

NATIONAL REPORT: LITHUANIA

A. GENERAL

1. Having regard to the concept of parental responsibilities as defined by the Council of Europe (see above), explain the concept or concepts used in your national legal system.

The concept of parental responsibilities results from Art. 3.155 - 3.158, among others, of Book Three of the Civil Code of Lithuania of 2000 (Lithuanian CC.).

According to Art. 3.155 of the Lithuanian CC, the substance of paternal authority is defined in the following way:

Until they attain majority or emancipation, children shall be cared for by their parents, i.e., a child is subject to the supervision of its parents until majority or emancipation;

Parents have a right and a duty to properly educate and bring up their children, care for their health and, having regard to their physical and mental state, to create favourable conditions for their full and harmonious development so that the child will be able to live independently in society.

Thus, Art. 3.155 defines the notion of parental authority. This notion is not absolutely new – it was used in the legal acts of Lithuania pre World War II as well. Parental authority, the whole complex of parental rights, powers, duties and responsibilities connected with their minor children, has existed in all the periods of development of the society. The essence of parental responsibilities (or parental authority, using the terminology of the Civil Code) is established by Part. 6 of Art. 38 of the Lithuanian Constitution of 1992 as the right and duty of parents to bring up their children to be honest individuals and loyal citizens, as well as to support them until they reach the age of majority (18 years). In fact, parental authority includes considerably more familial relationships than are defined by the law. Besides the legal aspects of parental authority, there are moral aspects, also the aspects determined by customs, which, though not determined by laws, nevertheless exist and develop alongside legal relationships.

In defining legal aspects of parental authority, the law combines personal interests of parents and children with those of the State. Therefore, proper exercise of parental authority is not only a responsibility of the parents themselves, but of the State as well. The principle of care and protection of the family, motherhood, fatherhood and childhood is a Constitutional principle, therefore the point of view of the State in this sphere is established in Part 2 of Art. 38 of the Lithuanian Constitution. The Lithuanian CC provides for such cases when the State interferes or must interfere in the family relationships if parental authority is not exercised in a proper way.

Legally, the parental authority starts from the moment the legal relationships between a child and its parents is established and exists until the child's majority, i.e. its characteristic feature is temporal; a time period defined by the law. Part 1 of

Art. 3.155 Lithuanian CC establishes the legal essence and duration of parental authority: until the age of majority, children are under the supervision of their parents. Parental supervision also comes to an end when a child enters into marriage before attaining the age of 18, or if the child is emancipated (Part 4 of Art. 3.194 Lithuanian CC).

All these provisions are closely connected and compose an integrated whole. They are established in the law as the personal and patrimonial rights and duties of the parents (Art. 3.165-3.172 Lithuanian CC). If any of the provisions on parental responsibilities are ignored, other provisions can not be exercised to their full extent, or at all. For instance, if the parents fail to provide maintenance for their child, it will be impossible to provide favourable conditions for the health, education and development of the child, and for the welfare of the child, etc. The main provisions of parental responsibilities are closely related with the rights of the child. Rights of minor children are implemented by their parents (Part 1 of Art. 3.163 Lithuanian CC), so the parental responsibilities must be orientated to the implementation of the rights of the child. In essence, parental responsibilities and the child's rights and duties are in conformity with each other.¹

2. Explain whether your national concept or concepts encompass:

(a) Care and protection

Yes, the Lithuanian national concept of parental authority encompasses the notion of care and protection. According to Part 2 of Art. 3.155 Lithuanian CC, parents have the right and the duty to properly educate and bring up their children, care for their health and, having regard to their physical and mental state, to create favourable conditions for their full and harmonious development so that the child will be able to live independently in the society. According to Part 1 of Art. 3.165, parents have the right and duty to bring up their children; they are responsible for their children's education and development, their health and spiritual and moral guidance.

In performing these duties, parents rights have priority over the rights of other persons. According to Part 2 of Art. 3.159 Lithuanian CC, parents are jointly and severally responsible for the care and education of their children. According to Art. 3.170 Lithuanian CC, the father or the mother who lives separately from the child has the right to have contact with the child and be involved in the child's education. The father or the mother with whom the child resides may not interfere with the other parent's contacts with the child or involvement in the child's education. Where the parents cannot agree as to the involvement of the separated father or mother in the education of and association with the child, the procedure of the separated parent's association with the child and involvement in the child's education is determined by the court. The separated father or mother has a right to receive information about the child from all the institutions and authorities concerned with the child's education, training, health care, protection of the child's rights, etc. Such information may be denied only if the child's life or health is imperilled by the mother or the father, and in situations provided for by the law.

¹ V. MIKELINAS a.o., *Commentary of Book Three of the Civil Code of Lithuania* (in Lithuanian), Vilnius: Justitia 2002, p. 297-298.

The authorities, organizations, institutions or natural persons who refuse to provide information to the parents about their children may be brought before the court. According to Art. 3.171 Lithuanian CC, parents can maintain contact and be involved in the education of the child who is placed in a special situation (detention, arrest, imprisonment, in-patient clinic, etc.) in the procedure laid down by the law.

