement is considered in Stockholm District Court.

The district court can decide on various measures. First of all, the court will usually seek to have the child handed over voluntarily. Should that not be possible, the court may ultimately decide on a conditional fine or recovery of the child. The imposition of a conditional fine means that the person who is looking after the child is threatened with having to pay a considerable sum of money if he or she does not hand over the child. Recovery of the child is a very unusual measure, which is only decided upon if it is not possible to resolve the situation in any other way and in order to prevent the child suffering serious harm. It entails the police recovering the child and handing him or her over to the person with custody.

**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?**

In certain cases the Brussels II Regulation applies. In Sweden, applications for declarations of enforceability are made to the Svea Court of Appeal (*Svea hovrätt*).

In other cases, for countries that have signed the 1980 European Convention and the 1996 Hague Convention, those conventions apply. Under the 1980 European Convention, applications for enforcement are made to the district court in the place where the child has his/her domicile. Under the 1996 Hague Convention, applications for enforcement are made to the Svea Court of Appeal.

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

Provisions governing this are to be found in the Brussels II Regulation.

An objection that a decision is not applicable or is not enforceable may also be made in cases in which the issue arises.

**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?**

In principle, the law of the country in which the child is domiciled is applied.

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**Parental responsibility - England and Wales**

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

Parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. This refers to any obligation which he may have in relation to a child (such as the duty to maintain) and any rights which, in the event of the child's death, he may have in relation to the child's property. Under the law of England and Wales, parental responsibility has not been held to include decisions on who a child should live with and who a child should spend time with.

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

If the parents of a child are married or in a civil partnership, both the mother and father (or second female parent) will have parental responsibility. Mothers always have parental responsibility and unmarried fathers or a second female parent who is not married to or in a civil partnership with the child's mother can acquire it by agreement with the mother, by court order or by registering the birth jointly with the child's mother. A step-parent may have parental responsibility by agreement with the child's parent or parents who have parental responsibility or by court order. A person who has a child arrangements order about with whom the child should live and when, has parental responsibility for the duration of the order, or sometimes longer. The making of an adoption order confers parental responsibility without limit of time, unless it is revoked. Special guardians (see the answer to question 3 below) have parental responsibility for the duration of the order. A local government authority has parental responsibility for a child if the child is the subject of a care order. A person with parental responsibility under Article 16 of the 1996 Hague Protection of Children Convention retains that parental responsibility when the child becomes habitually resident in England and Wales; the exercise of that parental responsibility is according to the law of England and Wales.

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

A special guardian may be appointed by the court to exercise parental responsibility if the parents are unable to take care of a child. A parent with parental responsibility may appoint a person to be the child's guardian in the event of the parent's death. The local authority (social welfare authority) will have parental responsibility if the child is in their care.

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

Parental responsibility is not affected if a couple separate, whether or not they are married. The court may restrict the exercise of parental responsibility if the court considers it appropriate to do so. In some cases the court may remove parental responsibility completely (although it cannot be removed from parents who are married to each other).

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

The agreement must be made in a Parental Responsibility Agreement form.

Details of the addresses of courts can be found on the website of [Her Majesty's Courts and Tribunals Service \(HMCTS\)](#). The form is accompanied by notes for guidance. As the making of the agreement will seriously affect the legal position of both parents, they are both advised to seek legal advice before completing the form. They can obtain the name and address of a solicitor in the location required in England and Wales from the Law Society Find a Solicitor Service (00 44 (0)20 7242 1222) or from:

their local family court

a [Citizens Advice Bureau](#)

a Law Centre

a local library.

In some circumstances they may also be eligible for legal aid.

The parents must provide evidence of identity and their signatures must be witnessed by an authorised officer of the court. The mother should take with her to the court proof that she is the child's mother, so a copy of the child's full birth certificate will be needed. She will also need to take proof of her identity, showing a photograph and signature (for example, a photocard, official pass or passport). The father will need to take proof of his identity, showing a photograph and signature (for example, a photocard, official pass or passport).

When the form has been signed and witnessed 2 copies should be made. The original Agreement form and the copies can be taken or sent to

The Central Family Court ,  
First Avenue House,  
42-49 High Holborn,  
London WC1V 6NP.

The Central Family Court will record the Agreement and keep the original. The copies will be stamped and sent back to each parent at the address on the Agreement. The Agreement will not take effect until it has been received and recorded at the Central Family Court. There is no fee for registering a Parental Responsibility Agreement. If there is more than one child in question, a separate form should be completed for each child.

