

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 has 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.

Parental responsibility is the entire set of rights and duties that parents have to create the conditions, to the best of their ability, for ensuring their child’s comprehensive development. Parental responsibility is shared between the two parents. (Article 6 of the Family Code [*Družinski zakonik*])

Parents must safeguard their child’s interests in all activities pertaining to the child and, when raising their child, respect their person, individuality and dignity. Parents take precedence over all others when it comes to caring for their child and exercising responsibility for working in the child’s interests. Parents are deemed to be working in their child’s interests if, by taking into account the child’s personality, age, level of development and desires in particular, they meet the child’s material, emotional and psychosocial needs by acting in a way that demonstrates their care and responsibility towards the child, provide them with adequate guidance and encourage their development. (Article 7 of the Family Code)

Parents have the main and an equal responsibility for the care, upbringing and development of their child. Their primary concern shall be the interests of the child, and the state shall assist them to discharge their parental responsibilities.

Parental responsibility encompasses the rights and duties of parents in connection with a child’s life and health, upbringing, protection, care, supervision and education, and their rights and responsibilities in connection with the representation and maintenance of the child and the management of the child’s property. A competent authority may restrict one or both parents in their exercise of parental responsibility, or remove parental responsibility from one or both parents, under the conditions set out in the Family Code.

Parents must care for the life and health of their child, and protect, nurture, raise and supervise them. They must provide their child with the conditions for healthy growth and balanced personal development, help them to develop the ability to live and work independently, maintain their child in accordance with the provisions of the Family Code and, to the best of their ability, ensure that they can be schooled and educated in line with their abilities, talents and wishes. (Articles 135, 136 and 137 of the Family Code)

A child has the right to have contact with both parents and both parents have the right to have contact with the child. (Article 141 of the Family Code)

Parents’ **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 145 of the Family Code regulates **representation** of a child in the child’s relations with the outside world. Unless the law determines otherwise (for example, if they have been placed in foster care), a child is represented by their parents. If it is necessary to deliver something to a minor child or inform them of something, either parent may take delivery or receive that information. If the parents do not live together, this is done by the parent with whom the child lives or the parent named in a court settlement or decision on joint custody under Article 139 of the Family Code. (Article 145 of the Family Code)

A child’s property is managed by the child’s parents in the child’s interests. Parents may use the income from their child’s property in particular for the child’s maintenance, upbringing and education, as well as for the immediate needs of the family if they themselves have insufficient means. (Articles 147 and 148 of the Family Code)

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

Parents have the main and an equal responsibility for the care, upbringing and development of their child. Their primary concern shall be the interests of the child. (Article 135 of the Family Code)

Parents exercise their parental right by common consent in accordance with the interests of the child. If they are unable to come to an agreement on the matter themselves, a social services centre (*center za socialno delo*) assists them to do so. They may also, if they wish, engage the services of a mediator. 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 matters 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. They may also, if they wish, engage the services of a mediator.

The parent who has custody of the child is the one who decides on matters relating to the child’s day-to-day life and on their place of permanent residence, provided this does not have an adverse effect on matters that have a significant bearing on the child’s development.

A court decides in cases where the parents are unable to come to an agreement on matters that have a significant bearing on the child’s development.

When one of the parents is prevented from exercising parental responsibility, it is exercised by the other parent on their own.

If one of the parents is no longer alive or is unknown, or if they have had their parental responsibility removed, that responsibility is exercised by the other parent. (Article 151 of the Family Code)

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

Parents take precedence over all others concerning the right and duty to protect the rights and interests of their child. If the parents fail to exercise these rights or fulfil these duties, or fail to do so in the interests of the child, the state takes measures to protect the rights and interests of the child (hereinafter: measures to protect the child’s interests). Measures to protect the child’s interests may be taken until the child gains full capacity to contract, unless the Family Code provides otherwise. (Article 154 of the Family Code)

A court may remove a child from their parents and place them with another person, in foster care or in an institution if the child is endangered and if removal is the only way of protecting their interests to a sufficient extent, and if the circumstances of the case indicate that the parents will, after a certain time, be able to reassume responsibility for the child’s care and upbringing. (Article 174 of the Family Code)

A court may also decide to place a child in an institution if they are suffering from psychosocial problems in the form of behavioural, emotional, learning or other difficulties in their development, if the child or other children in the family are endangered, and it is possible to protect the child's interests or those of the other children in the family only by placing the child in an institution. (Article 175 of the Family Code)

