

Parental responsibility - Slovenia

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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?

Parental responsibility is a legal relationship governed by **family law**. Relations begin with the birth of a child or the determination of paternity and maternity. In the Slovenian legal system, children born to unmarried parents have the same rights and duties as those born to married parents. Slovenian legislation had adopted a 'full adoption' system, which means that adopted children are treated the same as biological children.

The legal basis is provided by **Article 54 of the Slovenian Constitution (*Ustava Republike Slovenije*)**, according to which parents have the right and duty to maintain, educate and raise their children. This right and duty may be revoked or restricted only for reasons set out in law in order to protect the child's interests. Children born to unmarried parents have the same rights as those born to married parents.

Parents have the right and duty to ensure, by means of direct care and the work and activities they carry out, the successful physical and mental development of their child. Parents have the right and duty to safeguard the life, personal development, rights and interests of a child who has not reached the age of majority in order to ensure that they enjoy healthy growth and balanced personal development, and are subsequently able to live and work independently. The **parental right** comprises these rights and duties. (Article 4 of the Marriage and Family Relations Act [*Zakon o zakonski zvezi in družinskih razmerjih*])

Parents must safeguard their child's interests in all activities and procedures pertaining to the child. Parents are deemed to be working in their child's interests if they meet the child's material, emotional and psychosocial needs by means of conduct that meets acceptable standards and that is required to ensure their care and responsibility for the child, with due regard to the child's personality and wishes. (Article 5a of the Marriage and Family Relations Act)

Parents must provide their child with the conditions for healthy growth and balanced personal development, and help them to develop the ability to live and work independently. They must maintain and raise their child, and safeguard the child's health and life. They are responsible for ensuring, to the best of their ability, that their child is educated and professionally trained in line with the child's abilities, inclinations and wishes. A child has the right to have contact with both parents and both parents have the right to have contact with the child. (Articles 102, 103 and 106 of the Marriage and Family Relations Act)

Parent's **legal liability** for their child is laid down in Article 142 of the Code of Obligations (*Obligacijski zakonik*). Parents are liable for damage caused to a third party by a child who is under seven years of age, regardless of whether they are responsible for the damage caused. Parents are liable for damage caused to a third party by a minor child who is over seven years of age, unless they can prove that they were not responsible for the damage caused.

Article 107 of the Marriage and Family Relations Act regulates **representation** of a child in the child's relations with the outside world. Minor children are represented by their parents. If something must be formally served on or delivered to a minor child or inform them of something, either parent may take delivery. If the parents do not live together, this is done by the parent with whom the child lives. If both parents are engaged in caring for and raising the child, they must agree on the child's place of permanent residence and which of them is to take delivery of any correspondence for the child.

A child's **assets is managed** by the child's parents and in the child's interests until the child reaches the age of majority. (Article 109 of the Marriage and Family Relations Act)

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

The parental right is exercised by both the father and the mother. (Article 4 of the Marriage and Family Relations Act)

Parents exercise their parental right by common consent in accordance with the interests of the child. When the parents do not live together and do not have joint custody of the child, they both decide, by common consent and in accordance with the interests of the child, on issues that have a significant bearing on the child's development. The parent who has custody of the child is the one who decides on issues relating to the child's day-to-day life. When one of the parents is prevented from exercising their parental right, it is exercised by the other parent on their own. (Article 113 of the Marriage and Family Relations Act)

If one of the parents is no longer alive or is unknown, or if they have had their parental right or legal capacity removed, the parental right shall be exercised by the other parent. (Article 115 of the Marriage and Family Relations Act)

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

A child may be cared for by other persons or by an institution. A social services centre (*Center za socialno delo*) may remove a child from their parents and place them in the custody of **another person** or **institution** if the parents have neglected to raise and provide care for their child or if this is in the child's interests for other important reasons. (Article 120 of the Marriage and Family Relations Act)

A social services centre can place a child in **foster care** if they have no family of their own, or who, for various reasons, is unable to live with their parents, or a child whose physical and mental development is threatened by the environment in which they live. (Article 157 of the Marriage and Family Relations Act) Foster care is governed in more detail by the Foster Care Act (*Zakon o izvajanju rejniške dejavnosti*).

