

[Home](#) > ... > [Family Matters & Inheritance](#) > [Parental Responsibility - Child Custody and Contact Rights](#) Estonia

Parental responsibility - child custody and contact rights

 Estonia

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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?

Parental responsibility denotes rights of custody, which is the duty and the right of a parent to take care of their minor child. Parental custody includes the right to take care of the person of the child (*‘custody of person’*), the right to manage the child’s property (*‘custody of property’*) and the right to decide on matters related to the child. Custody of property includes the right and the duty to manage the child’s property, including to represent the child. This does not preclude the right of the child to manage their property independently in the cases provided by law.

The parent has decision-making powers in relation to the minor child, i.e. the right to decide on matters relating to the child’s day-to-day life (*‘ordinary custody’*). Decisions on day-to-day matters must generally be understood as taking routine decisions that occur frequently and do not have a lasting impact on the development of the child. In addition to decision-making power, a parent with the right of custody also has a right of representation with respect to their minor child. Parents who have joint custody have a joint right of representation.

Both parents have rights of access, which denotes the duty and right on the part of both parents to communicate with the child in person. Parental access rights do not depend on the existence of rights of custody. Parents also have a maintenance obligation in respect of their minor children.

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

The mutual rights and duties of parents and children derive from the parentage of the child, established in accordance with the procedure laid down by law. The mother is the woman who gave birth to the child. The father is the man who conceived the child. The child is considered to have been conceived by the man who was married to the child’s mother at the time of birth of the child, who has acknowledged paternity or whose paternity has been established by a court.

Parental responsibility in the form of custody rights over a child is exercised jointly by parents who are married. If the parents are not married to each other at the time the child is born, they have joint custody if, when submitting the acknowledgement of paternity, they did not express a wish to confine rights of custody to only one of the parents.

In cases where neither of the parents of the minor child has the right of representation or where the origin of the child cannot be established, a guardian for that child is appointed. In such cases, the guardian has rights of custody. The guardian’s role is to provide the child with an upbringing and to protect their personal and property interests.

Any adult natural or legal person with full active legal capacity, e.g. a relative of the child, a third party or a legal person (a company or a local government) may be the legal guardian. A legal person is appointed as guardian if no suitable natural person can be found, or if a parent so wishes by means of a will or succession agreement. The legal person is required to systematically seek guardians who are natural persons for the persons under the legal person's guardianship, and to provide advice and training to such guardians.

Until the appointment of a legal guardian, the guardian's duties are temporarily performed by the rural municipality or city government of the child's place of residence as entered in the population register, provided that the preconditions for establishing guardianship are met. In the performance of the guardian's duties, a rural municipality or city government has the rights and duties of a legal guardian.

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 take custody of the child, they can consent to the adoption of the child. Consent to adoption by a parent does not enter into force until 8 weeks have passed from the birth of the child, and an application for adoption cannot be filed with a court before parental consent has entered into force. With the consent of a parent, a child may be given to the person who wishes to adopt the child to be cared for before entry into force of the consent granted for adoption.

If neither of the parents of the minor child has the power of representation or if the origin of the child cannot be established, the court decides to appoint a guardian, at its own motion or at the request of a municipal or city authority or of an interested party.

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

If the parents are divorced or separated, they must decide how future questions regarding custody rights are to be resolved. Parents with custody rights may agree to organise joint exercise of the right of representation, but any change in the rights of custody, including the termination of joint custody, is possible only through the courts.

Each parent has the right to ask a court in proceedings on petition for custody of the child to be partially or fully transferred to them. A custody dispute may also be decided by the court as part of proceedings on an action, if this is requested in an action for divorce or the payment of a maintenance allowance.

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

Parents with custody rights may organise joint exercise of the right of representation in a free manner, but any change in rights of custody, including the termination of joint custody, is possible only through the courts. Matters related to custody are decided and determined in a legally binding manner by a court. When examining matters concerning the child, the court has as the primary consideration the best interests of the child, taking into account all the circumstances and the legitimate interests of the persons concerned. Custody disputes constitute family-law matters, which are heard by courts on petition and adjudicated on by means of a court order. To establish their rights in relation to a child, a parent must submit an application to the court.

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?

Parents with custody rights may organise joint exercise of the right of representation in a free manner, but any change in rights of custody, including the termination of joint custody, is possible only through the courts.

Parents can also use the national family mediation service in order to reach an agreement. The national family mediation service is intended for parents who have separated or are in the process of separating, who have one or more minor children together and who have failed to reach an agreement on matters relating to a child's living arrangements (such as contact arrangements or maintenance).

