Starševska odgovornost – pravica do varstva in vzgoje otroka ter stikov

Starševska odgovornost pomeni vse pravice in obveznosti staršev do otroka in njegovega premoženja. Ta koncept starševske odgovornosti se med državami članicami razlikuje, vendar običajno zajema pravico do varstva in vzgoje otroka ter pravico do stikov z njim. Če ste mednarodni par z enim ali več otroki, katerega življenjska skupnost je ravnokar prenehala, se boste morali dogovoriti o ureditvi varstva in vzgoje otrok.

Kje začeti?

Kaj je pravica do stikov z otrokom? Kaj je pravica do varstva in vzgoje otroka?

Dokler starša živita skupaj, imata običajno pravico do varstva in vzgoje otroka oba skupaj. Če pa se zakonska zveza staršev razveže ali če se starša razideta, se morata odločiti, kako bosta pravico do varstva in vzgoje otroka izvajala v prihodnosti.

Starša se lahko odločita, da bo otrok živel bodisi izmenično pri obeh starših bodisi pri enem od njiju. V zadnjem primeru ima drugi starš ponavadi pravico do stikov z otrokom ob določenih terminih.

Pravica do varstva in vzgoje otroka zajema tudi druge pravice in dolžnosti, povezane z vzgojo in varstvom otroka, vključno s pravico skrbeti za otroka in njegovo premoženje. Starševsko odgovornost za otroka imajo ponavadi starši, v nekaterih primerih pa se lahko podeli tudi instituciji, ki se ji otrok zaupa.

Kdo odloča o pravici do varstva in vzgoje otroka ter o pravici do stikov z njim?

Starša lahko ta vprašanja rešita sporazumno, v primeru spora pa jima lahko pomaga mediator ali odvetnik. Če želite najti mediatorja, obiščite spletno povezavo na koncu te strani.

Če se starša ne moreta sporazumeti o varstvu in vzgoji otroka ter o pravici do stikov z njim, bosta morda morala začeti postopek pred sodiščem. Sodišče lahko odloči, da imata pravico do varstva in vzgoje otroka oba starša (skupna pravica do varstva in vzgoje otroka) ali da ima to pravico samo eden od staršev (izključna pravica do varstva in vzgoje otroka). Če ima pravico do varstva in vzgoje otroka le eden od staršev, lahko sodišče odloči o pravici drugega starša do stikov z otrokom.

V primeru mednarodnega para pravila EU določajo, katero sodišče je pristojno za obravnavanje zadeve. Če želite najti pristojno sodišče, obiščite spletno povezavo na koncu te strani.

Glavni namen skupnih pravil EU je preprečiti, da bi vsak od staršev začel postopek pred sodiščem v svoji državi in da bi bili v isti zadevi izdani dve odločbi. Praviloma je za odločanje v sporih v zvezi s starševsko odgovornostjo, pravico do varstva in vzgoje otroka ter pravico do stikov z otrokom pristojno sodišče v državi, v kateri otrok običajno prebiva.

Ali se bo odločba sodišča izvršila v drugi državi EU?

Mehanizem za priznavanje in izvrševanje odločb zagotavlja, da se odločba sodišča uporabi v drugih državah EU, potem ko pristojno sodišče EU izda potrdilo. To osebam ali institucijam s starševsko odgovornostjo omogoča, da lažje uveljavljajo svoje pravice.

Za postopke v zvezi s starševsko odgovornostjo, ki so se začeli 1. avgusta 2022 ali pozneje, niso potrebni nobeni posebni postopki, da bi zadevna odločba postala izvršljiva v drugih državah članicah, kar je v podporo odnosu med otrokom in obema staršema. Razglasitev izvršljivosti bo morda še vedno potrebna za odločbe, izdane v postopkih v zvezi s starševsko odgovornostjo, ki so se začeli pred 1. avgustom 2022.

Katera pravila EU se uporabljajo?

Pravila reševanja sporov v čezmejnih zadevah med otroki in njihovimi starši so del Uredbe Sveta (EU) 2019/1111 – Bruselj IIb z dne 25. junija 2019 o pristojnosti, priznavanju in izvrševanju odločb v zakonskih sporih in sporih v zvezi s starševsko odgovornostjo ter o mednarodnem protipravnem odvzemu otrok. Uredba nadomešča Uredbo (EU) 2201/2003 – uredba Bruselj IIa, ki pa se še naprej uporablja za postopke, začete pred 1. avgustom 2022, ko se začne uporabljati Uredba (EU) 2019/1111. Ta pravila se uporabljajo enako za vse otroke, ne glede na to, ali so bili rojeni v zakonski zvezi ali izven nje. Uredba Bruselj IIb je temelj pravosodnega sodelovanja EU v zakonskih sporih in sporih v zvezi s starševsko odgovornostjo. Uporablja se v vseh državah EU, razen na Danskem.

Praktični vodnik za uporabo Uredbe Bruselj IIb je na voljo na tej strani: Publikacije Evropske pravosodne mreže.

Za podrobnejše informacije o posamezni državi izberite ustrezno zastavico.

Sorodne povezave

Iskanje mediatorjev

Iskanje pristojnih sodišč

Preberite zloženko

The Vulnerable

Priročnik o evropskem pravu v zvezi z otrokovimi pravicami

Pripomoček za strokovne delavce: Čezmejno priznavanje in izvrševanje sporazumov, doseženih v družinskih zadevah, v katere so vključeni otroci

Zadnja posodobitev: 14/06/2023

Stran vzdržuje Evropska komisija. Informacije na teh straneh ne izražajo nujno uradnega stališča Evropske komisije. Komisija ne sprejema nobene odgovornosti v zvezi z informacijami in podatki, vsebovanimi ali navedenimi v tem dokumentu. Pravila glede avtorskih pravic spletnih strani EU so navedena v pravnem obvestilu.

Parental responsibility - child custody and contact rights - 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 1253*ter*/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 1253*ter*/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 387*bis* 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 572*bis*(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 1253*ter*/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 1253*ter*(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 387*ter*(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 - child custody and contact rights - 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 - child custody and contact rights - Czechia

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, comprising:
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 and
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 form 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 to an extent 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 to an extent 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 a guardian for the child. 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 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 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 raising the child, the foster carer exercises the rights and responsibilities of the parents in an appropriate manner. The foster carer is obliged and authorised to make decisions only concerning the child's day-to-day affairs, represent the child in those affairs and manage the child's assets. The foster carer must inform the child's parents of essential matters pertaining to the child. 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 entrustment 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 something 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 an 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 contract.
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 themselves and the child. Agreements of this nature are subject to the court's consent. The court shall approve the 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. 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 three months, or may impose on them meetings with an expert in paediatric psychology.
Moreover, it is possible to use the services of 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 concerning 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 in whose care 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, for example, 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 material 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 on paper 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 in 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 what kind of 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 seven 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) provides for 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 period of time during 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 by courts of 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 emphasised that some decisions may be provisionally enforceable – they can thus be enforced even though an 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 ways in which decisions can be enforced: imposing fines or the removal of the child. The court may also ask 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 paediatric psychology 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, despite the measures being implemented, 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?

Judgments in parental responsibility cases issued by courts in EU Member States are recognised - with no special procedure required - 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’) and Council Regulation (EU) 2019/1111 of 25 June 2019 concerning jurisdiction, the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, and international child abduction (‘Regulation 2019/1111’). Under Regulation No 2201/2003, any person with a legal interest may go to court to apply for a decision to be issued on the recognition or non-recognition of a 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.
Under Regulation 2019/1111, any interested party may apply for a decision on the absence of grounds for refusal of recognition. In the Czech Republic district courts (district courts in Prague, the Municipal Court in Brno) are competent for such proceedings in the first instance.
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 court 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 Article 11 (8) of Regulation No 2201/2003 are, pursuant to Articles 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 Article 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 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 Article 38 (1) of Regulation No 2201/2003.
Pursuant to Regulation 2019/1111, decisions in matters of parental responsibility given in a Member State and enforceable in that Member State shall be enforceable in the Czech Republic with no need for a declaration of enforceability.
Decisions granting rights of access to children and decisions pursuant to Article 29(6), if the return of the child is required, where certified in the Member State of origin using the certificate provided in the Annex to Regulation 2019/1111, are recognised in other Member States pursuant to Article 43 of Regulation 2019/1111, with no special procedure required and without any possibility of opposing its recognition, unless the judgment is found to be irreconcilable with a [later] decision as referred to in Article 50, and only to the extent of that irreconcilability.
Decisions granting rights of access to children and decisions pursuant to Article 29(6), if the return of the child is required, where certified in the Member State of origin using the certificate provided in the Annex to Regulation 2019/1111, are recognised in other Member States pursuant to Article 43 of Regulation 2019/1111, with no need for a declaration of enforceability.
For the purposes of recognition and enforcement pursuant to Regulation 2019/1111, it is necessary to submit a copy of the decision, which fulfils the conditions required for the recognition of its authenticity and the relevant certificate referred to in Articles 36 or 47 issued by the relevant authority of the Member State where the decision was handed down, using the certificate provided in the Annex to Regulation 2019/1111. If the documents referred to in Article 31(1) are not provided, the procedure referred to in Article 32 of Regulation 2019/1111 must be followed.
With compliance with the conditions indicated in the above-mentioned regulations, 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 and enforcement 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 Article 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 - child custody and contact rights - Germany

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' refers to all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care (custody). Parents have the duty and the right to care for their child. Parental care involves taking care of the child and his/her property, and representing the child; the right to make decisions for the child is therefore in principle associated with **parental care**. Parental responsibility also includes contact with the child and the duty to provide maintenance for the child.

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

As already commented under question 1, the term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child.
In principle, joint parental custody is possible if:
the child is born to married parents,
the parents marry after the birth of the child,
the parents declare that they wish to care jointly for the child (custody declarations),
the Family Court (*Familiengericht*) grants them joint custody of the child.
Custody declarations must be certified in due legal form. This can be done by the Youth Welfare Office (*Jugendamt*), a notary or, in certain circumstances, by diplomatic missions abroad. If the parents do not issue a custody declaration and are not married to one another, the mother will have sole custody of the child. However, the Family Court can, at the request of one of the parents, grant joint custody to both parents, as long as this is in the best interest of the child. It is presumed that joint custody is in the best interest of the child if the other parent does not provide any reasons for not granting joint custody and no such reasons are otherwise apparent.

German law assumes that it is generally in the child's best interest to have contact with both parents and therefore guarantees the child's right to contact with his/her parents. In addition, both parents are entitled and obliged to maintain contact with their child.
Right of access first and foremost gives parents the right to see and speak to their child at regular intervals. Access includes contact by mail and telephone, in addition to face-to-face contact.
It is generally the duty of both parents to guarantee maintenance is provided. Parents can themselves choose the way in which they provide maintenance for their children. They can, for example, decide to provide maintenance in kind, predominantly in the parental home (accommodation, food, clothes, etc.).

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

The term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)**.
If the child is not cared for by his/her parents because, for example, the parents are dead or are not entitled to represent the child in matters related to the child or his/her property, because, for example, the parents have been deprived of custody, the child is assigned a legal guardian by the Family Court.
If the parents are unable to provide certain aspects of parental care, the Family Court will appoint a carer for the child for those aspects (Section 1909 of the Civil Code [*Bürgerliches Gesetzbuch*, BGB]).

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

The term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)**.
If the parents hold joint parental custody and then separate, they will continue to have joint custody of the child, regardless of whether they are married or not. However, the Family Court can grant custody to one parent at the request of one of the parents. Such a request will be granted if the other parent agrees, unless the child is at least 14 years old and objects, or if revoking joint custody and granting custody to one parent is deemed to be in the child's best interest. Even if the parents divorce, a decision of this kind is made only at the request of one of the parents, unless the child's wellbeing is at risk.

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 term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)** and **access**.
It is generally for the parents to decide how to manage joint parental custody of their child and there are no legal requirements as to what form it must take. However, a legally binding change to the custody arrangements is not possible only by agreement, but requires a decision to be taken by the Family Court. If the parents live apart, the Youth Welfare Office can help them to draw up a mutually acceptable parental care plan. This plan can be used as the basis for court decisions on parental custody. If the parents agree that one parent should be granted sole custody, they can ask the Family Court to transfer parental custody.
The parents can also agree how to manage access rights, since there are no requirements. If an arrangement is recorded in a settlement before a court and approved by the court, this settlement is equivalent to a binding court ruling and, where necessary, is enforceable.

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

If the parents are unable to resolve their conflicts on their own, they can contact the Youth Welfare Office or a voluntary youth welfare support service (*Freie Jugendhilfe*) organisation. They provide advice to parents and help them overcome their problems. A database of all such support services can be found at http://www.dajeb.de. Mediation can also help parents to reach an amicable settlement. More information on family mediation can be found at http://www.bafm-mediation.de/.

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

Depending on the request or proposal, the judge can decide, as part of the proceedings, on all matters relating to parental custody (including surrender of the child), access and child maintenance. The judge must aim to resolve conflicts in a manner which is acceptable to both parties at all stages of the proceedings. If the parents disagree on a custody-related matter that is important for the child, the Court may also give one parent power to make decisions on their own in this respect (*Alleinentscheidungsbefugnis*).
If the child's wellbeing is at risk, the Court can also, at any time and of its own motion, order any measures necessary in order to avert any such risk.