**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?**

Mediation services are available to help parents reach a satisfactory arrangement for the future parenting of the child. Any agreement reached must be registered with the court. Registration is needed to validate the agreement and to make the agreement enforceable.

More information on family mediation can be found on the website of the [Ministry of Justice](#).

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

The judge can decide with whom the child is to live and when. The judge can also decide with whom the child is to spend time or otherwise have contact and when. Parents are encouraged to reach agreement on contact. Courts will not decide maintenance payments for children as, if the parents cannot agree between themselves, this is undertaken by the [Child Maintenance Service](#). Parents usually agree what school the child will attend; this can be decided by the judge making a specific issue order if agreement cannot be reached. A child retains their own name unless directed otherwise by the court. The court can also prevent a person exercising part of their parental responsibility, by making a prohibited steps order. The court can also decide on permanent removal from the jurisdiction and change of surname (see question 8 below).

**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 court expects parents to take decisions together by agreement. If both parents have parental responsibility, the parent with a child arrangements order about who the child is to live with must have the consent of the non-resident parent (and anyone else with parental responsibility) to remove the child permanently from the United Kingdom, or have the permission of the court. The parent with whom it is ordered the child is to live can move within the jurisdiction (England & Wales). The consent of everyone with parental responsibility, or the permission of the court, is required for the child's surname to be changed.

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

Parents will share residence. The child will spend part of their time with each as ordered by the court. There may be practical effects on the amount of child maintenance payable.

**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?**

Application can be made to the family court under Section 4 of the [Children Act 1989](#). Details of court contact details are available from [Her Majesty's Courts and Tribunals Service](#) website. The [application form](#) is also available from that website. Every person with parental responsibility must be sent a copy of the application form. Documents will be filed later, as directed by the court.

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

The procedure is as detailed above. There are no emergency procedures for obtaining parental responsibility.

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

Legal aid will only be available where evidence of domestic violence has been shown.

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

Yes. Decisions on parental responsibility can be appealed from a judge of District Judge level to a judge of Circuit Judge level. Appeals from a District Judge of the High Court are to a judge of High Court level.

**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?**

Parental responsibility is a right and cannot of itself be enforced. Failure to exercise parental responsibility can be dealt with by application to the family court to address the specific issue in dispute, such as the obligation to maintain the child. Details of the addresses of courts 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?**

If you wish to enforce an order on rights of access or on Article 11(8) from another Member State under Council Regulation (EC) No 2001/2003 (Brussels IIa) you should obtain the certificate required under the Regulation from the court that made the decision and apply to the Principal Registry at the address of the Central Family Court for recognition or enforcement of the order. For registration, recognition or non-recognition of other orders, you should apply to the Principal Registry.

**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?**

You would have to oppose the making of the order in the court of the originating jurisdiction **before the order is made**. If the law of that State so provides, anyone with an interest in the case should be informed that the court is hearing an application for an order. The law of that Member State will say what action you can take to oppose the order being made.

**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?**

The proceedings must be brought in the court in the jurisdiction where the child is habitually resident.

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**Parental responsibility - Northern Ireland**

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

[The Children \(Northern Ireland\) Order 1995](#) defines parental responsibility as all the rights, duties, powers and responsibilities which, by law, a parent has in relation to his child. The Order does not list what those rights and responsibilities are. However, it has been recognised that those with parental responsibility have:

- a duty to protect, provide a home and care for the child;
- the ability to determine where the child should live;
- the ability to decide who may have contact with the child;
- a duty to secure the child's education;
- the right to consent to the granting of a passport;
- a duty to secure medical treatment or assistance and the right to consent to such treatment or assistance;
- the right to name the child;
- the right to secure religious instruction for the child.

Parental responsibility should, at all times, be exercised in the best interests of the child and all those with parental responsibility should be consulted before an important decision is made. However, if agreement cannot be reached, the court may be asked to resolve the issue.

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

If a child's parents were married to each other at the time of his birth, they will each have parental responsibility for him.

If a child's parents were not married to each other at the time of his birth, the mother will automatically have parental responsibility for him and the father may acquire parental responsibility for him by:

marrying the mother;

asking the court to make a parental responsibility order in his favour;

entering into a parental responsibility agreement with the mother (see question 5 below); or

being registered as the child's father (this only applies to births registered within the U.K. after 15th April 2002).