(b) Maintenance of personal relationships

Yes. According to Art. 3.156, 3.161 Lithuanian CC, a child has a right to live with its parents, be brought up and cared for in the parents' family, have contact with its parents no matter whether the parents live together or separately, and to have contact with its close relatives, unless that is prejudicial to the child's interests.

(c) Provision of education

Yes, according to Part 2 of Art. 3.165 Lithuanian CC, parents must create conditions for their children to learn during their compulsory school age (16 years). The parents' additional educational duties are established by Art. 21 of the Law on Education of 25 June 1991 (parents must create living and studying conditions for their children that guarantee sound and secure development of their mental and physical abilities as well as their moral growth, parents must send their children who are at least 6 or 7 years old to schools of general education if they are of sufficient physical and psychological maturity, parents must co-operate with educational institutions in questions concerning their child's education, etc).

(d) Legal representation

Yes. According to Art. 3.157 Lithuanian CC ('Representation of children'), legally incapable children are represented by their parents, except where the parents have been declared legally incapable by a court judgment. Parents represent their children on the presentation of the child's birth certificate (Art. 38 Lithuanian Code of Civil Procedure).

(e) Determination of residence

Yes. According to Art. 3.168 Lithuanian CC, an underage child's residence is determined in accordance with the provisions of Book Two of the Lithuanian CC (Art. 2.12-2.17). This means that the child's place of residence is the place of residence of its parents. A child may not be separated from its parents against the child's will, except in cases provided for in Book Three of the Lithuanian CC (this norm corresponds to the provision of Art. 9 of the United Nations Convention on the Rights of the Child). Parents have a right to demand the return of their children from any person who keeps them against the law.

Art. 3.169 Lithuanian CC establishes a child's residence if the parents are separated. When the parents are separated, the child's residence is decided by mutual agreement of the parents. If there is a dispute about the child's residence, it will be determined by a court judgment in favour of one of the parents. If the circumstances change or if the parent with whom the child is to live lets the child live with and be brought up by the other parent, the other parent may file a suit for a redetermination of the child's residence.

(f) Administration of property

Yes. These relationships are regulated by Art. 3.185-3.191 Lithuanian CC establishing parental rights and duties related to the property owned by the children. According to Art. 3.185 Lithuanian CC, property owned by underage children is managed by the parents under the right of usufruct. The parents' right of usufruct may not be pledged, sold, transferred or encumbered in any way, and no execution may be charged against it; parents manage the property that belongs to their underage child by mutual agreement. In the event of a dispute over the management of the child's property, either parent may petition for a judicial order establishing the management procedure of the property; where the parents, or one of the parents, cause harm to the child's interests by mismanaging their underage child's property, the state institution for the protection of the child's rights or a public prosecutor may apply to the court for the removal of the parents from the management of the property that belongs to their underage child. Where warranted, the court shall remove the parents from the management of their underage child's property, revoke their right of usufruct to the child's property and appoint another person as the administrator of the minor's property. Where the grounds for the removal no longer exist, the court may allow the parents to resume the management of their underage children's property under the right of usufruct.

3. In what circumstances (e.g. child reaching majority or marrying) do parental responsibilities automatically come to end?

This issue is specified in Art. 3.160 Lithuanian CC, according to which parental rights and duties shall end when the child attains majority (18 years of age) or full active legal capacity (e.g. in the event of the emancipation of the child who has attained 16 years, or in the event of marriage before the age of 18 years). In certain cases considered in the light of the child's interests, parental authority may be limited on a temporary or permanent basis, or the child may be separated from the parents in the procedure laid down by Book Three of the Lithuanian CC.

4. What is the current source of law for parental responsibilities?

Art. 3.2 Lithuanian CC, which defines sources of family law, establishes the sources of law for parental responsibility as well. The current sources of law for parental responsibilities are: the Constitution of the Republic of Lithuania (Parts 5 and 6 of Art. 38 establish that 'in the family, spouses shall have equal rights', 'the right and duty of parents is to bring up their children to be honest individuals and loyal citizens, as well as to maintain them until they come of age'. Art. 26 and 40 of the Lithuanian Constitution establish the right of parents to educate their children, including education of religion).

The main source is Chapter XI of Book Three of the Lithuanian CC Also special laws like the Law on the Protection of the Rights of the Child of 14 March, 1996, the Law on Education of 25 June 1991, etc. Also very important are international treaties such as the United Nations Convention on the Rights of the Child of 1989, the Council of Europe Convention on the legal status of children born out of wedlock of 1975, and others.

The Government and other state institutions may adopt legal acts on family law matters only as provided for by the Lithuanian CC and other laws (e.g., the Government may adopt regulations regarding the organization of provisional care of the child).

Important sources also are court practice and the legal literature, e.g., Commentary of the Lithuanian CC, which interprets and explains the content of parental responsibilities.

5. Give a brief history of the developments of the law concerning parental responsibilities

During the period of feudalism, family relationships, including the parental responsibilities, were regulated by codified sources of law: Lithuanian Statutes of 1529, 1566 and 1588. The Third Lithuanian Statute of 1588 was applied until 1840, when the Russian Imperial Civil Law was introduced. Characteristic of the Statutes was the discrimination against a child born out of wedlock and the dominant position of the father in the family.

