

Parental responsibility - Slovakia

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TABLE OF CONTENTS

- 1 What does the legal term “parental responsibility” mean in practical terms? What are the rights and obligations of a holder of parental responsibility?
- 2 As a general rule, who has the parental responsibility over a child?
- 3 If the parents are unable or unwilling to exercise parental responsibility over their children, can another person be appointed in their place?
- 4 If the parents divorce or split up, how is the question of parental responsibility determined for the future?
- 5 If the parents conclude an agreement on the question of parental responsibility, which formalities must be respected to make the agreement legally binding?
- 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?
- 7 If the parents go to court, what issues can the judge decide upon relating to the child?
- 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?
- 9 If the court decides that the parents shall have joint custody of a child, what does this mean in practice?
- 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?
- 11 Which procedure applies in these cases? Is an emergency procedure available?
- 12 Can I obtain legal aid to cover the costs of the procedure?
- 13 Is it possible to appeal against a decision on parental responsibility?
- 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?
- 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?
- 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?
- 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?



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

Under the Slovak Family Act (Act No 36/2005 on the family and on changes and amendments to certain acts) and case-law, parental responsibility (i.e. parental rights and obligations - custody) comprise, in particular, care of the child, maintenance, representation and administration of the child's property.

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

Both parents jointly share parental rights and obligations towards a child, irrespective of whether the child is born in or out of wedlock or whether the parents live together or not (are married, separated or divorced).

A parent may be deprived of their parental rights and obligations (or have them restricted) by the court in serious circumstances, as provided for in Section 38(4) of the Family Act.

A court may recognise the parental rights and obligations of a minor parent over the age of 16 for the personal care of a minor child, subject to the conditions set out in Section 29 of the Family Act.

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

Yes. If both parents of a minor child do not have legal capacity, have been deprived of their parental rights and obligations, or are dead, the court must appoint a guardian who is to personally bring up the minor child, represent it and administer the child's property.

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

The court has to decide on the allocation and exercise of parental rights and obligations (even when both parents continue to exercise parental rights and obligations jointly) or it can approve an agreement between them.

Under Section 36(1) of the Family Act '[t]he parents of a minor child living separately may agree an arrangement for the exercise of their parental rights and obligations at any time. If the parents do not reach an agreement, the court may determine how their rights and obligations are to be exercised, even if no application to this effect has been made; in particular the court has to decide which of the parents is to be granted custody (*osobná starostlivosť* – personal care) of a minor child. The provisions of Sections 24, 25 and 26 shall apply *mutatis mutandis*.

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

An agreement between parents regarding their parental rights and obligations must be 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?

Out-of-court resolution of disputes is possible by mediation under Act No 420/2004 on mediation. This act also applies to disputes arising from relationships governed by family law. Mediation is an out-of-court procedure in which the parties concerned use the assistance of a mediator to resolve a dispute arising from their contractual or other legal relationship. Any agreement reached through mediation must be in writing and is binding on the parties to the procedure.

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

The court can, in principle, decide anything except to award sole custody (personal care) to one of the parents. Only if one parent is deprived of their parental rights and obligations, can a single parent have sole custody of a child. In practice, however, the court will decide which of the parents is to have personal care of the child, who is to represent the child and administer the child's property. The court will also decide how the parent who was not awarded custody of the child is to contribute to the child's maintenance or will approve the parents' agreement on maintenance payments.

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?

The term 'parental responsibility' does not translate well in the context of Slovak family law. Slovak family law recognises the term 'parental rights and obligations', which are always shared jointly by both parents (so there can never be 'sole custody' unless the other parent is dead, does not have legal capacity or has been deprived of their parental rights and obligations). A distinction needs to be made between these cases and entrusting a child to someone's 'personal care'. If a child is entrusted to the personal care of one of the parents, that parent can make decisions on all routine matters relating to the child's everyday life without the consent of the other parent; but all important issues relating to the exercise of parental rights and obligations (administration of the

child's property, moving the child abroad, citizenship, granting consent to health care being provided, preparation for a future occupation) require the consent of the other parent. If the parents are unable to agree on a decision, the court decides at the request of one of the parents.

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

The court may award alternating personal care (i.e. joint custody) to both parents if they are both fit to raise the child and are interested in the child's personal care, and if this arrangement is in the child's interest to better meet his or her needs. If at least one of the parents agrees with shared personal care of the child, the court is obliged to find out if joint personal care is in the child's interest.

See all previous responses, in particular the response to question 8.

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 District Court in whose district a minor child resides is the competent court for lodging applications on parental rights and obligations. No formalities need to be respected and no documents need to be attached, since this is a procedure which the court may start by its own motion. Submission of documents depends on the content of the application; usually the child's birth certificate is needed.

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

A simplified and less formal procedure applies. There is an option of a provisional order, which takes the form of an urgent procedure.

