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# Parental responsibility - child custody and contact rights



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European Judicial Network  
(in civil and commercial matters)

## 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 Family Act (*Obiteljski zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia) Nos 103/15, 98/19, 47/20, 49/23 and 156/23) regulates parental care, which means the responsibilities, duties and rights of parents, in order to protect and promote the child’s personal and property rights, as well as the child’s best interests. Parents are required to discuss and agree the individual aspects of parental care with the child according to their age and maturity. Parental care fundamentally includes: the right and duty to protect the child’s personal rights to health, development, care and protection; upbringing and education; maintaining of personal contacts; selection of the place of residence; as well as the right and duty to represent the child’s personal and property rights and interests (Articles 91 and 92 of the Family Act).

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

Parents exercise parental care, which is the right, obligation and duty of the parents, in respect of their minor children.

Both parents have the right and duty to exercise parental care equally, jointly, and by agreement. When exercising shared parental care, parents must endeavour to resolve any issues by agreement (Articles 104 and 106 of the Family Act).

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, which must be approved by a court of law; where no agreement is reached by the parents, the court will rule on the issue by decision (Articles 107 and 461-467 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?

No parent is allowed to waive their right to parental care (Article 91(2) of the Family Act).

Both parents may agree to partially or fully entrust temporary parental care for a child to a person fulfilling the conditions laid down for guardians. Where the parents are placing the child in the care of another person for a period longer than 30 days, they are required to have a statement to that effect certified by a notary public (Article 102 of the Family Act).

Where due to sickness, inadequate housing conditions or other hardships the parents are temporarily unable to care for the child, the child may be temporarily placed in a social welfare institution, a foster family or in the care of another natural or legal person engaged in social welfare activities, in accordance with regulations governing social welfare.

Parents found to be inadequately caring for their child will be subject to a measure designed to protect the rights and best interests of the child, which may be imposed by the Croatian Institute for Social Work (*Hrvatski zavod za socijalni rad*) or a court having jurisdiction over the matter (Articles 127, 134 and 149 of the Family Act). The parents may, by decision of the court, be deprived of their right to live with the child and day-to-day care of the child may be entrusted to another person, a foster family or social welfare institution based on a family assessment, carried out by the Croatian Institute for Social Work, that the child's life, health and development is endangered by staying in the family (Articles 155 and 433 of the Family Act). In certain circumstances laid down by the law, the court may order a suspension of parental care (Articles 115, 173 and 433 of the Family Act). A measure to terminate the parents' right to parental care may be used as a last resort (Articles 170 and 433 of the Family Act).

Where by decision of the court the parents no longer care for the child, day-to-day care is entrusted to another person, a foster family or social welfare institution.

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

Where a marriage/partnership of the parents has irretrievably broken down, parental care is regulated by decision to be issued by a court of law, which may be based on an agreement reached by the parents in the form of a Shared Parental Care Plan (Articles 104, 106, 107 and 461-467 of the Family Act).

Before a petition for a divorce is lodged or other legal proceedings relating to parental care are initiated, one or both of the parents must file a request for mandatory counselling to the Regional Office of the Croatian Institute for Social Work with territorial competence 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 (Articles 321-323 of the Family Act).

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

To qualify as an enforceable instrument, an agreement concluded by the parents or a Shared Parental Care Plan must be approved by decision of a court (Articles 106, 107, 420 and 461-467 of the Family Act).

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

If the parents fail to agree on a Shared Parental Care Plan, the Croatian Institute for Social Work will refer them to the family mediation procedure, which is conducted by the Family Centre (*Obiteljski centar*) but may also be conducted by family mediators outside the social welfare system (Articles 331 and 334 of the Family Act).

Family mediation is not carried out where there are claims of domestic violence.

Where an agreement is reached by the parents, it must always be confirmed by decision of a court, as explained under question No 5.

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

## to the child?

The court may decide on any aspect of parental care which is the subject matter of a dispute, i.e. which parent the child will reside with, maintaining contact with the other parent, and the amount of maintenance as an obligation of the parent with whom the child does not reside, as well as any other relevant issues related to the child's personal and property rights as decided by the court (Articles 408 and 433 of the Family Act).

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

The court may issue a decision entrusting parental care to one of the parents on their own in full, in part, or to the extent required to decide on a particular important issue concerning the child, which, in turn, restricts the other parent in exercising parental care in full, or in certain aspects of parental care (Article 105 of the Family Act).

The parent whose right to exercising parental care is restricted is entitled to maintain contact with the child, unless this is prohibited by decision of the court, make day-to-day decisions relating to the child while the child is in their care, and to receive information on important circumstances relating to the child's personal rights (Article 112 in conjunction with Articles 110 and 111 of the Family Act).

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

Parents always have joint custody, except where the court issues a decision as explained in the response to question No 8.

Important decisions for the child relate to representation of the child in matters regarding their essential personal rights and representation in matters regarding the child's valuable assets and property rights (Articles 99 and 104 of the Family Act). Where the parents having joint custody fail to agree on important decisions for the child, the court will decide, in response to a proposal made by the child or either parent, which parent will represent the child in the given matter (Articles 100, 101, 108, 109 and 433 of the Family Act).

## 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 their 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 Regional Office of the Croatian Institute for Social Work with territorial competence 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). Following an application for mandatory counselling, the Croatian Institute for Social Work is obligated to schedule a meeting and summon the parties. By way of derogation, if the Croatian Institute for Social Work is aware of domestic violence or if it considers that in the given circumstances a joint meeting would not be useful or if one or both parties so request for justifiable reasons, separate interviews with the parties are scheduled and carried out.

Once that process is over, the Regional Office of the Croatian Institute for Social Work is required to 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*) (NN Nos 143/13 and 98/19).

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

Yes. Parties may lodge an appeal against a first-instance ruling within 15 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 non-contentious proceedings regulated by the Family Act. Appeals must be lodged within 15 days of the date of service 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?

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?

Under Regulation 2019/1111, a court decision issued in a Member State is recognised in Croatia without any special procedure being required.

A decision in matters of parental responsibility given in a Member State which is enforceable in that Member State is also enforceable in Croatia without any declaration of enforceability being required.

## 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?

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 (EU) 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), 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?

In accordance with Article 44 of the International Private Law Act (*Zakon o međunarodnom privatnom pravu*) (NN Nos 101/17 and 67/23), relations between parents and children are governed by the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (NN – International Treaties No 5/09) within its scope of application. The law applicable to relations between parents and children outside the scope of the Convention referred to in Article 44(1) (where not determined by another act or international treaty in force in Croatia) is determined in accordance with the provisions of the Convention referred to in Article 44(1) governing such relations.

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:

Family Act (NN Nos 103/15, 98/19, 47/20, 49/23 and 156/23)

Enforcement Act (NN Nos 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22 and 06/24)

International Private Law Act (NN Nos 101/17 and 67/23)

Free Legal Aid Act (NN Nos 143/13 and 98/19)

Act implementing Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (*Zakon o provedbi Uredbe Vijeća (EZ) br. 2201/2003 u području nadležnosti, priznanja i izvršenja sudskih odluka u bračnim sporovima i u stvarima povezanim s roditeljskom skrbi*) (NN No 127/13)

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.

Act implementing Council Regulation (EU) 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 (*Zakon o provedbi Uredbe Vijeća (EU) 2019/1111 od 25. lipnja 2019. o nadležnosti, priznavanju i izvršenju odluka u bračnim sporovima i u stvarima povezanim s roditeljskom odgovornošću te o međunarodnoj otmici djece*) (NN No 83/22)

Council Regulation (EU) 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).

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■ Last update: 17/12/2024

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