During the pre World War II period of independence (1918-1940), parental responsibilities were regulated by several legal acts applied in different parts of the territory of Lithuania: in the largest part the Russian Imperial Civil Law of 1840 was applied; in Klaipeda region, the German BGB; in Uznešume region, the French Civil Code of 1804; in Palanga and Zarasai regions, the Collection of Civil Laws of the Baltic Provinces of 1864.

From 1944 until 1 July 2001, the Soviet legislation, including the Code of Family and Marriage of 16 July 1969 was applied. The Code of Family and Marriage of 1969, which was in force until the entry into force of the Lithuanian CC of 2000, did not define the institute of parental responsibilities, but the legal aspects of parental authority were given: parental responsibilities and rights in educating their children, maintenance duties of parents, etc. The Code provided equal rights and duties to both parents and abolished discrimination towards children born out of wedlock.

In 2000 the new Lithuanian CC of Lithuania was adopted. The family law was incorporated into Lithuanian CC as its Third Book. During the preparation of the Lithuanian CC, new tendencies, especially the contemporary developments of international law in the area of parental responsibilities, were taken into account. The United Nation Commission on the Rights of the Child evaluated the new Civil Code as one of the most progressive sources in respect to the protection of the rights of the child. The new Lithuanian CC was enacted on 1 July 2001.

6. Are there any recent proposals for reform in this area

There have been no recent proposals for reform in the area of parental responsibilities because the enactment of the new Lithuanian CC means the end of current reforms in this area.

B. THE CONTENT OF PARENTAL RESPONSIBILITIES

7. Describe what the contents of parental responsibilities are according to your national law including case law.

The content of parental responsibilities (of parental authority) according to Lithuanian national law, including case law, includes personal parental responsibilities as well as parental property responsibilities. In general, the content of parental responsibilities is provided for in Part 2 of Art. 3.155 Lithuanian CC. Accordingly, the substance of paternal responsibilities is defined in the following way: parents have a right and a duty to properly educate and bring up their children, care for their health and, having regard to their physical and mental state, to create favourable conditions for their full and harmonious development so that the child will be able to live independently in society. Art. 3.165 Lithuanian CC, supplementing Art. 3.155 Lithuanian CC, defines the substance of personal parental rights and duties as follows:

Parents shall have a right and duty to bring up their children; they shall be responsible for their children's education and development, their health and spiritual and moral guidance. In performing these duties, parents' rights shall have priority over the rights of other persons;²

Parents must create conditions for their children to learn during their compulsory school age;

Parents shall decide all questions related to the education of their children by mutual agreement. In the event of the lack of agreement, the disputed matter shall be resolved by the court;

Parents are under the duty to provide maintenance for their child as well as to provide due management for the property of the child.

8. What is the position taken in your national law with respect to:

(a) Care

Part 6 of Art. 38 of the Lithuanian Constitution, in providing for the main direction of personal parental rights and duties, establishes the following responsibilities within the scope of care: to bring up their children to be honest individuals and loyal citizens, as well as to support them until they come of age. The main parental rights and duties as defined in Art. 3.155 Lithuanian CC include a more detailed list of parental responsibilities in the sphere of care: the duty to properly educate and bring up the children, care for their health and, having regard to their physical and mental state, to create favourable conditions for their full and harmonious development so that the child will be ready for independent life in society.

(b) Education

According to Part 2 of Art. 3.155 of the Lithuanian CC, parents must create conditions for their children to learn during their compulsory school age (16 years). Law on Education of 25 June, 1991 (Art. 19-25) is a special legal act which specifies the duties parents owe to their children in creating conditions for education.

² Supreme Court of Lithuania, 19.11.2002, case *Prienu rajono savivaldybe v. G.Sanda*, www.lat.lt

(c) Religious upbringing

According to Part 5 of Art. 26 of the Lithuanian Constitution, parents and guardians shall without restrictions ensure the religious and moral education of their children and the children under their guardianship, in conformity with their own convictions. Part 1 of Art. 26 of Lithuanian Constitution provides that freedom of religion shall not be restricted; Part 2 of Art. 26 states that everyone shall have the right to freely choose any religion or faith and, either alone or in community with others, in public or private, to manifest his religion or faith in worship, observance, practice or teaching. However, Part 3 of Art. 26 of the Lithuanian Constitution establishes that no one may coerce another person or be subjected to coercion to choose or manifest any religion or faith; Part 4 of Art. 26 of the Lithuanian Constitution provides that freedom to manifest and spread one's religion or faith may be subject only to limitations as are prescribed by law and only when this is necessary in the interests of public safety, public order, health or morals, or for the protection of fundamental rights and freedoms of others. At the same time, the Lithuanian Constitution (Art. 27) establishes that a person's convictions, manifested religion or faith may not serve as a justification for the commission of a crime or non-compliance with the law. Art. 17 of the Law on Education provides that 'upon the wish of parents (or guardians), children may have religious instruction in school by individuals authorized by church dignitaries of the chosen denomination. Children in ward shall be instructed in the religion which is professed by their families or relatives'.

(d) Disciplinary measures and corporal punishment

When exercising their parental authority, parents may use the necessary disciplinary measures with their child. However, corporal punishment or any other violence against a child, or measures which violate the honour and dignity of a child, are prohibited by Art. 49 of the Law on the Protection of the Rights of the Child of 14 March 1996.