An **adoptive parent** may care for a child. A child may only be adopted if their parents are unknown, if their parents' residence has been unknown for one year, if their parents have agreed, before a competent authority, to give their child for adoption, or if their parents are deceased. (Article 141 of the Marriage and Family Relations Act)

A minor child who has no parents or for whom the parents do not provide care shall be placed in the care of a **guardian** by a social services centre. The guardian of a minor child is responsible for caring for the child as if they were a parent. (Articles 201 and 202 of the Marriage and Family Relations Act)

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

Parents who do not live together or who intend to separate must come to an agreement on the custody of the children they have together, and do so in the interests of those children. They may agree to retain equal custody of their children, to give custody to one of the parents or to split the children between them. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. If the parents are unable to come to an agreement on the custody of their children even with the assistance of a social services centre, a court may agree, at the request of one or both parents, to custody being given to one of the parents or to the children being split between the parents. The court may also, of its own accord, rule that custody of all or some of the children is to be given to a third person. Before the court gives its ruling, it is obliged to seek the opinion of a social services centre regarding the child's interests. The court also considers the child's opinion if it is expressed by the child themselves or by a person whom the child trusts and who has been chosen by the child themselves, provided the child is capable of understanding the significance and consequences of the opinion. (Article 105 of the Marriage and Family Relations Act)

When a court annuls a marriage, it also rules on the custody and maintenance of any children the spouses have together and on their contact with the respective parents. (Article 78 of the Marriage and Family Relations Act)

When the parents do not live together and do not have joint custody of the child, they both decide, by common consent and in accordance with the interests of the child, on issues that have a significant bearing on the child's development. The parent who has custody of the child is the one who decides on issues relating to the child's day-to-day life. (Article 113 of the Marriage and Family Relations 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?

Parents who do not live together or who intend to separate must come to an agreement on the custody of the children they have together, and do so in the interests of those children. If the parents reach agreement on the custody of the children, they may propose that the court issue a decision thereon in a non-litigious procedure. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If the parents are unable to reach agreement on the matter themselves, a social services centre assists them to do so. If the parents are unable to reach agreement even with the assistance of the social services centre, the court produces a ruling at the request of one or both parents. (Article 105 of the Marriage and Family Relations Act)

Parents who do not live together or who intend to separate reach agreement on the maintenance of the children they have together. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. If the parents are unable to reach agreement on the maintenance of the children they have together even with the assistance of the social services centre, the court issues a decision at the request of one or both parents. (Article 105a of the Marriage and Family Relations Act)

A child has the right to have contact with both parents and both parents have the right to have contact with the child. Such contact shall ensure primarily that the child's interests are met. The parent with whom the child lives and who has custody of the child, or a third person with whom the child lives, must refrain from all conduct that hinders or prevents the child from maintaining contact with the other parent or their parents, and must endeavour to encourage the child to adopt an appropriate attitude towards contact with the other parent or their parents. The parent who has contact with the child must refrain from all conduct that hinders the care and upbringing of the child. If parents reach agreement on contact, they may propose that the court issue a decision thereon in a non-litigious procedure. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If the parents are unable to come to an agreement on contact even with the assistance of the social services centre, the court issues a decision at the request of one or both parents. (Article 106a of the Marriage and Family Relations Act)

A child also has the right to contact with other persons who are family relations and who have a close personal bond with the child, unless this is contrary to the child's interests. Such persons are deemed to be, in particular, a child's grandparents, brothers and sisters, half-brothers and half-sisters, former foster parents, and a former or present spouse or extra-marital partner of one or the other parent. Agreement on contact shall be reached by the child's parents, the child (if they are capable of understanding the importance of the agreement) and the persons with whom the child has a personal bond. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. The extent to and manner in which contact is maintained must be in the child's interest. If the child's parents, the child and the persons with whom the child has a personal bond come to an agreement on contact, they may propose that the court issue a decision thereon in a non-litigious procedure. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If they are unable to come to an agreement even with the assistance of the social services centre, the court decides on contact. (Article 106a of the Marriage and Family Relations 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 are unable to come to an agreement themselves, a social services centre assists them to do so. If they are unable to come to an agreement even with the assistance of the social services centre, the court decides on the matter.

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

The court may decide that one of the parents is to have custody of all the children or that the children are to be split between the parents. The court may also, of its own accord, rule that custody of all or some of the children is to be given to a third person. (Article 105 of the Marriage and Family Relations Act)

The court also rules on maintenance of the child and on contact. (Articles 105a, 106 and 106a of the Marriage and Family Relations Act)

In reaching a decision on contact, the court is mainly guided by the child's interests. The proposal or application for a decision on contact must be accompanied by proof from a competent social services centre stating that the parents attempted to come to an agreement on contact with its assistance. The court may remove or restrict the right to contact insofar as this is necessary to safeguard the child's interests. Contact is not in the child's interests if it imposes psychological pressure on the child or if it jeopardises the child's physical or mental development. The court may rule that contact is to take place under the supervision of a third party, or that it should not involve personal contact and association (i.e. that it should take place in another way) if this would otherwise not be in the child's interests. (Article 106 of the Marriage and Family Relations Act)

Maintenance is determined with due consideration for the needs of the claimant and the material and earning capacities of the person required to pay maintenance. When calculating the maintenance due to a child, the court must act in the child's interests, setting a level that is adequate to ensure the child's successful physical and mental development. (Articles 129 and 129a of the Marriage and Family Relations 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?

