NATIONAL REPORT: CZECH REPUBLIC

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A. GENERAL

1. Having regard to the concept of parental responsibilities as defined by the Council of Europe (see above), explain the concept or concepts used in your national legal system.

Under Czech law, every parent is awarded parental responsibility provided the parent has full legal capacity, regardless of whether the parents are spouses or the child is born out of wedlock. Court determined fathers also hold parental responsibility. If a parent is dead, unknown, or does not have full legal capacity, their right to exercise parental responsibility transfers to the second parent. This also applies if one of the parents is deprived of parental responsibility or if their exercise of parental responsibility has been suspended (Sec. 34 para. 2 Czech Family Code).

The 1998 reform of family law strengthened the position of the minor parent who, due to lack of legal capacity, cannot be awarded parental responsibility by operation of law. The court may award parental responsibility to the minor parent taking care of his or her child if the parent has attained sixteen years of age and is duly qualified for the exercise of rights and duties of parental responsibility (Sec. 34 para. 3 Czech Family Code).

The practical importance of this provision is that when a minor mother does not cohabit with a father who has obtained majority (and who would be the sole holder of parental responsibility), the court may award the minor mother parental responsibilities of care for the child, and at the same time, according to Sec. 50 Czech Family Code, the mother may be awarded the upbringing of the child (the exercise of personal care) and the father may be ordered to pay a certain amount of maintenance. If the father of the child is also a minor, or unknown, a guardian determined by court will be appointed the legal representative of the child, compare with Sec. 78 Czech Family Code.

Parental responsibility is defined in the Czech Family Code (Sec. 31 para. 1) as a sum of rights and duties:

- when caring for a minor child, which includes in particular caring for its health and physical, emotional, intellectual and moral development,
- when legally representing a minor child,
- when administering its property.

All the rights and duties mentioned above are also held by an adoptive parent because adoption establishes the same relationship between the adoptive parent and the adoptive child as between a natural parent and a natural child.

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and adopted child as between a biological parent and child (Sec. 63 Czech Family Code).

Parenthood is also protected by the Czech Charter of Basic Rights and Freedoms. Pursuant to Art. 32 of the Charter, care of children and their upbringing is a parental right, and children have a right to parental upbringing and care. Rights of parents may be restricted and minor children may be separated against their will from their parents only by court under the law.

Beside parental responsibility the parental legal relation to children also includes other rights and duties of parents such as the right and duty to determine the name and surname of the child, and the maintenance duty of the parent in relation to the child.

2. Explain whether your national concept or concepts encompass:

(a) Care and protection
The content of parental responsibility pursuant to the Czech Family Code means care and protection. Care means upbringing on the one hand but at the same time it also means deciding about the child’s matters. The parents are not obliged to take personal care of the child but may entrust the personal care to a third person (in practice, this frequently means the grandparents).

(b) Maintenance of personal relationships
A maintenance duty is not considered as part of parental responsibility because Czech law requires even a parent who lacks parental responsibility to fulfil a duty of maintenance towards the child (Sec. 44 para. 4 Czech Family Code). The duty to maintain does not expire when the child attains the age of majority but only when the child is able to make its own living, which may be either before or after attaining the age of majority (a child studying at a university, a handicapped child etc.).

(c) Provision of education
The Czech Family Code does not include any special regulations concerning education of the child. The choice of education method, including a particular type of school, may be seen as an essential matter, therefore the parents should agree on the method of the child’s education. If the parents disagree, the method of education may be determined by court. Pursuant to Sec. 31 para. 3 Czech Family Code, the child has the right to free expression on all parental decisions concerning essential matters relating to its personality, including the choice of profession and education method. Courts have repeatedly emphasised the child has a right to an education that corresponds with its abilities i.e. that the maintenance duty of parents does not expire when the child leaves primary school. Czech Act No. 3/2000 Coll. regulates that the parents determine the religious education of the child under fifteen.

5 H. NOVA and O. TEZKA, Vyživovací povinnost v rodinnom právu, ……
(d) Legal representation
The parents represent the child in legal acts for which the child does not have full legal capacity (Sec. 39 Czech Family Code). Pursuant to Sec. 9 Czech CC, minors possess the capacity to perform acts in law only if the nature of such acts corresponds to the mental and moral maturity of their age.

Neither parent may represent their child in legal acts concerning matters in which a conflict of interest may occur between the parents and the child, or between the child and other children of these parents (Sec. 37 para. 1 Czech Family Code). In this situation the court shall appoint a custodian who will represent the child in the proceedings or in a certain act. The custodian is usually an authority of social and legal protection of children, but another natural person, most frequently some other relative of the child, may also be appointed as custodian. The conflict of interests need not arise in practice; it is sufficient that such a possibility exists. Typically, in these situations the parents and the child are parties to proceedings that determine various issues about the child (awarding upbringing, setting up maintenance, regulating the other parent’s contact with the child, deciding about placing the child in a substitute family and probate proceedings to which the child and the other parent are parties).

(e) Determination of residence
Determination of residence of the child is known in Czech law as the concept of awarding custody, or exercising care of the child. In view of the fact that by operation of law both parents are entitled the same rights and duties in relation to the child, the Family Code provides for entrusting the care of the child to one of the parents, or alternating care, or the so-called joint care in the situation when the parents of the child do not cohabit (regardless of whether they are spouses or they have never been spouses). Joint care (custody) in the Czech Family Code ultimately means that the child’s terms are not legally regulated at all.6

(f) Administration of property
Both parents are entitled and obligated to administer the child’s property. The Czech Family Code imposes on them the duty to administer the child’s property with ‘due care’ (Sec. 37a Czech Family Code). The parents are not obliged to strive to increase the child’s property but they are obliged to preserve the property’s essence until the child attains majority. The law allows them to use interest from the child’s property for maintenance of the child and only then may it be used for reasonable family needs. The principal may be affected only when a gross disproportion in respect to social and economic conditions arises between the minor child and the persons obligated to maintain it, through no fault of those who maintain the child. However, in most cases the parents would need the consent of custody court (court for custody of minors) for such a use of the child’s property. The parents are obligated to give an account of their administration of the property, if the child so requires, within one year after termination of their administration. The child’s rights from liability for damage and unjust enrichment remain unaffected (Sec. 37a para. 3 Czech Family Code).

3. In what circumstances (e.g. child reaching majority or marrying) do parental responsibilities automatically come to an end?

Parental responsibility automatically comes to an end when the child reaches majority. A minor older than sixteen acquires majority by contracting marriage (Sec. 8 para. 2 Czech CC). Court consent is needed for contracting a valid marriage (Sec. 13 Czech Family Code). If the marriage is contracted without the court consent majority will still be acquired, even though the marriage will be void. Such a majority is not lost if the marriage is ended by other means.

