

Ondřej Frinta

Parents and Children. Parental responsibility. Maintenance and Support Duty. Foster Care.



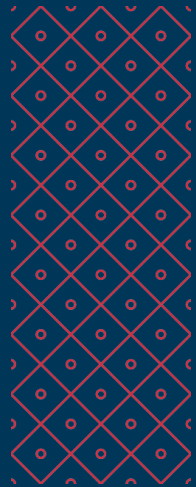
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2. Duties and Rights of Parents and Children
3. Parental Responsibility
4. Duty to Maintain and Support
5. Foster Care



Chapter 1

Parents and Children



Parents and Children

Fundamental characteristics

Parenting = relationship between parents and children

Content of the relationship = mutual duties and mutual rights = parental duties and rights are mutual rights between parents and children that arise directly from the law (ex lege)

- ▶ The nature of the relationship is **private (not public)**
- ▶ No autonomy of will (e.g., parental responsibilities cannot be transferred by a contract)
- ▶ They cannot be "given up" or "renounced/waived"
- ▶ Decisions about them (or their exercise) fall within the jurisdiction of the court



Parents and Children

History – Roman Law – patriarchal model of family

Pater familias ► *patria potestas* ► *ius vitae necisque*

originally unlimited power over children, without duties towards them

2nd century AD – fathers were obliged to provide maintenance for their children

= a set of rights (and duties) **unilateral** from father to child

+ *manus maritalis* (marital power – over a wife), *dominica potestas* (power over slaves),
mancipium (power over other persons temporarily under the power of *patris familiae*)



Parents and Children

History – Roman Law – patriarchal model of family

classical period: manus over children mitigated

Lex Duodecim Tabularum (Law of the Twelve Tables):

- ▶ a son can free himself from his father's power by being sold into slavery three times
- ▶ a father's decision to punish his son with death is subject to prior approval by public authorities (penalties are set for arbitrary killing)



Parents and Children

History – Middle Ages

- ▶ The patriarchal family model continues
- ▶ Monogamous marriage
- ▶ Influence of Christianity (especially the Catholic Church)
- ▶ Close connection between ecclesiastical (canon) law and secular law
- ▶ Estates-based legal system (nobility, free citizens of cities, clergy, military, serfdom)



Parents and Children

History – ABGB 1811

Sect. 144: The parents have the right to direct by mutual consent the acts of their children; **the children owe them respect and obedience.**

Sect. 145: **The parents are authorized to search** for children, who are missing, **to demand** the delivery of those, who have run away, **and to bring back** with the assistance of the authorities those, who have absconded; they are likewise **entitled to punish** immoral, disobedient children, or children, who disturb the domestic order and peace, **in a manner not exaggerated and dangerous to their health.**



Parents and Children

History – ABGB 1811

Sect. 147: The rights which belong especially to the father, **as head of the family**, form the **paternal authority**.

= towards children = paternal authority/power = **over a person** (the right to determine the child's occupation; ... to consent to the child's marriage; ... to appoint him a tutor; .. to represent the child) **and over property**

Sect. 91: **The husband is the head of the family.** [...]. (= towards wife)

- ▶ The concept of patriarchal family structure persists.
- ▶ + Distinction between children born in wedlock (legitimate) and children born out of wedlock (illegitimate).



Parents and Children

Terminology

ABGB 1811: **paternal authority** (= only father)

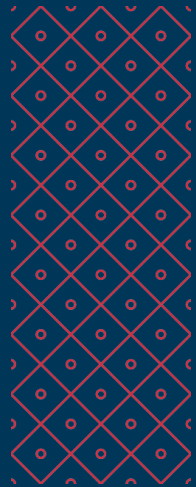
Act No. 265/1919 Coll., on Family Law: **parental authority** (= both parents)

Act No. 94/1963 Coll., on Family: list of rights and duties of parents **without a title**

Act No. 94/1963 Coll., on Family (after amendment made by Act No. 91/1998 Coll.):

parental responsibility (cf. Art. 5 of Convention on the Rights of the Child; CZ: “rodičovská **z**odpovědnost“)

Civil Code 2012: **parental responsibility** (CZ: “rodičovská **o**dpovědnost“)



Chapter 2

Duties and Rights of Parents and Children



Duties and Rights of Parents and Children

Fundamental characteristics:

- 1) The duties and rights of parents and children towards each other **are mutual**.
- 2) They cannot be waived and are therefore "inalienable"
(waivers are disregarded ► putative juridical act)
- 3) The existence of mutual obligations and rights serves a specific purpose = ensuring the moral and material well-being of the child.