(e) Medical treatment

One of the main personal parental duties is parents' responsibility for the health of their children (Part 1 of Art. 3.165 Lithuanian CC). If a child is 16 years of age or younger, the parents are responsible for all decisions regarding medical treatment of the child. After becoming 16, a child may independently make decisions regarding its medical treatment, except in cases provided for by law when such decisions could be adopted only by persons who have attained 18 years of age (Art. 6.726 Lithuanian CC).

(f) Legal representation

According to Art. 3.157 Lithuanian CC, legally incapable children are represented by their parents, except where the parents have been declared legally incapable by a court judgment. Parents represent their children on the presentation of the child's birth certificate.

According to Art. 2.5 Lithuanian CC, full civil legal capacity is acquired when a person attains 18 years. Art. 2.9 Lithuanian CC provides for the possibility of emancipation of persons from 16 years. Minors up to 14 years of age have the right to enter into small transactions (Part 3, Art. 2.7 Lithuanian CC). The special procedure for entering into transactions for minors up to 14 years of age is

established by Art. 2.8 Lithuanian CC Thus, children themselves who have not yet come to majority, if they are not emancipated or married, cannot implement their rights in full.

As has already been mentioned, according to Art. 3.157 Lithuanian CC, legally incapable children are represented by their parents, except where the parents have been declared legally incapable by a court judgment. Parents generally represent their children by entering in transactions (when children are below 14 years of age) or by giving their consent for the child to enter into such transactions (after children reach 14 years). Parents who are recognized by the court judgment as legally incapable cannot be representatives under the law. In such cases, children are represented by a guardian (curator) (Part 1, Art. 3.240 Lithuanian CC). Parental representation is not needed where the law provides the minor with the right to enter into certain transactions independently (Part 3, Art. 2.7; Part 2, Art. 2.8 Lithuanian CC). The minor's parents are his representatives under the law not only in civil relationships, but also when deciding upon the child's personal questions or questions of responsibility. For example, when parents give their consent to acknowledge a minor's paternity (Part 3, Art. 3.142 Lithuanian CC), they on the one hand realize their parental authority and, on the other hand, are acting on his or her behalf to represent the interest of the minor. Representation of minor children is one of the aspects of parental authority. Parental authority is based on filiation, therefore no authorization is needed for a parent to represent their child. Only the presentation of a document which confirms the child's filiation – the child's birth certificate – is required. To confirm their own identity, parents usually present their passport or personal identification card.

9. What is the position taken in respect of the child's right to be heard with regard to the issues mentioned under Q.8((a)-(f)). What relevance is given to the age and maturity of the child?

According to Art. 3.164 Lithuanian CC, the child, if capable of formulating his or her views, must be heard directly or, where that is impossible, through a representative. Any decisions related to a child must be taken with regard to the child's wishes unless they are contrary to the child's interests. In making a decision on the appointment of a child's guardian (curator) or on a child's adoption, the child's wishes shall be given paramount consideration.

If a child considers that his or her parents abuse his or her rights, the child shall have a right to apply to a state institution for the protection of the child's rights or, on attaining the age of 14, to bring the matter before the court.

According to Art. 3.177 Lithuanian CC, when adjudicating on disputes over children, the court must hear the child capable of expressing his or her views in order to ascertain the wishes of the child. According to Part 2 of Art. 3.174 Lithuanian CC, the court must resolve such disputes, having regard to the interest of the child and the child's wishes. The child's wishes may be disregarded only if they are contrary to the best interests of the child; etc.

The general rule is that the age of the child is not important. Therefore, the abstract criteria is established – the child must be heard only when it is capable of

formulating its views, i.e. when communicating with the child it is possible to know the child's opinion of the question discussed.

However, the law very often provides norms which establish from what age or in what cases and in what manner a child must be heard. Part 2 of Art. 3.142 Lithuanian CC provides that the acknowledgment of paternity in respect to a child who has become 10 is only possible with the written permission of the child.

10. Do(es) the holder(s) of parental responsibilities has(have) the right to administer the child's property.

Yes, he or she does.

11. If yes, explain the content of this right.

These relationships are regulated by Art. 3.185-3.191 Lithuanian CC establishing parental rights and duties related to the property owned by children. According to Art. 3.185 Lithuanian CC, property owned by underage children shall be managed by the parents under the right of usufruct. The parents' right of usufruct may not be pledged, sold, transferred or encumbered in any way, and no execution may be charged against it; parents shall manage the property that belongs to their underage child by mutual agreement. In the event of a dispute over the management of the child's property, either parent may petition for a judicial order establishing the procedure for the management of the property; where the parents, or one of the parents, cause harm to the child's interests by mismanaging their underage child's property, the state institution for the protection of the child's rights or a public prosecutor may apply to the court for the removal of the parents from the management of the property that belongs to their underage child. Where warranted, the court shall remove the parents from the management of their underage child's property, revoke their right of usufruct to the child's property and appoint another person the administrator of the minor's property. Where the grounds for the removal no longer exist, the court may allow the parents to resume the management of their underage children's property under the right of usufruct.