Parental responsibility also comes to an end by adoption. At the moment the legal relationship between the parents and the child ceases to exist, the adoptive parents are placed into the legal position of parents (including family relationships).

4. What is the current source of law for parental responsibilities?


5. Give a brief history of the main developments of the law concerning parental responsibilities.

After the formation of the Czechoslovak Republic in 1918 the previous civil law effective in the territory of the former Austro-Hungarian Empire i.e. the 1811 Allgemeines Burgerliches Gesetzbuch was adopted pursuant to the Czech Law No. 11/1918 Coll. The legal regulation of relationships between parents and children was based on distinguishing children born in and outside wedlock. The marital father was granted the so-called fatherly power. If the martial father was not alive, or was deprived of parental power, a guardian was appointed for the child.

On 1 January 1950 a new act on family law (Czech Family Law Act) following the ideas of the new Constitution of 9 May took effect. It stipulated equality between man and women in marriage and family, and also defined children born in and out of wedlock as equals. Both parents had the same rights and duties in relation to child regardless of existence of marriage. The total of all rights and duties of parents in relation to a child was labelled ‘parental power’. Its contents did not differ considerably from the regulation existing now.

However, Act No. 94/1963 Coll. effective from 1 April 1964 (Czech Family Code) eliminated the concept of parental power saying that the socialist society had disposed of all power elements in the relationship between parents and children, and from then on the concept of parental rights and duties was used. Their exact contents were not determined sufficiently. As an issue of theory as well as judicial practice, individual opinions differed. In particular, the Czech Family Code in its original version did not include regulation of administration of the child’s property. That situation was only changed after 1998 when the total of rights and

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7 J. PETRULAKOVA, Vychova deti v rodine, Bratislava: Obzor, 1970, p. 27.

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duties of parents were defined and designated in the Czech Family Code as parental responsibility.

6. Are there any recent proposals for reform in this area?

The proposal for a new Czech Civil Code, which is under preparation, returns to the designation of parental rights and duties. However, their contents remain basically the same and only partial issues are more specified.  

B. THE CONTENTS OF PARENTAL RESPONSIBILITIES

7. Describe what the contents of parental responsibilities are according to your national law including case law.

Parental responsibility is defined in the Czech Family Code (Sec. 31 para. 1) as the sum total of rights and duties:

- when taking care of a minor, including, in particular, care of its health and physical, emotional, intellectual and moral development,
- when representing a minor,
- when administering its property.

When executing these rights and duties the parents are obligated to protect the child’s interests, to control its conduct and supervise the child according to the degree of its development. The parents may use reasonable means of upbringing in such a manner that the child’s dignity is not affected and its health and physical, emotional, intellectual and moral development is not jeopardised (Sec. 31 para. 2 Czech Family Code). Parents have the decisive role in upbringing their children and they should be models for them through their lives and behaviour (Sec. 32 Czech Family Code).

8. What is the position taken in your national law with respect to:

(a) Care

The concept of care has several meanings in the Czech Family Code. Firstly, it is understood in the broadest sense to be about deciding essential matters related to the child, secondly, it means upbringing, and, thirdly, it is the physical care of the child. It is considered the most important part of parental responsibility.

(b) Education

Education is not expressly regulated in the Czech Family Code and should be a matter of agreement between the parents.

(c) Religious upbringing

Religious upbringing is not regulated in the Czech Family Code. Czech Act No. 3/2002 Coll. on Freedom of Religious Belief and Legal Status of Churches and Religious Communities establishes only that it is the parents who decide about the religious upbringing of a child under 15 years of age. From the contents of the provision of the Czech Family Code regulating exercise of rights and duties

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8 For more detail see K. ELIAS and M. ZUKLINOVA, Principy a vychodiska nového občanského zákoníku, Prague: Linde, 2002.
following from parental responsibility, it is possible to deduce that in case of disagreement between the parents about the religious upbringing of the child, the court may decide the issue.

(d) Disciplinary measures and corporal punishment
Parents are obliged to supervise the child according to its degree of development. They have a right to take reasonable disciplinary measures, so long as the dignity of the child is not affected and its physical, emotional, intellectual and moral development is not jeopardised in any way (Sec. 31 para. 2 Czech Family Code). Taking ‘reasonable disciplinary measures’ does not mean that parents are expressly allowed to corporally punish the child. However, the law does not include an express prohibition of corporal punishment, either.

If a parent mistreats his or her child physically or mentally to such an extent that it constitutes a crime, the Czech Family Code imposes the duty on courts to consider whether a procedure to deprive the parent of parental responsibility should be initiated (Sec. 44 para. 4 Czech Family Code).

(e) Medical treatment
Medical treatment concerning the child is not regulated by the Czech Family Code, but by the Czech Act No. 20/1966 Coll. on Care of People’s Health, as amended. The patient’s consent is required for medical examination and treatment. Medical treatment may also be started if such consent can be presumed (Sec. 23). If parents refuse to give their consent to medical treatment of a minor child and an urgent medical examination or treatment is required to save the child’s health or life, the doctor is entitled to decide about medical treatment (Sec. 23 para. 3). This provision expressly concerns children that cannot judge the urgency of such a treatment due to their intellectual development.

(f) Legal representation
Legal representation is part of parental responsibility. Parents represent their child in legal actions for which the child does not have full capacity (Sec. 56 Czech Family Code). The legal capacity of the child (to act legally) is regulated in Sec. 9 Czech CC. Minors possess the capacity to perform acts in law only if the nature of such acts corresponds to the mental and moral maturity of their age. Thus the current concept of legal capacity of minors follows the principle that either a minor has legal capacity and acts independently, or, regarding the nature of legal act and the minor’s age, it lacks legal capacity and one of the parents acts in the child’s name.

Parents especially represent their child in legal acts concerning property matters. The legal acts concerning personal matters, representation is usually excluded because of the very nature of such an act. For example, parents cannot represent their minor unmarried mother in her agreement to consent to adoption, or their minor son in a declaration of his paternity.

The Czech Family Code does not regulate in detail the manner in which parents represent a minor child in legal acts. Generally, there is an opinion that either parent may represent the child in ordinary matters. If, in essential matters, or in matters in which representation of both parents is expressly stipulated by
legislation, one of the parents does not consent there is an option of a court decision substituting his or her consent (Sec. 49 Czech Family Code).

The legal representative cannot perform all legal acts on behalf of the child, being, by operation of law, restricted in the following two cases. First, if the parent deals with the child’s estate in an essential matter, the court’s consent is required for such a legal act to be valid (Sec. 28 Czech CC). The court will approve such an act if it is in the interests of the minor (Sec. 179 Czech CCP). Second, neither parent may represent the child if a conflict of interest between the parents and the child, or a conflict of interests between the children of these parents, may arise. In such a situation the child is represented by a court appointed custodian ad litem. This is usually a community authority on social and legal protection of children (a community authority).

