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Parental responsibility - child custody and contact rights

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(in civil and commercial
matters)



Latvia

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

A child is under parental custody until the age of majority has been reached.

Custody means the parent's right and obligation to take care of the child and the child's property and represent the child in personal and property relationships.

Caring for a child means the care and supervision of a child and the right to determine the child's place of residence.

Child care means maintenance of the child, i.e. providing food, clothing, housing and health care, personal care, education and upbringing (ensuring mental and physical development with due regard to the child's personality, skills and interests, and preparing the child for useful work in society).

Parental supervision means taking care of the child's safety and preventing any danger from third parties. The right to determine the child's place of residence means the geographic choice of the place of residence and the choice of housing.

Caring for the child's property means maintaining and using the child's property in such a way as to preserve it and enhance its value.

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

Parents living together exercise parental custody jointly. If the parents are separated, their joint responsibility continues. The care and supervision of the child must be ensured by the parent with whom the child is living. Parents are to take decisions jointly on issues that may have a significant impact on the child's development.

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

If endangerment of the child's health or life is the fault of a parent (either intentional behaviour or neglect) or the parent abuses their rights or fails to provide child care and supervision, thus jeopardising the child's physical, mental or moral development, the court may deprive the parent of the right of custody.

When depriving one parent of custody, the court transfers the child to the separate custody of the other parent. Where the custody exercised by the other parent cannot adequately protect the child from danger or if both parents have been deprived of custody, the court tasks the family court (*bāriņtiesa*) with ensuring out-of-home

care for the child.

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

If the parents are separated, their joint responsibility continues. Care and supervision of the child must be ensured by the parent with whom the child is living. Parents are to take decisions jointly in matters that may have a significant impact on the child's development. Disputes between the parents are settled by the family court, unless the legislation provides otherwise. The parent's joint custody is terminated when an agreement between the parents or a court decision establishes the separate custody of one parent.

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 agree on the matter of parental responsibility and act on the agreement willingly, it is not necessary to obtain approval from any authority or 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?

In the event of a dispute, disagreements and differences are resolved by the family court.

Mediation can also be effective for the resolution of family conflicts; with the help of the mediator as a neutral third party, an attempt is made to find a solution to the dispute acceptable to the parties, by listening to both parties' expectations and needs. Under the '[Mediation of family disputes' State budget programme](#), implemented by the Ministry of Justice in cooperation with the Council of Certified Mediators, families have the opportunity to take part in five hour-long mediation sessions paid for by the State, while for families classified as low income or deprived, seven hour-long sessions are paid for.

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

If the parents go to court, they can apply for joint or separate custody. If necessary, the judge also decides on matters of maintenance, place of residence, etc. A parent with a separate right of custody exercises custody over the child, which includes the right to act on behalf of children in their personal and property relations and the right to establish the child's place of residence. Each parent has the obligation and the right to maintain a personal relationship and direct contact with the child. This rule also applies if the child is separated from the family or if the child no longer lives with one or both of the parents. The parent who does not live with the child has the right to be kept informed about them, especially about their development, health, academic achievements, interests and living conditions. A parental dispute over custody should be decided in the interests of the child and the child's opinion should be sought, if they are able to express it.

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?

A parent who has separate custody of the child has all the rights and obligations deriving from such custody. Parents are obliged to provide maintenance for a child commensurate with their ability and financial circumstances. The duty to provide for a child rests with the father and the mother until such time as the child is able to provide for itself.

The responsibility to provide maintenance for a child does not end if the child lives separately from the family or if the child no longer lives with one of the parents.

When awarding separate custody, the courts consider the circumstances of the case, that is, which parent the child lives with at the moment the action is filed and which parent exercises custody over the child on a daily basis. The child has the right to maintain a personal relationship and direct contact with either parent (access rights). Each parent has the obligation and the right to maintain a personal relationship and direct contact with the child. The parent who does not live with the child has the right to be kept informed about them, especially about their development, health, academic achievements, interests and living conditions. The award of separate custody of the child to one parent does not mean that the other parent is deprived of the right of custody.

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

If the children are under the joint custody of both parents, both parents may act on behalf of the children in their personal and property relations. The parents take joint decisions on all matters concerning the child's development.

