

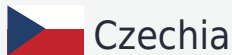
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Parental responsibility - child custody and contact rights

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

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 contact.

If circumstances change, a court will change the decision relating to the performance of obligations and rights arising from parental responsibility even without a petition.

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

In the case of divorce of the parents, the agreement between the parents on the method of performance of parental responsibility must regulate how each of the parents will care for the child after the divorce. In this agreement the parents may also regulate contact between 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:

1. 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)
2. care for the child and the regulation of contact with the child,
3. alternative forms of care for the child (e.g. custodianship, custody of another person, foster care, institutional care),
4. maintenance and support obligations,
5. representation and management of the child's property, consent to legal actions by the child,
6. 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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