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

All proceedings for the arrangement of parental rights and obligations are free of court fees. The legal aid system in Slovakia is currently limited to exemption from payment of court fees and provision of a representative free of charge. Very few people choose to be represented by a lawyer, given the non-contentious character of proceedings on parental rights and obligations. However, if a person meets the legal conditions for personal exemption from court fees, the court may, at its discretion, provide a representative free of charge, including a lawyer, if it considers that representation is necessary for the protection of the party's interests.

The court refers all parties requesting the provision of a lawyer and meeting the conditions for exemption from court fees to the Legal Aid Centre. The court advises parties of this option. The court may grant a party full or partial exemption from court fees if this is justified by their circumstances and if doing so would not be an arbitrary or evidently unsuccessful exercise or an obstruction of justice. Unless the court decides otherwise, exemption applies to the entire proceedings and has retroactive effect. However, any fees paid prior to the issue of a decision on exemption are not refunded.

The Legal Aid Centre provides the legal aid and security system for natural persons who are unable to make use of legal services in order to exercise and protect their rights owing to their economic circumstances. The extent of legal aid provided is governed by Act No 327/2005 on the provision of legal aid to persons in adverse economic circumstances.

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

Yes, it is possible to appeal against a decision on parental rights and obligations.

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?

An application for enforcement of a decision is lodged with the child's general court. The procedure applied in enforcement of a decision is governed by Act No 99/1963 - Civil Procedure Code.

The regular enforcement procedures apply (court enforcement) with the exception of enforcement of decisions on personal care (if a child is to be returned to the parent who under the decision has the right of personal care). In such cases the procedure is stricter (financial penalties and possible involvement of the police or other competent enforcement authorities).

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?

Court decisions on parental rights and obligations issued by a court in another Member State are recognised and enforced without special proceedings in the Slovak 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 (Article 21(1)), i.e. without the need to have the decision declared enforceable.

However, an interested party may apply for a decision on parental rights and obligations issued in another Member State to be declared enforceable, and the procedure under Chapter III, Section 2 of the Regulation then applies.

Applications are lodged with the District Court in whose district the child resides or, if the child is not resident, to the court in whose district the child is currently living, and if there is no such court, the competent court is the Bratislava I District Court .

The application for recognition of a decision or for a declaration of the enforceability of a decision must be accompanied by a copy of the decision on parental rights and obligations that meets the requirements as regards proof of authenticity and by a document certifying the decision, which is issued at the request of the interested person by the relevant court of origin, i.e. the court that issued the decision on parental rights and obligations.

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?

Appeals are always lodged with the District Court that issued the original decision but appeals are decided by the Regional Court. Appeals against recognition of decisions on parental rights and obligations are processed and decided in accordance with the Code of Civil Procedure.

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

The Slovak courts will only decide in proceedings on parental rights and obligations if the child is habitually resident in the Slovak Republic. If the child is not living in the Slovak Republic but has his or her habitual residence here, or if the parents do not live in the Slovak Republic or are citizens of different countries, the provisions of Slovak law are applied in accordance with the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (ref. no. 344/2002) (Chapter III of the Convention).

Act No 97/1963 on international private and procedural law states that relationships between parents and children, including the commencement or extinction of parental rights and obligations are governed by the law of the country of the child's habitual residence. In exceptional cases, the court may take into account the law of another country where there is a significant link with the matter at hand and if this is necessary to protect the child or his or her property. Parental rights and obligations originating in the country of the child's original habitual residence remain valid even if the child's habitual residence changes. If either of the parents did not possess any of the parental rights and obligations that are recognised under Slovak law, those rights and obligation commence when the child is habitually resident in the Slovak Republic. The exercise of parental rights and obligations is governed by the law of the country in which the child is habitually resident.

The provisions of the Act on international private and procedural law apply only in the absence of an international agreement or if an existing international agreement does not contain conflict-of-law criteria for determining the applicable law.

Besides the 1996 Hague Convention, the Slovak Republic is bound by a number of bilateral agreements containing provisions on the applicable law, and these provisions take precedence over the provisions of the Act on international private and procedural law in proceedings on parental rights and obligations. The agreements in question are:

Bulgaria: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Bulgaria on legal assistance and regulation of legal relationships in civil, family and criminal matters (Sofia, 25 November 1976, Decree No 3/1978)

Croatia, Slovenia: Agreement between the Czechoslovak Socialist Republic and the Socialist Federal Republic of Yugoslavia on regulation of legal relationships in civil, family and criminal matters (Belgrade 20.1.1964, Decree No 207/1964)

Hungary: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Hungary on legal assistance and regulation of legal relationships in civil, family and criminal matters (Bratislava, 28 March 1989, ref. no. 63/1990)

Poland: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Poland on legal assistance and regulation of legal relationships in civil, family, labour and criminal matters (Warsaw, 21.12.1987, Decree No 42/1989)

Romania: Agreement between the Czechoslovak Socialist Republic and the People's Republic of Romania on legal assistance and regulation of legal relationships in civil, family and criminal matters (Prague, 25.10.1958, Decree No 31/1959)

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