



MASARYK UNIVERSITY  
FACULTY OF LAW

# CZECH FAMILY LAW

## XI.

### CUSTODIANSHIP AND GUARDIANSHIP

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# Custodianship and guardianship

- One of the main aims of existence of Family law is to **protect children and their interests.**
- They both are based on the judicial decision in cases of parent's disability to exercise rights or duties.
- The origin of the guardianship and custodianship is in the Roman Law in institutes of *tutela* and *cura*.
- **Czech Family Code regulates both of these institutes.**



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## Custodianship



# Custodianship

- The institute of the custodianship is **not only typical for the Czech Family law** but also for other branches of private law (especially for Civil Law) and public law (especially for Civil Procedure Law).
- Its main aim is **to protect interests** of children.
- Custodianship may be appointed **only by the court** and its decision.



# Custodianship

## ■ Short-term custodianship

- In the cases of conflict of interests between the legal representatives and the child or between more children of the same parents (§ 892 para. 3),
- In the cases of adoption (§ 818).
- The court shall appoint a custody also if it is in the child's interest for other reasons (§ 943)

## ■ Long-term custodianship

- Custodianship for a more intense protection of the child's property (§ 905)
- In the cases of restriction of parental responsibility



## Cases of conflict of interests between the legal representatives and the child or between more children of the same parents

- **None of the parents can represent the child as for legal acts in matters in those conflict of interests between the parents and the child or conflict of more children of the same parents could occur.**
- **If the child can be represented by none of the parents, the court shall appoint a custodian who shall represent the child in proceedings or in a certain legal act. The post of custodian should be usually exercised by an authority exercising socio-legal protection of children.**



## Cases of adoption

- In cases mentioned in § 818 para. 2, **the adoption requires consent** of a custodian appointed to the adopted child in adoption proceedings.



## Custodianship for a more intense protection of the child's property

- **In grounded cases** that could lead to endanger of the **property interests of the child**, the court shall appoint a **custodian for a more intense protection of the child's property**. The post of custodian may be exercised only by an individual who is fully capable to legal acts, whose way of life guarantees a proper exercise of this post and who agrees to the appointment as a custodian.





- The court shall determine **the extent of the property** that is to be managed by the custodian with the care of a proper manager. At the same time, the court shall determine the ways in those the individual party can or must not be disposed of. The court shall particularly determine the way of exercise of ownership and other real rights, intellectual property rights, rights to securities and rights following from obligations.
- In the course of management of the property, **the custodian must not do acts that are connected with inadequate risk.**
- **The custodian shall be subject to control of the court.** According to circumstances of the case, **the court shall link validity of a legal act to its consent** and shall decide on a duty to provide regular reports about management of the child's property.



## Cases of restriction of parental responsibility

- **Unless a parent properly exercises the duties** following from the parental responsibility and if it is in **the child's interest**, the court shall **restrict** his or her **parental responsibility**; in doing so, the court shall always define the extent of rights and duties to that the restriction applies.
- **These rights and duties are then exercised by the appointed custodian.**



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## Guardianship



# Guardianship

- Its main aim is **to protect interests** of children.
- Guardianship may be appointed **only by the court** and its decision.
- It also may serve as an alternative care.



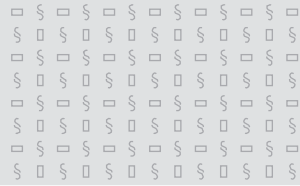
# Guardianship

- The guardian is appointed by the courts if:
  - child's parents died
  - child's parents were deprived of their parental responsibility
  - exercise of the parental responsibility was suspended



# Guardian

- The appropriate person to be appointed as a guardian:
  - The person recommended by parents,
  - The relatives or persons close to the child,
  - Eventually another individual,
  - Unless any individual can be appointed as guardian, the court shall appoint an authority of socio-legal protection of children as guardian.
- Also spouses may be appointed as guardians of a minor.



# Guardianship

- Guardian:
  - Brings up the child,
  - Represent him,
  - Manage his or her property instead of parents.
  
- **The guardianship does not include a guardian's duty to maintain the child.**



# The duties of guardian

- The guardian is **responsible for a proper exercise of this post** and is subject to a **regular supervision of court**. In particular, the guardian must give the court reports about the child and statements about management of his or her property. However, the court may relieve the guardian of his or her duty to submit a detailed statement unless the proceeds from the property exceed probable costs for upbringing and maintenance of the child.
- If the management of the child's property is connected with a considerable effort, **the court may award the guardian upon his or her petition an adequate remuneration** paid from this property yearly or at the end of the management.
- Within two months after the end of guardianship, the guardian must give the court a final statement about the management of the child's property. The court may relieve the guardian of this duty.
- **Any guardian's decision about an essential affair concerning the child requires a consent of the court.**





# Extinguishment of guardianship

- **The guardianship extinguish in these cases:**
  - The child comes of age,
  - The child died,
  - The child was adopted,
  - The decision of court about the recovery of parental responsibility,
  - The decision of court about the recovery of parent's full capacity to legal acts,
  - The guardian died.
- **Upon the guardian's petition**, the court shall relieve him or her of the guardianship.
- **The court shall annul the guardian** if he or she becomes unable to exercise the post of guardian or if he or she violates his or her duties.
- In case of divorce of spouses appointed as curators, the court shall always consider whether a further joint exercise of this post by both spouses is in the child's interest. Otherwise, the court shall relieve one of them of the post of guardian.