Duties and Rights of Parents and Children

Reasons for expressing the purpose of parental duties and rights:

- 1) **Propaedeutic (educational)** effect of legal norms
- 2) **Emphasis on the rule of interpretation:** If the exercise of parental duties and, in particular, parental rights towards the child does not fulfill this legal purpose (the best interests of the child!), then it constitutes unlawful behavior, an abuse of rights
(► and the application of appropriate sanctions must be considered)



Duties and Rights of Parents and Children

protective nature of parental duties and rights

the essence is **to protect a minor child** who is unable to manage their own affairs and pursue their own interests for a long period of time

if it is in the child's best interests, **the parent must exercise their duties** (and rights) and **cannot remain inactive**

if not ► **state intervention**



Duties and Rights of Parents and Children

A child is **not a passive object** of upbringing; in the parent-child relationship, **the child is an equal subject**.

= Concept of parental responsibility based on the democratic upbringing of the child.

= Emphasis on the right of the child to information and the right to be heard.

Compare developments in the area of religious belief:

Sect. 3 of Act No. 308/1991 Coll., (repealed): legal guardians **decide** on the religious education of children under 15 years of age. **X** Sect. 2 para 2 of Act No. 3/2002 Coll.: The **right of minor children to freedom of religion or to be without religion is guaranteed**.

The legal guardians of minor children **may regulate (not decide!)** the exercise of this right in a manner appropriate to the developing abilities of minor children.



Duties and Rights of Parents and Children

- 1) Rights of personal status
- 2) Rights related to the child's personality
- 3) Rights of a personal nature (Sects. 857, 883)
- 4) Duties and rights that constitute **parental responsibility** (Sect. 858 of the Civil Code)
- 5) **Duty to maintain and support** = duties and rights of a mixed (personal-property) nature



Duties and Rights of Parents and Children

Rights of personal status

- 1) Duty and right **to determine the child's first name and surname** (Sect. 860 et seq.)
- 2) Right **to consent to the adoption** of a child (Sect. 809 et seq.)
- 3) Right **to declare parenthood** (determination of paternity pursuant to Sects. 777, 778)

Only the first is both a DUTY and a right!



Duties and Rights of Parents and Children

Rights related to the child's personality

= primarily natural rights protecting individual values of human personality:

- ▶ health
- ▶ life
- ▶ dignity
- ▶ the appearance of the child

(and the protection of these)



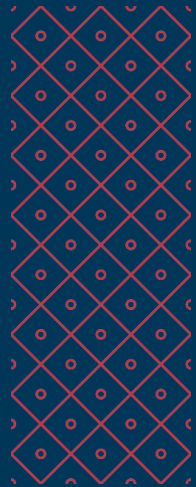
Duties and Rights of Parents and Children

Rights of a personal nature

Sect. 857:

- (1) **A child is required to heed his parents.**
- (2) Until a child acquires legal capacity, his **parents have the right to direct their child's behaviour using methods of upbringing**, as appropriate to the developing abilities, including limitations in order to protect the morals, health and rights of the child as well as the rights of other persons and public order. **The child is obliged to conform to those methods.**

Sect. 883: Parents and child are obliged **to help and support each other and respect each other's dignity.**



Chapter 3

Parental Responsibility



Parental Responsibility

Parental Responsibility (Sect. 865 et seq.)

Scope (Sect. 858):

- ▶ **caring for the child**, including, in particular caring for his or her health and physical, emotional, intellectual, and moral development **without corporal punishment, mental suffering, or other humiliating measures,**
- ▶ **the protection of the child,**



Parental Responsibility

Parental Responsibility (Sect. 865 et seq.)