A conflict of interest is always probable when the parents and the child are parties to proceedings. This is especially so in proceedings concerning the care of a minor child, but also in probate proceedings, the proceedings on determination or denial of paternity, etc. It is not necessary to determine a custodian for proceedings that qualify a minor to enter into marriage (Sec. 194 Czech CCP) because in that case the Czech Civil Procedure Code grants the minor full capacity to sue and be sued.

9. What is the position taken in respect of the child’s right to be heard with regard to the issues mentioned under Q 8 ((a)-(f)). What relevance is given to the age and maturity of the child?

The 1998 family law reform introduced a provision into the Czech Family Code stating that a child who is able to hold an opinion of his or her own and to consider the consequences of measures related to him or her, given the stage of his or her development, has the right to gain the required information and to free expression on all decisions of his or her parents in essential matters concerning his or her personality and the right to be heard in every proceeding in which such matters are decided (Sec. 31 para. 3 Czech Family Code). Czech Act No. 359/1999 Coll. states that the child who is able to articulate his or her own opinions has the right to express these opinions, for purposes of social-legal protection, wherever matters concerning his personality are dealt with, even without the presence of the child’s parents or other persons responsible for its upbringing. The opinions expressed by the child shall be duly taken into consideration according to its age and intellectual maturity wherever matters concerning its personality are dealt with (Sec. 8 para. 2 Czech Act on Social and Legal Protection).

The extent to which the child’s opinion is respected and the child is really heard in a judicial procedure depends considerably on the particular case, as well as on the judge. Court practice differs in this respect, but the child is usually heard before court if he is more than twelve years old. The opinion of a younger child is always investigated by a social worker through a conversation with the child and is also available to the court. The more the child approaches majority the more respect is paid to his opinion by the court as well as the social worker.
10. Do(es) the holder(s) of parental responsibilities has(have) the right to administer the child's property?

The parents are obliged to administer the child’s property ‘with due care’. The right to administer the child’s property is held by both parents on the basis of their mutual agreement. If the child is placed into care of one of the parents, everyday property matters are administered by that parent, but in essential matters the other parent’s consent is required. If a parent (parents) deals (deal) with the child’s property beyond ordinary matters, court approval is required (Sec. 28 Czech CC).

The parents are obligated to give the child an account of the estate administration if the child requires it within a year after the termination of their administration. The child’s rights from damage liability and unjust enrichment remain unaffected (Sec. 37a para. 3 Czech Family Code).

11. If yes, explain the content of this right.

See Q 2f.

12. Are there restrictions with respect to:

(a) Certain goods and/or values (inherited property, gift…)

When dealing with the child’s estate the parents are only restricted by the general provision of Sec. 28 Czech CC, according to which, in essential matters, the legal representative may deal with the estate of the represented person only with consent of the court. Typically, the court will approve the parents’ acting on behalf of the child.

(b) Salary of the child

According to the established practice, the child who has an income from its own work is entitled to deal with it independently within the extent of the child’s legal capacity to act (Sec. 9 Czech CC). However, the child cohabiting with its parents and having an income from its own work or estate is obligated to contribute to cover common family expenses (Sec. 31 para. 4 Czech Family Code).

(c) Certain transactions

When dealing with the child’s estate the parents are restricted only by the general provision of Sec. 28 Czech CC, according to which, in essential matters, the legal representative may deal with the estate of the represented person only with the consent of the court. Typically, the court will approve the parents’ acting on behalf of the child.

13. Are there special rules protecting children from indebtedness caused by the holder(s) of parental responsibilities?

The parents are obliged to administer the child’s estate with due care (Sec. 37a para. 1 Czech Family Code). If the child’s interests in the estate could be put at risk, the court will appoint a special custodian for administration of the child’s estate under the supervision of the court. The child’s rights resulting from liability or unjust

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14. Do the contents of parental responsibilities differ according to the holder(s) of parental responsibilities (e.g. married, unmarried, parents not living together, stepparents, foster parents or other persons). If so, describe in some detail how it differs.

Parental responsibility belongs to both parents, provided they have full legal capacity to act. It does not matter whether the parents are married or divorced or have never been married. If the child’s parents do not cohabit and cannot agree, either of them may apply to the court to decide on the regulation of an exercise of their parental responsibility, i.e. deciding about awarding the upbringing (personal care) of the child to one of them and setting up the amount of maintenance for the other one, or deciding about regulation of contact between one of the parents and the child, or about any other essential matter in which the parents cannot come to an agreement.

The step-parent does not have parental responsibility. Pursuant to Sec. 33 Czech Family Code, he or she only has a duty to participate in the upbringing of the child. He or she does not have a maintenance duty. If the child is placed into foster care, parental responsibility remains with the parents. Foster parents are obliged to take personal care of the child, ‘reasonably’ exercising the rights and duties of parents. Foster parents have a right to represent the child and administer its matters (assets) in ordinary matters only. If the foster parent believes that a decision of the parent as a legal representative is not in compliance with the child’s interest, he or she may seek a judicial decision. Foster parents do not have a maintenance duty in relation to the child; the State provides them with a social allowance for covering the child’s needs, an allowance when the child is taken over by them and remuneration for exercise of foster care. The individual allowance amounts are set forth in Czech Act No. 117/1995, Coll., On State Social Benefit. The parents continue to have a maintenance duty; they do not pay the expenses to the foster parents but to the State (Sec. 45c Czech Family Code).

The upbringing of the child may be awarded to a natural person other than the child’s parents (Sec. 45 Czech Family Code). Parental responsibility remains with the parents. In such a case the extent of the rights and duties is to be determined by a court, which usually awards these persons the right to decide about the child, to represent it and to administer the child’s estate but only in ordinary matters. In essential matters, the rights remain with the parents. Most frequently, the upbringing of the child is awarded to the grandparents or other relatives. The parents pay these persons for the expenses as a result of their maintenance duty. The legal theory designates such cases as the factual limitation of parental responsibility.

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C. ATTFIBUTION OF PARENTAL RESPONSIBILITIES

I. Married Parents

15. Who has parental responsibilities when the parents are:

(a) Married at the time of the child’s birth

If the parents are married at the time of the child’s birth both of them have parental responsibility provided that their legal capacity to act has not been limited by the court due to their mental illness, or they have not been deprived of legal capacity.

(b) Not married at that time but marry later

Parental responsibility arises for both parents regardless of whether the child is born in or out of wedlock. It also arises, by operation of law, for the father whose paternity has been determined by court. The only precondition for the vesting of parental responsibility is the fact that at the time of the child’s birth the parent has full legal capacity to act.