A child may be cared for by an adoptive parent. A child may only be given for adoption if the parents consented to adoption at a social services centre or before a court after the birth of the child. For a child who has not reached the age of eight weeks, consent must be reconfirmed after the child reaches the age of eight weeks. If it is not, it has no legal effect. Consent is not required from a parent whose parental responsibility has been withdrawn or who is permanently unable to express their wishes. Children whose parents are unknown or whose residence has been unknown for a year may also be given for adoption. (Article 218 of the Family Code) Adoption terminates a child's rights and duties vis-à-vis their parents and other relatives, and vice versa. If the spouse or extra-marital partner of one of the child's parents adopts the child, that child's rights and duties vis-à-vis that parent and their relatives are not terminated, and vice versa. (Article 220 of the Family Code)

The granting of parental responsibility to a relative is a new institution introduced by the Family Code in relation to caring for a child. This institution is only available in relation to a child who has no living parent. If this is in the child's interests, the court may grant parental responsibility to a relative who is willing to assume responsibility for the child and meets the conditions for adoption set out in the Family Code. The Family Code sets out who is to be regarded as a relative in such cases: a person related to the child by blood in a direct line up to twice removed or in a collateral line up to four times removed. The person to whom parental responsibility has been granted acquires the same rights and duties as the child's parents would have had, and becomes the child's legal representative. The person to whom parental responsibility has been granted must maintain the child. If parental responsibility is to be granted to two relatives who are married to or in an extra-marital relationship with each other, or to a relative and their spouse or extra-marital partner who meet the conditions, that responsibility is granted to both partners and may not be granted merely to one. (Article 231 of the Family Code)

The court appoints a guardian for a child who has no parents or a child for whom the parents do not provide care, and places the child in the care of that guardian. (Article 257 of the Family Code) A social services centre or court appoints a special ('collision') guardian (*kolizijski skrbnik*) to a child when the child's parents exercise parental responsibility but their interests are in conflict, or when, in the case of guardianship, the interests of the child and their guardian are in conflict. (Article 269 of the Family Code)

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 joint 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. They may also, if they wish, engage the services of a mediator. If the parents come to an agreement on custody, they may propose that a court settlement be signed. If the court establishes that the agreement is not in the children's interests, it rejects the proposal. If the parents fail to reach agreement on custody, the matter is decided by the court. The court may also, of its own accord and in accordance with the provisions of the Family Code, decide on other measures to safeguard the interests of the child. When reaching a decision on custody, the court always also decides on the maintenance of the children the parents have together and on contact with the respective parents, in accordance with the Family Code. The court issues a new decision on custody when so required by a change in circumstances or by the child's interests. (Article 138 of the Family Code)

When a court annuls a marriage, it also rules on the custody and maintenance of any children the parents have together and on contact with the respective parents, in accordance with this act. Prior to this, it must establish how best to ensure the child's or children's interests. (Article 98 of the Family Code)

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 matters 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. They may also, if they wish, engage the services of a mediator. The parent who has custody of the child is the one who decides on matters relating to the child's day-to-day life and on their place of permanent residence, provided this does not have an adverse effect on matters that have a significant bearing on the child's development. (Article 151 of the Family Code)

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. They may agree to retain joint 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. They may also, if they wish, engage the services of a mediator. If the parents come to an agreement on custody, they may propose that a court settlement be signed. If the court establishes that the agreement is not in the children's interests, it rejects the proposal. If the parents fail to reach agreement on custody, the matter is decided by the court. (Article 138 of the Family Code)

A court settlement or court decision on joint custody must contain a decision on the child's place of permanent residence, which of the parents is to take delivery of any correspondence for the child and on the maintenance of the child. (Article 139 of the Family Code)

Parents who do not live together or who intend to separate, and parents who live together, come to an 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. They may also, if they wish, engage the services of a mediator. If the parents fail to reach an agreement on the maintenance of the children they have together, the matter is decided by the court. (Article 140 of the Family Code)

A child has the right to have contact with both parents, and both parents have the right to have contact with the child. Contact must ensure that the child's interests are served. The parent with whom the child lives and to whom custody of the child has been entrusted, or a third person with whom the child lives, must refrain from all conduct that hinders or prevents the child from maintaining contact, and must endeavour to encourage the child to adopt an appropriate attitude towards contact with the other parent or both parents. The parent who has contact with the child must refrain from all conduct that hinders contact with and the care and upbringing of the child. Parents who do not live together or who intend to separate shall come to an agreement on contact. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. They may also, if they wish, engage the services of a mediator. If the parents come to an agreement on custody, they may propose that a court settlement be signed. If the court establishes that the agreement is not in the child's interests, it rejects the proposal. If the parents fail to reach agreement on contact, the matter is decided by the court. (Article 141 of the Family Code)

A child also has the right to contact with other persons who are family members 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 referred to above. If they are unable to come to an agreement on the matter themselves, a social services centre assists them to do so. They may also, if they wish, engage the services of a mediator. The extent to and manner in which contact is maintained must be in the child's interest. If agreement is reached on contact, the parents, the child and the persons referred to above may also propose that a court settlement be signed. If the court establishes that the agreement is not in the children's interests, it rejects the proposal.