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' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)** and **access**.
With regard to parental care, the question must in general be answered in the affirmative. The parent without custody does not have any right to be involved in decisions. He/she does, however, have access rights and can request information about the child's personal situation from the other parent as long as the request is legitimate. However, while the child is residing with the parent without custody, on the basis of either the consent of the parent with custody or a court ruling (e.g. in the context of access rights being exercised), the parent without custody may make decisions on their own for matters relating to caring for the child (e.g. food).

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

The term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)**.
If parents have joint custody of their child and they live together, they must reach mutually acceptable solutions on all issues relating to parental care. If, on the other hand, the parents live apart, they only have to do so in relation to matters of considerable importance for the child. On everyday matters, the parent with whom the child lives has the right to make decisions on their own.

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 term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)** and **access**.

In most cases, Family Courts (divisions of Local Courts [*Amtsgerichte*]) have jurisdiction for proceedings related to parental custody and access. If a request to launch proceedings is required, for example in proceedings for the granting of sole custody where the parents are living apart, grounds must be provided for this request. The facts and evidence of the case should be provided and documents referred to should be enclosed. The request should also indicate whether the parties have already attempted mediation or another out-of-court conflict resolution procedure. Legal representation is only necessary in exceptional cases, e.g. for requests made within the context of divorce proceedings. If legal representation is not obligatory, a request can be made directly to the competent court. There are court offices (*Rechtsantragstellen*) at the Local Courts for this purpose, where applications and other statements can be recorded.

If the parents are not married to one another when the child is born, the custody declaration (in the case of joint custody) may be certified by the official responsible for documentation at the Youth Welfare Office (*Jugendamt*), a notary or, under certain circumstances, diplomatic missions abroad.

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

The principle of '*ex officio* investigation' (*Amtsermittlungsgrundsatz*) applies in procedures relating to parental custody and access rights. According to this principle, the court has to investigate all relevant facts of its own motion, and is not bound by the arguments of the parties.

In emergency cases, the court can issue a temporary injunction, as long as this is justified and urgently needed. If the child's wellbeing is at risk, the court must verify whether a temporary injunction should be issued, even without a request from one of the parties. If it is not possible to reach a mutually acceptable settlement within the time limit in access proceedings, the court must discuss the issue of a temporary injunction with the parents and the Youth Welfare Office.

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

Citizens who, because of their personal and financial situation, are unable to cover the costs of the proceedings, are only able to cover a portion of the costs, or can only pay in instalments, can obtain legal aid for proceedings, including those heard by the Family Court. A prerequisite for this legal aid is that the intended legal action or defence should have sufficient prospects of success and should not appear frivolous. This also gives people with fewer financial resources access to the courts. Under the legal aid process, the State will, depending on the available income of the person entitled to aid, cover his/her share of court costs and, if a lawyer has been appointed to him/her, the lawyer's fees, either in full or in part.

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

The term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)** and **access**.

It is possible to appeal against decisions on parental custody/access. It does not matter whether a decision was reached as part of a standalone procedure or whether it was taken as part of ancillary proceedings to a divorce. Appeals are admissible in both cases.

The appeal must be lodged within one month of the decision being published in writing. Temporary injunctions on parental custody may only be appealed against if they were issued on the basis of oral exchange. Such appeals must be lodged within two weeks. Injunctions issued without oral exchange are final. Irrespective of the question of oral exchange, temporary injunctions on the right of access are also not open to appeal. In these cases, however, it is possible to bring proceedings on the merits. It is worth noting that temporary injunctions become invalid when other rulings concerning the same matter take effect.

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 term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)** and **access**.

If an enforcement order on the surrender of persons and the regulation of access is breached, the court may issue the obligated party with a fine and, if this cannot be recovered, may order imprisonment. Under certain conditions, imprisonment can also be ordered directly. The decision ordering the surrender of the person or the regulation of access will outline the consequences of breaching the enforcement order. The maximum fine for one person is EUR 25 000 and the maximum term of imprisonment six months. Another potential means of enforcement is the order of force to be used on the obligated party. It is not permissible for force to be used on a child if he/she needs to be surrendered in order to allow the right of access to be exercised. Use of force on a child is only allowed if this is in the child's best interest and it is not possible to enforce the obligation by less severe means.

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 term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)** and **access**.

Decisions on parental custody and access issued in other Member States of the EU (except Denmark) are recognised in Germany on the basis of Regulation (EC) No 2201/2003 (Brussels IIa Regulation) and therefore no special procedure is required for this purpose. However, it is also possible in Germany to apply for recognition of such decisions at the competent Family Court. This recognition applies with regard to all parties.

Before a decision on parental custody from another Member State can be enforced in Germany, an application must be made for a declaration of enforceability, as set out in the Brussels IIa Regulation, i.e. the decision must be approved for enforcement in Germany. The application must be made to the local Family Court where the Higher Regional Court (*Oberlandesgericht*) has its seat. The application for enforcement should be accompanied by a copy of the decision and a certificate from the court in the original Member State using the standard form provided in Annex II to the Regulation. Applicants need not be represented by a lawyer. However, applicants living in another Member State must appoint an authorised representative to accept service in Germany.

The Family Court will come to a decision without a prior oral hearing. The registrar of the court will issue the enforcement order on the basis of this decision.

Appeals against the decision of the Family Court can be lodged with the Higher Regional Court. Appeals against the decision of the Higher Regional Court can be filed with the Federal Court of Justice (*Bundesgerichtshof*) if the Higher Regional Court allows it. In Germany, only 22 of more than 650 Family Courts are responsible for applications for recognition and enforceability declarations. Their addresses can be found at http://www.bundesjustizamt.de/sorgerecht - '*Zuständige Gerichte*' (German) and http://www.bundesjustizamt.de/custody-conflicts - 'Competent German courts' (English).

It should be noted that certain decisions of Member States on access rights and the return of children who have been wrongfully removed or retained can be recognised and enforced in Germany without the need for a declaration of enforceability and without the option to challenge this recognition. Nevertheless, in such cases the holders of parental responsibility are also free to formally request the enforceability declaration for such decisions through the German 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?

The term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)** and **access**.

The 22 courts mentioned in the response to question 15 also have special competence in this instance. Applications for the non-recognition of a decision on parental custody must be made to the Family Court at the seat of the Higher Regional Court in whose jurisdiction the respondent or the child affected by the decision habitually resides. Failing that, it is the Family Court in whose jurisdiction the interest in non-recognition or the need for care exists that is competent; otherwise it is the Pankow/Weißensee Family Court. The initiation of this procedure will generally lead to the competence for all matters relating to the child in question being concentrated in one place, i.e. one court will be able to decide on all matters relating to the child. However, decisions (on recognition or non-recognition) only apply in the Member State in which they were issued. Nevertheless, a procedure to establish non-recognition can still be carried out in Germany, even as a precautionary measure.
With regard to this procedure, the provisions governing authorisation of enforcement shall apply accordingly in the first instance and in any appeals proceedings.

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 term 'parental responsibility' covers all the rights and obligations parents have in relation to a child. An important part of parental responsibility is parental care; parental responsibility also includes contact with the child and the duty to provide maintenance for the child (see the comments under question 1). The following comments refer to **parental care (custody)** and **access**.
A distinction must be made between questions of applicable law and questions of jurisdiction. The judicial and administrative authorities of the habitual residence of the child usually have jurisdiction in matters of parental custody and access (Article 8 of Regulation (EC) No 2201/2003 and Article 5 of the Hague Convention on Protection of Children). However, nationality is irrelevant. The applicable law is also based on the Hague Convention on Protection of Children. Also in accordance with this Convention, by law it is in principle the laws of the State in which the child habitually resides that apply to the assignment, removal and exercise of parental custody and the right of access. In principle, parental custody arising under the laws of the State of habitual residence of the child will continue even if the child's place of residence changes. If the German judicial and administrative authorities which have jurisdiction by virtue of the child's place of residence issue provisions on parental custody and access, these will be governed by German law.

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Parental responsibility - child custody and contact rights - 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 denotes rights of custody, which is the duty and the right of a parent to take care of their minor child. Parental custody 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 the duty to manage the child's property, including to represent the child. This does not preclude the right of the child to manage their property independently in the cases provided by law.
The parent has decision-making powers in relation to the minor child, i.e. the right to decide on matters relating to the child's day-to-day life ('ordinary custody'). Decisions on day-to-day matters must generally be understood as taking routine decisions that occur frequently and do not have a lasting impact on the development of the child. In addition to decision-making power, a parent with the right of custody also has a right of representation with respect to their minor child. Parents who have joint custody have a joint right of representation.
Both parents have rights of access, which denotes the duty and right on the part of both parents to communicate with the child in person. Parental access rights do not depend on the existence of rights 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 duties of parents and children derive from the parentage of the child, established in accordance with the procedure laid down by law. The mother is the woman who gave birth to the child. The father is the man who conceived the child. The child is considered to have been conceived by the man who was married to the child's mother at the time of birth of the child, who has acknowledged paternity or whose paternity has been established by a court.
Parental responsibility in the form of custody rights over a child is exercised jointly by parents who are married. If the parents are not married to each other at the time the child is born, they have joint custody if, when submitting the acknowledgement of paternity, they did not express a wish to confine rights of custody to only one of the parents.
In cases where neither of the parents of the minor child has the right of representation or where the origin of the child cannot be established, a guardian for that child is appointed. In such cases, the guardian has rights of custody. The guardian's role is to provide the child with an upbringing and to protect their personal and property interests.
Any adult natural or legal person with full active legal capacity, e.g. a relative of the child, a third party or a legal person (a company or a local government) may be the legal guardian. A legal person is appointed as guardian if no suitable natural person can be found, or if a parent so wishes by means of a will or succession agreement. 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 as entered in the population register, provided that the preconditions for establishing guardianship are met. In the performance of the guardian's duties, a rural municipality or city government has the rights and duties 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 take custody of the child, they can consent to the adoption of the child. Consent to adoption by a parent does not enter into force until 8 weeks have passed from the birth of the child, and an application for adoption cannot be filed with a court before parental consent has entered into force. 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 the minor child has the power of representation or if the origin of the child cannot be established, the court decides to appoint a guardian, at its own motion or at the request of a municipal or city authority or of an interested party.

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 future questions regarding custody rights are to be resolved. Parents with custody rights may agree to organise joint exercise of the right of representation, but any change in the rights of custody, including the termination of joint custody, is possible only through the courts.

Each parent has the right to ask a court in proceedings on petition for custody of the child to be partially or fully transferred to them. A custody dispute may also be decided by the court as part of proceedings on an action, if this is requested in an action for 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 rights may organise joint exercise of the right of representation in a free manner, but any change in rights of custody, including the termination of joint custody, is possible only through the courts. Matters related to custody are decided and determined in a legally binding manner by a court. When examining matters concerning the child, the court has as the primary consideration the best interests of the child, taking into account all the circumstances and the legitimate interests of the persons concerned. Custody disputes constitute family-law matters, which are heard by courts on petition and adjudicated on by means of a court order. To establish their rights in relation to a child, a parent must submit an application to 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?

Parents with custody rights may organise joint exercise of the right of representation in a free manner, but any change in rights of custody, including the termination of joint custody, is possible only through the courts. Parents can also use the national family mediation service in order to reach an agreement. The national family mediation service is intended for parents who have separated or are in the process of separating, who have one or more minor children together and who have failed to reach an agreement on matters relating to a child's living arrangements (such as contact arrangements or maintenance). The national family mediation service is free of charge for parents; to access it they must contact the Social Insurance Board (*Sotsiaalkindlustusamet*). The outcome of the family mediation process is a parenthood agreement signed by the parents. A parenthood agreement approved by the Social Insurance Board is an enforceable instrument. The role of the local government when parents turn to the family mediation service is to support and advise them.

When determining the procedure for having contact with the child, the court also acts as a conciliation body in court proceedings, seeking an agreement between the parents on contact with the child. The court hears the parties concerned as early as possible and draws their attention to the possibility of availing themselves of the help of a family counsellor, in particular with a view to coming to a joint position on the custody of and responsibility for the child. The court can stay the proceedings concerning the child if such action does not entail a delay that would jeopardise the best interests of the child and if the parties concerned are willing to engage in consultations outside of court proceedings, or if the court considers for other reasons that there seems to be a way of resolving the case by means of an 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 rights, reinstatement of custody rights, obligations to pay a maintenance allowance and changes at the request of a parent in the amount of the maintenance allowance.

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 duties of parents and children derive from the parentage of the child, established in accordance with the procedure laid down by law, which means that the parent from whom a child is descended has a duty to care for the child. The mutual rights and duties 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 may have sole rights of custody as from the moment the child is born, e.g. if in an acknowledgement of paternity the father expresses a wish to confine parental authority to only one of the parents. A parent can also obtain sole custody in the three cases outlined below.

A parent obtains sole custody if the parent has applied to a court, in proceedings on petition, for custody of the child to be partially or fully transferred to them. A parent usually applies for this arrangement when parents with joint custody are permanently separated or otherwise do not wish to exercise custody jointly in the future.

A parent also exercises sole rights of custody when the rights of custody are held jointly by the parents but the rights of one of the parents have 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 rights of custody to the other parent, provided that this is consistent with the best interests of the child.

A court also grants custody to the other parent if the parent with sole custody has died or has been deprived of their rights of custody, unless this conflicts with 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 custodial duties 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 the 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. For disputes related to rights of custody, an applicant must submit an application to the county court for a decision in proceedings on petition. The petition must be filed with the county court of the child's place of residence.

