



MASARYK UNIVERSITY
FACULTY OF LAW

CZECH FAMILY LAW

V.

PARENTAL RESPONSIBILITY

©

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TERMINOLOGY

Ancient Rome - *patria potestas* - concept of *an authority*

Czechoslovakia/the Czech republic:

- 1918 - Civil Code (ABGB): Pater Familias
- 1949 - Act on the Family Law: Power of Parents
- 1963 - Act on the Family: Parental Rights and Duties
 - 1998: an amendment: Parental Responsibility
- 2012 (2014) - Civil Code: Parental Responsibility

Europe: *Parental Responsibility, Elterliche Sorge, l' Autorité Parental, della Potestà dei Genitori, Władza Rodzicielska.*



INTERNATIONAL TREATIES

the Constitution of the Czech Republic

Art. 10 - international treaties have priority in application

the UN

- *Convention on the Rights of the Child*

the Council of Europe

- *European Convention for the Protection of Human Rights and Fundamental Freedoms - art. 8 - Right to respect for private and family life*
- *European Convention on the Exercise of Children's Rights*
- *European Convention on the Legal Status of Children Born out of Wedlock*
- *European Convention on Adoption of Children*
- *European Convention on Contact Concerning Children etc.*

the Hague Conference on Private International Law

- *the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*
- *the Hague Convention on the Civil Aspects of International Child Abduction*
- *the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*



EU

- Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No. 1347/2000



NATIONAL SOURCES

- **The Constitution of the Czech Republic**
Art. 10 - international treaties have priority in application
- **The Charter of Fundamental Human Rights and Freedoms**
(part of the Constitutional Order)
- **The Civil Code:**
Art. 858, art. 865 et seq.
- **The Children Act 1999**



GENERAL REMARKS ON PARENTAL RESPONSIBILITY

- Parental responsibility is a *legal institution*
- The aim of Parental responsibility is to *protect* a minor child who is not fully capable
- Only a *minor child who is not fully capable* can be protected by Parental responsibility
- Parental responsibility belongs to *both legal parents* (no discrimination based on sex)
- Parental responsibility belongs to all parents irrespective of their age or capacity
 - minor parents
 - parents with mental disorder
- Parental responsibility is *collection of rights and duties* (reciprocity)
- Parental responsibility should be *exercised* with the respect to the best interest of the child
 - the *child is a subject* of parental responsibility, not a passive object



CONTENT OF PARENTAL RESPONSIBILITY

858 CC

- a) care of a minor, including caring for his/her health as well as physical, emotional, cognitive and moral development (*upbringing*)
- b) representing a minor, and
- c) managing his/her property
 - living, education etc.



■ Care of a child/upbringing

- Right to have a child by herself/himself, to live with the child, to see/visit the child, to communicate with the child
 - Right to control child's behavior and education
 - Right to decide in the matters regarding a child on his/her behalf
 - Right to determine residence of a child (?)

■ Representation of a child

- In matters the child has no capacity
- In conflict of interests custodian

■ Management of a child's property

- While deciding extraordinary matters court decision
- When problems property custodian by court



Rights and duties excluded from parental responsibility

- Maintenance duty
- Right to give a name and surname to a child
- Right to keep relations with a child (to meet him/her) (?)
- Right to give consent with adoption



EXERCISE OF PARENTAL RESPONSIBILITY

- Parental responsibility is a dynamic institution
- Execution depends on circumstances, age, view, needs and mental development of the child etc.
- It is important
 - whether parents live together or not
 - whether they are able to reach an agreement on key matters regarding their child
- Flexibility NO *res iudicata* the court can change the decisions