If the parents do not live together and do not have joint custody of the child, they both decide, by common consent and in accordance with the interests of the child, on issues that have a significant bearing on the child's development. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. The parent who has custody of the child is the one who decides on issues relating to the child's day-to-day life. If the parents are unable to come to an agreement on issues that have a significant bearing on the child's development even with the assistance of the social services centre, the court issues a decision in a non-litigious procedure at the request of one or both parents. (Article 113 of the Marriage and Family Relations Act)

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

It means that both parents are equally responsible for the child's upbringing and development and that both must continue to care for the child.

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

District courts (*okrožna sodišča*) are the courts with **subject-matter jurisdiction** in such cases. (Article 32 of the Civil Procedure Act [*Zakon o pravnem postopku*])

The court in which the defendant has their permanent residence has general **territorial jurisdiction**. If a court in Slovenia has jurisdiction because the defendant has temporary residence in Slovenia, the court covering the area in which the defendant has temporary residence has general territorial jurisdiction. If in addition to their permanent residence the defendant also has temporary residence in another locality and it can be assumed, owing to the circumstances, that they will live there for an extended period of time, the court covering the area in which the defendant has temporary residence also has general territorial jurisdiction. (Article 47 of the Civil Procedure Act)

If in a dispute over legal maintenance the plaintiff is the person requesting maintenance, the court covering the area in which the plaintiff has permanent or temporary residence has jurisdiction, in addition to the court of general territorial jurisdiction. If in a dispute over legal maintenance with an international element a court in Slovenia has jurisdiction because the plaintiff is a child with permanent residence in Slovenia, the court covering the area in which the plaintiff has permanent residence has territorial jurisdiction. If in a dispute over legal maintenance a court in Slovenia has jurisdiction because the defendant has property in Slovenia from which maintenance could be paid, the court covering the area in which that property lies has territorial jurisdiction. (Article 50 of the Civil Procedure Act)

Parties to and other participants in the procedure have to file actions, appeals and other applications in the **Slovenian language or in the language of a national community** in official use at the court. (Article 104 of the Civil Procedure Act)

An **action** must include a specific request setting out the main subject of the case and the side claims, the facts supporting the plaintiff's claim, evidence substantiating those facts, and the other information that every action is obliged to contain (Article 180 of the Civil Procedure Act).

According to the act, an application is an action, a response to an action, legal redress and other statements, proposals or communications submitted outside of proceedings. Applications must be comprehensible and include everything required for a judicial hearing. They must include the following in particular: a reference to the court, the names and places of permanent or temporary residence or the place of establishment of the parties, the names of their legal representatives or proxies, the subject of the dispute and the content of the statement. The applicant must sign the application, unless this cannot be done because of the form of the application. The applicant's original signature shall be deemed to be their handwritten signature, as well as a secure electronic signature verified by means of a qualified certificate. If the statement includes a request, the party must state in the application the facts on which the application rests and, where required, the evidence. (Article 105 of the Civil Procedure Act)

Court fees must be paid when an action is filed. Court fees must be paid no later than by the deadline set by the court in the order for the payment of court fees. (Article 105a of the Civil Procedure Act)

Applications must be filed **in writing**. A written application is an application that has been handwritten or printed and signed in the applicant's own hand (application in physical form) or an application in electronic form that has been signed using a secure electronic signature verified by means of a qualified certificate. A written application is submitted by post, electronically, using communication technology, delivered directly to an authority or delivered by a person engaged professionally in submitting applications (commercial provider). Electronic applications are submitted electronically to the information system. The information system automatically confirms to the applicant that the application has been received. Applications can also be filed on the prescribed or otherwise prepared form. (Article 105b of the Civil Procedure Act)

Applications that have to be delivered to the opposing party must be submitted to the court in as many **copies** as are required by the court and the opposing party, and in a form that enables the court to deliver them. This also applies to enclosures. Applications and enclosures that are submitted electronically and that have to be sent to the opposing party are sent in the form of a single copy. The court makes as many electronic copies or photocopies as the opposing party requires. (Article 106 of the Civil Procedure Act) Documents enclosed with the application may be **originals or copies**. (Article 107 of the Civil Procedure Act)