The application must state the name of the court, the identity of the applicant, of the person concerned by the case and of their children, as well as the applicant's claim, clearly expressed. The application must also state the facts of the matter, and the applicant must list and provide the evidence they have at

their disposal. The application must be signed by the applicant or a representative thereof. If it is signed by a representative, an authorisation document or another document certifying their powers of representation must also be included.
The application and documentary evidence must be submitted to the court in writing and in Estonian. If an application, petition, appeal or objection submitted to the court by a party to the proceedings is not in Estonian, the court requires the person submitting it to provide a translation into Estonian by a set deadline.
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 as part of an action in conjunction with a 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 (*tsiviilkohtumenetluse seadustik*) [1]).
In expedited proceedings concerning a child, courts can rule only on a claim for maintenance against a parent who is separated 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. For matters heard on petition, the court itself sets out the facts and collects the necessary evidence for that purpose, unless otherwise provided by law. The court is not bound by the petitions made or facts submitted by the parties to the proceedings, nor by their assessment of the facts, unless otherwise provided 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. Provisional legal protection in a family matter on petition may be imposed by any court within whose territorial jurisdiction the relevant measure must be applied. Examples of measures include the surrender of a child to the other parent or the enforcement of a legal maintenance obligation, including the possibility of requiring the defendant to pay maintenance during the proceedings or to provide security for that purpose.
[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 finds that a natural person is unable to bear the costs of the proceedings because of their financial situation, the court may exempt them from the payment of legal aid and state fees, in whole or in part.

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

A ruling in proceedings on petition is a court order to which the provisions of a court order in an action are applicable, unless otherwise provided by law. An appeal can be filed against an order on rights of 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 family matters on petition, the court issues an order which is enforceable from the date of its entry into force, unless otherwise provided by law. An order issued in a matter on petition is an enforceable instrument. If the debtor does not voluntarily comply with the custody order, it is enforced on the basis of an application by the claimant in enforcement proceedings. To this end, the claimant must submit an application to the bailiff of the place where the debtor is domiciled or resident 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, in exceptional cases, 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, they 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?

Under Council of Europe Regulation (EU) 2019/1111, which governs jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and international child abduction, a judgment handed down in one 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 given in a Member State on the exercise of parental responsibility in respect of a child 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, a petition for a declaration of enforceability must be submitted to the 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 produce:
a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
b) the certificate concerning judgment on parental responsibility.
Form available here
A judgment relating to parental responsibility is not recognised if:
a) 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) it was given *in absentia* if the absent person 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 their defence, unless it is determined that such person has accepted the judgment unequivocally;
c) on the request of any person claiming that the judgment infringes their parental responsibility, it was given without such person having been given an opportunity to be heard;
d) it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;
e) it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or a non-Member State that is 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
f) the procedure laid down in Article 82 of Council Regulation (EC) No 2019/1111 has not been complied with.

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

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 produce:

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 36 of Council Regulation (EC) No 2019/1111.
Form 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?

The Estonian Private International Law Act (*Rahvusvahelise eraõiguse seadus*) establishes that family-law relationships between a child and their parents are governed by the law of the child's country of residence.
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:
The Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships (1993);
The Agreement between the Republic of Estonia and the Russian Federation on Legal Assistance and Legal Relationships in Civil, Family and Criminal Matters (1993);
The Agreement between the Republic of Estonia and Ukraine on Legal Assistance and Legal Relationships in Civil, Family and Criminal Matters (1995);
The Agreement between Estonia and Poland on Granting Legal Assistance and Legal Relations on Civil, Labour and Criminal Matters (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 - child custody and contact rights - 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 appellant 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 - child custody and contact rights - 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 *(μονομελές 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 (cassation, *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 - child custody and contact rights - 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:
Looking after them, being with them, feeding them, educating them and ensuring that they receive a well-rounded education.
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. 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.
The specific system of custody is decided on a case-by-case basis, in accordance with the interests of the minor.

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. The minors will be heard where this is deemed necessary on an ex officio basis or at the request of the prosecutor, the parties, members of the court's technical team or the minor. After seeking the opinion of 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 judgment:
the judicial measures concerning custody and care, granted to one or both parents, and education;
the visiting arrangements between the parents, indicating the time, method and place when parents can communicate with their children and have them in their company.
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), 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 when the custody of a minor is awarded jointly to both parents, in practice day-to-day care of and direct attention to the minor alternates for predetermined periods. The joint custody arrangement may vary; usual practice is to alternate weeks or to share out the days of the week, with the parents taking alternate weekends.
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.
Those without a fixed address or residence may be sued in the place where they are currently based or that of their last residence, at the choice of the plaintiff; if the jurisdiction can still not be determined, it will fall to the court of the place of address of the plaintiff.
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.
A certification of the marriage's registration at the Civil Registry and, as appropriate, the birth certificates of any offspring shall be attached to the application, along with the document or documents on which the spouse may base his or her rights. If measures on the division of property are sought, the plaintiff must provide the documents in his or her possession which allow the financial circumstances of the spouses and, as appropriate, those of the children, to be assessed, such as tax returns, payslips, bank statements, property deeds or registration certificates.

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. This Regulation applies to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements which have become enforceable in the Member State where they were concluded before 1 August 2022. Regulation 2019/1111 of 25 June 2019 will apply henceforth.
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 non-recognition laid down in Regulation 2201/2003 and, in due course, those recognised by Regulation 2019/1111.
The grounds that may be pleaded at present 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 applicable law is that of the minor's habitual residence, in accordance with the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and the Measures for the Protection of Children.

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Parental responsibility - child custody and contact rights - France

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

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

It rests with parents until a child is of full age or emancipated.
Parents have a duty to protect the safety, health and moral values of children, to educate them and to allow their development, with due respect for them as individuals.
They are responsible for establishing the child's place of habitual residence, particularly if they are separated. They must house the child or, if unable to do so, must arrange for him or her to be housed with a third party.
Mothers and fathers have a right and duty of supervision and must look after children and see to their daily needs. They may oversee or even prohibit children's relationships with third parties in view of their age. They must respect children's rights to a personal relationship with their grandparents.
Parents have a responsibility to ensure that their children are educated. This covers schooling, vocational training, morality and civic life. They are responsible for deciding the child's religious orientation, with due respect for him or her as an individual. They decide on any medical treatment the child is to be given.
Since they exercise parental authority, mothers and fathers are also statutory representatives of their children and, in that capacity, represent them in all civil matters and manage their property.
Whether or not they exercise parental authority, each parent must contribute to the maintenance and education of children in proportion to their means and the needs of the child.

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

Parental authority lies with both parents equally. The notion of parental power was abolished in France in 1970.
Holding parental authority is distinct from exercising parental authority. A parent might hold parental authority without exercising it.
In principle, both parents exercise parental authority jointly except in cases of belated acknowledgment of paternity more than a year after the child's birth (in that case only a joint declaration to a court or a decision by the family court judge (*juge aux affaires familiales*) allows parental authority to be exercised jointly). The mother might therefore exercise parental authority on her own, but the principle is joint exercise by both parents.
Fathers and mothers who jointly exercise parental authority over a child must take joint decisions on all important matters affecting him or her (moving house, change of school, surgical operations, etc.).
Parents who have parental authority but do not exercise it must still be informed of important decisions taken by the other parent in order to exercise their right and duty of 'supervision'. They must be informed in order to be able to alert social services or the court if necessary in the event of major problems.
They still have a duty to contribute to the child's maintenance and education and might therefore have to pay child support. The court may rule that parental authority is to be exercised jointly or exclusively.

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

If parents are temporarily unable to care for their children, they may entrust them to third parties. They may also apply to a court for the exercise of parental authority to be delegated to those third parties. Delegation will then be voluntary.
If parents are placing their child at risk, the children's court to which the case is referred by both parents or one of the parents, the person to whom the child has been entrusted, the guardian of the minor or the minor himself/herself, or the Public Prosecutor may order the child's placement and hand him or her over either to the care of a third party or to the Child Welfare Service (*Aide Sociale à l'Enfance*) under the authority of the President of the Regional Council (*Conseil départemental).*
As a general rule, if parents are clearly uninterested in or incapable of exercising all or part of the parental authority, the individual, institution or Child Welfare Service with which the child was placed or a member of the family may bring an action in court to have the exercise of parental authority delegated to them fully or in part. This is sometimes referred to as enforced delegation of the exercise of parental authority.
When a protective measure is imposed on the parents (e.g. guardianship or curatorship), they are not necessarily deprived of the exercise of parental authority. In certain circumstances, if the conditions are met, the exercise of parental authority or guardianship may still be delegated for the benefit of the child.
If parents have died or been deprived of the exercise of parental authority (particularly a parent who is absent or unable to express his or her wishes), a guardianship is set up. A family council is appointed, composed of at least four people chosen with the child's interests in mind, and a guardian and auxiliary guardian will be selected from its members. The guardianship is monitored by the family court judge, who acts as judge for the guardians of minors.
Parental authority is a public policy function. It is an inalienable right. Parents cannot waive it.
In regard to the exercise of parental authority, they may make certain applications or decide that one of the two parents is to exercise parental authority exclusively, but that must be compatible with the child's interests.
Unless otherwise agreed, a court decision is needed to rule on the exercise of parental authority. Delegation of the exercise of parental authority to a third party is always subject to court supervision.

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

Separation of the parents does not affect the rules on transfer of the exercise of parental authority. They must both continue to care for the children and take joint decisions in the children's interests.
If they are unable to agree, the family court judge will decide on the arrangements for exercise of parental authority in the divorce proceedings or proceedings on the exercise of parental authority, taking account of:
1. the practice the parents previously followed or any agreements they might previously have made;
2. the views expressed by the minor child when heard by the judge;
3. the ability of each parent to carry out his or her duties and respect the other's rights;
4. the result of any experts' reports, having regard particularly to the age of the child;
5. the information obtained from any social services enquiries or counter-enquiries;
6. physical or psychological pressure or violence by one parent against another.

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

Parents may agree on all action to be decided in the interests of their child and draw up a parental agreement, on their own or with the help of a mediator and /or their lawyers.
They may then ask the family court judge for approval of the agreement setting out the arrangements for exercise of parental authority and establishing the contribution to the maintenance and education of the child in order to make it enforceable.
The judge cannot amend the agreement and will approve it unless he or she finds that it does not adequately safeguard the interests of the child or the parents have not given their consent freely. The judge may give a decision without a hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The parent referring the case to the judge must produce:

- a full copy of the birth certificate of each child to whom the application relates,
- previous court decisions if any,
- a copy of the parent's identity document,
- proof of address (e.g. rent receipt, electricity bill),

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

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

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

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

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

If the case is referred by way of an application (*requête*), within 15 days of receipt of the application, the registrar summons the respondent to a hearing by registered letter with acknowledgment of receipt.
However, when the application states that the respondent's address is the last known address, the registrar invites the applicant to use personal service.
The registrar notifies the applicant by any means of the place, date and time of the hearing.
The family court judge may also rule on matters of parental authority in divorce proceedings (see 'Divorce').
Family court judges act as interim relief judges in urgent cases. Referral may be made in interim relief proceedings by a summons (*assignation*). The judge investigates the case with the participation of both parties at a hearing and gives a decision in the form of an order which does not constitute res judicata on the merits. Interim relief proceedings allow judges to adopt provisional measures without delay pending a decision on the merits. Thus an application for interim relief proceedings allows them to preserve their rights.
In interim relief proceedings, the family court judge may order any measures to which there is no serious objection or which are justified by the existence of a dispute. Since these are purely provisional measures, the procedure is rarely used.
In cases where urgency is duly justified, family court judges to whom a case has been referred by application may allow summonses to be issued for a hearing date set for the near future. In that event the judge decides on the merits but the timescales are shorter. This course of action is used very frequently.
Cases may also be referred to family court judges in fast-track proceedings on the merits (*procédure accélérée au fond)* in certain instances specified by law (in family matters this concerns the wrongful removal of a child). The case is brought by summons and the judge will then give an immediate decision on the merits. In such cases there is no need to provide supporting evidence for the urgency. The very nature of the proceedings dictates that a date must be set without delay.
In domestic violence cases, family court judges may also be called on urgently to issue a protection order under Article 515-9 et seq. of the Civil Code (*Code civil*). They must now give a decision within six days of the hearing date being set (Law of 28 December 2019). This protection measure is aimed at protecting spouses or ex-spouses who are victims of physical or mental abuse by allowing all contact to be prohibited between them and if necessary between the violent spouse or ex-spouse and the children. In the protection order judges also set out the measures concerning the exercise of parental authority over the children. In particular, they may decide to make the parent suffering the abuse solely responsible for exercising parental authority, deprive the abusive parent of his or her access and accommodation right or allow a restricted access right at a meeting venue.

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

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

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

Decisions by the family court judge are open to appeal within one month, apart from decisions based on Article 481-1 of the Code of Civil Procedure (*Code de procédure civile*) (fast-track proceedings on the merits for wrongful removal), which are open to appeal within 15 days.
Orders by the family court judge are open to appeal within 15 days (interim relief proceedings, protection order).
The appeal is to be lodged in writing and representation by a lawyer is mandatory. It is heard in the Court of Appeal (*Cour d'appel*).