The status of a minor parent, especially of a minor unmarried mother, has been strengthened since the 1998 family law reform. As a result, such a parent does not have parental responsibility by operation of law, but pursuant to Sec. 34 para. 3 Czech Family Code, even a minor parent may be judicially awarded parental responsibility in relation to care of the child, if such a parent has attained the age of 16 and is duly qualified for the exercise of rights and duties of parental responsibility. In practice, this provision allows that, in case of the child’s parents not cohabiting and not agreeing, the court may award the minor unmarried mother parental responsibility in relation to care of the child and to place the child in her upbringing (personal care) pursuant to Sec. 50 Czech Family Code, and to determine maintenance from the father. However, the minor parent is not a legal representative of the child and cannot administer its estate. If the father is of the age of majority, he will have those rights. If both parents are minors, the court must appoint a guardian (Sec. 78 Czech Family Code).

If the parents get married after the child’s birth their parental responsibility is not affected. The marriage may only affect the surname of their child because the child will have their common surname or the surname determined for their common children (if each of them keeps their original surnames), compare with Sec. 39 para. 1 Czech Family Code.

16. How, if at all, is the attribution of parental responsibilities affected by:

(a) Divorce

Spouses may not divorce until after a judicial decision on the regulation of the relationship between the spouses and their minor children for the period after divorce. This judgment must always include the decision on placing the child into upbringing (personal care, determination of residence) and establishing the amount of maintenance due (Sec. 26 Czech Family Code). In case of the parents’ inability to come to an agreement the court may also decide upon the regulation of contact (visits) of the other parent.
The parents’ agreement concerning contact with the child need not be approved by the court. As for personal care and maintenance, the court may decide itself or approve the parents’ agreement, so long as the agreement does not contravene the child’s interests (Sec. 26 para. 3 Czech Family Code).

Parental responsibility does not end by divorce for either of the parents; it is only the exercise that is changed. The parent who does not personally care for the child continues to be a legal representative of the child and his or her consent is needed in all essential matters relating to the child.

(b) Legal separation
Czech law does not recognise the concept of legal separation.

(c) Annulment of the marriage
Annulment of the marriage has the same effects in relation to exercise of parental responsibility as divorce of the marriage (Sec. 17 para. 2 Czech Family Code).

(d) Factual separation
In case of factual separation the court may award the care of the child to one of the parents and determine that the other parent pay maintenance, if the parents cannot reach an agreement (Sec. 50 Czech Family Code). Parental responsibility remains for both parents and it is only its exercise that is changed. The court may start proceedings (ex officio) even without a parent’s motion.

17. To what extent, if at all, are the parents free to agree upon the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage? If they are, are these agreements subject to scrutiny by a competent authority.

An agreement between the parents on placing the child into one’s personal care and on the other one’s maintenance is always subject to court approval (Sec. 26 para. 3 Czech Family Code) and must be made before the divorce. If the marriage is declared void, the court will commence proceedings on regulation of the relationships between the parents and their common children even without a motion.

The court will approve an agreement on care and maintenance if it is in the interests of the child. The agreement between the parents on contact with the child does not require court approval (Sec. 27 para. 1 Czech Family Code). Sometimes, such an agreement is submitted to the court for approval, especially if the divorce occurs on the basis of the spouses’ agreement pursuant to Sec. 24a Czech Family Code, when that agreement is part of larger agreements on placing the child into someone’s care, on maintenance and on settlement of the spouses’ property after divorce. In practice, some judges refuse to approve the agreement, arguing that it does not need a court approval, but only in rare cases.
18. May the competent authority attribute joint parental responsibilities to the parents of the child even against the wish of both parents/one of the parents? To what extent, if at all, should the competent authority take account of a parent’s violent behaviour towards the other parent?

Joint parental responsibility belongs to both parents regardless of their will. The court may deprive a parent of parental responsibility if he or she abuses his or her parental responsibility or its exercise, or if he or she seriously neglects it (Sec. 44 para. 3 Czech Family Code). However, abuse or neglect must be related to the child. Violent behaviour towards the other parent does not affect parental responsibility.

19. Provide statistical information on the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage.

No answer.

II. Unmarried Parents

20. Who has parental responsibilities when the parents are not married?

Both parents have parental responsibility regardless of their mutual relationship. The only requisite condition for parental responsibility is that the parent must have full legal capacity to act. If this condition is met, the mother acquires parental responsibility at the moment of the child’s birth and the father acquires it on the basis of a determination of paternity by a consensual declaration of the child’s parents or by a court decision.

21. Does it make a difference if the parents have formalised their mutual relationship in some way (registered partnership, civil union, pacte civil de solidarité...).

The parents have parental responsibility regardless of their mutual relationship. The only condition for the arising of parental responsibility is the parent’s full legal capacity to act.

22. Under what condition, if at all, can

(a) The unmarried mother obtain parental responsibilities

The unmarried mother acquires parental responsibility at the moment of the child’s birth. The only condition for the arising of parental responsibility is the parent’s full legal capacity to act.

(b) The unmarried father obtain parental responsibilities

The unmarried father acquires parental responsibility at the moment of his paternity determination; this takes place by a consensual declaration of the parents or by a court decision. The proceedings on the determination of paternity are linked with the proceedings on regulation of the relationships between the parents and the minor child i.e. the court decides at the same time on placing the child into
someone’s upbringing – care (typically, the mother) and on setting up maintenance of the father (Sec. 113 Czech Civil Procedure Code).

23. How, if at all, is the attribution of parental responsibilities affected by the ending of the unmarried parents’ relationship?

If the parents of a minor child do not cohabit and do not come to an agreement concerning the upbringing and maintenance of the child, the court may decide, even without a motion, who will be awarded the care of the child and how each of the parents will contribute to the child’s maintenance (Sec. 50 Czech Family Code). This regulation also concerns the parents who are married but factually separated.

24. May the competent authority attribute joint parental responsibilities to the parents also against the wish of both parents/one of the parents? To what extent, if at all, may the competent authority take into account a parent’s violent behaviour towards the other parent?

Joint parental responsibility arises for both parents by operation of law, regardless of their will, under one condition; that the parent has full legal capacity to act. The competent authority cannot take into account a parent’s violent behaviour towards the other parent. The competent authority may take into account only a parent’s violent behaviour towards the child, and it does so by depriving the parent of parental responsibility if the parent seriously abuses or neglects his or her parental responsibility or its exercise (Sec. 44 para. 3 Czech Family Code). If it is in the interests of the child, the court may restrict or prohibit the contact of such a parent with the child (Sec. 27 para. 3 Czech Family Code). This may happen if the child witnesses violent behaviour towards the parent it lives with.

