

**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 signifies custody of a minor child, which involves the parent's obligation and right to take care of the child. Parental responsibility 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 obligation to manage the child's property, and also to represent the child. This does not preclude the right of the child to manage his or her property independently in the cases provided by law.

A parent has decision-making power in respect of his or her minor child, which consists of the right to decide on every day (usual care-related) matters concerning the child. As a rule, deciding on everyday matters means making ordinary decisions which occur often and which do not have a permanent effect on the development of the child. In addition to the decisionmaking power, a parent with the right of custody also has a right of representation with respect to his or her minor child. Parents who have joint custody have a joint right of representation.

Both parents have the right of parental contact with their children, which means the obligation and right of both parents to maintain direct contact with their children. The right of parental contact with their children does not depend on the existence 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 obligations of parents and children arise from filiation, which is ascertained pursuant to the procedure provided by law. The woman who gives birth to a child is the mother of that child. The man by whom a child is conceived is the father of that child. A child is deemed to have been conceived by the man who is married to the mother of the child at the time of the birth of the child, who has acknowledged his paternity, or whose paternity has been established by a court.

Parents who are married to each other have joint parental responsibility, i.e. custody of their children. If the parents of a child are not married to each other at the time of birth of the child, they have joint parental responsibility unless they have expressed their wish to leave the parental responsibility to one of the parents when submitting the declarations of intention concerning the acknowledgement of paternity or maternity.

If neither of the parents of a minor child has the right of representation or if it is not possible to ascertain the child's parentage, the child is appointed a legal guardian. In this case, the legal guardian will have custody. The duty of the legal guardian is to ensure the upbringing and development of the child and the protection of the child's personal and proprietary interests.

An adult natural person with full active legal capacity (for example, the child's relative or a third party) or a legal person (a company or a local government) may be the legal guardian. A legal person is appointed as the legal guardian, if a suitable natural person is not found or if a parent has specified in his or her will or succession contract that a legal person should be appointed as the legal guardian. 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 entered in the population register, provided that the preconditions for the establishment of guardianship are met. In the performance of the guardian's duties, a rural municipality or city government has the rights and obligations 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 exercise parental responsibility over a child, they can consent to giving the child up for adoption. The consent of a parent to adoption will not enter into force before eight weeks have passed from the birth of the child, and a petition for adoption cannot be filed with a court before entry into force of the consent of a parent. 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 a minor child has the right of representation or if it is not possible to ascertain the parentage of a child, a court decides on the appointment of a legal guardian on its own initiative or on the basis of an application of a rural municipality or city government or an interested person.

**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 to settle further custody issues. Parents who have custody may agree on the arrangements for exercising their joint right of representation. However, changing custody arrangements, including the termination of joint custody, may only be done through a court.

Each parent has the right to request from a court in proceedings on petition that custody of the child be partially or fully transferred to him or her. A court can also adjudicate a custody dispute in an action, if this is requested in conjunction with 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 may freely arrange the exercise of joint custody. However, changing custody arrangements, including the termination of joint custody, is possible only through a court. Matters related to custody are decided and determined in a legally binding manner by a court. When hearing any matter concerning a child, the courts are above all guided by the best interests of the child, taking into account all of the circumstances and the legitimate interest of the relevant persons. Custody disputes constitute family law matters, which are heard by courts on petition and adjudicated by an injunction. In order to have his or her rights in respect of a child be determined, a parent must file a petition with a 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 may freely arrange the exercise of joint custody. However, changing custody arrangements, including the termination of joint custody, is possible only through a court. To come to an agreement, parents can use the family mediation service. The local government can refer them to the relevant service provider. For example, parents can agree on the procedure for access to the child on their own or with the help of a family mediator, but if the agreement is violated, they must go to court to obtain an enforcement instrument (i.e. an injunction).

In determining the procedure for access to a child, the courts also act as conciliation bodies in judicial proceedings, seeking to achieve an agreement between the parents on access to the child. Courts hear the parties as soon as possible and draw their attention to the possibility of using the assistance of a

family counsellor, in particular to reach a common position on the care of and responsibility for the child. A court may suspend proceedings concerning a child, provided that the suspension will not lead to a delay harming the best interests of the child and if the parties concerned are prepared to be counselled outside the court or if, in the opinion of the court, the dispute could, for other reasons, be resolved by 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, reinstatement of custody, the obligation to pay the maintenance allowance and changes in the amount of the maintenance allowance at the request of a parent.