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

Decisions on parental authority by the family court judge are automatically enforceable.
In the event of failure to comply with a parental authority decision by a family court judge, for instance if one of the parents has a right of access and accommodation and the other parent prevents them from exercising that right, a complaint may be filed with the Public Prosecutor (*procureur de la République*) at the court for the district where the child is resident. Preventing the other parent from exercising his or her right of access and accommodation constitutes a criminal offence of retention of a minor, which carries a penalty of one year's imprisonment and a €15,000 fine.
Family court judges may impose a periodic penalty payment in addition to the measures they order. They may, even of their own motion, impose a periodic penalty payment to ensure their decision is enforced. If circumstances require, they may also attach a periodic penalty payment to a decision by another judge and the parental agreement recorded in the mutual consent divorce agreement.
When a parent, seriously or repeatedly, deliberately obstructs enforcement of a decision, a mutual consent divorce agreement in the form of a private document countersigned by lawyers and the original filed with a notary, or an approved agreement setting out the arrangements for exercise of parental authority, family court judges may order him or her to pay a civil fine of up to €10,000.
Finally, on application from the family court judge or the parent concerned, the Public Prosecutor may, in exceptional cases, seek the assistance of the police to ensure enforcement of a decision by a judge, a mutual consent divorce agreement or an approved agreement setting out the arrangements for exercise of parental authority, for example enforcement of the right of access and accommodation.
Thus, depending on the circumstances, application should be made to the Public Prosecutor or the family court judge who made the decision.

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

Parental authority decisions by a court in a Member State are recognised and enforceable in France without the need for an exequatur procedure.
However, not all parental responsibility decisions are enforceable immediately, but only those concerning the right of access and the return of the child. The certificates provided for by Council Regulation (EC) No 2201/2003 of 27 November 2003 **concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility** (Brussels IIa) must be presented. For other decisions on parental responsibility, an enforcement declaration issued on the basis of the relevant certificate is required.
In France, applications for recognition or establishment of enforceability in the territory of France of foreign writs of execution in accordance with Brussels IIa are to be made to the president of the *tribunal judiciaire* (ordinary court) or his or her delegate (Article 509-2 of the Code of Civil Procedure). Applications made before the judge do not require legal representation.

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

Under Article 21(3) of the Regulation, 'any interested party may … apply for a decision that the judgment be or not be recognised.'
In France, applications for a ruling that a decision on parental authority by a court in another EU Member State is not to be recognised are to be made to the president of the *tribunal judiciaire* or his or her delegate.
Applications may only be accepted for the following reasons:
• non-compliance with the public policy of the Member State in which recognition is sought, taking into account the best interests of the child;
• failure to hear the child, assuming that hearing is a fundamental principle of the procedure of the Member State in which recognition is sought; failure to respect the rights of the defence;

• impediment to the exercise of parental responsibility;
• incompatibility with a later judgment either in the state in which recognition is sought or in another Member State or a third country when that decision fulfils the conditions necessary for recognition in the Member State in which recognition is sought;
• failure to comply with the placement procedure.
The decision by the president of the *tribunal judiciaire* is open to appeal.

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

When an international element is involved (one of the parties or the child is resident abroad, foreign nationality), it first needs to be determined whether the French court has jurisdiction.
Jurisdiction of the French courts
Pursuant to Article 8 of Council Regulation (EC) No 2201/2003 of 27 November 2003, if the child is habitually resident in France, the French courts have jurisdiction to decide on applications concerning parental responsibility.
Under Article 12(1) of the Regulation, if the French courts have jurisdiction to decide on an application for divorce they also have jurisdiction to decide on applications relating to parental responsibility if the spouses exercise parental authority jointly and they have expressly accepted the jurisdiction of the French courts and that is in the best interests of the child.
Under Article 12(3) of the Regulation, the courts of a Member State also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in Article 12(1) where the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident there or the child is a national of that Member State and its jurisdiction has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the matter is referred to the court and it is in the best interests of the child.
The jurisdiction of the courts of the child's former habitual residence may also be extended if the child moved to another Member State less than three months before and the dispute relates to a change in access rights.
Finally, pursuant to Article 13 of the Regulation, where a child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12, the French courts will have jurisdiction if the child is present in French territory and his or her habitual residence cannot be established (child refugees or displaced children).
In certain circumstances a different international agreement or French private international law might also be applicable and lead the French courts to accept jurisdiction.
Applicable law
On this matter France applies Article 15 of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. Thus, the courts with jurisdiction to decide on parental responsibility apply their own law except where the Convention specifies otherwise.
Accordingly, if the French courts have jurisdiction for matters of parental responsibility, they will apply French law (*lex fori*).
As an exception, the law that is closely related to the situation will be applied if required by the protection of the minor.

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Parental responsibility - child custody and contact rights - 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. Parentchild relationships not covered by the above provisions are subject to the law of the country of which the child is a national.
As of 1 January 2010, Croatia has been implementing the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children.
For more information, please refer to:
The Family Act (NN No 103/15 and 98/19)
The Enforcement Act (NN Nos 112/12, 25/13, 93/14)
The Act on the Resolution of Conflicts between Croatian Laws and the Regulations of Other Countries relating to Certain Relationships (NN Nos 53/91, 88 /01)
The Free Legal Aid Act (NN No 143/2013)
The Act on the Implementation of Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (NN No 127/2013)
Council Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

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Parental responsibility - child custody and contact rights - 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 - child custody and contact rights - 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 - child custody and contact rights - 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?

A child is under parental custody until the age of majority has been reached.

Custody means the parent's right and obligation to take care of the child and the child's property and represent the child in personal and property relationships.

Caring for a child means the care and supervision of a child and the right to determine the child's place of residence.

Child care means maintenance of the child, i.e. providing food, clothing, housing and health care, personal care, education and upbringing (ensuring mental and physical development with due regard to the child's personality, skills and interests, and preparing the child for useful work in society).

Parental 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 in such a way as to preserve it and enhance its value.

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

Parents living together exercise parental custody jointly. If the parents are separated, their joint responsibility continues. The care and supervision of the child must be ensured by the parent with whom the child is living. Parents are to take decisions jointly on issues that may 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 endangerment of the child's health or life is the fault of a parent (either intentional behaviour or neglect) or the parent abuses their rights or fails to provide child care and supervision, thus jeopardising 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. Where the custody exercised by the other parent cannot adequately protect the child from danger or if both parents have been deprived of custody, the court tasks the family court (*bāriņtiesa*) 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 the parents are separated, their joint responsibility continues. Care and supervision of the child must be ensured by the parent with whom the child is living. Parents are to take decisions jointly in matters that may have a significant impact on the child's development. Disputes between the parents are settled by the family court, unless the legislation provides otherwise. The parent's joint custody is terminated when an agreement between the parents or a court decision establishes the separate custody of one 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?

If the parents agree on the matter of parental responsibility and act on the agreement 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 the event of a dispute, disagreements and differences are resolved by the family court.

Mediation can also be effective for the resolution of family conflicts; with the help of the mediator as a neutral third party, an attempt is made to find a solution to the dispute acceptable to the parties, by listening to both parties' expectations and needs. Under the 'Mediation of family disputes' State budget programme, implemented by the Ministry of Justice in cooperation with the Council of Certified Mediators, families have the opportunity to take part in five hour-long mediation sessions paid for by the State, while for families classified as low income or deprived, seven hour-long sessions are paid for.

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

If the parents go to court, they can apply for joint or separate custody. If necessary, the judge also decides on matters of maintenance, place of residence, etc. A parent with a separate right of custody exercises custody over 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 rule also applies if the child is separated from the family or if the child no longer lives with one or both of the parents. The

parent who does not live with the child has the right to be kept informed about them, especially about their development, health, academic achievements, interests and living conditions. A parental dispute over custody should be decided in the interests of the child and the child's opinion should be sought, if they are 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 deriving from such custody. Parents are obliged to provide maintenance for a child commensurate with their ability and financial circumstances. The duty to provide for a child rests with the father and the mother until such time as the child is able to provide for itself.

The responsibility to provide maintenance for a child does not end if the child lives separately from the family or if the child no longer lives with one of the parents.

When awarding separate custody, the courts 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 custody over the child on a daily basis. The child has the right to maintain a personal relationship and direct contact with either parent (access rights). Each parent has the obligation and the right to maintain a personal relationship and direct contact with the child. The parent who does not live with the child has the right to be kept informed about them, especially about their development, health, academic achievements, interests and living conditions. The award of 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 the children are under the joint custody of both parents, both parents may act on behalf of the children in their personal and property relations. The parents take joint decisions on all matters concerning 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 to be brought before the court of the child's place of residence. The registered place of residence of the 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 areas, the child's place of residence is deemed to be the registered place of residence of the parent with whom they live. If the child's parents or the child have no registered place of residence, the child's place of residence is deemed to be the parents' place of residence.

The statement of claim should be filed pursuant to Article 128 of the Law on civil procedure (*Civilprocesa likums*). Article 129 of the Law on civil procedure applies in terms of the documents to be annexed to the statement of claim.

A family court opinion on the matter may also be annexed 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 Latvia's Law on civil procedure. Cases relating to the protection of the child's rights and interests are considered by the court as a matter of priority. The court requests the family court's opinion in matters relating to the award 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 their age and degree of maturity.

Civil cases are heard by the courts 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 substantiated request by the parties or at the discretion of the court.

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

Upon the request of one of the parties, a court judgment may state that the judgment in full or parts thereof on child maintenance and in cases relating to custody and the right of access is/are enforceable without delay.

Upon the request of one of the parties, the court hands down a ruling temporarily establishing maintenance for the child until the judgment is issued.

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

Low-income or deprived persons, who have been classified as such pursuant to the procedure laid down in the legislation, and persons who suddenly find themselves in such a position and financial situation that prevents them from defending their rights (as a result of natural disasters, cases of *force majeur* or other circumstances beyond their 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 exempts them from payment of legal expenses into the State budget, likewise suspending the compulsory payment of court expenses into the State budget or dividing them into instalments.

In accordance with the Law on civil procedure, 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 judgment can be appealed under the general procedure, i.e. by filing an appeal with the Regional Court (*Apgabaltiesa*) or an appeal on a point of law with the Supreme Court (*Augstākajā tiesa*).

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 acted upon once they enter into effect, or immediately if they are declared as immediately enforceable.

They 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?

The rulings of foreign courts are recognised and enforced by Latvia's courts.

The rulings of foreign courts are recognised and enforced pursuant to the procedure established by the Law on civil procedure and pursuant to Council Regulation No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the 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) 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 decision on a declaration of enforceability or on the rejection of a decision declaring enforceability is taken by a judge sitting alone, on the basis of the application submitted and the documents attached thereto, within 10 days of the day of submission of the application, without summoning the parties.

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

The decision of the first-instance court on the recognition of a decision of a foreign court may be contested by the submission of an ancillary complaint to the regional court, and the regional court's decision may be contested by lodging an ancillary complaint with the Senate (*Senāts*).
A party to the case whose declared place of residence is in Latvia, or failing that whose actual place of residence is in Latvia, may lodge an ancillary complaint within 30 days of receipt of a copy of the decision; a party to the case whose declared place of residence or actual place of residence is not in Latvia may lodge an ancillary complaint within 60 days of receipt of a copy of the decision.

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 - child custody and contact rights - 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.

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 StateGuaranteed 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 - child custody and contact rights - 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 and 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 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. 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. 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 barrister (*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 barrister.
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 exceptionnel*). 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*); travel 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 who has decided the schedule for a child to live with each parent or who 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 (EU) No 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)* (the *'Brussels IIb Regulation'*), any decision on parental responsibility 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 decisions will be recognised without any special procedure being required.
A decision on parental responsibility given by a court of another Member State of the European Union, which is enforceable there, is enforceable in Luxembourg without the need for a declaration of enforceability. In order to enforce such a decision, the party requesting enforcement shall provide the competent authority responsible for enforcement with:
a) a copy of the decision which satisfies the conditions necessary to establish its authenticity and
b) the appropriate certificate issued in accordance with Article 36 of the *'Brussels IIb'* Regulation.

The competent authority responsible for enforcement may also require a translation of the translatable content of the free text fields of the certificate and a translation of the decision.
It should be noted that decisions on rights of access and on the return of the child are recognised without any possibility of opposing them, unless the decision is irreconcilable with a subsequent decision, and are enforced without the need for a declaration of enforceability. In order to enforce such a decision, the party requesting enforcement shall provide the competent authority responsible for enforcement with:
a) a copy of the decision which satisfies the conditions necessary to establish its authenticity and
b) the appropriate certificate issued in accordance with Article 47 of the *'Brussels IIb'* Regulation.
The competent authority responsible for enforcement may also require a translation of the translatable content of the free text fields of the certificate and a translation of the decision.

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

Under the *'Brussels IIb Regulation'*, any interested party may, by summons, submit to the district court sitting in civil matters an application for refusal of recognition or an application for refusal of enforcement relating to a decision in parental matters handed down by a court of another Member State of the European Union. The party must be represented by a barrister.
The grounds for refusal of recognition and refusal of enforcement are listed in Articles 39 and 41 of the *'Brussels IIb Regulation'*.
Either party may appeal against the decision of the district court sitting in civil matters before the Court of Appeal sitting in civil matters. The decision of the Court of Appeal sitting in civil matters can be appealed on points of law before the Court of Cassation (*Cour de 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 court has 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.

Related links

Brochure on parental authority
Legilux

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Parental responsibility - child custody and contact rights - 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 - child custody and contact rights - 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 invovled, 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 - child custody and contact rights - 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 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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Parental responsibility - child custody and contact rights - Austria

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' (*Amtstage*), 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 Anwaltspflicht*] 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 (*Vermögensbekenntnis*) 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 - child custody and contact rights - 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?