If an unmarried father has acquired parental responsibility by court order, agreement or registration, that responsibility can only be brought to an end by an order of the court.

If a court grants a residence order to an unmarried father, it must, if he would not otherwise have parental responsibility, also make a parental responsibility order in his favour.

A non-parent may acquire parental responsibility for a child by virtue of a court order.

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

A person who has parental responsibility for a child cannot surrender or transfer that responsibility. She or he can, however, arrange for someone else to discharge that responsibility on his or her behalf.

In addition, a non-parent may acquire parental responsibility for a child by obtaining a court order (for example, a residence order, emergency protection order or care order).

As a general rule, a parent does not automatically lose parental responsibility for a child simply because someone else acquires it. However, an adoption order transfers parental responsibility from the natural parents to the adoptive parents.

If a parent has parental responsibility for a child, she or he may appoint another person to be the child's guardian in the event of his or her death.

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

Parental responsibility for a child continues post-divorce and is limited only to the extent that a voluntary agreement or court order settles issues between the parents or the parents and third parties.

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

If the parents are unmarried, they can enter into a parental responsibility agreement. This must be:

in the form set out in the [Children \(Parental Responsibility Agreement\) Regulations \(Northern Ireland\) 1996](#);

witnessed; and

filed, together with two copies, in the Office of Care and Protection in the Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

If the parents were married, but have separated or divorced, they can agree how they will meet their parental responsibilities and have that agreement made an order of court, which may be varied at a later stage to take account of changed circumstances.

### **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?**

In Northern Ireland there are a number of agencies that provide mediation services and can assist in the amicable resolution of disputes. Information can be found on the websites of the [UK College of Family Mediators](#), Family Mediation Northern Ireland, [Barnado's Northern Ireland](#), [Family Support Northern Ireland](#), Dispute Resolution Service Northern Ireland and [Mediation and Counselling Northern Ireland](#).

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

The courts in Northern Ireland have a broad range of powers at their disposal and, in particular, can resolve issues relating to –  
a child's removal from Northern Ireland

residence (where, and with whom, a child should live);

contact (when, where and with whom a child may have contact);

financial provision;

education;

religious instruction;

medical treatment;

the administration of the child's estate.

### **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 courts have recognized the need for flexible and practical arrangements wherever possible. So if a child is being looked after by one parent, that parent needs to be able to take the decisions that have to be taken while the child is in his or her care.

At the same time, there is an expectation that major decisions will be discussed with the other parent and resolved amicably. However if agreement is not reached the court can grant a specific issue order (which resolves a particular question) or a prohibited steps order (which specifies the type of decision that cannot be taken without the consent of the court).

If a residence order is in force with respect to a child, no person may cause the child to be known by another surname or remove him/her from the United Kingdom for one month or more without the written consent of every person who has parental responsibility or the consent of the court.

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

When the child is with one parent, that parent will make required routine decisions. However, it is expected that the other parent will be consulted about major decisions.

### **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?**

Ordinarily, an application for an order that will confer parental responsibility should be commenced in a Family Proceedings Court. However, if there are other family proceedings relating to the child pending in another court, the application may be commenced in that court.

Proceedings commenced in a Family Proceedings Court may be transferred up to a Family Care Centre or the High Court on a number of grounds (for example, if they are complex or involve a question of general public interest).

The addresses and telephone numbers of the courts can be found on the website of the [Northern Ireland Courts and Tribunal Service](#).

There are a number of forms that must be completed and lodged in the relevant court office. Most of these are in a standard form. The court office will be able to provide copies of the forms and explain how to complete them. However, court staff cannot give legal advice or tell you what to say. A court fee will also be payable.

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

When the application is lodged, the court office will set a date for the hearing and the other party will be notified of that date. If the matter is not resolved before the date set for hearing, a magistrate or judge will hear the evidence and reach a decision. There are no emergency procedures for obtaining parental responsibility.

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

You are entitled to apply for legal aid. However, the level of financial assistance provided (if any) is subject to a financial means assessment. Even if you are assessed as being financially eligible, you may have to make a financial contribution towards the costs. By agreement this contribution may be repaid to the Legal Services Agency over a period of time. In addition to the financial eligibility criteria you must also satisfy a merits test i.e. that there must be a reasonable grounds for bringing, or defending, the proceedings and it must be reasonable in all the circumstances to do so.

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

An appeal lies:

from a Family Proceedings Court to a Family Care Centre; and

from a Family Care Centre to the High Court

against the making or refusal to make an order.