#### **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 obligations of parents and children arise from the parentage of children, which means that the parent of whom a child is descended has a duty to care for the child. The mutual rights and obligations 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 can have sole custody of a child from the birth of the child, for example, in cases where the parents have expressed their wish to leave the parental responsibility to one of the parents when submitting the declarations of intention concerning the acknowledgement of paternity. One parent can also obtain sole custody, for example, in the following three cases.

A parent obtains sole custody if the parent has requested from a court, in proceedings on petition, that custody of the child be partially or fully transferred to him or her. A parent would normally request sole custody if parents who have joint custody live permanently apart or for some other reason no longer wish to exercise joint custody.

A parent may also exercise custody alone in cases where parents have joint custody, but one parent's custody has 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 custody to the other parent if this is consistent with the best interests of the child.

A court will also grant custody to the other parent if the parent with sole custody has died or has been deprived of the custody, unless this contradicts 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 the custodial obligation 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 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. In the event of a custody-related dispute, the petitioner must file a petition with a county court for adjudication of the matter in proceedings on petition. The petition has to be filed with the county court of the child's place of residence.

The petition must state the name of the court, the personal data of the petitioner, the person concerned and their children, as well as the express request of the petitioner. In addition, the petition must indicate the facts, and the petitioner must list and present the evidence at his or her disposal. The petition must be signed by the petitioner or the petitioner's representative. In the case of a representative, a power of attorney or another document certifying the power of representation must be appended to the petition.

The petition and documentary evidence must be submitted to the court in writing in Estonian. If a petition, request, complaint or statement of opposition filed with the court by a participant in the proceedings is not in Estonian, the court will require that the person submitting such documents provide a translation by the date set by the court.

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 in an action in conjunction with the 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 [1]).

In an urgency procedure, a court can only adjudicate the claim for maintenance allowance from a parent who lives apart 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. In a matter on petition, the court ascertains the facts and gathers the necessary evidence itself, unless otherwise provided by law. The court is not bound by the requests or facts presented by the parties to the proceedings or by their assessment of the facts, unless otherwise prescribed 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. In a family law matter adjudicated on petition, interim measures may be applied by each court within whose territorial jurisdiction the measures must be taken. Such measures include, for example, return of the child to the other parent or compliance with the legal maintenance obligation; among other things, courts can order the defendant to pay the maintenance allowance during the period of the proceedings or to provide security for compliance with the payment obligation.

[1] Code of Civil Procedure (RT I 2005, 26, 197; RT I, 21.06.2014, 58). Online: <https://www.riigiteataja.ee/en/eli/513122013001/consolide>.

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

If the court concludes that a natural person is unable to bear the costs of proceedings due to his or her financial position, the court may release the person completely or partially from the costs of legal assistance and payment of the state fee.

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

A ruling made in proceedings on petition is an injunction to which the provisions concerning injunctions made in actions apply, unless otherwise prescribed by law. An appeal can be filed against an injunction on 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 a family law matter adjudicated on petition, the court issues an injunction that is enforceable from the moment of its entry into force, unless otherwise prescribed by law. An injunction issued in a matter on petition is the enforcement instrument. In the event that a debtor fails to voluntarily comply with the injunction on custody, the injunction will be enforced in enforcement proceedings on the basis of the

application submitted by the claimant. To this end, the claimant must submit an application to a bailiff in whose territorial jurisdiction the debtor has his or her residence or seat 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, exceptionally, 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, he or she 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?**

According to Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, a judgment given in a 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 on the exercise of parental responsibility in respect of a child given in a Member State 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, an application for a declaration of enforceability must be submitted to a 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 submit:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) the certificate concerning judgments on parental responsibility.

The form is available [here](#).

A judgment relating to parental responsibility is not recognised:

- (a) if 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) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;
- (c) where it was given in default of appearance if the person in default 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 his or her defence unless it is determined that such person has accepted the judgment unequivocally;
- (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;
- (e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;
- (f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of 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
- (g) if the procedure laid down in Article 56 of Council Regulation (EC) No 2201/2003 has not been complied with.

#### **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?**

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 submit:

- (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 39 of Council Regulation (EC) No 2201/2003.

The form is 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?**

According to the Estonian Private International Law Act [1], the relationships between a child and the parents are governed by the law of the country of residence of the child.

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:

- Agreement on legal assistance and legal relations between the Republic of Estonia, the Republic of Lithuania and the Republic of Latvia (1993);
- Agreement on legal assistance and legal relations in civil, family and criminal matters between the Republic of Estonia and the Russian Federation (1993);
- Agreement on legal assistance and legal relations in civil and criminal matters between the Republic of Estonia and Ukraine (1995);
- Agreement on legal assistance and legal relations in civil, labour law and criminal matters between the Republic of Estonia and the Republic of Poland (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/en/eli/513112013009/consolide>.

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