Parental responsibility in particular encompasses parents' obligations and rights to care for a child's person and assets and to bring up a child, with respect for the child's dignity and rights (Article 95(1) of the Family and Guardianship Code (KRiO*)*).

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.
Parental responsibility may also be limited by a decision of the court. In such circumstances, the other parent is entitled to exercise parental responsibility over the child in so far as specified in the court decision.

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 the child's adoption. There are three forms of adoption under Polish law: complete, complete and irrevocable (also known as 'full adoption'), and incomplete.

Should parents duly exercising parental responsibility jeopardise the child's interests, 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 to resolve the question of parental responsibility over a child unless it has no jurisdiction with regard to parental responsibility in a specific case. When resolving the issue of parental responsibility, the Polish court may take into account a written agreement between the spouses concerning the manner in which parental responsibility is to be exercised, provided it is in the best interests of the child.

If the parents fail to agree, the court may, considering the child's right to be brought up by both parents:

1) decide upon joint exercise of parental responsibility;

2) grant parental responsibility to either parent and restrict the other parent's responsibility to specific obligations and rights with regard to the child.

Where warranted by the best interests of the child, the court dealing with guardianship matters (*sąd opiekuńczy*) may alter a ruling on parental responsibility and the manner of its exercise in a judgment on divorce, legal separation or marriage annulment (Article 106 KRiO).

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

No form is specified by law for such parental agreement. It should be noted, however, 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. The agreement may be reached also by mediation. In that case it is made in writing and signed by both parents and a mediator. In order to be legally binding, the settlement 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?

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 reached 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?

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?

If a court has entrusted the exercise of parental responsibility to just one of the parents, that parent is free to decide on all matters concerning the child without having to consult the other parent or obtain their consent.

A parent may be deprived of parental responsibility by the court dealing with guardianship matters if parental responsibility cannot be exercised due to a permanent impediment, the parent abuses their parental responsibility or grossly neglects their obligations vis-à-vis the child.

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 decided 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 district court (*sąd rejonowy*) with jurisdiction over the child's place of residence. The district court's family and minors division is the court dealing with guardianship matters (*sąd opiekuńczy*). Where there is no such basis, jurisdiction lies with the District Court for the Capital City of Warsaw.

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 and copies of previous judgments by other courts concerning parental responsibility.

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

Parental responsibility cases are heard in what is known as a non-litigious procedure, which is less formal than a litigious procedure.

Additionally, at the request of a party to the proceedings, the court dealing with guardianship matters may grant an interim measure 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 (*Ustawa o kosztach sądowych w sprawach cywilnych*). 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. In the case of protective orders, an appeal is lodged with a court of the same instance. Appeals against judgments delivered by a district court (*sąd rejonowy*) concerning parental responsibility may be brought before a regional court (*sąd okręgowy*). Judgments delivered by a regional court (*sąd okręgowy*) concerning parental responsibility in proceedings for divorce, legal separation or marriage annulment are subject to appeal before 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 to a court-appointed guardian by the court 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 (*Kodeks postępowania cywilnego*) with regard to judgments on contact arrangements. In that case, at the request of a person entitled to contact with the child, the court dealing with guardianship matters (*sąd opiekuńczy*) will threaten to issue an order against the person who has custody and fails to fulfil obligations arising from a judgment or settlement with regard to contact with 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 contact with the child or a person prohibited from such contact infringes the obligation imposed by the decision, the court dealing with guardianship matters (*sąd opiekuńczy*) 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 (*sąd opiekuńczy*) 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 contact with the 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. As a rule, such judgments are recognised and enforced without any additional proceedings. It is, however, possible to lodge an application for recognition and enforcement with a regional 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 mediation.

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

By law, judgments handed down by the courts of foreign countries in civil matters are recognised, unless there is an impediment under the Code of Civil Procedure.

Anyone with a legal interest can apply for the recognition or non-recognition of a judgment handed down by a foreign court. An application for recognition of a judgment handed down by a foreign court must be accompanied by:

- an official copy of the judgment;
- a document confirming that the judgment is final, unless that fact is clear from its wording;
- a sworn translation into Polish.

An application for non-recognition of a judgment handed down by a foreign court must be accompanied by an official copy of the judgment and a sworn translation into Polish.

An application is examined by the regional court (*sąd okręgowy*) that would be geographically competent to consider the case resolved by the judgment of the foreign court or by the regional court of the region in which the geographically competent district court (*sąd rejonowy*) is located or, in the absence of such a court, by the Regional Court in Warsaw (*Sąd Okręgowy w Warszawie*).

A decision on recognition delivered by the regional court is subject to interlocutory appeal (*zażalenie*) and a decision of the court of appeal to cassation appeal (*skarga kasacyjna*); it is also possible to apply for proceedings closed by a final decision on recognition to be reopened and for that final decision to be declared unlawful.

As regards the execution of foreign court judgments, procedures vary so much according to the type of proceedings that it is always best to contact the central authority for information on how to proceed beforehand.

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 contact with the child 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 the Private International Law Act of 4 February 2011 (*Ustawa z dnia 4 lutego 2011 r. - Prawo prywatne międzynarodowe*) apply. 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 that country will govern all subsequent 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 - child custody and contact rights - 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?

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

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

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

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

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

Representing the children;

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

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

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

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

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

On the other hand:

Children have a duty of obedience towards their parents;

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

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

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

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

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

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

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

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

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

Yes, under the following conditions:

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

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

the spouse or civil partner of either parent;

someone in the family of either parent.

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

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

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

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

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

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

The parent who is responsible for the exercise of parental responsibilities relating to everyday activities may exercise these themselves or delegate their exercise.
The court will determine the child's residence and visitation rights according to the child's interests, taking into account all relevant circumstances, namely any agreement of the parents and the willingness expressed by each of them to promote the child's normal relationships with the other parent;
The parent who does not exercise parental responsibility, whether in full or in part, has the right to be informed about how such responsibility is exercised, particularly regarding the education and living conditions of the child.
The court will always decide in accordance with the child's interests, including maintaining a close relationship with both parents, promoting and accepting agreements, or taking decisions that favour ample opportunities for contact with both parents and sharing responsibilities between them.

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

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

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

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

Mediation prior to court intervention

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

Mandatory ratification of the agreement

Once the agreement has been obtained as a result of the mediation, in order for it to be binding and enforceable, the parties must apply for its ratification by the court or the civil registry registrar, as the case may be.
Cases relating to family matters falling within the competence of the civil registry registrar require the prior agreement of the parties. Otherwise they fall within the jurisdiction of the courts (Article 12 of Decree-Law No 272/2001 of 13 October 2001 — Procedures within the jurisdiction of the Prosecutor's Office and the Civil Registry Offices).
Civil registry offices are competent to ratify the agreement with respect to parental responsibilities only when it is annexed to an agreement on divorce or legal separation by mutual consent. Prior to ratification by the registrar, the prosecution office issues an opinion on the agreement in so far as it concerns parental responsibilities relating to minor children.
Where family mediation takes place before the action is proposed and is intended solely to settle parental responsibilities relating to minor children (without the agreement being annexed to a divorce or legal separation agreement), the ratification of that agreement must be requested by the parties from the competent court.

Private mediation

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

Public mediation

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

List of Mediators of the Family Mediation System

If the parties do not choose a mediator, the alternative dispute resolution office of the Directorate-General for Justice Policy indicates one of the mediators from the list of public mediators, in sequential order and taking into account proximity to the parties' area of residence. As a rule, this appointment is made electronically.
Note: The activity of the Family Mediation System (SMF) is governed by Ministerial Implementing Order No 13/2018 of 22 October 2018.

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

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

Mediation and specialist technical hearings in the course of legal proceedings

(Law No 141/2015 of 8 September 2015 — Legal Framework for the Civil Guardianship Procedure, as amended by Law No 24/2017 of 24 May 2017)
If the parties refer the matter to court, civil proceedings regulating the exercise of parental responsibility will be initiated, in which the judge begins by setting up a parent meeting. (Article 35 of the Legal Framework for the Civil Guardianship Procedure)
If the parents cannot reach an agreement at the meeting, the judge will suspend it for a maximum period of two to three months, depending on the case, and refer the parents for mediation (if they agree to use this method), or for specialist technical hearing (which may be imposed on parents as mandatory) (Article 38 of the Legal Framework for the Civil Guardianship Procedure).
At the end of that period, the judge is informed of the outcome of the mediation or specialist technical hearing and will set a date for continuation of the meeting in order to secure and/or ratify the agreement. (Article 39 of the Legal Framework for the Civil Guardianship Procedure)
If at the end of this phase the parents cannot reach an agreement, then the litigation phase of the proceedings follows – the parents are notified to file their pleadings and to produce evidence, followed by the investigation and judgment.
Information on mediation is available here.

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

As a preliminary point, it is important to emphasise that in Portugal, in the event of divorce, separation, annulment of marriage, and in cases where there is no marriage or co-habitation of the parents, a decision on the exercise of parental responsibility must always be taken in respect of three fundamental aspects:
custody of the child;
visiting arrangements;
maintenance due to the child.
In other words, the obligation to provide maintenance to a minor child is considered to be one of the parental responsibilities, and in principle it is regulated together with the other parental responsibilities, although in certain cases an action may be brought only to set and amend the maintenance due to a child.
The court may rule on the following matters (Articles 6 and 7 of the Legal Framework for the Civil Guardianship Procedure):
establish guardianship and the administration of assets;
appoint a person who conducts business on behalf of the minor and, in addition, appoint a trustee who represents the child subject to parental responsibilities out of court;
govern the exercise of parental responsibility and hear issues that relate to it;
establish the maintenance due to the minor and to children over 18 or emancipated, who are continuing their academic or vocational education;
prepare and judge enforcements for maintenance;
order the judicial surrender of a child;
authorise the legal representative of minors to perform certain acts, to confirm those acts that have been performed without authorisation, and make arrangements for the acceptance of gifts;
decide on the security that the parents must provide in favour of their minor children;
decree full or partial barring and establish limits on the exercise of parental responsibilities;
verify maternity and paternity of its own motion;
decide, in the event of disagreement between the parents, on the first name and surnames of the minor;
establish a relationship of civil custody (apadrinhamento civil) and revoke such decisions;
regulate the child's interactions with siblings and ascendants;
if there is guardianship or administration of assets, determine the remuneration of the guardian or administrator, take cognizance of the dispensation, exoneration or removal of the guardian, administrator or member of the family council, demand and judge accounts, authorise the replacement of the legal mortgage and determine the reinforcement and replacement of the security provided, and appoint an ad hoc guardian to represent the child out of court;
appoint an ad hoc guardian to represent the minor in all guardianship proceedings;
decide on the reinforcement and replacement of the security given to minor children;
demand and judge the accounts that the parents must provide.