Scope (Sect. 858):

- ▶ **maintaining contact with the child**, including **personal contact**, **indirect contact** through means of remote communication, mutual **provision of all essential information** about the child between parents, and provision of all essential information about the parents to the child,
- ▶ ensuring his **upbringing and education**,
- ▶ **determining the place of his residence**,
- ▶ **representing** him and
- ▶ **administering his assets and liabilities**



Parental Responsibility

Parental Responsibility (Sect. 865 et seq.)

Duration (Sect. 858):

created upon the **child's birth** and

extinguished upon the **child acquiring full legal capacity**.



Parental Responsibility

Preliminary measures for placing a child in a diagnostic institution

40. [...]. Intervention in the exercise of parental responsibility **must therefore be preceded by** preventive action on the part of the social and legal protection of children authority, which consists of discussing existing problems with parents and their children, thoroughly mapping the children's circumstances, requesting reports from doctors, schools, extended family, etc. and in **the use of milder educational measures not involving the placement of children outside the family.** [...].

CC Case No I. ÚS 1393/17



Parental Responsibility

The seriousness of *[neglecting of parental responsibility]* can also be inferred from the **attitude of the child itself – where it is able to express its opinion** – because, alongside the other parent, it is **primarily the child whose rights guaranteed in Article 8 of the Convention on the Rights of the Child [...] are seriously affected by the neglect of parental responsibility [...]**; A similar conclusion regarding the consideration of the child's attitude can also be accepted for the situation of assessing the intensity of parental responsibility abuse or its exercise.

SC Case No 24 Cdo 80/2020



Parental Responsibility – Court Interventions

Suspension of Parental Responsibility

Sect. 869: (1) If a parent is prevented from exercising his parental responsibility **by a serious circumstance** and there are reasons to believe that it is necessary in the best interests of the child, **a court may** decide that the exercise of parental responsibility of the parent be **suspended**.

(2) If it is in the child's best interests, **the court shall** decide to suspend the exercise of **parental responsibility** by a parent **if the exercise of that responsibility threatens to disrupt the child's emotional or psychological development** and if this threat cannot be averted by other means.

!!! does not affect the duty to support and maintain the child !!!



Parental Responsibility – Court Interventions

Suspension of Parental Responsibility

Sect. 793: If required by the evident interest of the child and in order to fulfil the provisions guaranteeing fundamental human rights, a court may, even of its own motion, initiate proceedings on a denial of paternity if paternity has been determined by an affirmative statement of both parents, but the child's father determined in this manner cannot be his father. **At the same time, the court shall also typically suspend the exercise of parental responsibility.**

!!! does not affect the duty to support and maintain the child (but the denial of paternity does) !!!



Parental Responsibility – Court Interventions

Suspension of Parental Responsibility

X distinguish: suspension of parental responsibility **by the operation of law (*ex lege*)**

► Sect. 825: After three months from the date on which consent to adoption was given, the exercise of rights and duties stemming from **parental responsibility is suspended**; [...].

► Sect. 868 para 1: The **exercise of parental responsibility of a minor parent** who has not previously acquired full legal capacity by having been granted legal capacity or having entered into marriage **is suspended** until such time as the minor parent acquires full legal capacity (**note: *ex lege***); this does not apply to the exercise of right and duty to care for the child, **unless a court**, having regard to the personality of the parent, **decides that the exercise of this right and duty is also suspended** until such time as the parent acquires full legal capacity (**note: court intervention**).

!!! does not affect the duty to support and maintain the child !!!



Parental Responsibility – Court Interventions

Suspension of Parental Responsibility

X distinguish: suspension of parental responsibility **by the operation of law (*ex lege*)**

► Sect. 868 para 2: **The exercise of parental responsibility of a parent whose legal capacity has been limited in this area is suspended** for the duration of such limitation, **unless a court decides** that the exercise of the parent's rights and duties relating to the care for the child and personal contact with the child is to be retained with regard to his personality.

!!! does not affect the duty to support and maintain the child !!!



Parental Responsibility – Court Interventions

Limitation of Parental Responsibility

Sect. 870: If a parent does not exercise his parental responsibility properly and if required by the interests of the child, **a court shall limit his parental responsibility or its exercise**, while determining the scope of this limitation.

e. g. the duty/right to administer the property of the child will be limited, the duty/right to represent a child...

!!! does not affect the duty to support and maintain the child !!!



