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Parental responsibility - child custody and contact rights

 Lithuania

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European Judicial Network
(in civil and commercial matters)

1 What does the legal term “parental responsibility” mean in practical terms? What are the rights and obligations of a holder of parental responsibility?

The rights and duties between children and parents are regulated by the provisions of Part IV of Book III of the Civil Code of the Republic of Lithuania (*Lietuvos Respublikos civilinis kodeksas*, hereinafter ‘the Civil Code’). Article 3.155 of the Civil Code provides that children shall be cared for by their parents until they reach the age of majority or emancipation. The parents shall have a right and a duty to raise and educate their children to be honest, look after their health and, having regard to their physical and mental state, create favourable conditions for their full and harmonious development in order to prepare them for an independent life in society. Chapter XI of Book III of the Civil Code sets out parental rights and duties in respect of their children and Chapter XII stipulates property rights and duties between parents and children.

Article 3.227(2) of the Civil Code states that adoptive parents are to be treated as a child’s parents under the law from the day on which the court judgement on adoption enters into force, save in exceptional cases provided for in Article 3.222(4) of the Civil Code.

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

Article 3.156 of the Civil Code provides that a father and mother shall have equal rights and duties in respect of their children. Parents shall have equal rights and duties in respect of their children irrespective of whether the child was born to a married or unmarried couple, after divorce or annulment of marriage or separation.

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

If the parents are unable or unwilling to exercise parental responsibility over their children, another person can be appointed in their place. For that purpose, the Civil Code establishes the institution of guardianship and curatorship of minors. The basic rules governing the placing of a child under temporary and permanent guardianship/curatorship are laid down in Articles 3.254 and 3.257.

4 If the parents divorce or split up, how is the question of parental responsibility determined for the future?

If parents divorce, future parental responsibility is determined according to the type of divorce.

If a marriage is dissolved by mutual consent between the spouses, they are required to present to the court an agreement on the consequences of the dissolution of marriage (separation of property, maintenance payments for the children, etc.). Article 3.53(3) of the Civil Code provides that, when granting a divorce decree, the court shall approve an agreement on the consequences of the dissolution of the spouses' marriage governing maintenance payments for children of minor age and each other, the place of residence of their minor children, the spouses' involvement in their children's education and other property rights and duties. The content of this agreement is incorporated in the divorce decree. When there is a significant change in circumstances (illness or incapacity for work of one of the former spouses, etc.), the former spouses or one of them may petition the court to modify the terms and conditions of their agreement on the consequences of the dissolution of marriage.

If a marriage is dissolved on the basis of the application of one of the spouses, the application presented to the court must also indicate how the applicant will perform his or her obligations towards the other spouse and their minor children. In granting a divorce the court must resolve the matters relating to the place of residence and maintenance of the minor children, the maintenance of one of the spouses and the separation of the spouses' jointly owned property, except in cases where the property has been divided according to a mutual agreement between them certified by a notary (Article 3.59 of the Civil Code).

A divorce based on the fault of both spouses has the same consequences as the dissolution of marriage by mutual consent between the spouses (Articles 3.51 to 3.54 of the Civil Code). Divorce proceedings based on the fault of one of the spouses are subject, *mutatis mutandis*, to Article 3.59 of the Civil Code.

On the matter of separation, one of the spouses may apply to the court for separate living arrangements to be established if he or she can no longer tolerate living with his or her spouse or this has become impossible or may seriously prejudice the interests of minor children owing to specific circumstances which may not depend on the other spouse, or the spouses are no longer interested in living together. When granting legal separation, the court must designate the spouse with whom the children are to live and resolve the issues relating to the maintenance of the children and the involvement of the separated father (or mother) in the children's education. Both spouses may jointly apply to the court for the approval of their separation if they have reached agreement on the consequences of their separation in terms of the place of residence, the maintenance and education of their minor children, the division of their property and maintenance of each other. Where the spouses have reached agreement on the consequences of their separation, the court will approve the agreement provided that it is consistent with public order and does not harm the rights and legitimate interests of their minor children or one of the spouses. Having approved the agreement, the court incorporates it into the judgment on legal separation.

5 If the parents conclude an agreement on the question of parental responsibility, which formalities must be respected to make the agreement legally binding?