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

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

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

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

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

Procedures for bringing actions relating to parental responsibility

Care and protection procedures

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

Civil guardianship procedures

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

Procedures within the competence of the civil registry offices

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

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

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

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

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

Promotion and protection procedure by the courts (Article 100 et seq. of the *Law on the Protection of Children and Young People in Danger)*
The procedure begins with the receipt of an initial application filed by the prosecution office, by the parents, the legal representative, the de facto guardians, or child over the age of 12;
The procedure consists of the investigation, judicial proceedings, decision and enforcement phases of the measure;
It is not compulsory for either of the parties to appoint a lawyer in the first instance except in the following situations, where the court must mandatorily appoint counsel for the minor: when the interests of the minor conflict with those of their parents, legal representative or guardian; when the minor requests it; in judicial proceedings in which the minor must always be represented by a lawyer or nominated representative.
Civil Guardianship procedure (Articles 12 to 33 of the Legal framework for the civil guardianship procedure)
The procedure begins on the initiative of the prosecution office, the child over the age of 12, the ascendants, siblings or legal representative of the minor.
It is the responsibility of the prosecution office to represent the minor in court, to take action on their behalf, to request the regulation of parental responsibilities, and to defend the best interests of the child.
It is a voluntary jurisdiction procedure that begins with an application filed in court, and where there is an objection.
Where the law does not provide otherwise, it is in the application and the objection that the parties must offer the list of witnesses and request all evidence.
The court is advised by multidisciplinary technical teams.
The child has the right to be heard. For this purpose, the judge assesses, by order, the child's ability to understand the issues, and may rely on technical advice.
During the hearing, the judge hears the child, the parties, the family members and other persons they deem relevant to hear.
Provisional and precautionary decisions may be pronounced at any stage of the proceedings.
At any stage of the procedure, the judge may order the intervention of the public or private mediation services, provided the parties agree to use mediation.
Specifically, in procedures regulating parental responsibilities, a parent meeting is arranged, and if the parents do not reach an agreement at the meeting, the court refers them for mediation (if they accept it) or for specialist technical hearing. Only if agreement is not possible through one of these routes do the statement of facts, the investigation, the hearing and the ruling follow.
The parties have the right to know the information provided in the technical advice and other evidence and opinions included in the proceedings; they may request clarification, add other evidence or apply for information to be requested. The judge can dismiss such applications by an unappealable order if he or she judges them to be unnecessary, impossible to fulfil, or dilatory.
The hearing, when it takes place, is always recorded.
Grounds are provided for the judge's decision.
It is only mandatory to appoint a lawyer at the appeal stage. However, in the first instance, the appointment of a lawyer for the child is mandatory in the following cases: when the interests of the minor and those of their parents, legal representative or guardian are conflicting; when a child with appropriate maturity requests it from the court.
Unless expressly provided otherwise, appeals may be brought against decisions pronounced as final or provisional concerning the application, amendment or termination of civil guardianship measures.
The prosecution office and the parties, the parents, the legal representative, and whoever has *de facto* custody of the child, may appeal.
Appeals are processed and judged as in civil matters, with a time limit for claims and response of 15 days.
The appeals have a purely devolutive effect, unless the court determines otherwise.
Cases falling within the jurisdiction of the civil registry offices (Articles 1775 to 1778-A of the Civil Code; Articles 12 to 14 of Decree-Law No 272/2001 of 13 October 2001— Procedures within the competence of the Prosecutor's Office and the Civil Registry Offices)
In cases where the agreement on parental responsibilities is annexed to a divorce or legal separation agreement, the following documents must be submitted:
The process of legal separation or divorce by mutual consent is initiated by an application signed by the spouses or their representatives at the civil registry office;
The application is examined in relation to common property, the agreement on divorce, maintenance between spouses and the designation of the family home, in addition to the agreement on the exercise of parental responsibility when there are minor children and there is no previous judicial regulation;
Following the application, the civil registry database is immediately and automatically consulted, and the necessary documents are included in the database in order to corroborate the marriage certificate of the interested parties and the conclusion of any pre-nuptial agreement declared before the registrar, except in cases where the property regime is stated in the marriage certificate;
Once the application has been received, the registrar informs the spouses of the existence of family mediation services;
When an agreement is reached on the exercise of parental responsibility in relation to minor children, the case is referred to the prosecution office at the regional court (tribunal judicial de primeira instância) competent to hear the matter within the jurisdiction to which the civil registry office belongs, so that it can issue a decision on the agreement within 30 days;
If the prosecution office takes the view that the agreement does not adequately protect the interests of minors, the applicants may amend the agreement accordingly or submit a new agreement, in which case such agreement will be re-examined by the prosecution office;
If the prosecution office takes the view that the agreement duly safeguards the interests of minors, or if the spouses have amended the agreement as instructed by the prosecution office, the registrar verifies fulfilment of the statutory assumptions, and is able to determine for that purpose the performance of acts and the production of any necessary evidence, and then rules on the merits of the application;
In cases where the applicants do not comply with the amendments instructed by the prosecution office, and continue in their intention to divorce, the case is referred to the court of the district to which the civil registry office belongs.
In cases where the parents, whether or not married, wish to regulate the exercise of parental responsibility over minor children of them both, or to amend an agreement already ratified, they must request this at any time from any civil registry office. To this end, they should include the following documents:
Application for regulation of the exercise of parental responsibility;
Agreement on the exercise of parental responsibility and on liability for minor children, signed by both parents or by their representatives;
The Registrar reviews the agreement and invites the parents to amend it when it does not protect the interests of the minors;
The agreement is then referred to the prosecution office at the regional court with competence on the matter, in the minor's area of residence, so that it can rule within 30 days;
If there is no objection from the prosecution service, the case is referred to the civil registry office and the Registrar ratifies the agreement;
Ratification decisions have the same effect as judicial judgments.
Information on the competence of the Civil Registry Offices can be found here.
Entities to which the interested parties must refer (depending on the case, the courts, committees for the protection of children and young people, and the civil registry offices):

Substantive and territorial jurisdiction of the courts

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

The following rules on territorial jurisdiction apply (Article 9 of the Legal Framework for the Civil Guardianship Procedure):

The court of the child's place of residence at the time the proceedings were instituted has jurisdiction;

If the residence of the child is not known, the court of the place where the holders of parental responsibility reside has jurisdiction;

If the holders of parental responsibilities reside in different places, the court with jurisdiction is the court competent for the place of residence of the person exercising parental responsibility;

In the case of joint exercise of parental responsibility, the court with jurisdiction is the court of the place of residence of the person with whom the child resides or, in the case of joint custody, the court at which the action was first brought;

If any of the actions concern two children, children of the same parents and who are resident in different districts, the court with jurisdiction is the court at which the action was first brought;

If any of the actions concern more than two children, children of the same parents and residents in different districts, the court with jurisdiction is the court where the greatest number of these children reside;

If, when the proceedings are instituted, the child resides abroad and the Portuguese court has jurisdiction internationally, the court competent to hear and decide the case is the court of the place of residence of the applicant and respondent;

When the applicant and the respondent reside abroad and the Portuguese court has jurisdiction internationally, the case is heard by Lisbon Family and Minors Court (*Juízo de Família e Menores de Lisboa*), in the judicial district of Lisbon;

Without prejudice to the rules on related actions and the provisions of a specific law, any changes in fact that occur after the initiation of proceedings are irrelevant.

Substantive and territorial competence of the Commissions for the Protection of Children and Young People (Article 79 of the Law on the Protection of Children and Young People in Danger)

The Commissions for the Protection of Children and Young People are competent in matters relating to procedures concerning the care and protection of children and young people at risk, where there is parental agreement and there is no objection from the minor.

The following rules on territorial jurisdiction apply:

The Commission for the Protection of Children and Young People or the court of the minor's place of residence at the time notification of the situation is received or judicial proceedings commence is competent for the application of care and protection measures.

If the residence of the child or young person is not known and cannot be determined, the Commission for Protection of the place where the child is located is competent.

The Commission for Protection of the place where the minor is located takes the steps considered urgent and the necessary measures for the child's immediate protection.

If, after the application of a non-protective measure, the child or young person changes their residence for more than three months, the case is referred to the Commission for Protection of Children and Young People in the new area of residence.

The implementation of a care and foster protection measure does not entail the change of residence of the child or young person.

The Commission for Protection with territorial jurisdiction in the area of the foster municipality or district of the child or young person will cooperate with the Commission for Protection that applied the care and protection measure as fully as necessary for the effective follow-up of the applied measure as requested for this purpose.

Substantive and territorial competence of the civil registry offices (Articles 6 and 12 to 14 of *Decree-Law No 272/2001 of 13 October 2001 — Procedures within the competence of the prosecution office and the Civil Registry Offices*)

Depending on the matter at issue, civil registry offices are competent to ratify the agreement with respect to parental responsibility, whether submitted in isolation or annexed to applications for divorce or legal separation by mutual consent.

Depending on the matter at issue, civil registry offices are competent to process and decide on divorce or legal separation proceedings by mutual consent, including the ratification of agreements with respect to parental responsibility annexed thereto.

Territorial jurisdiction rules do not apply to civil registry offices. In other words, the parties may refer to any civil registry office.

Related jurisdiction (Article 81 of the Law on the Protection of Children and Young People in Danger)

If, in relation to the same child, a civil guardianship procedure and care and protection procedure, including procedures before the Commission for the Protection of Children and Young People, or educational guardianship procedure, are instituted separately, these must be processed as a joined case, irrespective of their status, and the judge competent to hear the cases will be the judge to whom the procedure was first brought;

The provisions of the previous paragraph do not apply to civil guardianship measures relating to automatic verification of maternity or paternity, or to those that fall within the competence of civil registry offices, or to those that concern more than one child;

In the event of divorce or legal separation proceedings, procedures regulating the exercise of parental responsibility, the provision of maintenance and barring the exercise of parental responsibility are joined to that action.

When the danger concerns more than one child or youth at the same time, a single procedure may be instituted and, where different procedures have been instituted, all of them may be joined to whichever was initiated first, if family relationships or the danger justify this (Article 80 of the Law on the Protection of Children and Young People in Danger).

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

The procedure has already been referred to in the reply to question 10.

Care and protection cases and civil guardianship cases may be treated as emergency procedures when a delay may adversely affect the interests of the child. In this case, they continue to be processed during judicial holidays.

In any event, provisional measures may be applied in emergency situations.

In particular, the following urgent legal proceedings are provided for (Article 92 of the Law on the Protection of Children and Young People in Danger):

At the request of the prosecution office, the court, when informed of situations that pose a danger to the life or physical or mental integrity of the minor, issues a provisional decision within 48 hours, confirming the measures taken for the immediate protection of the child, applying any of the care and protection measures provided for in law or determining what is appropriate for the minor's future;

To this end, the court conducts summary and indispensable investigations and orders the necessary steps to ensure its decisions are enforced, and may make use of the police authorities and allow persons who are responsible for complying with their decisions to enter any house during the day.

In particular, the following urgent legal proceedings are provided for (Article 91 of the Law on the Protection of Children and Young People in Danger):

When there is a danger to the life or physical or mental integrity of the minor, and there is no consent from those holding parental responsibility or from those with *de facto* custody, any authority with competence on child and youth matters, or the child and youth protection commissions, takes appropriate measures for the immediate protection of the minor and requests the intervention of the court or police;
The intervening entity notifies the prosecution office immediately or, if that is not possible, as soon as it becomes possible.
Until such time as the court can intervene, the police removes the child or young person from the danger they are in and ensures they have emergency protection at a foster home, at the facilities of the bodies with competence on child and youth matters, or another suitable place.
The prosecution office, after receiving a notification from any of the above entities, immediately requires the competent court to take urgent legal action.

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

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

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

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

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

Infringement of a decision on parental responsibility (Article 41 of the Legal Framework for the Civil Guardianship Procedure)
If, with respect to the child's situation, one of the parents or a third party to whom they have been entrusted does not comply with what has been agreed or decided, the court may, of its own motion, on an application from the prosecution office or from the other parent:
Order the steps necessary to ensure enforcement;
Issue a fine of up to 20 units of account (in 2021, the value of a unit of account was EUR 102.00);
And, having verified the respective assumptions, order the defaulter to pay compensation in favour of the child, the requesting parent or both.
If the agreement has been ratified by the court or the court has pronounced its decision, the application is processed as a joinder to the procedure in which the agreement was made or a decision was pronounced, for which the respective court will be petitioned if, according to the rules on competence and jurisdiction, it is the court competent to hear the infringement.
Once the application has been processed or appended to the procedure, the judge summons the parents to a meeting or, in exceptional cases, notifies the respondent to plead as they deem appropriate within five days.
At the meeting, the parents may agree to amend what is established for the exercise of parental responsibility, taking into account the child's interests.
In the case of non-compliance with the visitation regime, if the respondent does not attend the meeting, does not submit pleadings, or if their pleadings are manifestly unfounded, the court may order the surrender of the child so that the visitation regime can be complied with, specifying where the visits should take place and providing for the presence of court technical advisers.
The respondent is notified to release the child in the manner determined, subject to a fine being imposed.
If a meeting is not convened or if the parents fail to reach an agreement, the judge refers the parties for mediation (if the parents agree to use it) or to a specialist technical hearing, and then reaches a decision.
If a fine is imposed and the fine is not paid within ten days, enforcement takes place as a joinder to the procedure.
This is provided for and regulated in the Legal Framework for the Civil Guardianship Procedure, approved by Law No 141/2015 of 8 September 2015, which can be consulted here
Maintenance enforcement
In order to enforce the provision of maintenance, three alternative means may be used: the hearing for infringement of parental responsibility, referred to above; the pre-enforcement hearing for the provision of maintenance, as mentioned below; or the special maintenance enforcement, mentioned below.
Pre-enforcement hearing to recover maintenance due (Article 48 of the Legal Framework for the Civil Guardianship Procedure)
When the person legally liable to pay maintenance fails to pay the amounts due within 10 days of the date when it became payable, the following shall be observed:
If the person is a public sector worker, the respective amounts are deducted when due, upon the request of the court addressed to their public sector employer;
If the person is a salaried employee, the amounts will be deducted from earnings or salary, for which the respective employer will be notified to process such deductions, and will assume the role of depositary;
If a person receives rent, pensions, allowances, commissions, percentages, emoluments, gratuities, contributions or similar income, the deduction is made from these instalments when they have to be paid or credited, making the necessary requisitions or notifications, with those notified assuming the role of depositaries.
The amounts deducted also cover maintenance accrued beforehand, and are paid directly to those due to receive them.
Special maintenance enforcement
If maintenance is due to minors, the maintenance creditor may, alternatively, bring special maintenance proceedings, as laid down in Article 933 of the Code of Civil Procedure. Thus, in a single action, they may recover in full the amounts due, overdue or to become due. In an enforcement action, the maintenance creditor may make use of broader means of enforcement, such as seizure and pledge of income.
In special maintenance enforcement, the applicant may request: the adjudication of a proportion of the amounts, salaries or pensions the other party receives; or an assignment of income belonging to the maintenance debtor. The adjudication or pledge takes place independently of seizure and is intended to cover the payment of overdue amounts and amounts that will become due.
When the applicant requests the adjudication of amounts, salaries or pensions, the body responsible for paying these or for processing the respective payments will be notified that it is to pay the adjudicated part directly to the applicant. The amount adjudicated must be deposited monthly in the bank account of the applicant, who must give the account number in the initial application.
If the applicant requests a pledge of income, they must specify the property to which this relates, and the enforcement agent must provide this in relation to property deemed sufficient to meet maintenance payments that are either overdue or will become due.
The maintenance creditor may still request the seizure of the maintenance debtor's property. Seizure may involve movable property and immovable property, bank deposits, credit rights, commercial establishments or company shares.
If the seized property is sold to pay off a maintenance debt, the return of the excess to the maintenance debtor should not be ordered unless the payment of maintenance that will become due is ensured to the extent that the judge considers appropriate, unless a security or other suitable guarantee is provided.
The maintenance debtor should only be summoned after the seizure/adjudication/pledge of income has taken place. The maintenance debtor's opposition to the enforcement or seizure does not stay the enforcement.
In the case of a request to amend or terminate maintenance payments while special maintenance enforcement is pending, the request for amendment or termination is joined to the enforcement.