According to Art 3.186 Lithuanian CC, parents are under the obligation to manage their underage children's property by giving paramount consideration to the interests of the children. The parents may use the fruits and income derived from their underage child's property to meet the needs of the family by taking account of the child's interests. In managing the property of their underage child, the parents have no right to acquire, directly or through intermediaries, this property or any rights to it. This rule shall also be applicable to auctioning a minor's property or interests in it. An action to have such transactions declared void may be brought by the child or the child's successors. The parents of an underage child may not enter into a contract of assignment of claim under which they would acquire the right of claim to their underage child's property or the child's rights to it.

If a transaction causes a conflict of interests between the underage children of the same parents or between an underage child and the child's parents, the court, on the application of either of the parents, shall appoint an *ad hoc* guardian to the transaction.

Where there is a conflict of interests between an underage child and one of the child's parents, the child's interests shall be represented and transactions shall be made by the parent whose interests do not conflict with those of the child.

A breach of the above mentioned rules may cause the court to declare the transaction void in an action brought by the child, one of the child's parents or their successors.

According to Art. 3.189 Lithuanian CC, the parents who manage their underage children's property under the right of usufruct may not transfer, pledge or encumber the right of usufruct in any way. The claims of the creditors of the parents of underage children may not be executed against the property of the underage children or against the right of usufruct of their parents.

According to Art. 3.190 Lithuanian CC, where parental authority is exercised by only one of the parents of a minor, the minor's property shall be managed only by that parent. Where the parents are divorced or separated, the right to manage the minor's property shall belong to the parent with whom the child lives. If a parent of an underage child enters into a new marriage, that parent shall retain the right of usufruct in respect to the underage child's property, but shall be obliged to transfer all the fruits and income derived from the property to the minor's bank account and to maintain separate accounts for the fruits in excess of the expenses for the child's education (training, education, maintenance). If the new spouse of the child's parent adopts the child, he or she shall also acquire the right to manage the underage child's property.

Parents shall lose the right to manage their underage children's property under the right of usufruct, when:

- the minor is emancipated under the law;
- the minor contracts a marriage in the procedure laid down by the law;
- the minor reaches majority;
- the court orders the parents removed from the management of their underage child's property;
- the court separates the children from the parents or limits their parental authority (Art. 3.191 Lithuanian CC).

Where the parents (or one of the parents with whom the child lives) continue to use the child's property after the end of the right of usufruct, they shall be obliged to return the property and all the income and fruits derived from the child's property to the child from the moment when the child or the child's representative demands it.

12. Are there restrictions with respect to:

(a) Certain goods and/or values (inherited property, gift...)?

Yes. According to Art. 3.187 Lithuanian CC, parents shall have no right to manage the property under the right of usufruct if that property:

- has been acquired for the money earned by the child;
- is intended for the purposes of the child's education, hobbies or leisure;

- has been devolved to the child by donation or succession on condition that it will not be made subject to usufruct.

(b) Salary of the child

Yes. According to Art. 2.7 and 3.187 Lithuanian CC, parents shall have no right to manage under the right of usufruct the salary of the child.

(c) Certain transactions

Yes. According to Parts 3 and 4 of Art. 3.186 Lithuanian CC, in managing the property of their underage child, the parents have no right to acquire, directly or through intermediaries, the property or any rights to it. This rule shall also be applicable to auctioning a minor's property or interests in it. An action to have such transactions declared void may be brought by the child or the child's successors. The parents of an underage child may not assign a claim under which they would acquire the right of claim to their underage child's property or the child's rights to it.

Without the prior leave of the court parents shall have no right to:

- alienate or charge their underage children's property or in any other way encumber the rights to it;
- accept or decline to accept inheritance on behalf of their underage children;
- enter into a lease agreement in respect of their underage children's property for a term exceeding five years;
- enter into an arbitration agreement on behalf of their underage children;
- enter into a loan agreement on behalf of their underage children for an amount exceeding four minimal monthly wages;
- invest the funds of their underage children in excess of ten minimal monthly wages (Art. 3.188 Lithuanian CC).

Art. 3.188 Lithuanian CC provides that if a transaction causes a conflict of interests between the underage children of the same parents or between an underage child and the child's parents, the court, on the application of either of the parents, shall appoint an *ad hoc* guardian to the transaction. Where there is a conflict of interests between an underage child and one of the child's parents, the child's interests shall be represented and transactions shall be made by the parent whose interests do not conflict with those of the child. A breach of the above mentioned rules may cause the court to declare the transaction void in an action brought by the child, one of the child's parents or their successors.

13. Are there special rules protecting children from indebtedness caused by the holder(s) of parental responsibilities?

According to Part 1 of Art. 3.189 Lithuanian CC, the parents' right of usufruct may not be pledged, sold, transferred or encumbered in any way, nor may execution be charged against it. The same Article provides that the claims of the creditors of underage children's parents may not be executed against the property of the underage children or against the right of usufruct of their parents.

14. Do the contents of parental responsibilities differ according to the holder(s) of parental responsibilities (e.g. married, unmarried, parents not living together, stepparents, foster parents or other persons)

According to Part 2 of Art. 3.156 Lithuanian CC, parents have equal rights and duties towards their children irrespective of whether the child was born to a married or unmarried couple, after divorce or judicial nullity of the marriage or separation.

