


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

Parental responsibility - child custody and contact rights

 Hungary

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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?

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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