Parental Responsibility – Court Interventions

Relieving of Parental Responsibility

Sect. 871: If a parent **abuses or seriously neglects** his parental responsibility or its exercise, **a court shall relieve** him of his parental responsibility.

- + The right of parents to personal contact with their child is preserved only if the court so decides, taking into account the interests of the child (Sect. 872).
- + The court may also decide to deprive the parents of all or some of their rights under Sect. 856 = status rights (in particular, **the right to consent to the adoption of a child!**).

!!! does not affect the duty to support and maintain the child !!!



Parental Responsibility – Court Interventions

Sect. 909:

In case of a change in circumstances, **a court shall change the decision regarding the exercise of rights and duties arising from parental responsibility**, even of its own motion.

= clausula rebus sic stantibus



Parental Responsibility

Amendment by Act No. 268/2025 Coll. – main features:
in force from 1st January 2026

- ▶ **prohibition of corporal punishment**, mental suffering, or other humiliating measures (see Sects. 858, 884 para 2)
- ▶ A child has the **right to equal care from both parents**, just as parents have the right to equal care for their child. (Sect. 888 para 1)
- ▶ changes in the exercise of parental responsibility after divorce (see below)



Parental Responsibility

Amendment by Act No. 268/2025 Coll. – main features:

► changes in the exercise of parental responsibility **after divorce**
before the amendment:

1) agreement of parents

2) decision of the court on

a) the care of one parent

b) shared care (the child is usually 1/2/3 weeks with one parent and then the same time with the other one)

c) joint care (both parents are in day-to day contact with the child, e. g. they still live in one flat even after a divorce **(note: this is NOT “joint custody” in terms of ECtHR case law)**)

d) the care of a person other than a parent (e. g. grandparent)

!!! note: in CZ, from Act No 265/1949 Coll., both parents have their duties and rights preserved after a divorce !!!



Parental Responsibility

Amendment by Act No. 268/2025 Coll. – main features:

► changes in the exercise of parental responsibility **after divorce**
after the amendment:

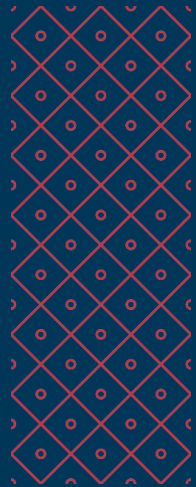
1) agreement of parents (approved by the court)

2) decision of the court on

a) the care of both parents (if the parents consent) **without determining the extent of each parent's care + without decision on duty to maintain and support** the child

b) [if not decided under a)] the care **with determined extend** of each parent's care for the child + **with decision on duty to maintain and support** the child

!!! note: in CZ, from Act No 265/1949 Coll., both parents have their duties and rights preserved after a divorce !!!



Chapter 4

Duty to Maintain and Support



Duty to Maintain and Support

In general:

- ▶ The family was originally considered an economic (independent) unit, where it was natural for it to take care of its members.
 - ▶ Gradually, the state is taking over this role to an increasing extent (pensions, social benefits, welfare state, erosion of the family), but nowhere to the full extent.
 - ▶ The family's obligation to care for its members is still PRIMARY.
 - ▶ The fulfillment of this obligation is assumed to be a matter of course and voluntary
(the principle of solidarity)
-
- ▶ However, this may not work in specific cases ▶ legal regulation of duty to maintain and support



Duty to Maintain and Support

"At this point, it is necessary to emphasize that conceiving a child is not a sport or entertainment, even though it may seem so to some individuals at the beginning.

In reality, however, the future parent takes on duties and responsibilities that will accompany them for the rest of their life, often until their own death.

It is therefore essential that they behave in such a way that they are always able to fulfill their commitments and obligations in all circumstances."

SC Case No 4 Tdo 250/2012

(criminal offense of neglecting mandatory maintenance under Sect. 196 of the Criminal Code)



Duty to Maintain and Support

Fundamental concepts:

Alimony = assets (valuable in monetary terms) provided by one person to another for the purpose of supporting them,

i.e.: **to satisfy their basic needs**

includes:

- ▶ alimony *stricto sensu* ("alimentation" / nourishment)
- ▶ other material needs (clothing, footwear, etc.)
- ▶ cultural needs (leisure activities, etc.)