Art. 3.267 Lithuanian CC establishes that a child's guardian (curator) is obliged to:

- ensure the child's physical and mental safety;
- take care of the child's health and schooling;
- educate the child;
- decide issues related to the child's interests in co-operation with the interested central and local government institutions;
- create no obstacles for the child's contact with his or her biological parents provided this is not detrimental to the child's interests;
- maintain contact with the child's parents, inform the child's parents and close relatives, if they so request, about the child's development, health, studies and other important issues;
- organize the child's leisure activities, taking into account the child's age, development level and inclinations;
- prepare the child for independent life and work in the family, civil society and the State.

Art. 3.272 Lithuanian CC establishes that a child's guardian (curator) is the child's statutory representative and defends the child's rights and legitimate interests. A child's guardian (curator) has the right to demand in court the return of the child from any person who unlawfully keeps the child.

The essential content of parental responsibilities does not differ depending on the persons holding the responsibilities. Some difference can be found in the guardian's (curator's) responsibilities, as these persons have the duty to maintain contact with the child's parents, to inform the child's parents and close relatives, if they so request, about the child's development, health, studies and other important issues.

Stepparents and foster parents only have the same responsibilities as the biological parents if they adopt the child. However, according to the legal literature, the stepparent who has not adopted the child has the obligation to provide maintenance for the child.³

³ V. MIKELINAS, *The Law of Obligations* (in Lithuanian), Vol. I, Vilnius: Justitia 2003, p. 26.

C. ATTRIBUTION TO PARENTAL RESPONSIBILITIES

I. Married parents

15. Who has parental responsibilities when the parents are:

(a) Married at the time of the child's birth

The married parents themselves. According to Part 3 of Art.3.137 Lithuanian CC, the filiation of a child is confirmed at birth, and the mutual rights and duties of the child and its parents are based on the child's filiation. Therefore, parental authority is exercised from the child's birth.

(b) Not married at that time, but marry later

First parents that are not married, if the unmarried father acknowledges his paternity or his paternity is established by the court judgment, and after the marriage - the married parents. Second, the unmarried mother, if the father does not acknowledge his paternity. In the event of the marriage between the child's mother and the man who does not acknowledge his paternity, parental responsibilities belong only to the mother.

A person who was not married to the child's mother and did not acknowledge paternity at the time of the child's birth can acquire the parental responsibilities for after the acknowledgement of his paternity or the establishment of his paternity by a court judgment (Art. 3.156, 3.159 Lithuanian CC)

According to Art. 3.156 Lithuanian CC, the father and the mother have equal rights and duties with respect to their children. This equality of rights and duties is irrespective of whether the child was born to a married or unmarried couple, after divorce or judicial nullity of the marriage or separation. This conforms to the principle of equality of all persons provided for by Part 1 of Art. 29 of the Lithuanian Constitution, the provisions of Art. 14 of the European Convention on Human Rights and the provisions of Part 1 of Art. 6 the Council of Europe Convention on the legal status of children born out of wedlock.

16. How, if at all is the attribution of parental responsibilities affected by:

(a) Divorce

According to Art. 3.159 Lithuanian CC, a father's or mother's disclaimer (waiver) of the rights and duties by his or her underage children shall be void. Parents are jointly and severally responsible for the care and education of their children. Parental authority may not be used contrary to the interests of the child. Failure to exercise parental authority shall be subject to legal responsibility under the law. Divorce shall have no legal effect on attribution of parental responsibilities, except with the administration of the property of the child. According to Art. 3.190 Lithuanian CC, if the parents are divorced or separated, the right to manage the minor's property shall belong to the parent with whom the child lives.

However, the divorce of child's parents may cause problems related to the exercise of parental responsibilities, e.g. regarding the determination of the child's place of residence, contacts with the child, and participation of the parents in the

maintenance of the child, etc. According to Art. 3.193 Lithuanian CC, on divorce, spouses shall make an agreement providing for the place of residence of the child and the parents' mutual duties in maintaining their underage children, as well as on the procedure, amount and form of such maintenance. This agreement shall be approved by the court (Art. 3.53 Lithuanian CC). In the absence of this agreement between the divorced parents, all questions shall be decided by the court.

(b) Legal separation

Legal separation, like a divorce, shall not affect the attribution of parental responsibilities, except the administration of property of the child. According to Art. 3.190 Lithuanian CC, where the parents are separated, the right to manage the minor's property shall belong to the parent with whom the child lives.

The separated spouses shall have equal parental responsibilities. However, despite these parental duties, some disputes or conflicts over the attribution of parental responsibilities between the parents living separately may take place: disputes over the child's residence, disputes of separated parents over contacts with the child or involvement in the education of the child, disputes over the child's contact with his or her close relatives, disputes over maintenance duties, etc. In the event of legal separation, the parents shall make an agreement on the place of residence of the child and their mutual duties in maintaining their underage children, as well as the procedure, amount and form of such maintenance (Art. 3.193 Lithuanian CC). Such agreement shall be approved by the court (Art. 3.53 Lithuanian CC). In the absence of such agreement between separated parents, all questions shall be decided by the court under the application of one of the parents.