If the parents, the child and the persons referred to in the first paragraph of this article cannot reach agreement, contact is decided by the court. (Article 142 of the Family Code)

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?

Before proposing that the court decide on the custody and maintenance of the child, on the child's contact with them or with other persons, or on matters relating to the exercise of parental responsibility that have a significant bearing on the child's development, the parents take part in a prior counselling process at a social services centre, unless one of the parents is mentally incompetent, or if one of the spouses lives abroad or their whereabouts or residence are unknown.

If contact with another person is at issue, that other person, and the child (if the child is applying for contact), must attend counselling prior to the proposal being filed.

The purpose of prior counselling is to draw the parents' attention, or that of another person, to the requirement to safeguard the interests of the child when arranging relations with the child, the positive impact that an amicable arrangement of relations has on the child, and the purpose of mediation.

Counselling must also take place before the filing of a proposal for a new decision to be issued on any of the matters referred to in the first paragraph of this article.

Parents or the persons referred to above attend prior counselling without their representatives. With the consent of the parents or the persons referred to above, a social services centre may follow prior counselling with a mediation procedure. These persons may also take part in a mediation process provided by other providers. (Article 203 of the Family Code)

Mediation may take place before, during or after court proceedings, and may include assistance in the settlement of personal and property relationships.

Mediation is primarily carried out before court proceedings begin with a view to shaping a proposal for the termination of a marriage by agreement or a proposal for a court settlement on child custody, maintenance and contact with parents or other persons, or matters of parental responsibility that have a significant bearing on the child's development. Mediation during court proceedings is conducted in accordance with the law governing alternative dispute resolution. Even if the parties to or participants in proceedings have agreed to seek mediation, the court may reject the application and may not stay the court proceedings if, in proceedings involving a child, it judges that a stay would not be in the child's interests. (Article 205 of the Family Code)

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

The court may decide that one parent is to have custody of all the children, the children are to be split between the parents or that both parents are to have joint custody of the children. The court may also, of its own accord and in accordance with the provisions of the Family Code, decide on other measures to safeguard the interests of the child. When reaching a decision on custody, the court always also decides on the maintenance of the children the parents have together and on contact with the respective parents, in accordance with the Family Code. The court issues a new decision on custody when so required by a change in circumstances or by the child's interests. (Articles 138 and 139 of the Family Code)

The court also rules on maintenance of the child and on contact. (Articles 105a, 106 and 106a of the Marriage and Family Relations Act [*Zakon o zakonski zvezi in družinskih razmerjih*])

In reaching a decision on contact, the court's primary concern is the child's interests. If the parent with whom the child lives prevents contact between the child and the other parent and contact cannot be made to occur even with the specialist assistance of a social services centre, the court may, at the proposal of the other parent, decide to remove custody from the parent who is preventing contact and entrust the child to the other parent, if the court believes that the other parent will enable contact and if this is the only way in which the child's interests can be safeguarded. The court issues a new decision on parental contact when so required by a change in circumstances and the child's interests. (Article 141 of the Family Code) The court may remove or restrict the right to contact as part of a measure to safeguard the child's interests. (Article 173 of the Family Code)

When deciding on the custody and maintenance of a child, contact, the exercise of parental responsibility and the granting of parental responsibility to a relative, the court also considers the child's opinion as 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. In relation to the child's interests, the court takes into account the opinion of the social services centre, whenever such an opinion is acquired in accordance with the act governing the non-litigious civil procedure. (Article 143 of the Family Code)

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. The maintenance must cover the child's living expenses, in particular the costs of accommodation, food, clothing, footwear, care and protection, education, schooling, recreation, amusement and other specific needs. (Article 190 of the Family Code)

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?