The current version of the Code of Civil Procedure can be found here

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

Recognition

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

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

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

Territorial jurisdiction for the application for enforceability

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

Requirements and documents that must accompany the application for enforceability

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

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

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

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

Applicable Portuguese rules of civil procedure

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

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

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

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

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

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

indicate the work address of their legal representative;

indicate the type of action;

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

formulate the application;

declare the value of the claim;

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

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

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

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

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

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

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

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

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

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

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

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

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

In that case, the court to which the party should apply in Portugal and the applicable rules of procedure are those indicated in the answer to question 15, with the following clarification: this is a case of a common action for a negative declaration. This has consequences with regard to the rules of the burden of proof,

since under Portuguese law, in actions for a negative declaration, it is for the defendant to prove the facts constituting the right claimed (Article 343(1) of the Civil Code).

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

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

Where to find the applicable legislation

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

Warning:

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

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Parental responsibility - child custody and contact rights - 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 (*Instanţa 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 - child custody and contact rights - 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 has 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.

Parental responsibility is the entire set of rights and duties that parents have to create the conditions, to the best of their ability, for ensuring their child's comprehensive development. Parental responsibility is shared between the two parents. (Article 6 of the Family Code [*Družinski zakonik*])

Parents must safeguard their child's interests in all activities pertaining to the child and, when raising their child, respect their person, individuality and dignity. Parents take precedence over all others when it comes to caring for their child and exercising responsibility for working in the child's interests. Parents are deemed to be working in their child's interests if, by taking into account the child's personality, age, level of development and desires in particular, they meet the child's material, emotional and psychosocial needs by acting in a way that demonstrates their care and responsibility towards the child, provide them with adequate guidance and encourage their development. (Article 7 of the Family Code)

Parents have the main and an equal responsibility for the care, upbringing and development of their child. Their primary concern shall be the interests of the child, and the state shall assist them to discharge their parental responsibilities.

Parental responsibility encompasses the rights and duties of parents in connection with a child's life and health, upbringing, protection, care, supervision and education, and their rights and responsibilities in connection with the representation and maintenance of the child and the management of the child's property. A competent authority may restrict one or both parents in their exercise of parental responsibility, or remove parental responsibility from one or both parents, under the conditions set out in the Family Code.

Parents must care for the life and health of their child, and protect, nurture, raise and supervise them. They must provide their child with the conditions for healthy growth and balanced personal development, help them to develop the ability to live and work independently, maintain their child in accordance with the provisions of the Family Code and, to the best of their ability, ensure that they can be schooled and educated in line with their abilities, talents and wishes. (Articles 135, 136 and 137 of the Family Code)

A child has the right to have contact with both parents and both parents have the right to have contact with the child. (Article 141 of the Family Code)

Parents' **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 145 of the Family Code regulates **representation** of a child in the child's relations with the outside world. Unless the law determines otherwise (for example, if they have been placed in foster care), a child is represented by their parents. If it is necessary to deliver something to a minor child or inform them of something, either parent may take delivery or receive that information. If the parents do not live together, this is done by the parent with whom the child lives or the parent named in a court settlement or decision on joint custody under Article 139 of the Family Code. (Article 145 of the Family Code)

A child's property is managed by the child's parents in the child's interests. Parents may use the income from their child's property in particular for the child's maintenance, upbringing and education, as well as for the immediate needs of the family if they themselves have insufficient means. (Articles 147 and 148 of the Family Code)

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

Parents have the main and an equal responsibility for the care, upbringing and development of their child. Their primary concern shall be the interests of the child. (Article 135 of the Family Code)

Parents exercise their parental right by common consent in accordance with the interests of the child. If they are unable to come to an agreement on the matter themselves, a social services centre (*center za socialno delo*) assists them to do so. They may also, if they wish, engage the services of a mediator.

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 matters 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. They may also, if they wish, engage the services of a mediator.

The parent who has custody of the child is the one who decides on matters relating to the child's day-to-day life and on their place of permanent residence, provided this does not have an adverse effect on matters that have a significant bearing on the child's development.

A court decides in cases where the parents are unable to come to an agreement on matters that have a significant bearing on the child's development.

When one of the parents is prevented from exercising parental responsibility, it is exercised by the other parent on their own.

If one of the parents is no longer alive or is unknown, or if they have had their parental responsibility removed, that responsibility is exercised by the other parent. (Article 151 of the Family Code)

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

Parents take precedence over all others concerning the right and duty to protect the rights and interests of their child. If the parents fail to exercise these rights or fulfil these duties, or fail to do so in the interests of the child, the state takes measures to protect the rights and interests of the child (hereinafter: measures to protect the child's interests). Measures to protect the child's interests may be taken until the child gains full capacity to contract, unless the Family Code provides otherwise. (Article 154 of the Family Code)

A court may remove a child from their parents and place them with another person, in foster care or in an institution if the child is endangered and if removal is the only way of protecting their interests to a sufficient extent, and if the circumstances of the case indicate that the parents will, after a certain time, be able to reassume responsibility for the child's care and upbringing. (Article 174 of the Family Code)

A court may also decide to place a child in an institution if they are suffering from psychosocial problems in the form of behavioural, emotional, learning or other difficulties in their development, if the child or other children in the family are endangered, and it is possible to protect the child's interests or those of the other children in the family only by placing the child in an institution. (Article 175 of the Family Code)

A child may be cared for by an adoptive parent. A child may only be given for adoption if the parents consented to adoption at a social services centre or before a court after the birth of the child. For a child who has not reached the age of eight weeks, consent must be reconfirmed after the child reaches the age of eight weeks. If it is not, it has no legal effect. Consent is not required from a parent whose parental responsibility has been withdrawn or who is

permanently unable to express their wishes. Children whose parents are unknown or whose residence has been unknown for a year may also be given for adoption. (Article 218 of the Family Code) Adoption terminates a child's rights and duties vis-à-vis their parents and other relatives, and vice versa. If the spouse or extra-marital partner of one of the child's parents adopts the child, that child's rights and duties vis-à-vis that parent and their relatives are not terminated, and vice versa. (Article 220 of the Family Code)

The granting of parental responsibility to a relative is a new institution introduced by the Family Code in relation to caring for a child. This institution is only available in relation to a child who has no living parent. If this is in the child's interests, the court may grant parental responsibility to a relative who is willing to assume responsibility for the child and meets the conditions for adoption set out in the Family Code. The Family Code sets out who is to be regarded as a relative in such cases: a person related to the child by blood in a direct line up to twice removed or in a collateral line up to four times removed. The person to whom parental responsibility has been granted acquires the same rights and duties as the child's parents would have had, and becomes the child's legal representative. The person to whom parental responsibility has been granted must maintain the child. If parental responsibility is to be granted to two relatives who are married to or in an extra-marital relationship with each other, or to a relative and their spouse or extra-marital partner who meet the conditions, that responsibility is granted to both partners and may not be granted merely to one. (Article 231 of the Family Code)

The court appoints a guardian for a child who has no parents or a child for whom the parents do not provide care, and places the child in the care of that guardian. (Article 257 of the Family Code) A social services centre or court appoints a special ('collision') guardian (*kolizijski skrbnik*) to a child when the child' s parents exercise parental responsibility but their interests are in conflict, or when, in the case of guardianship, the interests of the child and their guardian are in conflict. (Article 269 of the Family Code)

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 joint 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. They may also, if they wish, engage the services of a mediator. If the parents come to an agreement on custody, they may propose that a court settlement be signed. If the court establishes that the agreement is not in the children's interests, it rejects the proposal. If the parents fail to reach agreement on custody, the matter is decided by the court. The court may also, of its own accord and in accordance with the provisions of the Family Code, decide on other measures to safeguard the interests of the child. When reaching a decision on custody, the court always also decides on the maintenance of the children the parents have together and on contact with the respective parents, in accordance with the Family Code. The court issues a new decision on custody when so required by a change in circumstances or by the child's interests. (Article 138 of the Family Code)

When a court annuls a marriage, it also rules on the custody and maintenance of any children the parents have together and on contact with the respective parents, in accordance with this act. Prior to this, it must establish how best to ensure the child's or children's interests. (Article 98 of the Family Code)

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 matters 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. They may also, if they wish, engage the services of a mediator. The parent who has custody of the child is the one who decides on matters relating to the child's day-to-day life and on their place of permanent residence, provided this does not have an adverse effect on matters that have a significant bearing on the child's development. (Article 151 of the Family Code)

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. They may agree to retain joint 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. They may also, if they wish, engage the services of a mediator. If the parents come to an agreement on custody, they may propose that a court settlement be signed. If the court establishes that the agreement is not in the children's interests, it rejects the proposal. If the parents fail to reach agreement on custody, the matter is decided by the court. (Article 138 of the Family Code) A court settlement or court decision on joint custody must contain a decision on the child's place of permanent residence, which of the parents is to take delivery of any correspondence for the child and on the maintenance of the child. (Article 139 of the Family Code)

Parents who do not live together or who intend to separate, and parents who live together, come to an 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. They may also, if they wish, engage the services of a mediator. If the parents fail to reach an agreement on the maintenance of the children they have together, the matter is decided by the court. (Article 140 of the Family Code)

A child has the right to have contact with both parents, and both parents have the right to have contact with the child. Contact must ensure that the child's interests are served. The parent with whom the child lives and to whom custody of the child has been entrusted, or a third person with whom the child lives, must refrain from all conduct that hinders or prevents the child from maintaining contact, and must endeavour to encourage the child to adopt an appropriate attitude towards contact with the other parent or both parents. The parent who has contact with the child must refrain from all conduct that hinders contact with and the care and upbringing of the child. Parents who do not live together or who intend to separate shall come to an agreement on contact. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. They may also, if they wish, engage the services of a mediator. If the parents come to an agreement on custody, they may propose that a court settlement be signed. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If the parents fail to reach agreement on contact, the matter is decided by the court. (Article 141 of the Family Code)

A child also has the right to contact with other persons who are family members 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 referred to above. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. They may also, if they wish, engage the services of a mediator. The extent to and manner in which contact is maintained must be in the child's interest. If agreement is reached on contact, the parents, the child and the persons referred to above may also propose that a court settlement be signed. If the court establishes that the agreement is not in the children's interests, it rejects the proposal. If the parents, the child and the persons referred to in the first paragraph of this article cannot reach agreement, contact is decided by the court. (Article 142 of the Family Code)

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?

Before proposing that the court decide on the custody and maintenance of the child, on the child's contact with them or with other persons, or on matters relating to the exercise of parental responsibility that have a significant bearing on the child's development, the parents take part in a prior counselling

process at a social services centre, unless one of the parents is mentally incompetent, or if one of the spouses lives abroad or their whereabouts or residence are unknown.
If contact with another person is at issue, that other person, and the child (if the child is applying for contact), must attend counselling prior to the proposal being filed.
The purpose of prior counselling is to draw the parents' attention, or that of another person, to the requirement to safeguard the interests of the child when arranging relations with the child, the positive impact that an amicable arrangement of relations has on the child, and the purpose of mediation.
Counselling must also take place before the filing of a proposal for a new decision to be issued on any of the matters referred to in the first paragraph of this article.
Parents or the persons referred to above attend prior counselling without their representatives. With the consent of the parents or the persons referred to above, a social services centre may follow prior counselling with a mediation procedure. These persons may also take part in a mediation process provided by other providers. (Article 203 of the Family Code)
Mediation may take place before, during or after court proceedings, and may include assistance in the settlement of personal and property relationships.
Mediation is primarily carried out before court proceedings begin with a view to shaping a proposal for the termination of a marriage by agreement or a proposal for a court settlement on child custody, maintenance and contact with parents or other persons, or matters of parental responsibility that have a significant bearing on the child's development. Mediation during court proceedings is conducted in accordance with the law governing alternative dispute resolution. Even if the parties to or participants in proceedings have agreed to seek mediation, the court may reject the application and may not stay the court proceedings if, in proceedings involving a child, it judges that a stay would not be in the child's interests. (Article 205 of the Family Code)

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

The court may decide that one parent is to have custody of all the children, the children are to be split between the parents or that both parents are to have joint custody of the children. The court may also, of its own accord and in accordance with the provisions of the Family Code, decide on other measures to safeguard the interests of the child. When reaching a decision on custody, the court always also decides on the maintenance of the children the parents have together and on contact with the respective parents, in accordance with the Family Code. The court issues a new decision on custody when so required by a change in circumstances or by the child's interests. (Articles 138 and 139 of the Family Code)
The court also rules on maintenance of the child and on contact. (Articles 105a, 106 and 106a of the Marriage and Family Relations Act [*Zakon o zakonski zvezi in družinskih razmerjih*])
In reaching a decision on contact, the court's primary concern is the child's interests. If the parent with whom the child lives prevents contact between the child and the other parent and contact cannot be made to occur even with the specialist assistance of a social services centre, the court may, at the proposal of the other parent, decide to remove custody from the parent who is preventing contact and entrust the child to the other parent, if the court believes that the other parent will enable contact and if this is the only way in which the child's interests can be safeguarded. The court issues a new decision on parental contact when so required by a change in circumstances and the child's interests. (Article 141 of the Family Code) The court may remove or restrict the right to contact as part of a measure to safeguard the child's interests. (Article 173 of the Family Code)
When deciding on the custody and maintenance of a child, contact, the exercise of parental responsibility and the granting of parental responsibility to a relative, the court also considers the child's opinion as 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. In relation to the child's interests, the court takes into account the opinion of the social services centre, whenever such an opinion is acquired in accordance with the act governing the non-litigious civil procedure. (Article 143 of the Family Code)
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. The maintenance must cover the child's living expenses, in particular the costs of accommodation, food, clothing, footwear, care and protection, education, schooling, recreation, amusement and other specific needs. (Article 190 of the Family Code)

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?