Duty to Maintain and Support

Fundamental concepts:

How the duty to maintain and support can be performed:

- ▶ regular cash payments (Sect. 921)
- ▶ performance of a natural kind (e.g., provision of housing, food etc.)
- ▶ personal care for the entitled person and the shared household



Duty to Maintain and Support

Fundamental concepts:

Duty to maintain and support is a duty and right arising directly by the operation of law (***ex lege***)

The fact that the law imposes a maintenance duty on one person (e.g., a parent) and grants another person (e.g., that parent's child) the right to maintenance **does not necessarily mean** that in a specific case the court will impose the duty or grant the right.



Duty to Maintain and Support

Kinds of Duty to Maintain and Support (Civil Code):

- 1) between spouses (Sect. 697 et seq.), i.e., also between partners under Sect. 655 para 2
- 2) between divorces spoused (Sect. 760 et seq.), i.e., also, between partners under Sect. 655 para 2
- 3) between ancestors and descendants (Sect. 910 et seq.)
 - 3.1) parents towards a child
 - 3.2) other relatives towards a child
 - 3.3) descendants towards ancestors
- 4) maintenance and support, and provision for the payment of certain costs for an unmarried mother (Sect. 920)



Duty to Maintain and Support

Kinds of Duty to Maintain and Support:

5) between registered partners

6) between former (ex-) registered partners

(Act No. 115/2006 Coll., on registered partnership)

X

Sect. 1665 et seq. **right of certain persons to provision for life**

law of succession (short-term provision for some persons linked with the decedent)



Duty to Maintain and Support

Scope of Duty to Maintain and Support:

general criterion

X

special criteria

(for individual kinds of duty to maintain and support)



Duty to Maintain and Support

Scope of Duty to Maintain and Support:

general criterion (Sect. 913)

- ▶ obligor: his abilities, potential and property situation
- ▶ obligee (entitled person): justified needs and property situation
- ▶ good morals (Sect. 2 para 3)



Duty to Maintain and Support

Scope of Duty to Maintain and Support – general criterion – **potential of obligor:**

When **determining the amount of potential income**, the court does not base its decision on the higher income that the obligated person previously earned, but on **the income that the obligated person could earn given their actual abilities and possibilities** (including financial), determined by, among other things, their physical condition, talents, education, work experience, and supply and demand in a reasonably defined regional labor market.

SC Standing No Cpjn 204/2012 (R 110/2016)



Duty to Maintain and Support

Scope of Duty to Maintain and Support – general criterion – **good morals:**

In other words, **a conflict with good morals as a reason for not granting maintenance under Section 96(2) of the Family Act is linked to the conduct of the person seeking maintenance, and not to the conduct of other persons**, whether they are obligated, i.e., those against whom the claim for maintenance is directed, or third parties.

CC Case No III. ÚS 606/04



Duty to Maintain and Support

Scope of Duty to Maintain and Support – special criteria:

1) an **extent that, in principle, ensures the same material and cultural standard for both of them** (Sect. 697 para 1)

▶ spouses, partners under Sect. 655 para 2

2) **a reasonable extent**

▶ divorced spouses, partners under Sect. 655 para 2



Duty to Maintain and Support

Scope of Duty to Maintain and Support – special criteria:

3) an extent ensuring that the divorced spouses have essentially the same standard of living (Sect. 762 para 1)

▶ divorced spouses, partners under Sect. 655 para 2 (in case of “sanction“, no more than 3 years after the divorce)

4) in principle, the standard of living of a child is to be identical to the standard of living of his parents (Sect. 915 para 1)

▶ a child maintained by parents (not by grandparents or other relatives)



Duty to Maintain and Support

Scope of Duty to Maintain and Support – special criteria:

5) **fair maintenance** (Sect. 915 para 2)

▶ parents maintained by their child

6) **no special criteria stipulated in CC**

▶ among other ancestors and descendants

(repealed Act No. 94/1963 Coll., on Family stipulated for essential maintenance)



Duty to Maintain and Support

Scope of Duty to Maintain and Support – special criteria:

X essential maintenance

Sects. 1665 et seq. – short time provision in succession law;

Sect. 2068 – donation contract: a donor may revoke the gift if he lack the means for his own essential maintenance or the essential maintenance of the person in respect of whom he has the statutory duty to maintain and support ...