The national family mediation service is free of charge for parents; to access it they must contact the Social Insurance Board (*Sotsiaalkindlustusamet*). The outcome of the family mediation process is a parenthood agreement signed by the parents. A parenthood agreement approved by the Social Insurance Board is an enforceable instrument. The role of the local government when parents turn to the family mediation service is to support and advise them.

When determining the procedure for having contact with the child, the court also acts as a conciliation body in court proceedings, seeking an agreement between the parents on contact with the child. The court hears the parties concerned as early as possible and draws their attention to the possibility of availing themselves of the help of a family counsellor, in particular with a view to coming to a joint position on the custody of and responsibility for the child. The court can stay the proceedings concerning the child if such action does not entail a delay that would jeopardise the best interests of the child and if the parties concerned are willing to engage in consultations outside of court proceedings, or if the court considers for other reasons that there seems to be a way of resolving the case by means of an agreement between the parties.

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

The jurisdiction of courts includes matters related to the right of parental contact with children, changes in custody rights, reinstatement of custody rights, obligations to pay a maintenance allowance and changes at the request of a parent in the amount of the maintenance allowance.

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?

The mutual rights and duties of parents and children derive from the parentage of the child, established in accordance with the procedure laid down by law, which means that the parent from whom a child is descended has a duty to care for the child. The mutual rights and duties of a parent and a child depend on who has custody of the child, i.e. if only one parent has custody of the child, that parent can decide on all matters relating to the child without first consulting the other parent.

A parent may have sole rights of custody as from the moment the child is born, e.g. if in an acknowledgement of paternity the father expresses a wish to confine parental authority to only one of the parents. A parent can also obtain sole custody in the three cases outlined below.

A parent obtains sole custody if the parent has applied to a court, in proceedings on petition, for custody of the child to be partially or fully transferred to them. A parent usually applies for this arrangement when parents with joint custody are permanently separated or otherwise do not wish to exercise custody jointly in the future.

A parent also exercises sole rights of custody when the rights of custody are held jointly by the parents but the rights of one of the parents have been suspended. If sole custody of a child granted to a parent on the basis of law or a court ruling is suspended and there is no reason to expect that the grounds for suspension will cease to exist, a court grants the rights of custody to the other parent, provided that this is consistent with the best interests of the child.

A court also grants custody to the other parent if the parent with sole custody has died or has been deprived of their rights of custody, unless this conflicts with the best interests of the child.

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

If parents have joint custody, they exercise the joint custody with respect to their child and perform custodial duties on their own responsibility and unanimously, considering the child's overall well-being. Parents who have joint custody also have a joint right of representation.

If parents exercising joint custody fail to reach an agreement in a matter significant for the child, a court may, at the request of a parent, grant powers of decision in this matter to one parent. In the case of the transfer of powers of decision, a court may restrict the exercise of the powers of decision or impose supplementary obligations on the parent exercising the right.

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?

Custody-related disputes are adjudicated by county courts. For disputes related to rights of custody, an applicant must submit an application to the county court for a decision in proceedings on petition. The petition must be filed with the county court of the child's place of residence.

The application must state the name of the court, the identity of the applicant, of the person concerned by the case and of their children, as well as the applicant's claim, clearly expressed. The application must also state the facts of the matter, and the applicant must list and provide the evidence they have at their disposal. The application must be signed by the applicant or a representative thereof. If it is signed by a representative, an authorisation document or another document certifying their powers of representation must also be included.

The application and documentary evidence must be submitted to the court in writing and in Estonian. If an application, petition, appeal or objection submitted to the court by a party to the proceedings is not in Estonian, the court requires the person submitting it to provide a translation into Estonian by a set deadline.

Matters involving the determination of a parent's rights in respect of a child and the arrangement of access to the child, i.e. custody-related matters, can also be adjudicated in an action, if this is requested as part of an action in conjunction with a divorce or the payment of maintenance allowance.

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

Courts hear custody-related matters on petition in accordance with the provisions concerning actions, considering the differences laid down in respect of proceedings on petition (see the Code of Civil Procedure (*tsiviilkohtumenetluse seadustik*) [1]).

In expedited proceedings concerning a child, courts can rule only on a claim for maintenance against a parent who is separated from a minor child. Custody-related matters cannot be heard in a simplified procedure. However, custody-related matters are matters heard on petition and therefore differ from an ordinary action. For matters heard on petition, the court itself sets out the facts and collects the necessary evidence for that purpose, unless otherwise provided by law. The court is not bound by the petitions made or facts submitted by the parties to the proceedings, nor by their assessment of the facts, unless otherwise provided by law. The requirements for taking minutes of hearings and for service of documents are also less stringent. In custody-related matters, courts can also apply measures to regulate the exercise of custody or the access to the child during the proceedings or in order to secure future compliance with agreements.