(c) Annulment of the marriage

Annulment of the marriage of the parents shall have no legal effect on their children (Part 1, Art. 3.45 Lithuanian CC). However, the annulment of the marriage of a child's parents may cause some problems related to the exercise of parental responsibilities, e.g. regarding the determination of the child's place of residence, regarding the contacts with the child, and regarding the participation of the parents in the maintenance of the child, etc. In such a case, the parents shall make an agreement on the place of residence of the child and their mutual duties in maintaining their underage children, as well as the procedure, amount and form of such maintenance. Such agreement shall be approved by the court (Art. 3.53 Lithuanian CC). In the absence of such agreement between the parents, all questions shall be decided by the court under the application of one of the parents.

(d) Factual separation

Factual separation of spouses shall have no legal effect on their parental responsibilities, except the administration of property of the child. According to Art. 3.190 Lithuanian CC, where the parents are separated, the right to manage the minor's property shall belong to the parent with whom the child is to live. This legal rule shall be applied by the analogy to the factual separation as well.

However, factual separation may cause various disputes between parents regarding the exercise of their parental rights and duties. According to Art. 3.174 Lithuanian CC, petitions for the determination of the child's residence may be filed by the child's father, mother, also by the parents or guardians (curators) of the

child's minor-aged parents of limited active capacity. The court must resolve the dispute by giving regard to the interests of the child and the child's wishes. A child's wishes may be disregarded only if they are contrary to the best interests of the child.

According to Art. 3.175 Lithuanian CC, petitions for contact or involvement in the child's education may be filed by the child's father, mother or the parents (guardians/ curators) of the child's legally incapable minor-aged parents. The court shall determine the procedure for the separated parent's contact with the child by taking into consideration the child's interests and by creating a possibility for the separated parent to be involved in the education of the child to the greatest extent possible. Minimal contact with a child may be ordered only in cases where constant maximal contact is prejudicial to the child's interests.

17. To what extent, if at all, are the parents free to agree upon the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage? If they are, are these agreements subject to scrutiny by a competent authority?

According to Art. 3.51 Lithuanian CC, parents are free to agree upon the exercise of their parental duties and rights after divorce, legal separation or annulment of the marriage. They may agree upon the place of the residence of a child, upon their participation in maintenance of a child, their contact with a child, etc. Such an agreement must be made in writing and presented to the court for approval. The court has the duty to investigate the content of the agreement in respect to the interests of the child and the equality of the parents. The court shall refuse to approve the agreement if it contradicts the interests of a child or violates the principle of equality of the rights and duties of parents (Art. 3.53 Lithuanian CC). However, it is prohibited for the parents to waive their rights or duties in respect to the child by means such agreement. Parental responsibilities are statutory obligations and may be not waived. Agreements between parents to disclaim or waive parental duties and rights are void because they violate mandatory rules and are against public policy and good morals (Art. 3.108 Lithuanian CC).

18. May the competent authority attribute joint parental responsibilities to the parents of the child even against the wish of both parents/one of the parents? To what extent, if at all, should the competent authority take account to the parent/s violent behaviour towards the other parent?

Yes. In deciding such questions, the wishes of one or both parents are irrelevant because parental responsibilities are statutory obligations and their existence or attribution does not depend on the wishes of the parties.

A parent's violent behaviour towards the other parent shall have legal significance only if attribution of joint responsibilities to both parents is against the best interest of the child. In such a case, the violent behaviour of one of the parents may be a ground for the separation of that parent from the child or for the restriction of parental authority of the parent (Art. 3.179 Lithuanian CC). In any case, the attribution of parental responsibilities to only one of the parents is possible in the event of judicial separation of a parent from the child or in the event of judicial restriction of parental authority.

19. Provide statistical information on the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage.

There is no relevant statistical information available. A survey of court practice carried out by the Supreme Court in 2002 shows that with divorce, the child's place of residence was established with the father in 45 percent of cases, with the mother in 34 percent, and with other persons, such as grandparents, etc, in 21 percent of the cases.⁴

II. Unmarried parents

20. Who has parental responsibilities when the parents are not married?

When the parents are not married, the parental responsibilities attach to the unmarried parents if the filiation of the child from those parents is established according to the procedure provided by Art. 3.139-3.148 Lithuanian CC

21. Does it make a difference if the parents have formalised their mutual relationship in some way (registered partnership, civil union, *pacte civil de solidarite* ...)?

No, it does not make any difference.

22. Under what conditions, if at all, can

(a) The unmarried mother obtain parental responsibilities?

Parental responsibilities are statutory obligations which arise independently from the existence of marriage. The only source of such statutory obligations is filiation because the mutual rights and duties of the child and its parents shall be based on the filiation of the child, i.e. on the blood (biological) relationship between a child and the mother. According to Art. 3.139 of Lithuanian CC, a woman shall be entered as a child's mother in the records of the Registry of the Civil Status Acts on the basis of the certificate of the child's birth issued by a hospital. Where the child is not born in a hospital, a certificate of the child's birth shall be issued by the medical centre that performs the postnatal examination of the mother and the baby's health. If a child is not born in a hospital and no postnatal examinations of the mother and the baby's health are made, the certificate of the child's birth shall be issued by a consulting commission of doctors in the procedure laid down by the Government. According to this certificate, the mother of the baby is the woman who the consulting commission of doctors have no doubt gave birth to the baby concerned. If the record of the child's birth contains no data on the child's mother or if the maternity of the child has been successfully contested, the child's mother may be established by a court action filed by the woman who considers herself to be the child's mother, by the adult child, by the child's father or guardian (curator) or by a state institution for the protection of the rights of the child.