On appeal, the High Court may, upon the application of a party, state a case on point of law for the opinion of the Court of Appeal. Otherwise, the High Court's decision is final.

The Court of Appeal's decision on the case stated by the High Court is final.

#### **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?**

In a Family Proceedings Court (where most matters relating to children are dealt with) an application may be made to address a specific issue relating to the exercise of parental responsibility. Contact details are noted above.

#### **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?**

Council Regulation (EC) No 2001/2003 ("Brussels IIa") provides for certain decisions on the exercise of parental responsibility given in one Member State to be enforced in another Member State.

The decision must have been declared enforceable in that other State. In Northern Ireland you must apply to have the decision registered in the High Court.

#### **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?**

You would have to oppose the recognition in the court in the other Member State under the procedure applicable in that court.

#### **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?**

Proceedings must be brought in the court in the jurisdiction where the child is habitually resident.

If the court in Northern Ireland decides it has jurisdiction to deal with the proceedings, it will apply the law in Northern Ireland.

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### **Parental responsibility - Scotland**

#### **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 Scotland, the rights and obligations of a parent are called "parental responsibilities and parental rights", or PRRs.

A person with parental responsibilities for a child should, so far as it is practicable and in the interests of the child:

- safeguard and promote the child's health, development and welfare;
- provide the child with direction and guidance in a manner appropriate to the child's stage of development
- if the child is not living with the parent, maintain personal relations and direct contact with the child on a regular basis
- act as the child's legal representative.

A person has rights in order to fulfill his or her responsibilities. The parental rights are:

- to have the child living with him or otherwise to regulate the child's residence;
- to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;
- if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis;
- to act as the child's legal representative.

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

A child's mother has PRRs automatically. A child's father will have PRRs if:

- He was married to the mother at the time of conception or subsequently
- On or after the 4 May 2006, he jointly registered his child's birth with the mother
- He and the mother completed and registered an agreement in a prescribed form (see the answer to question 5 below)
- A court gave them to him.

Anyone with an interest in a child can ask the court for PRRs.

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

Yes. A court can give a person other than a parent PRRs or can appoint a person as a child's guardian.

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

If parents divorce or separate, this does not, of itself, affect who has PRRs. If parents cannot agree about what is best for their child, one or both can ask the court to decide matters. The court must regard the welfare of the child concerned as its paramount consideration. It must not make an order unless to do so would be better for the child than to make no order. The court must also, taking account of the child's age and maturity, have regard to any views the child wishes to express.

#### **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 the case of an agreement giving the father PRRs, the agreement must be in a prescribed form and must be registered in order to have legal effect. The form is available on the Scottish Government's website.

Each parent must sign the agreement in the presence of one witness who must be aged 16 or over and who must also sign the agreement. The same person can witness both signatures. The agreement must be registered in the Books of Council and Session while the mother still has the PRRs she had at the time of signing the agreement.

#### **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?**

There are a variety of methods of “alternative dispute resolution”. These include:

- Family mediation (where a mediator gives family members the opportunity to talk about their concerns, explore options, and agree a way forward)
- Lawyer mediation (where the mediator is a lawyer who also holds a qualification in mediation)
- Arbitration (where the parties agree to appoint a person called an “arbitrator” to resolve a dispute and to be bound by the arbitrator’s decision)
- Collaborative law (where both parties have a lawyer and the lawyers agree to attempt to resolve the dispute outside of court)

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

The judge can make orders in relation to:

- parental responsibilities;
- parental rights;
- guardianship;
- the administration of a child’s property.

#### **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?**

Everyone with PRRs in relation to a child should be involved in decisions about that child. Where only one parent has PRRs, that parent can decide on all matters without consulting the other parent.

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

If both parents have full PRRs in relation to a child, they both have the right to have the child living with him or her, or to otherwise regulate the child’s residence. Where the child lives with one of them, the other has the right to maintain personal relations and direct contact with the child on a regular basis. The general principle is that where possible, both parents should contribute to the upbringing of their children, where this is practicable and in the interests of the child. If parents cannot agree, the court can determine with whom a child resides, and when. It is possible for the court to order that a child should reside with different people at different times.