The court may apply precautionary or interim measures if there is reason to believe that failure to apply the measures may render enforcement of a judgment difficult or impossible. Provisional legal protection in a family matter on petition may be imposed by any court within whose territorial jurisdiction the relevant measure must be applied. Examples of measures include the surrender of a child to the other parent or the enforcement of a legal maintenance obligation, including the possibility of requiring the defendant to pay maintenance during the

proceedings or to provide security for that purpose.

[1] Code of Civil Procedure (RT I 2005, 26, 197; RT I, 21.06.2014, 58).
Online: <https://www.riigiteataja.ee/akt/121062014058?leiaKehtiv>.

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

If the court finds that a natural person is unable to bear the costs of the proceedings because of their financial situation, the court may exempt them from the payment of legal aid and state fees, in whole or in part.

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

A ruling in proceedings on petition is a court order to which the provisions of a court order in an action are applicable, unless otherwise provided by law. An appeal can be filed against an order on rights of custody in accordance with the general provisions governing appeal proceedings, if the appellant finds that the ruling of the court of first instance is based on an infringement of a legal provision (for example, if the court of first instance has incorrectly applied a legal provision of substantive law or procedural law). For the above reasons, an appeal in cassation can also be filed with the Supreme Court.

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?

Custody-related matters are heard in proceedings on petition. In family matters on petition, the court issues an order which is enforceable from the date of its entry into force, unless otherwise provided by law. An order issued in a matter on petition is an enforceable instrument. If the debtor does not voluntarily comply with the custody order, it is enforced on the basis of an application by the claimant in enforcement proceedings. To this end, the claimant must submit an application to the bailiff of the place where the debtor is domiciled or resident or where the debtor's assets are located. In a matter concerning access to a child, the bailiff will, in enforcement proceedings, work together with a representative of the local government of the place of residence of the child or, in exceptional cases, of the place of residence of the obligated person, who has expertise in interaction with children. If necessary, the bailiff may suggest to the local government that the child be temporarily placed in a welfare facility. If the obligated person impedes compulsory enforcement, they may be subject to a penalty payment.

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?

Under Council of Europe Regulation (EU) 2019/1111, which governs jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and international child abduction, a judgment handed down in one Member State is recognised in the other Member States without any special procedure being required. The Regulation applies to all Member States of the European Union, with the exception of Denmark.

A judgment given in a Member State on the exercise of parental responsibility in respect of a child which is enforceable in that Member State and has been served will be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. To this end, a petition for a declaration of enforceability must be submitted to the court.

The court to which the application should be submitted can be found [here](#).

A party seeking or contesting recognition or applying for a declaration of enforceability must produce:

a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

b) the certificate concerning judgment on parental responsibility.

Form available [here](#)

A judgment relating to parental responsibility is not recognised if:

a) such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought, taking into account the best interests of the child;

b) it was given *in absentia* if the absent person was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for their defence, unless it is determined that such person has accepted the judgment unequivocally;

c) on the request of any person claiming that the judgment infringes their parental responsibility, it was given without such person having been given an opportunity to be heard;

d) it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;

e) it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or a non-Member State that is the habitual residence of the child, provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought;

or

f) the procedure laid down in Article 82 of Council Regulation (EC) No 2019/1111 has not been complied with.

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

The court to which the application should be submitted can be found [here](#).

A party seeking or contesting recognition or applying for a declaration of enforceability must produce:

a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

b) the certificate concerning judgments on parental responsibility referred to in Article 36 of Council Regulation (EC) No 2019/1111.

Form available [here](#)

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 Estonian Private International Law Act (*Rahvusvahelise eraõiguse seadus*) establishes that family-law relationships between a child and their parents are governed by the law of the child's country of residence.

In addition, the Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children is applicable between the States signatory to the Convention.

The determination of the applicable law may also be subject to agreements on legal assistance. The Republic of Estonia has entered into agreements on legal assistance with the following countries:

- The Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships (1993);
- The Agreement between the Republic of Estonia and the Russian Federation on Legal Assistance and Legal Relationships in Civil, Family and Criminal Matters (1993);
- The Agreement between the Republic of Estonia and Ukraine on Legal Assistance and Legal Relationships in Civil, Family and Criminal Matters (1995);
- The Agreement between Estonia and Poland on Granting Legal Assistance and Legal Relations on Civil, Labour and Criminal Matters (1999).

Since all the parties to the agreements on legal assistance concluded with Lithuania, Latvia and Poland are also parties to the Hague Convention of 1996, the parties have decided to apply the provisions of the Convention in determining the applicable law.

[1] Private International Law Act (RT I 2002, 35, 217).

Online: <https://www.riigiteataja.ee/akt/13242136?leiaKehtiv>.

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