PRINCIPLES OF EXERCISE OF PARENTAL RESPONSIBILITY - THE RIGHTS OF THE CHILD

- **The best interests of the child** should be the primary consideration in all matters concerning child
- **The child's autonomy** should be respected in accordance with the developing ability and need of the child to act independently.
- **The child should not be discriminated** on grounds such as sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, sexual orientation, disability, property, birth or other status
- **Child's right to be heard** according to his or her age and maturity
- **The child should have the right to be informed, consulted and to express his or her opinion** in all matters concerning the child, with due weight given to the views expressed by him or her



PROBLEM I. DISAGREEMENT/MISMATCH OF PARENTS

§ 877 CC

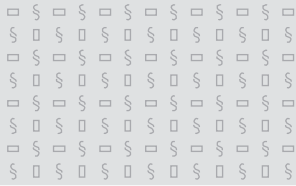
If the parents are unable to agree on important issues concerning the exercise of their parental responsibility, the court shall decide.



PROBLEM II. SEPARATION OF THE PARENTS

Art. 908, 919 CC

If the parents of a minor *do not live together* and are unable to agree on the child's upbringing and alimentation, the court can decide who will have custody of the child and how each of the parents shall contribute to his/her alimentation, even without a petition.



PROBLEM III. DIVORCE OF THE PARENTS

Art. 755 (3)

The *divorce* cannot be granted before a court ruling has taken effect granting *custody* of minor children after the divorce.



CHILD CUSTODY (personal care: individual, joint, alternative), MAINTENANCE AND CONTACT

Art. 907 et seq. CC

A court may entrust a child to the care of one of the parents or to shared or joint care; a court may also entrust a child to the care of a person other than a parent if it is necessary with regard to the interests of the child. If a child is to be entrusted to joint care, the consent of both parents is required.



SUSPENSION, RESTRICTION, DEPRIVATION OF PARENTAL RESPONSIBILITY by the court

Art. 868 et seq. CC

- **Suspension** - there is *an obstacle* impeding execution of parental responsibility guardian
- **Restriction** - parent does not execute his/her parental responsibility appropriately and restriction corresponds with the best interest of the child (*partial*)
- **Deprivation** - when parent abuses or seriously neglects his/her rights and duties derived from parental responsibility; it is the most radical intervention to parental responsibility (*the whole*) guardian



TERMINATION OF PARENTAL RESPONSIBILITY

- Full legal capacity of the child (18 years, marriage after 16, court declaration)
- Death of the child
- Death of the parents
- Deprivation by the court guardian



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PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES by CEFL - Commission on European Family Law

<http://www2.law.uu.nl/priv/cefl/>



Principle 3:1 Concept of parental responsibilities

Parental responsibilities are a collection of rights and duties aimed at promoting and safeguarding the welfare of the child. They encompass in particular:

- (a) care, protection and education;
- (b) maintenance of personal relationships;
- (c) determination of residence;
- (d) administration of property, and
- (e) legal representation.



Principle 3:2 Holder of parental responsibilities

- (1) A holder of parental responsibilities is any person having the rights and duties listed in Principle 3:1 either in whole or in part.
- (2) Subject to the following Principles, holders of parental responsibilities are:
 - (a) the child's parents, as well as
 - (b) persons other than the child's parents having parental responsibilities in addition to or instead of the parents.



RIGHTS OF THE CHILD

Principle 3:3 Best interests of the child

In all matters concerning parental responsibilities the best interests of the child should be the primary consideration.

Principle 3:4 Autonomy of the child

The child's autonomy should be respected in accordance with the developing ability and need of the child to act independently.

Principle 3:5 Non-discrimination of the child

Children should not be discriminated on grounds such as sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, sexual orientation, disability, property, birth or other status, irrespective of whether these grounds refer to the child or to the holders of parental responsibilities.

Principle 3:6 Child's right to be heard

Having regard to the child's age and maturity, the child should have the right to be informed, consulted and to express his or her opinion in all matters concerning the child, with due weight given to the views expressed by him or her.

Principle 3:7 Conflict of interests

The interests of the child should be protected whenever they may be in conflict with the interests of the holders of parental responsibilities.