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 matters 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. They may also, if they wish, engage the services of a mediator. The parent who has custody of the child is the one who decides on matters relating to the child's day-to-day life and on their place of permanent residence, provided this does not have an adverse effect on matters that have a significant bearing on the child's development. A court decides in cases where the parents are unable to come to an agreement on matters that have a significant bearing on the child's development. (Article 151 of the Family Code)

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 10 of the Non-Litigious Civil Procedure Act [*Zakon o nepravdnem postopku*])

General **territorial jurisdiction** is held by the court covering the area in which the person against whom the proposal has been filed has permanent residence or their place of establishment. When a court commences a procedure of its own accord, general territorial jurisdiction is held by the court covering the area in which the person in relation to whom the procedure is being conducted has permanent residence. If only one participant is taking part in the procedure, general territorial jurisdiction is held by the court covering the area in which the participant has permanent residence or their place of establishment. If the participant does not have permanent residence in Slovenia, general territorial jurisdiction is determined in line with their place of temporary residence. If in addition to permanent residence they also have temporary residence elsewhere 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 they have temporary residence also has general territorial jurisdiction. If a court in Slovenia is competent to decide and it is not possible to establish which court in Slovenia has general territorial jurisdiction, the court with general territorial jurisdiction is determined by the Slovenian Supreme Court (*Vrhovno sodišče Republike Slovenije*). (Article 11 of the Non-Litigious 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 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. (Article 50 of the Civil Procedure Act [*Zakon o pravdnem postopku*])

Unless the law provides otherwise, the provisions of the Civil Procedure Act are applied by analogy to non-litigious civil proceedings.

A proposal in non-litigious civil proceedings must contain a description of the relationship or situation on which the court is to decide, the facts relevant to the decision and the evidence for these facts, the other details that every application is obliged to contain, and the participants' identifying details, as laid down for actions by the Civil Procedure Act. (Article 23 of the Non-Litigious 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, the other information that every action is obliged to contain, and the parties' identifying details, as laid down by the Civil Procedure Act. (Article 180 of the Civil Procedure Act).

Unless the law provides otherwise, court fees must be paid when a proposal to commence a procedure is filed. (Article 39 of the Non-Litigious Civil Procedure Act)

Under the Civil Procedure 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 is deemed to be their handwritten signature or their electronic signature (which is equivalent to a handwritten signature). If an applicant does not know how to write or is unable to provide a signature, they furnish the application with a fingerprint instead of a signature. If the court doubts the authenticity of an application, they may issue a decision ordering that an application be furnished with a certified signature. No appeal may be made against this decision. 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)

An application is a written application in physical or electronic form. 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 signed using an electronic signature, which is equivalent to a handwritten signature (application in electronic form). An application in physical form is submitted by post, using communication technology, delivered directly to the body concerned or delivered by a person engaged professionally in submitting applications. An application in electronic form is submitted to the judicial information system. The judicial information system automatically confirms to the applicant that the application has been received. An application may also be filed on the prescribed or otherwise prepared form. Without prejudice to the provisions of other regulations, forms submitted in electronic form must be identical in content to the forms prescribed for applications submitted in physical form. (Article 105b of the Civil Procedure Act)

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.

Applications that have to be delivered to the opposing party must be submitted to the court in as many copies as required by the court and the opposing party, and in a form that allows 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. If the opposing part comprises more than one person with a joint legal representative or proxy, the applications and enclosures are delivered for all persons together as a single copy. (Article 106 of the Non-Litigious Civil Procedure Act)

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

The court decides on matters of personal status and family relationships in non-litigious civil proceedings. (Chapter X of the Non-Litigious Civil Procedure Act)

Judicial matters under the Family Code that are conducted in relation to relations between parents and children, adoption, the transfer of parental responsibility to relatives, foster care and guardianship are resolved as a matter of priority. Where the Family Code defines a court as having competence to decide on matters under the Code, it is district courts that have subject-matter jurisdiction to decide in the first instance, unless another law provides otherwise. (Article 14 of the Family Code)

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)

The Family Code provides that the court shall issue a temporary injunction in procedures to safeguard a child's interests if it is demonstrated as being probable that the child's interests are threatened. (Article 161 of the Family Code)

Under the Non-Litigious Civil Procedure Act, temporary injunctions to safeguard a child's interests under the conditions laid down in the Family Code are issued in accordance with the procedure laid down in the law governing the securing of claims.

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*])

Under this act, legal aid may be granted 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 the 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 (e.g. at the start of an extra-judicial or judicial procedure, and at any stage of proceedings already under way). In deciding on requests for the allocation of legal aid, the applicant's financial status is determined, along with other conditions defined in this act (ordinary legal aid). (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 36 of the Non-Litigious 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 (*Zakon o izvršbi in zavarovanju*). 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 general 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 general territorial jurisdiction over direct enforcement (Article 238e). (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.

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](#)  (244 Kb) 

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)

This web page is part of [Your Europe](#).

We welcome your [feedback](#) on the usefulness of the provided information.



This webpage is part of an EU quality network

Last update: 18/01/2021

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.