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 matters 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. They may also, if they wish, engage the services of a mediator. The parent who has custody of the child is the one who decides on matters relating to the child's day-to-day life and on their place of permanent residence, provided this does not have an adverse effect on matters that have a significant bearing on the child's development. A court decides in cases where the parents are unable to come to an agreement on matters that have a significant bearing on the child's development. (Article 151 of the Family Code)

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 10 of the Non-Litigious Civil Procedure Act [*Zakon o nepravdnem postopku*])
General **territorial jurisdiction** is held by the court covering the area in which the person against whom the proposal has been filed has permanent residence or their place of establishment. When a court commences a procedure of its own accord, general territorial jurisdiction is held by the court covering the area in which the person in relation to whom the procedure is being conducted has permanent residence. If only one participant is taking part in the procedure, general territorial jurisdiction is held by the court covering the area in which the participant has permanent residence or their place of establishment. If the participant does not have permanent residence in Slovenia, general territorial jurisdiction is determined in line with their place of temporary residence. If in addition to permanent residence they also have temporary residence elsewhere 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 they have temporary residence also has general territorial jurisdiction. If a court in Slovenia is competent to decide and it is not possible to establish which court in Slovenia has general territorial jurisdiction, the court with general territorial jurisdiction is determined by the Slovenian Supreme Court (*Vrhovno sodišče Republike Slovenije*). (Article 11 of the Non-Litigious 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 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. (Article 50 of the Civil Procedure Act [*Zakon o pravdnem postopku*])
Unless the law provides otherwise, the provisions of the Civil Procedure Act are applied by analogy to non-litigious civil proceedings.

A proposal in non-litigious civil proceedings must contain a description of the relationship or situation on which the court is to decide, the facts relevant to the decision and the evidence for these facts, the other details that every application is obliged to contain, and the participants' identifying details, as laid down for actions by the Civil Procedure Act. (Article 23 of the Non-Litigious 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, the other information that every action is obliged to contain, and the parties' identifying details, as laid down by the Civil Procedure Act. (Article 180 of the Civil Procedure Act).
Unless the law provides otherwise, court fees must be paid when a proposal to commence a procedure is filed. (Article 39 of the Non-Litigious Civil Procedure Act)
Under the Civil Procedure 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 is deemed to be their handwritten signature or their electronic signature (which is equivalent to a handwritten signature). If an applicant does not know how to write or is unable to provide a signature, they furnish the application with a fingerprint instead of a signature. If the court doubts the authenticity of an application, they may issue a decision ordering that an application be furnished with a certified signature. No appeal may be made against this decision. 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)
An application is a written application in physical or electronic form. 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 signed using an electronic signature, which is equivalent to a handwritten signature (application in electronic form). An application in physical form is submitted by post, using communication technology, delivered directly to the body concerned or delivered by a person engaged professionally in submitting applications. An application in electronic form is submitted to the judicial information system. The judicial information system automatically confirms to the applicant that the application has been received. An application may also be filed on the prescribed or otherwise prepared form. Without prejudice to the provisions of other regulations, forms submitted in electronic form must be identical in content to the forms prescribed for applications submitted in physical form. (Article 105b of the Civil Procedure Act)
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. Applications that have to be delivered to the opposing party must be submitted to the court in as many copies as required by the court and the opposing party, and in a form that allows 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. If the opposing part comprises more than one person with a joint legal representative or proxy, the applications and enclosures are delivered for all persons together as a single copy. (Article 106 of the Non-Litigious Civil Procedure Act)

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

The court decides on matters of personal status and family relationships in non-litigious civil proceedings. (Chapter X of the Non-Litigious Civil Procedure Act) Judicial matters under the Family Code that are conducted in relation to relations between parents and children, adoption, the transfer of parental responsibility to relatives, foster care and guardianship are resolved as a matter of priority. Where the Family Code defines a court as having competence to decide on matters under the Code, it is district courts that have subject-matter jurisdiction to decide in the first instance, unless another law provides otherwise. (Article 14 of the Family Code)
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)
The Family Code provides that the court shall issue a temporary injunction in procedures to safeguard a child's interests if it is demonstrated as being probable that the child's interests are threatened. (Article 161 of the Family Code)
Under the Non-Litigious Civil Procedure Act, temporary injunctions to safeguard a child's interests under the conditions laid down in the Family Code are issued in accordance with the procedure laid down in the law governing the securing of claims.

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*])
Under this act, legal aid may be granted 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 the 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 (e.g. at the start of an extra-judicial or judicial procedure, and at any stage of proceedings already under way). In deciding on requests for the allocation of legal aid, the applicant's financial status is determined, along with other conditions defined in this act (ordinary legal aid). (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 36 of the Non-Litigious 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 (*Zakon o izvršbi in zavarovanju*). 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 general 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 general territorial jurisdiction over direct enforcement (Article 238e). (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.

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) sl

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 - child custody and contact rights - 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 amending certain acts) and the case-law, parental responsibility (i.e. parental rights and obligations and custody) comprises primarily care of the child, maintenance obligations, representation of the child and administration of the child's property.

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

The two parents jointly share parental rights and obligations towards a child, irrespective of whether the child was born in or out of wedlock or whether the parents live together or not (whether married, separated or divorced).

Parents may have their parental rights and obligations removed (or restricted) by a court in serious circumstances, as provided for in Section 38(4) of the Family Act.

A court may also grant parental rights and obligations to a parent who is a minor but over the age of 16 as regards custody of a minor child, subject to the conditions set out in Section 29 of the Family Act.

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

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

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

The court has to decide on the allocation and exercise of parental rights and obligations (even when both parents continue to exercise parental rights and obligations jointly) or it can approve an agreement between them.

Under Section 36(1) of the Family Act '[t]he parents of a minor child living separately may at any time agree an arrangement for the exercise of their parental rights and obligations. If the parents do not reach an agreement, the court may determine how their rights and obligations are to be exercised, even if no

application to this effect has been made; in particular the court has to decide which of the parents is to be granted physical custody of the minor child. The provisions of Sections 24, 25 and 26 shall apply *mutatis mutandis*'.

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

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

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

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

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

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

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

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

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

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

See all previous responses, in particular the response to question 8.

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

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

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

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

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

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

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

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

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

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

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

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

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

Court decisions on parental rights and obligations issued by a court in another Member State are recognised and enforced without special proceedings in the Slovak Republic, in accordance with Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Article 21(1)), i.e. without the need to have the decision declared enforceable.

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

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

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

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

Jurisdiction for applications for recognition (and also for applications for nonrecognition) of a decision relating to parental rights and obligations lies with the district court in the place where the child resides, or Bratislava I District Court (*Okresný súd Bratislava I*) if the child does not reside in the Slovak Republic.
Jurisdiction for applications for enforcement (and also for applications for refusal of enforcement) of a decision relating to parental rights and obligations lies with the district court in the place where the minor resides, or the district court in whose district the minor is staying if the court having territorial jurisdiction is not known or unable to intervene in time.

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

Decisions in proceedings on parental rights and obligations are taken by a Slovak court only if the child is habitually resident in the Slovak Republic. If the child is not living in the Slovak Republic but has his or her habitual residence here, or if the parents do not live in the Slovak Republic or are citizens of different countries, the provisions of Slovak law are applied in accordance with the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (ref. No 344/2002) (Chapter III of the Convention).
Act No 97/1963 on international private and procedural law states that relationships between parents and children, including the commencement or extinction of parental rights and obligations are governed by the law of the country of the child's habitual residence. In exceptional cases, the court may take into account the law of another country with which the case has a significant link and if this is necessary to protect the child or his or her property. Parental rights and obligations originating in the country of the child's original habitual residence remain valid even if the child's habitual residence changes. If either of the parents lacked the parental rights and obligations that a parent has under Slovak law, they acquire those rights and obligations as soon as the Slovak Republic becomes the child's place of habitual residence. The exercise of parental responsibility is governed by the law of the State of the child's habitual residence.
The provisions of the Act on international private and procedural law apply only in the absence of an international agreement or if an existing international agreement does not contain conflict-of-law criteria for determining the applicable law.
Besides the 1996 Hague Convention, the Slovak Republic is bound by a number of bilateral agreements containing provisions on the applicable law, and these provisions take precedence over the provisions of the Act on international private and procedural law in proceedings on parental rights and obligations.
The agreements in question are:
Bulgaria: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Bulgaria on legal assistance and regulation of legal relationships in civil, family and criminal matters (Sofia, 25 November 1976, Decree No 3/1978)
Croatia, Slovenia: Agreement between the Czechoslovak Socialist Republic and the Socialist Federal Republic of Yugoslavia on regulation of legal relationships in civil, family and criminal matters (Belgrade, 20 January 1964, Decree No 207/1964)
Hungary: Treaty between the Czechoslovak Socialist Republic and the People's Republic of Hungary on Legal Aid and Settlement of Legal Relations in Civil, Family and Criminal Matters (Bratislava, 28 March 1989, ref. No 63/1990)
Poland: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Poland on legal assistance and regulation of legal relationships in civil, family, labour and criminal matters (Warsaw, 21 December 1987, Decree No 42/1989)
Romania: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Romania on legal assistance and regulation of legal relationships in civil, family and criminal matters (Prague, 25 November 1958, Decree No 31/1959)

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Parental responsibility - child custody and contact rights - 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 well-being 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 of the child 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 f 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 must be drawn up in writing, and the parents may ask the local social welfare authority to validate it. 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 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. A validated agreement is regarded as equivalent to a 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 whom 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 religious denomination or place of residence, a foreign passport, 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 which 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. More information on legal aid in Finland is available here: https://oikeus.fi/oikeusapu/en/index.html..

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 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. This Regulation does not apply to 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, in Sweden, decisions on parental responsibility 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 - child custody and contact rights - 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 they are 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 their age, development and other circumstances and must monitor whether 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, it is the child's parents or one of them who is the legal guardian of the child. If the child's parents are married to each other at the time of birth, they automatically have joint custody. 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 parent who does not have custody 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 their 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 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. The child's parents must have participated in an information interview with the Social Welfare Board before bringing any court case concerning custody, residence and rights of access (see also Section 6 below).

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 Welfare Board 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 be signed by both parents. Furthermore, it must be approved by the Social Welfare Board 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 Welfare Board, 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 it. If the parents can agree in matters relating to custody, residence and contact, they may sign an agreement which, once approved by the Social Welfare Board, will have the same effect as a court judgment.

As a general rule, as from 1 March 2022, the child's parents must first have participated in information sessions with the municipality before it is possible to bring proceedings before a court. This means that the parents must first turn to the municipality to try to resolve the dispute with the aid of the municipal Social Welfare Board (often a department known as the family law department). It is the Social Welfare Board of the municipality in which the child is registered that is responsible for ensuring that these sessions can be held. At the information sessions, the parents receive relevant information aimed at finding the best solution for the child in matters of custody, residence and access. The parents are, as a starting point, offered mediation and, as needed, are offered or guided towards support and assistance in other forms. After the session, a report is issued which is used if the parents have still not agreed and choose to bring the matter before a court. If, after the information session, the parents go to court, the court can refer them to the Social Welfare Board for mediation if such mediation has not previously taken place and the court considers there to be scope for reaching amicable 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 amicable 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 may decide on (sole or joint) custody, the residence of the child (which of the parents the child should live with or whether the child should live alternately with both parents), and access rights (the child's right of access to the parent they do not live with).

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?

Parents who have sole custody of their child have 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 seek 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 settled 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 is domiciled. 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.

Applications for summons must be made in writing and 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 adduced and what each piece of evidence is intended to prove, and information about the circumstances through which the court has jurisdiction. The written evidence adduced 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, relate to where the child is to live while the dispute is in progress and apply until the matter has been settled 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 at the district court in the place where the child is domiciled. If there is no competent court, the matter of enforcement is considered in Stockholm District Court.

The district court can decide on various measures. In the first place, 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 adopted only if it is not possible to resolve the situation in any other way and in order to prevent the child from 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 the case of decisions to which the Regulation applies, the starting point is that the decision is recognised and, where appropriate, enforceable without any special procedure.

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 is domiciled. Under the 1996 Hague Convention, applications for enforcement are made to the district court.

For decisions that are or have been declared enforceable in Sweden, an application for enforcement may be made (see Section 15).

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

In certain cases the Brussels II Regulation applies. For decisions to which the Regulation applies, the starting point is that the decision is recognised and, where appropriate, enforceable without any special procedure. There is, however, the possibility of applying in Sweden for a decision adopted abroad not to be recognised or enforced in Sweden. There is also the possibility of applying for a declaration that there are no grounds for refusing recognition of a decision adopted abroad. The application is made to the district court.

A district court decision on a question of refusal of recognition or enforcement under the Brussels II Regulation may be appealed to the court of appeal, the decision of which may in turn be appealed to the Supreme Court.

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 - child custody and contact rights - 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 - child custody and contact rights - 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 - child custody and contact rights - 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?

i. 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.

ii. 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.

iii. 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

iv. 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.

v. 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 - child custody and contact rights - 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 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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