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

A district court rules in a civil procedure, unless the law stipulates that it should do so in a non-litigious procedure. Courts resolve matters governed by the Marriage and Family Relations Act as a matter of priority. (Article 10a of the Marriage and Family Relations Act)

During proceedings in disputes involving relations between parents and children, the court may, at the proposal of a party or acting on its own accord, issue interim measures (temporary injunction) on the custody and maintenance of children, as well as interim measures on the removal or restriction of the right of contact or on the method by which contact is to take place. Interim measures are issued under the procedures of the Enforcement and Securing of Claims Act (*Zakon o izvršbi in zavarovanju*). (Article 411 of the Civil Procedure Act)

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

Yes, legal aid may be obtained to cover the costs of the procedure. The presiding judge of the district court decides on the allocation of legal aid. (Article 2 of the Legal Aid Act [*Zakon o brezplačni pravni pomoči*])

Legal aid may be approved for legal advice, legal counsel and other legal services determined by law, for all forms of judicial protection before all courts of general jurisdiction and specialised courts in Slovenia, before the Slovenian Constitutional Court (*Ustavno sodišče Republike Slovenije*) and before all authorities, institutions and persons in Slovenia competent for extra-judicial settlement of disputes, and for the waiving of the payment of the costs of a judicial procedure. (Article 7 of the Legal Aid Act)

Those entitled to legal aid under this act are: 1. citizens of Slovenia; 2. foreign nationals with permanent or temporary residence in Slovenia and persons without citizenship (stateless persons) lawfully residing in Slovenia; 3. other foreign nationals under conditions of reciprocity or under conditions and in cases defined in international treaties binding on Slovenia; 4. non-governmental organisations and associations that operate on a non-profit basis and in the public interest, and that are registered in the corresponding register in accordance with the applicable legislation, in disputes connected with the performance of activities in the public interest or with the intention for which they were established; 5. other persons for whom the law or an international treaty binding on Slovenia prescribes an entitlement to legal aid. (Article 10 of the Legal Aid Act)

A person entitled to legal aid may request legal aid during any stage of the proceedings. In deciding on requests for legal aid, the applicant's financial status is established, as are other conditions defined in the act. (Article 11 of the Legal Aid Act)

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

Yes, the competence to rule on appeals against a decision on parental responsibility made by a district court is held by a higher court (*višje sodišče*). (Article 35 of the Civil Procedure Act) An appeal may be filed with the court that passed the judgment of first instance, in a sufficient number of copies for the court and the opposing party. (Article 342 of the Civil Procedure Act)

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

Enforcement proceedings are laid down in the Enforcement and Securing of Claims Act. Unless the law determines otherwise, the local court (*okrajno sodišče*) has subject-matter jurisdiction to permit enforcement. (Article 5 of the Enforcement and Securing of Claims Act)

The court with territorial jurisdiction to decide on a proposal to enforce a judicial decision on the custody of a child and for enforcement itself is the court covering the area in which the person who has been given custody has permanent or temporary residence or the court covering the area in which the person against whom the proposal for enforcement has been filed has permanent or temporary residence. The court covering the area in which the child is located is also the court with territorial jurisdiction over direct enforcement. (Article 238a of the Enforcement and Securing of Claims Act)

Under an enforcement order, the obligation to deliver a child is imposed on the person to whom the enforcement instrument relates, the person on whose will the delivery of the child depends and the person with whom the child is at the time the order is issued. The court announces in the enforcement order that the duty to deliver the child is also effective against any other person with whom the child is at the time the enforcement is carried out. (Article 238c of the Enforcement and Securing of Claims Act)

Taking all the circumstances of the case into consideration and in order to protect the child's interests, the court decides whether to enforce the decision on the custody of the child by imposing a fine on the person to whom the enforcement order relates or by removing the child and delivering them to the person to whom custody of the child has been given. (Article 238č of the Enforcement and Securing of Claims Act)

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

A court decision on parental responsibility is recognised and enforced in accordance with Council Regulation (EC) No 2201/2003. The court applies a non-litigious procedure under the provisions of the Non-Litigious Civil Procedure Act (*Zakon o nepravdnem postopku*).

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

All district courts are competent to handle requests to declare enforceability.

The court that declared a judicial decision to be enforceable is the court competent to handle legal redress against a judicial decision declaring enforceability.

The court applies a non-litigious procedure under the provisions of the Non-Litigious Civil Procedure Act.

List of District Courts

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

Under the Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*), relations between parents and children are assessed under the law of the country of which they are nationals. If the parents and children are nationals of different countries, the law of the country in which they all have permanent residence is applied. If the parents and children are nationals of different countries and do not have permanent residence in the same country, the law of the country of which the child is a national is applied. (Article 42)

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