25. To what extent, if at all, are unmarried parents free to agree upon the attribution of parental responsibilities after the ending of their relationship?

Whether the parents are married is not essential. If the parents of a minor child do not cohabit and do not come to an agreement, the court may decide, even without a motion, on the regulation of the relationship between the parents and the child, i.e. about placing the child into the personal care of one of the parents and setting up maintenance obligations of the other (Sec. 50 Czech Family Code). The court may approve the parents’ agreement on the measures. The parents’ agreement on contact with the child does not require a court approval (Sec. 27 para. 1 Czech Family Code).

26. Provide statistical information available regarding the attribution of parental responsibilities for unmarried parents.

No answer.

III. Other Persons

27. Under what conditions, if at all, can the partner of a parent holding parental responsibilities obtain parental responsibilities, when, he/she is:
(a) Married to that parent
The spouse of the child’s parent cannot have parental responsibility as it belongs only to the child’s parents, who are recorded in the register of births as being the parents. The Czech Family Code only imposes a duty on the step-parent to participate in the upbringing of the child if he or she lives with the child (Sec. 33 Czech Family Code).

(b) Living with that parent in a formalised relationship (registered partnership, civil union, pacte civil de solidarité…)
Czech legislation does not recognise the concept of a formalised relationship. Even the proposed act on registered partnership of persons of the same sex does not take into account any rights or duties of the partner in relation to the child.

(c) Living with that parent in a non-formalised relationship
The partner of the child’s parent living with that parent in a non-formalised relationship has no rights or duties in relation to the child.

28. Does it make any difference if the partner of the parent holding parental responsibilities is of the same sex?
Czech legislation has not yet recognised registered partnership of persons of the same sex. The act is under discussion in the Parliament. Even if adopted, the act on registered partnership of persons of the same sex does not take into account any rights and duties of one partner in relation to the other partner’s child.

29. How, if at all, is the attribution of parental responsibilities in the partner affected by the ending of his/her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q28.
The partner of the child’s parent does not have any rights or duties in relation to the child after their relationship is ended.

30. To what extent, if at all, is the parent holding parental responsibilities and his/her partner free to agree upon the attribution of parental responsibilities after the ending of his/her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q 28.
The partner of the child’s parent does not have any rights or duties in relation to the child after his or her relationship with that parent is ended.

31. Under what conditions, if at all, can other persons not being a parent or a partner of a parent holding parental responsibilities, obtain parental responsibilities (e.g. members of the child’s family, close friends, foster parent…)? Specify, where such other persons may obtain parental responsibilities, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.
Parental responsibility as a right to decide about the child belongs only to the parents and cannot be awarded to another person. Even in case of foster care or placing the child into the upbringing of another person, parental responsibility remains for the parents. It is only restricted in the sense that personal care,
representation and administration of the child’s estate in ordinary matters belongs to the foster parent or third person whose upbringing the child was placed into by court.

32. Under what conditions, if at all, can a public body obtain parental responsibilities? Specify, where it is so obtained, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.

Public bodies cannot obtain parental responsibility.

33. To whom are the parental responsibilities attributed in the case of:

(a) The death of a parent holding parental responsibilities
In case of the death of one of the parents, parental responsibility is attributed to the other parent.

(b) The death of both parents of whom at least one was holding parental responsibilities at the time of the death
If the child’s parents have died there is no one to hold parental responsibility. The court is obligated to appoint a guardian of the child who will bring up and represent the child and administer his or her estate on behalf of the parents. The same applies if the parents have been deprived of parental responsibility, the exercise of parental responsibility has been suspended or the parents lack full legal capacity to act (Sec. 78 Czech Family Code). The guardian is subject to the court’s supervision. All the guardian’s decisions in essential matters concerning the child must be approved by court (Sec. 80 para. 4 Czech Family Code). The guardian does not have parental responsibility; the Family Code establishes that the relationships between the guardian and the child are adequately governed by provisions on rights and duties of parents and children. The guardian does have maintenance duty in relation the child, though (Sec. 81 Czech Family Code).

34. To what extent, if at all, may the holder(s) of parental responsibilities appoint a new holder(s) upon his/her/their death? If such an appointment is permitted, must it take place in a special form, e.g. will?

Parental responsibility belongs only to the parents or to the adoptive parents. In case of the death of the child’s parents a guardian of the child must be appointed by court. Preference is given to the person recommended by the parents. The form of recommendation is not prescribed; it is not excluded that the will may include such a recommendation. The court is not bound by such a recommendation; it must first examine whether the recommended guardian has full legal capacity to act, if he or she agrees with his or her appointment, and he or she must guarantee that their exercise of guardianship will be in the interests of the child. The guardian does not have parental responsibility and is subject to supervision of the court.
D. THE EXERCISE OF PARENTAL RESPONSIBILITIES

I. Interests of the Child

35. In exercising parental responsibilities, how are the interests of the child defined in your national legal system?

Despite a frequent use of the concept of interests of the child, the Czech Family Code does not expressly define what is meant by ‘interests of the child’. The interpretation of ‘interests of the child’ is then left to judicial practice and theory. Generally, it may be deduced from the contents of individual provisions that the parents have a decisive role in upbringing the children and are supposed to be models for the children by their personal life and behaviour (Sec. 32 Czech Family Code), and that the exercise of parental responsibility should lead to an all-round development of the child.

II. Joint Parental Responsibilities

36. If parental responsibilities are held jointly by two or more persons, are they held equally?

Parental responsibility is always held jointly by the parents, provided they have full legal capacity to act and the court has not deprived one (or both) parents of parental responsibility or has not suspended its exercise (Sec. 44 Czech Family Code). Both parents have the same rights and duties in relation to the child and the Czech Family Code presumes that they will agree on exercise of rights and duties. If they do not come to an agreement on an essential matter, either of them may apply to the court for a decision.

37. If parental responsibilities holders cannot agree on an issue, how is the dispute resolved? For example does the holder of parental responsibilities have the authority to act alone? In this respect is a distinction made between important decisions and decisions of a daily nature? Does it make any difference if the child is only living with one of the holders of the parental responsibilities?

If the child’s parents cannot agree on an essential matter concerning the child, either of them may apply to the court for a decision (Sec. 49 Czech Family Code). In ordinary matters either of the parents may act on his or her own. Cohabiting parents usually act in harmony. If the child’s parents do not cohabit and the court has placed the child into care of one of them, the other parent is usually excluded from deciding ordinary matters. However, an agreement of both parents is always required in essential matters, or the parent may apply to the court for a decision (Sec. 49 Czech Family Code).

