


[Home](#) > ... > [Family Matters & Inheritance](#) > [Parental Responsibility - Child Custody and Contact Rights](#) > [Bulgaria](#)

Parental responsibility - child custody and contact rights

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 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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