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Italian

Parental responsibility - child custody and contact rights

Italy

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 Italian law, the concept of 'parental authority' (*potestà genitoriale*) was replaced by the concept of 'parental responsibility' (*responsabilità genitoriale*) by the law reforming parenthood (Law No 219/2012) and Legislative Decree No 154/2013, the provisions of which came into force on 7 February 2014.
Parental responsibility is the duty to maintain, bring up, educate and provide moral support to children, with due regard to their capacities, inclinations and aspirations.
Children also have the right to maintain a balanced and continuous relationship with both parents, to be cared for, brought up, educated and morally supported by each of them, and to maintain meaningful relationships with the ascendants and relatives of each parent.
Children themselves also have duties: to respect their parents and to play a part in the maintenance of the family for as long as they live within it.

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

Parental responsibility arises by operation of law when the parents are married to each other. In this case, both parents have parental responsibility for their children.
If the parents are not married to each other, it is the parent who acknowledges the child who has parental responsibility. If both parents acknowledge the child, they both have and exercise parental responsibility for the child, as if they were married. If the parents are not married to each other and do not acknowledge the child at the same time, the second acknowledgement cannot take place without the consent of the parent who has already made the acknowledgement.
Parental responsibility must be exercised by the parents by common agreement, taking into account the capacities, natural inclinations and aspirations of the child. In particular, the parents must establish the child's habitual residence by common agreement.

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

If the child temporarily lacks a suitable family environment, arrangements are made for the child to be fostered by another family.
Moreover, when parents do not demonstrate sufficient capacity to take care of their children's upbringing, for example when they are extremely confrontational, the courts often grant custody to the social services of the family's place of residence. This usually involves a limitation on the exercise of parental responsibility: normally, decisions concerning the child's health, education and upbringing are taken over by the social services of the family's place of residence. In such cases, the child often continues to live with his/her parents, or with one of them. In the most serious cases, the court orders the child's removal from the family home.
If a parent breaches or neglects his or her duties or abuses the associated powers, resulting in serious harm to the child, the court may order the withdrawal of that parent's parental responsibility.
If both parents are dead, have had their parental responsibilities withdrawn or are unable to exercise parental responsibilities for any other reason, a guardian is appointed. The guardian takes care of the child, represents him/her in all civil proceedings, and administers the child's assets.
The Civil Code also provides for the possibility of the court appointing a special guardian when the parents are jointly unable or unwilling – or when the parent exercising sole parental responsibility is unable or unwilling – to carry out one or more acts in the interests of the child, outside the scope of routine administration. In such cases, the special guardian is authorised to carry out those specific acts.

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

The parental responsibility of both parents does not end following separation, dissolution, cessation of the civil effects, annulment and nullity of the marriage.
The usual form of custody, which is capable of ensuring co-parenting, is joint custody whereby both parents exercise parental responsibility.
Decisions of the greatest interest for children concerning the education, upbringing, health and choice of habitual residence of the child are made by mutual agreement between the parents and in the child's best interests, taking into account his/her abilities, natural inclinations and aspirations; conversely, for any routine administrative matters, the parents may exercise their parental responsibilities separately (Article 337-ter of the Civil Code).
Shared custody does not necessarily imply that the child divides its time equally between each parent. Normally, the separation or divorce order determines who is the cohabiting parent – i.e. the parent with whom the child lives permanently – and the conditions under which the non-cohabiting parent can spend time with the child are then established. It is also possible for the time the children spend living with each parent to be divided equally, if the parents live close to each other and lead similar lifestyles, provided that such an arrangement will not have an adverse effect on the children's social or school life.
However, if joint custody does not meet the best interests of the child, the judge may grant sole custody to one parent, by a reasoned decision (Article 337c of the Civil Code).
The most common cases in which sole custody is granted are: 1. if one of the parents poses a risk to the physical and psychological wellbeing of the child (a violent parent, a parent with a significant criminal record, a parent who is a drug addict or an alcoholic); 2. if a parent is incapable of morally and materially supporting the child, or has not shown any interest in the child; 3. if a parent disparages the other parent in front of the child; 4. if the hostility between the parents is so bad that it could upset the child's equilibrium and psychophysical development.
In the case of sole custody, parental responsibility is exercised only by the parent with custody, but any decisions of the greatest interest for the child must be made by both parents, unless provided otherwise owing to particularly serious circumstances, for instance violent or abusive behaviour (Article 337c of the Civil Code).
A parent who does not exercise parental responsibility has the right and duty to monitor the education, upbringing and living conditions of the child (last paragraph of Article 316).

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

The agreement between the parents on how they will exercise parental responsibility following their separation must be submitted to the court with local jurisdiction, which will then ascertain whether or not the agreement will guarantee the rights and wellbeing of the children; if it does, the court will approve it.
If a married couple with children who are minors wish to separate or divorce and have also reached an agreement on the custody of the children and the exercise of parental responsibility, they may choose between two solutions:
a) they may submit a joint application to the court and have their agreement approved;
b) they may use 'lawyer-assisted negotiations' (Article 6 of Legislative Decree No 132/2014): these constitute an agreement through which the parties agree to cooperate in good faith and in a fair manner in order to amicably settle the dispute relating to their separation and custody of the children.
If there are children who are minors (but also adult children with an incapacity or who have a serious disability or are economically not self-sufficient), the agreement reached as a result of assisted negotiation must be forwarded, within ten days, to the Public Prosecutor at the court with jurisdiction, who will authorise the agreement if he or she considers the agreement to be in the interest of the children. If, however, the Public Prosecutor considers that the agreement is not in the best interest of the children, he or she will forward it, within five days, to the President of the court, who will set a date, within the following thirty days, for the attendance of the parties and will act without delay.
Once the agreement has been authorised, it is equivalent to the court orders made in relation to separation or divorce.
If the parents are not married, only the first solution is possible (i.e. agreement approved by the court).