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38. If holders of parental responsibilities cannot agree on an issue, can they apply to a competent authority to resolve their dispute? If applicable, specify whether this authority’s competence is limited to certain issues e.g. residence or contact.

Either of the parents (holders of parental responsibility) may apply to the court for a decision if the parents are not able to agree on any essential matter concerning the child (Sec. 49 Czech Family Code). A change of residence agreement by the parents must be approved by court. The court may decide a change of upbringing environment if a material change of circumstance has occurred. Either of the parents may apply to the court for a decision when there is disagreement between the parents about contact with the child. The parents’ agreement on regulation of contact does not require a court approval (Sec. 27 para. 1 Czech Family Code).

39. To what extent, if at all, may a holder of parental responsibilities act alone if there is more than one holder of parental responsibilities?

The law presumes that if both parents hold parental responsibility they will agree on the exercise of individual rights and duties. Both parent’s consent is always required in essential matters; if there is no agreement either of the parents may apply to the court for a decision (Sec. 49 Czech Family Code).

40. Under what circumstances, if at all, may the competent authority permit the residence of the child to be changed within the same country and/or abroad (so called relocation) without the consent of one of the holders of parental responsibilities?

If the child is placed into personal care of one of the parents due to a court decision or due to an agreement approved by the court, no consent of the other parent or the court is needed for the parent to move the child to another town within the same country. If the parent wants to move the child to another country no approval of the court is needed, either provided the other parent agrees (even tacitly) with the move. If the other parent who does not live with the child disagrees with the move, he or she can apply to the court for a change of upbringing environment so that the child may be placed into his or her care. The reason for a change of the court decision on the child’s upbringing is a material change of circumstance in which the child lives (Sec. 28 Czech Family Code). It is arguable, though, whether he or she would be successful because the court will consider the interests of the child first, including continuity of the child’s upbringing environment. However, the court may not expressly forbid the parent to move the child.

41. Under what conditions, if at all, may the competent authority decree that the child should, on an alternating basis, reside with both holders of parental responsibilities (e.g. every other month with mother/father)?

Czech legislation has recognised the possibility of alternating upbringing since the 1998 reform. Sec. 26 para. 2, establishes that if both parents are qualified for the child’s upbringing and they wish to do so the court may place the child into common (joint) or alternating upbringing (care) of both parents if it is in the interests of the child and if his or her needs are better satisfied in that manner. Placing the child into common upbringing (joint custody) means, in Czech law, that
the situation of the child is not regulated in any manner after the divorce or factual separation of its parents. Even though the wording of the law allows for the possibility of the court deciding against the will of one of the parents the judicial practice inclines to the view that such a decision would not be in the interests of the child. Therefore, courts approve agreements on common upbringing. In practice, common upbringing appears quite rarely, usually when the children approach the majority age.

Neither alternating upbringing is awarded against the will of one of the parents; courts only approve the parental agreement. The length of alternating upbringing is not regulated by the law. In practice, the parents alternate at monthly intervals; with the children of tender years the interval is often weekly. Opinions on alternating upbringing are varied (‘a child with a suitcase in hand, constantly travelling’). In practice, courts hold the view that the child should not change its school, circle of friends and leisure interests.

III. Sole Parental Responsibilities

42. Does a parent with sole parental responsibilities have full authority to act alone, or does he/she have a duty to consult:

(a) The other parent
The parent who is the sole holder of parental responsibility has no duty to consult with the parent who has been deprived of parental responsibility or whose exercise of parental responsibility has been suspended.

(b) Other persons, bodies or competent authorities
If one parent has been deprived of parental responsibility or his or her exercise of parental responsibility has been suspended, the parent who is the sole holder of parental responsibility has full authority to act alone with two exceptions. Dealing with the child’s estate in essential matters always requires court approval (Sec. 28 Czech CC) and a parent cannot represent the child if there is a danger of a conflict of interests between the child and the parent or between children of the same parent (Sec. 37 Czech Family Code).

E. CONTACT

43. Having regard to the definition by the Council of Europe (see above), explain the concepts of contact used in your national legal system.

If the child’s parents do not cohabit, regardless of being divorced, married or the child being born out of wedlock, the form of contact of the parent who does not live with the child in a common household is not regulated by the Czech Family Code and it is up to the parents to reach a contact agreement. Only if the parents are not able to agree will the court determine the extent of the child’s contact with the other parent. The extent of the contact depends on the child’s age, the distance of the other parent’s residence and a number of other individual circumstances. A typical judicial regulation of contact between a child and parent is to allow contact every

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odd or even week-end (either from Friday until Sunday, or one day only), a week or two weeks during summer holidays, one day during Christmas holidays and one day during Easter holidays.

44. To what extent, if at all, does the child have a right of contact with:

(a) A parent holding parental responsibilities but not living with the child
If the child’s parents do not cohabit, regardless of them being divorced, married or the child being born out of wedlock, the form of contact of the parent who does not live with the child in a common household is not regulated by the Family Code and it is up to the parents to agree on the contact. Only if the parents are not able to agree will the court determine the extent of the child’s contact with the other parent. A typical judicial regulation of the contact between the child and the non-custodial parent is to allow contact every odd or even week-end, one to four weeks during summer holidays, one day during Christmas holidays and one day during Easter holidays.

(b) A parent not holding parental responsibilities
The parent not holding parental responsibility does not have the right of contact with the child.

(c) Persons other than parents (e.g. grandparents, stepparents, siblings etc…)
On the basis of the 1998 family law reform the court may regulate the child’s contact with grandparents and siblings, if regulation is needed for the interests of the child or due to the family situation (Sec. 27 para. 4 Czech Family Code). The extent of the contact will depend on the child’s age and particular circumstances but it is usually narrower than the contact allowed between the parent and the child.

45. Is the right to have contact referred to in Q 43 also a right and/or a duty of the parent or the other persons concerned?

The parent who is a holder of parental responsibility and does not live with the child in a common household has a right to contact with the child but contact is not a duty. The parental agreement on contact with the child does not require a court approval (Sec. 27 para. 1 Czech Family Code).

46. To what extent, if at all, are the parents free to make contact arrangements? If they can, are these arrangements subject to scrutiny by a competent authority?

The parental agreement on contact with the child does not require the approval of the court (Sec. 27 para. 1 Czech Family Code) or any other state authority. However, the court will regulate contact between the parents and child if the parents cannot agree. The extent of the regulation depends on the child’s age, his/her interests, the distance of the residence of both parents etc.
47. Can a competent authority exclude, limit or subject to conditions, the exercise of contact? If so, which criteria are decisive?