#### **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?**

- An action concerning parental responsibilities can be raised in either the Court of Session or in the Sheriff Court. The application can be made within an ordinary action for divorce or separation.
- Which court to use is a matter of personal choice. Where no such action for divorce or separation is pending, the Court of Session has jurisdiction to deal with an application for a parental responsibilities order where the child is habitually resident in Scotland and the Sheriff Court has jurisdiction to entertain such an action where the child is habitually resident within the Sheriffdom in which the Court is geographically situated. The [Scottish Courts and Tribunals Service website](#) contains a map showing court locations and lists addresses and contact details.
- An application concerning parental responsibilities and rights requires to be made in the form of a Summons in the Court of Session and by Initial Writ in the Sheriff Court. As in the case of divorce actions each Court has its own set of rules which set out the form such application should take. See paragraph 11 (6) of the page on [divorce](#).

##### *Formalities and documentation*

- A fee will be payable in either Court on the lodging of such an application. See paragraph 11(8) of the page on [divorce](#) concerning possible fees exemptions.
- With any of these types of application you will require to present an extract entry of the child’s birth. A photocopy will not be accepted by the court nor will an abbreviated form of certificate.

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

There is no simplified procedure available in applications of this type. The rules referred to in paragraph 11(6) of the page on [divorce](#) set out the procedures. It is possible to seek an interim order where this is thought to be necessary.

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

Advice and Assistance is available on parental responsibility matters subject to the normal statutory financial tests. Civil Legal Aid is also available on parental responsibility matters, subject to the three normal statutory tests of financial eligibility, reasonableness and probable cause.

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

Yes.

#### **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?**

It may be possible to bring proceedings in the same action for failure to comply with a court order. If there is a failure to comply, contempt of court proceedings could be taken.

#### **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?**

If you wish to enforce a judgment from another Member State, the matter is regulated by Council Regulation (EC) 2201/2003 (commonly known as Brussels IIa). A judgment of another Member State on the exercise of parental responsibility relating to a child is enforceable in Scotland where (1) an application has been lodged and (2) in consequence, the judgment has been declared enforceable in Scotland.

The procedure for lodging this application is set out in Scots law. Application must be made to the Court of Session and must be accompanied by specific documents (which are set out in Brussels IIa). You may find it helpful to get legal advice on this matter.

Under Brussels IIa, there are certain judgments that are enforceable in other Member States without the need for a declaration of enforceability.

#### **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?**

If you wish to challenge the recognition of a judgment from another Member State, the matter is regulated by Council Regulation (EC) 2201/2003 (commonly known as Brussels IIa). Brussels IIa lists the grounds on which the judgment shall not be recognised.

An application requires to be lodged according to the procedure set out in Scots law. The application must be made to the Court of Session and must be accompanied by specific documents (which are set out in Brussels IIa). You may find it helpful to get legal advice on this matter.



Under Brussels IIa, there are certain judgments that are enforceable and recognised in other Member States without the need for a declaration of enforceability.

### **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?**

If the court in Scotland has jurisdiction, it will generally apply Scots Law. If it is thought that a particular question is governed by a relevant foreign law which is different from Scots law, that law must be averred and proved. There may be unusual circumstances where foreign law is pleaded by the parties in a case in which circumstances the Scottish court may take this into consideration.

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## **Parental responsibility - Gibraltar**

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

For the purposes of Gibraltar law, parental responsibility would refer to the custody, care and control of a child, normally exercised by a parent or parents or by an appointed guardian. Generally, a parent or guardian is responsible for the custody and upbringing of a child and for the administration of any property belonging to a child or held in trust for the same.

The term parental responsibility extends to the father, mother or any appointed guardian who fulfils his or her parental responsibilities in relation to a particular child. Parental responsibility also extends to control either directly or by providing guidance, in a manner appropriate to the stage of development of the child. It also extends to the child's upbringing, if the child is not living with him, to maintain personal relations and direct contact on a regular basis; and to act if required as the child's legal representative.

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

Generally, in relation to the custody or upbringing of a child and the administration of any property, a mother has the same rights and authority as a father. Such rights and authority of a mother and father are equal and can be exercised by either without the other. These general rights are subject to any order imposed by the [Gibraltar courts](#).

Where a child's father and mother were married to each other at the time of his birth, according to Gibraltar law each parent has parental responsibility over the child. If however they had not, only the mother would have parental responsibility at birth. This is not a strict or absolute rule as Gibraltar law recognizes that if the father is registered as “the father” by the mother he would acquire parental responsibility over the child. Also if ordered by the Court.