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 resolve any issues relating to the exercise of parental responsibility, the parents may turn to a family mediator. The aim of mediation is not to achieve a reconciliation of the couple, but to enable mutual agreement to be reached on the conditions for the exercise of parental responsibility, thereby avoiding and lessening any form of conflict. However, any shared solutions arrived at must be submitted to the court, which will assess whether child's interests have been respected.
If the dispute persists, it will be brought before the court with jurisdiction for separation, divorce and child custody proceedings.

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

Two scenarios need to be distinguished.
a) If the parents disagree on particularly important issues, they may bring the dispute before a court. In such cases, the court first of all proposes the solutions that best meet the interests of the child and the family unit. If the dispute persists, the court grants the power to decide on the specific question to the parent it considers most likely to take care of the child's interests.
b) The parents may bring an action before the courts seeking a decision on the custody of the children and their placement (normally when the parents are separating). In this case, the court decides on:
the custody of the children, choosing primarily the solution of joint custody (i.e. both parents),
the times and conditions of residence with each parent,
the amount of child support and, in general, the contribution of each parent to the expenses incurred for the children's care, education and upbringing.
Since the most important decisions must be taken by common agreement even when the parents separate or divorce, if the parents disagree on any individual issues, they may bring the dispute before a court as explained in point a).

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?

A parent who has been granted sole custody of the children has exclusive exercise of parental responsibility, unless the court orders otherwise. The parent in question can, in particular, also take non-routine administrative decisions independently.
However, even when one of the parents has been granted sole custody, decisions serving the best interests of the children (those relating to their education, upbringing and health) must be taken by both parents, unless the custody decision provides otherwise.
In general, judges rule that the agreement of the parent not having custody is not needed when that parent is absent, indifferent, unreachable or has behaved violently or abusively in the past.
The parent not having custody of the children has the right and duty to monitor their education, upbringing and living conditions, and may go to court when he /she believes that decisions have been taken that go against the children's interests.

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

If joint custody is granted, parental responsibility is exercised by both parents, who must agree on the direction of the children's lives and take decisions together concerning the education, upbringing, health and choice of usual place of residence of the children, ensuring that those decisions are in the children' s best interests. With respect only to any decisions on routine administrative matters, as a rule the parents exercise parental responsibility separately, during the respective periods when the children are living with them.

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 General Jurisdiction Court (*Tribunale ordinario*) has jurisdiction for all proceedings concerning the custody of the children and any associated issues relating to parental responsibility.
If a dispute relates to the withdrawal or restriction of parental responsibility or the reinstatement of parental responsibility, without involving any factors relating to the custody of the children, the court with jurisdiction is the Juvenile Court (*Tribunale per i minorenni*).

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

If the issue relating to the custody of and the exercise of parental responsibility over children born during marriage forms part of the separation or divorce dispute, the procedure is that set out in the section on Divorce.
Measures concerning custody and the exercise of parental responsibility for children born out of wedlock are adopted by the court in closed session, having sought summary information and after having heard the public prosecutor and the parents; in an emergency, the court may order temporary measures in the interests of the child.
In both cases, the judge may order urgent temporary measures to protect the children. The proceedings differ depending on whether they relate to the children of unmarried couples or married couples, but the General Jurisdiction Court has jurisdiction in both cases.
As in all procedures relating to children, the child is heard by the judge if he/she is aged twelve or over or in any event is capable of discernment.

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

Legal aid can be obtained to cover the costs of separation, divorce and child custody proceedings, or proceedings restricting or removing parental responsibility.

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

Appeals against decisions on parental responsibility can be lodged with the Court of Appeal (*Corte d'Appello* - court of second instance).

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?

Decisions of the court concerning parental responsibility are enforceable.

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?

Recognition of a decision on parental responsibility of a court of another EU Member State is automatic. However, pursuant to Regulation (EC) No 2201 /2003 of 27 November 2003, any interested party may apply for a ruling that the decision be or not be recognised.

For the decision to be enforced, the interested party must submit an enforcement application to the Court of Appeal with local jurisdiction. Once the decision has been declared enforceable, it is enforced under the same conditions that would have applied had the decision been made in that Member State.

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 competent judicial authority is the Court of Appeal with local jurisdiction (with reference to the place where the decision is enforced, in accordance with national rules). The legal action is conducted in the form of contentious proceedings and concludes with a declaratory judgment, against which an appeal may be lodged on a point of law (*ricorso per cassazione*).

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?

Since Italy has ratified the Hague Convention of 1996, the provisions of that Convention apply. Thus, the attribution and extinction of parental responsibility, the exercise of parental responsibility and the withdrawal or restriction of parental responsibility are governed by the law of the State of the child's habitual residence.

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