The court may limit or prohibit the parent’s contact with the child if the interests of the child require it (Sec. 27 para. 3 Czech Family Code). Limitation of contact means the original court decision regulating the parent’s contact with the child is changed so that the extent of the originally regulated contact is made narrower. The court may also forbid the parent to keep contact with the child. These are situations where contact between the child and the other parent is traumatizing for the child, or even dangerous, if the other parent is not able to guarantee due care of the child when the child is with him/her, or the relationship between the child and the other parent is seriously disrupted and the child refuses contact with the parent (e.g. if the parent committed a serious crime).

It is possible for the court to decide that the contact will take place in the presence of the parent who lives with the child (especially if the child is of tender years). Even though Czech legislation does not regulate the contact between the parent and the child in the presence of a third person (psychologist, social worker, etc.), some courts have recently decided that the contact between the parent and the child in difficult cases is to take place in a special non-governmental institution which provides the parents and the child with help in making contact. For the time being, such a practice is unique, though.

48. What if any, are the consequences on parental responsibilities, if a holder of parental responsibilities with whom the child is living, disregards the child’s right to contact with:

(a) A parent

Preventing the other parent from contact with the child has been a debated problem for some time in the Czech court practice. Provisions on execution of a judgment regulated by the Civil Procedure Code are little effective in such situations. For that reason the 1998 reform supplemented Sec. 27 para. 2 Czech Family Code, with a provision establishing that disregarding the entitled parent’s right to contact with the child, if repeatedly unjustified, is considered as a change of the child’s situation requiring a new decision on upbringing environment. On the basis of this provision the court may decide on placing the child into the other parent’s care. However, in practice, the provision does not stop problems concerning the contact between the parent and the child, as the court would have to take into consideration whether such a change of upbringing environment is in the interests of the child. In one particular case a court came to the conclusion that a parent had been repeatedly and without justification prevented from keeping contact with the child, but the child refused the parent (syndrome of rejected parent), in fact he does not know the other parent any more and has a deep emotional bond with the parent living with him in a common household. In that situation the court decided that it was not in the interests of the child to be placed into the care of a parent with whom the child refuses contact.

(b) Other persons
The court may regulate contact of the child with grandparents or siblings if the interests of the child and the family situation require it (Sec. 27 para. 4 Czech Family Code). When someone prevents this contact with the child, the court may proceed to impose fines for non-compliance with a judgment, pursuant to Sec. 272 and 273, Czech CCP.

F. DELEGATION OF PARENTAL RESPONSIBILITIES

49. To what extent, if at all, may the holder(s) of parental responsibilities delegate its exercise?

Parents may temporarily place a child into the care of a third person, very often the grandparents, but that does not deprive the parents of responsibility for the child’s upbringing. Parents cannot directly confer the right of the child representation on third persons. Only a general representation by means of a power of attorney is possible. As for administration of the child’s estate, the parents need not administer the estate personally, they may authorise a third person by means of a power of attorney. The parents are not allowed to delegate the duty of maintenance on another person.

50. To what extent, if at all, may a person not holding parental responsibilities apply to a competent authority for a delegation of parental responsibilities?

Czech law does not recognise the delegation of parental responsibility.

G. DISCHARGE OF PARENTAL RESPONSIBILITIES

51. Under what circumstances, if at all, should the competent authorities in your legal system discharge the holder(s) of his/her/their parental responsibilities for reasons such as maltreatment, negligence or abuse of the child, mental illness of the holder of parental responsibilities, etc.? To what extent, if at all, should the competent authority take into account a parent’s violent behaviour towards the other parent?

The exercise of parental responsibility may only be changed by a court (Sec. 42 Czech Family Code). The court may suspend the exercise of parental responsibility for the parent or both parents, limit his or her parental responsibility or completely deprive the parents of parental responsibility (Sec. 44 Czech Family Code).

If the parent is hindered in the exercise of parental responsibility by a serious obstacle and the interests of the child so require, the court may suspend the exercise of parental responsibility (Sec. 44 para. 1 Czech Family Code). These are situations where the parent serves a long prison term, stays abroad, or is in a curative institution for a long time etc. If the exercise of parental responsibility has been suspended for one of the parents, the other parent becomes its sole holder. If the exercise of parental responsibility is suspended for both parents or for the only living parent, the court will appoint a guardian of the child (Sec. 78 Czech Family Code).
If a parent does not duly execute duties following from parental responsibility and if the interests of the child require it, the court will limit his or her parental responsibility, always establishing the extent of rights and duties affected by the limitation (Sec. 44 para. 2 Czech Family Code). If both parents, or the only living parent, are limited in the exercise of parental responsibility, the court will appoint a custodian for the extent of limitation.

If a parent abuses his or her parental responsibility, or its exercise, or seriously neglects it, the court will deprive him or her of parental responsibility (Sec. 44 para. 3 Czech Family Code). If the parent committed a crime against the child or used the child younger than fifteen to commit a crime or committed a crime as an accessory or counselled the child to be a party to an offence, the court will always consider whether there are reasons for starting proceedings on the deprivation of parental responsibility (Sec. 44 para. 4 Czech Family Code).

All the abovementioned types of judicial intervention with parental responsibility are always in relation to an individual parent and an individual child. The fact that the parent has been deprived of parental responsibility in relation to one child does not mean that he or she does not have parental responsibility to his or her other children. If the parent, due to a mental illness, has been limited by court in legal capacity, or has been deprived of it, his or her parental responsibility also ceases to exist.

52. Who, in the circumstances referred to in Q 51, has the right or the duty to request the discharge of parental responsibilities?

Proceedings on judicial intervention with parental responsibility may be started by a court even without a specific motion (ex officio) as soon as the need for intervention is known to the court. In practice, a motion is usually filed by an authority in charge of social and legal protection of children, which is entitled to do so by Czech Act No. 329/1998 Coll. On Social and Legal Protection of Children, or the motion may be filed by a Prosecuting Attorney (Sec. 35 Czech CCP).

53. To what extent, if at all, are rights of contact permitted between the child and the previous holder of parental responsibilities after the latter has been discharged of his/her parental responsibilities?

Being deprived of parental responsibility automatically results in a prohibition of contact between the parent and the child.

54. To what extent, if at all, can the previous holder(s) of parental responsibilities, who has been discharged of his/her parental responsibilities, regain them?

The law does not exclude the possibility of regaining full parental responsibility for the parent who has been deprived of parental responsibility or whose exercise of parental responsibility has been suspended, if an essential change of the situation occurs (Sec. 163 para. 2 Czech CCP). In practice, this happens very rarely.
H. PROCEDURAL ISSUES

55. Who is the competent authority to decide disputes concerning parental responsibilities, questions of residence of the child or contact? Who is the competent authority to carry out an investigation relating to the circumstances of the child in a dispute on parental responsibility, residence or contact?