Duty to Maintain and Support

Scope of Duty to Maintain and Support – equal material and cultural standard for spouses – extremely wealthy spouses

The life of a **person from a wealthy social class** cannot be simply reduced to shopping for expensive clothes, as the regional court has done. **Judges must not mechanically project their middle-class ideas onto the needs of people from other social classes.** The court summarily rejected the complainant's claims as demands for a "life of luxury," **but did not take into account the Civil Code's requirement for "fundamentally the same material and cultural level" for both spouses.** The consequence of such reasoning will be the regular disadvantage of women, as it is typically (though not always) women who are financially weaker in a marriage and who care for the children.

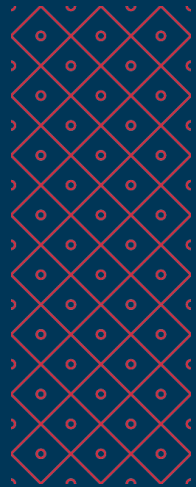
CC Case No IV. ÚS 2691/24



Duty to Maintain and Support

Scope of Duty to Maintain and Support – equal material and cultural standard for parents and children – extremely wealthy family

The convergence in living standards between parents and children must therefore be sought **primarily in the way of life itself**, in the use of cultural, sporting, and social opportunities. **The same standard of living must enable the child to live a lifestyle that does not exclude them from the family as a whole** in comparison with other family members, or that does not create unjustified differences between parents and children.



Chapter 5

Foster Care



Foster Care – In General

= substitute for family care

= foster care in broader sense (*largo sensu*)

Includes:

- 1) **Tutorship** (Sect. 928 et seq.)
- 2) **Guardianship** (of a child) (Sect. 943 et seq.)
- 3) **Entrusting a child to the care of another person** (Sect. 953 et seq.)
- 4) **Foster care** (Sect. 958) (*stricto sensu*, in proper/narrower sense)
- 5) **Institutional Care** (Sect. 971 et seq.)



Foster Care – 1) Tutorship

“Tutor loco parentis habentur.”

“The tutor takes the place of the parents.”

locum tenens = *lieu-tenant* = “place-holder“, substitute

► **personal status institution; the tutor does not have parental responsibility, but performs all its components; he has not duty to maintain and support the child**

X The adoptive parent becomes a (legal) parent (change in personal status in terms of legal kinship, therefore the adoptive parent has parental responsibility)

X Foster care *stricto sensu*, entrusting a child..., institutional care have no status consequences – personal status does not change



Foster Care – 1) Tutorship

the institution of substitute legal protection for a person, especially minors, who lack protection in the form of:

paternal authority (ABGB 1811),

parental authority (AFL 1949),

parental responsibility (AF 1963; CC 2012),

and expressing **comprehensive care for the legal affairs of such persons**

Sect. 858: today only for **minors without full legal capacity** (with full legal capacity extinguishes parental responsibility)



Foster Care – 1) Tutorship

Sect. 928 para 1: In the absence of a parent having and exercising his full parental responsibility with respect to a child, **a court shall appoint a tutor** to the child.

E.g.:

parents have died

parents have suspended parental responsibility

parents were relieved of parental responsibility

X

parents were limited in parental responsibility = a guardian shall be appointed



Foster Care – 1) Tutorship

Public tutorship:

if necessary to appoint a tutor to the child (it takes some time)

► tutorship is exercised **by the body for social and legal protection of children as a public tutor, up until the court appoints a tutor to the child** or until the tutor assumes his office.

= ensuring continuity of comprehensive legal protection for children “in every single second” of child's life



Foster Care – 1) Tutorship

termination of tutorship (= no more need for tutorship)

= at least one of the parents of the person under tutorship acquires parental responsibility, or the ability to exercise it.

= is also extinguished if the child acquires legal capacity, or if

= he is adopted.