If the parents live together, the arrangements and form of maintenance are determined by the mutual agreement between them. There is no special model for such an agreement or procedure for concluding it. Article 3.193 of the Civil Code provides that, in case of divorce by mutual agreement (Article 3.51 of the Civil Code) or separation (Article 3.73 of the Civil Code), the spouses shall conclude an agreement setting out their mutual duties in maintaining their minor children as well as the means, amount and form of such maintenance. The agreement shall be approved by the court (Article 3.53 of the Civil Code). Parents of minor children may also conclude an agreement on the maintenance of their children if their divorce is based on other grounds. If one of the parents does not comply with the agreement on the maintenance of their minor children as approved by the court, the other parent acquires the right to apply to the court for the issue of the writ of execution.

6 If the parents cannot come to an agreement on the issue of parental responsibility, what are the alternative means for solving the conflict without going to court?

Mediation services as an alternative means for resolving conflict without going to court are available to the parents. Judicial mediation is available at all ordinary courts. Judicial mediation is free-of-charge. It is a cheaper and quicker way of resolving disputes. It should be noted that judicial mediation guarantees confidentiality, and

any party may withdraw from judicial mediation without giving reasons. The referral of a dispute to judicial mediation may be initiated by the judge (chamber) hearing the civil case or any party to the dispute. More information on mediation and a list of mediators can be found on the [Lithuanian courts' website](#).

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

If parents go to court, the judge can decide upon all issues relating to their children, including their place of residence, the parents' visiting/access rights, the maintenance of minor children, and any other issues indicated in the application submitted to the court.

8 If the court decides that one parent shall have sole custody of a child, does this mean that he or she can decide on all matters relating to the child without first consulting the other parent?

Article 3.156 of the Civil Code provides that the father and the mother shall have equal rights and duties in respect of their children. This applies irrespective of whether the child was born to a married or unmarried couple, after divorce or annulment of the marriage or separation. The parents have a right and duty to bring up their children, be responsible for their education and development, look after their health, and provide spiritual and moral guidance. In performing these duties, the parents' rights take precedence over the rights of other persons. The parents must create conditions for their children to attend educational institutions until they reach the age prescribed by law.

The sole custody of one parent may be determined only in cases where the parental authority of the other parent is restricted. Where parents (the father or the mother) fail in their duties to bring up their children, abuse their parental authority, treat their children cruelly, have a harmful influence on their children as a result of immoral behaviour or do not take care of their children, the court may deliver a judgment to temporarily or indefinitely restrict their parental authority (that of the father or the mother). When delivering such a judgment, the court will take into account the specific circumstances on which the application for a restriction of parental authority are based. The parents, however, retain the right to have contact with their child, except where this is contrary to the child's interests. Where parental authority is restricted for an indefinite period, the child may be adopted without the parents' specific consent.

9 If the court decides that the parents shall have joint custody of a child, what does this mean in practice?

Parents decide all issues relating to the education of their children and to other matters of parental responsibility by mutual agreement. If they do not agree, any disputed matter is resolved by the court.

The child's father, mother or the parents (guardians/curators) of legally incapable minor-aged parents may apply to the court regarding parental contact with the child or involvement in the child's education. The court determines the arrangements for a separated father's or mother's parental contact with a child taking into consideration the child's interests with a view to enabling the separated father or mother to enjoy maximum involvement in the child's education. Minimal contact with the child may be ordered only in cases where constant maximum contact is prejudicial to the interests of the child.

10 To which court or authority should I turn if I want to lodge an application on parental responsibility? Which formalities must be respected and which documents shall I attach to my application?

If a person wishes to lodge an application regarding parental responsibility, he or she must apply to the district court. The formalities which must be respected and the documents to be attached to the application depend on the requirements set out in the application and the rights and duties which are contested or must be resolved or determined (as to what parental responsibility involves).

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

The main disputes and issues of parental responsibility are examined according to a simplified procedure.

12 Can I obtain legal aid to cover the costs of the procedure?

The availability of legal aid free-of-charge is governed by the provisions of the Law on State-Guaranteed Legal Aid (*Valstybės garantuojamos teisinės pagalbos įstatymas*). The possibility of obtaining State-guaranteed legal aid depends on a person's financial situation.

13 Is it possible to appeal against a decision on parental responsibility?

Yes, it is possible to appeal against such a decision to the higher court in accordance with the general rules of civil procedure.