The court is the only authority competent to decide disputes concerning parental responsibilities, questions of residence of the child or contact. The competent court is the one in whose jurisdiction the child has residence on the basis of a parental agreement, a judicial decision or other decisive facts (Sec. 88 para. (c) Czech CCP). In all proceedings concerning the child, the child must be represented by the custodian ad litem, whose role is usually played by an authority in charge of social and legal protection of children (a community with extended powers). Pursuant to Czech Act No. 359/1999 Coll. On Social and Legal Protection of Children, such an authority is charged to provide the court with information on all important facts so the court will be able to make an informed decision. The proceedings on matters concerning care of minors are considered non-contentious proceedings, which means that the court is obligated to furnish itself with all necessary evidence for its deciding and is not bound by the parties’ motions to call in evidence.

56. Under what conditions, if any, may a legally effective decision or agreement on parental responsibilities, the child’s residence or contact, be reviewed by a competent authority? Is it, e.g., required that the circumstances have changed after the decision or agreement was made and/or that a certain period of time has passed since the decision or agreement?

If the circumstances have changed, the court, even without a motion, may change its decision regarding the parental agreement on exercise of parental rights and duties (Sec. 28 Czech Family Code). This also applies to the maintenance duty the parents owe the children. It must be a material change of circumstances, either on the part of the child or on the part of the parents.

57. What alternative disputes solving mechanisms, if any, e.g. mediation or counselling, are offered in your legal system? Are such mechanisms also available at the stage of enforcement of a decision/agreement concerning parental responsibilities, the child’s residence or contact?

Alternative mechanisms of solving disputes between the parents are not yet regulated by Czech law. The role of mediator is played to a certain extent by a good certified expert who is authorized by the court to provide an expert’s opinion on regulation of contact between the parent and the child, or an expert witness who answers the court’s question which of the parents is better qualified for upbringing and whose care the child should be placed into because of that. Such experts attempt to make the parents to come to an agreement but it is not a general rule.

58. To what extent, if at all, is an order or an agreement on parental responsibilities, the child’s residence or contact enforceable and in practice enforced? Describe the system of enforcement followed in your
national legal system. Under what conditions, if at all, may enforcement be refused?

The Czech Civil Procedure Code includes a special provision on enforcement of the decision on upbringing of minor children (Sec. 272 and 273a). If a judicial decision, or a court approved agreement relating to upbringing of the child (residence) and contact with the child, or a decision on placing the child back into care of one of the parents, is not respected voluntarily the court first calls on the obligated parent to voluntarily obey the judicial decision or fulfil the court approved agreement (Sec. 272 Czech CCP). The court also has a duty to inform the obligated parent about consequences of not fulfilling his or her duties. If the call remains unsuccessful the court may repeatedly impose fines not exceeding 50,000 CZK. The fines are received by the state. The judge may also order the child to be removed from the person with whom the child should not be, according to the judicial decision or the court approved agreement, and may order the child to pass to the entitled parent (Sec. 273 para. 1 Czech CCP). The factual removal of the child takes place in the presence of the judge, a social worker and the judicial guard.

In case of taking the child away the above mentioned call need not be made if it is clear that the call would not force the obligated person to voluntarily fulfil his or her duty, or if the enforcement of the decision could be obstructed (Sec. 273 para. 2 Czech CCP) e.g. if there is a danger of the obligated parent hiding with the child, etc.

59. To what extent, if at all, are children heard when a competent authority decides upon parental responsibilities, the child’s residence or contact, e.g., upon a dispute, when scrutinizing an agreement, when appointing or discharging holder(s) of parental responsibilities, upon enforcement of a decision or agreement?

Generally, the child has a right to be heard in any proceedings that decide essential matters relating to the child (Sec. 31 para. 3 Czech Family Code). In practice, the child is heard before the court if the parents dispute about placing the child into personal care (determination of residence) or when the parents dispute regulation of contact with the child. When the court approves a parental agreement the hearing of the child is not usually required, but the child’s opinion is investigated by a social worker. When the court determines parental responsibility, the child’s opinion is not found out in practice; the same applies to enforcement of the decision.

60. How will the child be heard (e.g. directly by the competent authority, a specially appointed expert or social worker)?

The manner in which the child is heard in proceedings depends on the age of the child, the individual matter and the judge’s view. Individual courts differ in approach, but the child over twelve is usually heard directly before the court in matters relating its placement of care if the parents disagree, or in matters relating to regulation of contact between the parent and the child. The child’s opinion (even of the younger one) is always ascertained orally by a social worker when an authority of social and legal protection prepares a report for the court. When there is a dispute over placing the child into personal care the court often orders an
expert’s opinion to be made, then a certified expert talks to the child. However, the court is not bound by conclusions of the expert’s report.

61. How, if at all, is the child legally represented in disputes concerning:

(a) Parental responsibilities
It is a proceeding in matters relating to judicial care of minors (Sec. 176 and subs., Czech CCP). The Czech Civil Procedure Code requires that the child shall always be a party to these proceedings. Due to the child’s lack of capacity to sue and be sued, it must be represented in the proceedings. However, as a conflict of interest between the parents and the child might occur, the child must be represented by a custodian ad litem who defends the child’s interests in the proceedings (Sec. 37 Czech Family Code).

(b) The child’s residence
It is the proceeding in matters relating to judicial care of minors (Sec. 176 and subs., Czech CCP). The Czech Civil Procedure Code requires that the child shall always be a party to these proceedings. Due to the child’s lack of capacity to sue and be sued, he or she must be represented in the proceedings. However, as a conflict of interest between the parents and the child might occur, the child must be
represented by a custodian *ad litem* who defends the child’s interests in the proceedings (Sec. 37 Czech Family Code).

**(c) Contact**

It is the proceeding in matters relating to judicial care of minors (Sec. 176 and subs., Czech CCP). The Czech Civil Procedure Code requires that the child shall always be a party to these proceedings. Due to the child’s lack of capacity to sue and be sued, it must be represented in the proceedings. However, as a conflict of interest between the parents and the child might occur, the child must be represented by a custodian *ad litem* who defends the child’s interests in the proceedings (Sec. 37 Czech Family Code).

**62. What relevance is given in your national legal system to the age and maturity of the child in respect of Q 59-61?**

This problem is solved in Czech legislation by a very general wording that the child’s opinions and information should be ‘taken into consideration’ (e.g. Sec. 47 para. 2 Czech Family Code, Sec. 8 para. 2 Czech Act No. 359/1999 Coll. On Social and Legal Protection of Children). Neither the court nor the social worker is bound by the child’s opinion. However, in practice, the court will usually respect the child’s opinion if the child’s age approaches majority. It will always depend on the particular situation, the child’s age and, among other factors, on the personality and life experience of the judge.