X

termination of the office of the tutor (= the child still needs another tutor)

the death of a tutor,

by a court decision relieving the tutor of or removing him from his office



Foster Care – 2) Guardianship of the Child

curator – cf. cura minorum

guardian = representative of a child **appointed to protect the child in a specific situation**

► the scope of rights and obligations must always be defined for the guardian in a court decision within the given scope, the guardian is (also) the legal representative of the child

this is **not** comprehensive legal protection (= difference from tutor)

the guardian does not (ever) care for the child (= difference from tutor and foster parent)

it is not taken as a personal status institution



Foster Care – 2) Guardianship of the Child

Appointment by the court if (Sect. 943):

- ▶ there is a thread of conflict of interests between the child and another person,
- ▶ the legal representative fails to sufficiently defend the child's interests,
- ▶ it is in the interests of the child for another reason (= the list of reasons is illustrative), or
- ▶ where provided by a statute (e. g. Sect. 807 – consent with adoption of a minor under 12 years of age).
- ▶ for the administration of the child's assets and liabilities (Sect. 948 et seq.)

An appointed guardian has the right to initiate proceedings whenever the interest of the child requires that a court or another public body decide on a matter of the child.



Foster Care – 2) Guardianship of the Child

apply subsidiarily with the necessary modifications the provisions on guardianship

flexible definition of the content of the function:

the court shall specify:

- ▶ the reason why the guardian is appointed,
- ▶ whether and how the term of his office is limited,
- ▶ what his rights and duties are in relation to other persons also,
- ▶ whether he needs court approval for any juridical acts,
- ▶ whether and how he reports to the court, and
- ▶ whether he is entitled to be reimbursed for all or some of the costs and to receive remuneration.



Foster Care – 3) Entrusting a Child to the Care ...

If neither **of the parents or a tutor** can personally care for the child, a court may entrust the child to the care of another person (hereinafter a “caring person”). (Sect. 953 para 1)

The rights and duties of a caring person are determined by a court; otherwise, **the provisions on foster care apply** with the necessary modifications.

The court shall determine the amount of maintenance and the obligation to pay maintenance to the hands of caring person.

! The child cannot be entrusted to the care of another person if the parents or other relatives cannot be obliged to pay maintenance for the child !



Foster Care – 4) Foster Care *stricto sensu*

Two kind of foster care:

1) under Sect. 958 et seq. CC

= **foster care**

2) under Sect. 27a of Act No. 359/1997 Coll., on social and legal protection of children

= **temporary foster care**

= *so called “professional foster care”*

= in principle no more than 1 year (with some exceptions)



Foster Care – 4) Foster Care *stricto sensu*

Sect. 958:

- (1) If none of the parents or a tutor can personally care for the child, **a court may entrust the child to the care of a foster parent.**
- (2) Foster care takes precedence over institutional care for a child.
- (3) A court may also place a child in foster care temporarily. Details are provided by another statute. (Sect. 27a of Act No. 359/1999 Coll., see above)



Foster Care – 4) Foster Care *stricto sensu*

A foster parent **is obliged** and entitled **to personally care** for the child.

(= he is paid for it)

He is obliged and entitled:

to decide only on common matters of the child,

represent the child in these matters and administer his assets and liabilities

(again, only in these matters)

to allow both parents to have contact with their child in foster care, unless a court decides otherwise

He has the duty to inform the child's parents about substantial matter relating to the child.



Foster Care – 5) Institutional Care

Duration no more than three years (can be prolonged)

For important reasons, **a court may extend institutional care by up to one year after reaching the age of majority.**

= *ultima ratio*

[...] as a necessary measure, also order institutional care. It will do so in particular where previously taken measures have not led to remedy. In doing so, a court shall always consider whether it would not be appropriate to prefer entrusting the child to the care of a natural person. (Sect. 971 para 1)



List of Sources – Civil Code, Case Law

Relevant provisions of Czech Civil Code:

Sects. 777, 778, 855 et seq., 910 et seq., 928 et seq.

Case law:

CZ: CC Case No III. ÚS 606/04

CZ: CC Case No I. ÚS 1393/17

CZ: CC Case No IV. ÚS 650/15

CZ: CC Case No IV. ÚS 2691/24

CZ: SC Standing No Cpjn 204/2012

CZ: SC Case No 24 Cdo 80/2020

CZ: SC Case No 4 Tdo 250/2012



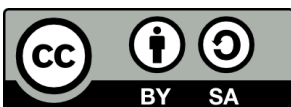
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