14 In certain cases, it may be necessary to apply to a court to have a decision on parental responsibility enforced. Which court should I use in such cases and which procedure applies?

The decision of a court is enforced by bailiffs.

15 What should I do to have a decision on parental responsibility that is issued by a court in another Member State recognised and enforced in this Member State?

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility is applied without any special procedure by recognising a judgment issued by the court of another EU Member State in Lithuania. This Regulation is applied to all EU Member States with the exception of Denmark.

Judgments on access rights and judgments requiring the return of the child issued by the courts of the EU Member States are subject to enforcement in accordance with the rules laid down in Part VI of the Code of Civil Procedure of the Republic of Lithuania (*Lietuvos Respublikos civilinio proceso kodeksas*, hereinafter 'the Code of Civil Procedure').

Applications for jurisdiction to be taken over from a court of a foreign country and applications for jurisdiction to be transferred to a court of a foreign country, as referred to in Article 15 of Council Regulation (EC) No 2201/2003 (and Articles 8 and 9 of the Hague Convention of 19 October 1996), are considered by the Court of Appeal of Lithuania (*Lietuvos apeliacinis teismas*).

The said applications are considered in accordance with the procedure laid down in Chapter 39 of the Code of Civil Procedure, provided Council Regulation (EC) No 2201/2003 does not provide otherwise. Such applications are not subject to court fees.

Applications lodged with the Court of Appeal of Lithuania must comply with the general requirements for procedural documents (Article 111 of the Code of Civil Procedure). In compliance with Article 15 of the Council Regulation (EC) No 2201/2003, the application and any accompanying appendices must be submitted in the state language, or translations of them into Lithuanian must be attached. Where the applicant resides outside the Republic of Lithuania and has not appointed a representative for the case or an authorised person to obtain procedural documents who resides/has a professional office in the Republic of Lithuania (Article 805 of the Code of Civil Procedure), the application must indicate an address in the Republic of Lithuania or the address of a telecommunications terminal device, to which the procedural documents will be served on the applicant. However, these requirements do not apply to applications lodged with the Court of Appeal of Lithuania by a court of a foreign country.

Where appropriate, the Court of Appeal of Lithuania may charge the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour of the Republic of Lithuania (*Valstybės vaiko teisių apsaugos ir įvaikinimo tarnyba prie Lietuvos Respublikos socialinės apsaugos ir darbo ministerijos*) with submitting an opinion on the expediency of taking over or transferring jurisdiction. The Court of Appeal of Lithuania sets a time limit within which this opinion must be submitted.

An application must be considered by the Court of Appeal of Lithuania not later than within six weeks of the date of receipt of the application by the court.

After having considered an application for jurisdiction to be taken over from a court of a foreign country and adopted a decision to grant the application, the Court of Appeal of Lithuania, having regard to the circumstances of the case, will appoint a competent Lithuanian court to consider the case in Lithuania. The proceedings instituted in the court of the foreign country are transferred to the competent Lithuanian court for an examination of the merits of the case. In this case, the provisions of Article 35 of the Code of Civil Procedure apply *mutatis mutandis* and the proceedings continue at the competent Lithuanian court. Where appropriate, the competent Lithuanian court establishes the position of the parties in the proceedings and takes measures to eliminate any shortcomings affecting the procedural documents.

16 To which court in this Member State should I turn to oppose the recognition of a decision on parental responsibility issued by a court in another Member State? Which procedure applies in these cases?

An appeal must be lodged with the Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*). It will be examined as an appeal in cassation in accordance with the provisions of the Code of Civil Procedure.

17 Which law does the court apply in a proceeding on parental responsibility where the child or the parties do not live in this Member State or are of different nationalities?

The law applicable to relations between parents and children is determined under Article 1.32 of the Civil Code. Personal and property relationships between parents and children are governed by the law of the state where the child is habitually resident. If neither parent is habitually resident in the state where the child is habitually resident and the child and both parents are citizens of the same state, the law of the state of which they all are citizens is applicable.

In matters concerning parental responsibility, the competent court is determined in accordance with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.

The law applicable to the protection of minors, their guardianship and curatorship is determined pursuant to the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants.

Maintenance obligations (alimony) within the family are governed by the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.

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