One, two or more persons however could also have parental rights in respect of a child. They may not exercise however that right without the consent of the other or, as the case may be, of any of the others, unless stated by any order of the court, deed or agreement.

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

On the death of a parent, the surviving parent becomes the child's guardian either alone or jointly with any guardian appointed by the deceased parent. If the deceased parent had not appointed a guardian or the nominated guardian is either dead or refuses to act, then a guardian can be appointed by a court if it thinks fit.

A court may, on the application of the mother or father of a child, make an order regarding the residence of the child and the right of contact to the child of his mother or father. The court also has power to give the residence of the child to any person (whether or not one of the parents). However, the grant of residence to one parent is unenforceable while both parents are living together.

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

In the case of a divorce, the Supreme Court of Gibraltar has the power exercisable either before or after the final decree, to make provision for the custody, maintenance and education of the children of the marriage or even direct that proceedings be taken to place the children under the protection of the Court. The Supreme Court cannot make absolute a decree of divorce unless it is satisfied that satisfactory arrangements have been made for any children.

Where the parents separate, an agreement may be entered between the parties whereby one of them may choose to give up all or some of their parental rights. Such an agreement however, shall not be enforced by a court if the court is of the opinion that it would not be for the benefit of the child to give effect to it.

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

As indicated in question 4 above, where a parent enters into a separation agreement whereby he or she purports to give up all or some of his or her parental rights, such agreement will only be enforced by a court where it is of the opinion that to give effect to it would be for the benefit of the child.

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

If the issue of parental responsibility has been raised within the context of divorce proceedings, then the determination of this issue comes within the jurisdiction of the Supreme Court of Gibraltar. However, some social assistance may be obtained through marriage counselling. A marriage counselling service is provided by the Roman Catholic Church in Gibraltar. It may also be possible to deal with some of the issues through mediation.

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

The judge can decide any issue that he deems may affect the welfare of the child.

### **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?**

Once full custody is granted to a parent, he or she can then decide on all matters relating to the child without first consulting the other parent unless doing so constitutes a breach of an existing court order; for example, an order concerning access to the child.

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

Joint custody of a child means that both parents have equal rights and responsibilities in relation to the child. These rights can be exercised jointly or severally.

### **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?**

If the application for parental responsibility is made in relation to or as a consequence of divorce proceedings, then the application should be made to the Supreme Court of Gibraltar. An application is made by way of summons, supported by affidavit evidence. Upon the filing of these papers, the Supreme Court Registry would proceed to set a date for the hearing of the application.

Applications for a child in need of care to be made a ward of court should also be made to the Supreme Court of Gibraltar.

Where the issue of parental responsibility does not arise out of divorce proceedings, then an application can be made to the Magistrates' Court of Gibraltar. The application should be in the form of a written complaint setting out the relief sought and the grounds on which it is based. A copy of the child's birth certificate should also be included with the application as well as a copy of the marriage certificate, where applicable. Upon receipt of the complaint, the Court would proceed to list the matter for hearing and inform the parties of the return date.

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

In all cases, either the Supreme Court or Magistrates' Court would proceed to set a date for the hearing of the relevant application and inform the parties. Parties should attend court on the date set together with their legal representatives if applicable.

There are emergency procedures available where it appears that a child may be in need of care.

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

In both the Magistrates' Court and the Supreme Court, legal assistance may be available subject to the applicant having an annual income of less than £5000 and subject to a means test. Applications for legal assistance in either court should be made to the Supreme Court and application forms are available from the Supreme Court Registry.

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

Where a decision on parental responsibility is made by the Magistrates' Court, an appeal may be made to the Supreme Court. Where the decision is made by the Supreme Court, it may be possible to appeal to the Court of Appeal.

**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?**

An application should be made to the Court that made the original order of parental responsibility. If the court was the Magistrates' Court, then a complaint should be filed setting out the grounds of the complaint. In the Supreme Court, a Summons should be filed, supported by affidavit evidence where appropriate.

**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?**

A judgment on parental responsibility given in a Member State arising out of divorce, legal separation or annulment proceedings can be recognised in Gibraltar. In order to enforce such a judgment, an application should be made to the Magistrates' Court for a declaration of enforceability.

**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?**

The decision on the application for a declaration of enforceability may be appealed against by either party. An appeal lies to the Supreme Court if the decision was made by the Magistrates' Court.

**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?**

The Courts of Gibraltar will apply Gibraltar law, which includes local legislation, as well as any Acts or other provisions extended to Gibraltar from time to time.

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