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?

Claims arising from custody and access rights are to be brought before the court of the child's place of residence. The registered place of residence of the parents is deemed to be the child's place of residence in claims arising from custody and access rights. If the registered places of residence of the child's parents are located in different administrative areas, the child's place of residence is deemed to be the registered place of residence of the parent with whom they live. If the child's parents or the child have no registered place of residence, the child's place of residence is deemed to be the parents' place of residence.

The statement of claim should be filed pursuant to Article 128 of the Law on civil procedure (*Civilprocesa likums*). Article 129 of the Law on civil procedure applies in terms of the documents to be annexed to the statement of claim.

A family court opinion on the matter may also be annexed to the statement of claim.

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

Judicial proceedings in civil cases are governed by Latvia's Law on civil procedure. Cases relating to the protection of the child's rights and interests are considered by the court as a matter of priority. The court requests the family court's opinion in matters relating to the award of custody, child care and the procedure for exercising the right of access, and invites a representative to attend the court hearing and find out the child's opinion if the child is able to express it considering their age and degree of maturity.

Civil cases are heard by the courts in open sessions, except, for instance, cases of custody and access rights. Similarly, the court may declare the session, or part of it, as closed in the interests of minors upon substantiated request by the parties or at the discretion of the court.

The parties have the right to make a substantiated request to the court for faster consideration of the case. The court then examines this substantiated request.

Upon the request of one of the parties, a court judgment may state that the judgment in full or parts thereof on child maintenance and in cases relating to custody and the right of access is/are enforceable without delay.

Upon the request of one of the parties, the court hands down a ruling temporarily establishing maintenance for the child until the judgment is issued.

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

Low-income or deprived persons, who have been classified as such pursuant to the procedure laid down in the legislation, and persons who suddenly find themselves in such a position and financial situation that prevents them from defending their rights (as a result of natural disasters, cases of *force majeure* or other circumstances beyond their control), or are fully in the care of the State or municipality (hereinafter referred to as a 'special situation'), have the right to request financial support for legal assistance.

At a person's substantiated request, the court or the judge considers the financial situation of an individual and fully or partially exempts them from payment of legal expenses into the State budget, likewise suspending the compulsory payment of court expenses into the State budget or dividing them into instalments.

In accordance with the Law on civil procedure, claimants are exempt from payment of court expenses into the State budget for claims relating to maintenance recovery for a child.

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

A judgment can be appealed under the general procedure, i.e. by filing an appeal with the Regional Court (*Apgabaltiesa*) or an appeal on a point of law with the Supreme Court (*Augstākajā tiesa*).

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?

Court rulings are acted upon once they enter into effect, or immediately if they are declared as immediately enforceable.

They are enforced by a sworn bailiff.

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?

The rulings of foreign courts are recognised and enforced by Latvia's courts.

The rulings of foreign courts are recognised and enforced pursuant to the procedure established by the Law on civil procedure and pursuant to Council Regulation No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

An application for a declaration of enforceability is submitted for consideration to the district (or city) court at the permanent place of residence of the person against whom the enforcement is sought or at the permanent place of residence of the child to whom the enforcement relates. A decision on a declaration of enforceability or on the rejection of a decision declaring enforceability is taken by a judge sitting alone, on the basis of the application submitted and the documents attached thereto, within 10 days of the day of submission of the application, without summoning the parties.

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 decision of the first-instance court on the recognition of a decision of a foreign court may be contested by the submission of an ancillary complaint to the regional court, and the regional court's decision may be

contested by lodging an ancillary complaint with the Senate (*Senāts*).

A party to the case whose declared place of residence is in Latvia, or failing that whose actual place of residence is in Latvia, may lodge an ancillary complaint within 30 days of receipt of a copy of the decision; a party to the case whose declared place of residence or actual place of residence is not in Latvia may lodge an ancillary complaint within 60 days of receipt of a copy of the decision.

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?

Latvia is bound by 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, and bilateral agreements on legal assistance concluded between the Republic of Latvia and the Russian Federation, Ukraine, the Republic of Belarus, the Republic of Uzbekistan, the Republic of Kyrgyzstan and the Republic of Moldova.

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