⁴ Teismu praktika (Court Practice), No. 17, 2002, p. 348.

(b) The unmarried father obtain parental responsibilities?

The unmarried father obtains parental responsibilities in either of the two possible ways:

- by the acknowledgement of his paternity (Art. 3.141-3.145 Lithuanian CC), or
- by the declaration of his paternity by the court judgment (Art. 3.146-3.148 Lithuanian CC). An action for the establishment of paternity may be filed by the man considering himself the father of the child, the child's mother, child's guardian (curator), a state institution for the protection of the child's rights or by the child itself after having attained 18 years, or by the descendants of the child (Art. 3.148 Lithuanian CC).

23. How, if at all, is the attribution of parental responsibilities affected by the ending of the unmarried parents' relationship?

The ending of the unmarried parent's relationship does not affect the attribution of parental responsibilities, however, it may cause disputes between the parents regarding the exercise of their parental responsibilities. Also, according to Art. 3.190 Lithuanian CC, where the parents are separated, the right to manage the minor's property shall belong to the parent with whom the child lives.

24. May the competent authority attribute joint parental responsibilities to the parents also against the wish of both parents/one of the parents? To what extent, if at all, may competent authority take into account a parent's violent behaviour towards the other parent?

Yes. In deciding such questions, the wishes of one or both parents are irrelevant because parental responsibilities are statutory obligations and their existence or attribution may not depend on the wishes of the parties.

One parent's violent behaviour towards the other parent shall have legal significance only if the attribution of joint responsibilities to both parents shall be against the best interest of a child. In this situation, violent behaviour of one of the parents may be a ground for the separation of the violent parent from a child or for the restriction of parental authority of that parent (Art. 3.179 Lithuanian CC). This means that in any case, the attribution of parental responsibilities only to one of the parents is possible in the event of judicial separation of such parent from a child or in the event of judicial restriction of parental authority.

25. To what extent, if at all, are unmarried parents free to agree upon attribution of parental responsibilities after the ending of their relationship?

According to Art. 3.51 Lithuanian CC, parents are free to agree upon the exercise of their parental duties and rights after divorce, legal separation or the annulment of the marriage. This rule is applied by analogy to unmarried parents as well. The unmarried parents may agree upon the place of the residence of a child, upon their participation in maintenance of a child, their contact with a child, etc. after the ending of their relationship. Such an agreement must be made in writing and must be presented to the court for the approval. The duty of the court is to investigate the content of the agreement in respect to the interest of the child and the equality

of the parents. The court shall refuse to approve the agreement if it contradicts the interests of the child or violates the principle of equality of the rights and duties of parents (Art. 3.53 Lithuanian CC). However, in no case may the parents, by such agreement, disclaim (waive) their rights or duties in respect to the child. Parental responsibilities are statutory obligations and may not be waived. Agreements between parents to disclaim (waive) parental duties and rights are void because they violate mandatory rules and are against public policy and good morals (Art. 1.80, 1.81, 3.159 Lithuanian CC).

26. Provide statistical information on the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage.

There is no relevant statistical information available.

III. Other persons

27. Under what conditions, if at all, can the partner of a parent holding parental responsibilities obtain parental responsibilities when, he or she is:

(a) Married to that parent

According to the Lithuanian law, marriage is possible only between persons of different sex. In the event of marriage, a spouse of the parent can obtain parental responsibilities in either of two possible ways:

- if he or she is the biological parent of a child, by acknowledgement of paternity (maternity) or by the establishment of paternity by court judgment;
- if he or she is not the biological parent of a child, by the adoption of the child.

(b) Living with that parent in a formalized relationship (registered partnership, civil union, *pacte civil de solidarité*...)

According to the Lithuanian law, the registered partnership is possible only between a man and a woman, i.e. only between persons of different sex (Art. 3.229 Lithuanian CC). In the event of registered partnership, the partner of the parent can obtain parental responsibilities in either of the two possible ways:

- if he or she is the biological parent of a child, by acknowledgement of paternity (maternity) or by the establishment of paternity by court judgment;
- if he or she is not the biological parent of a child, by the adoption of the child.

However, adoption in such a case will be complicated because according to Art. 3.210 Lithuanian CC, the right to adopt a child may be exercised only by married couples. An unmarried person may be allowed to adopt a child only in exceptional cases.

(c) Or living with that parent in a non formalized relationship?

In the event of a man and a woman living in a non formalized relationship, the partner of the parent can obtain parental responsibilities in either of two possible ways:

- if he or she is the biological parent of a child, by acknowledgement of paternity (maternity) or by the establishment of paternity by court judgment;
- if he or she is not the biological parent of a child, by the adoption of the child.

However, the adoption in such a case will be complicated because according to Art. 3.210 Lithuanian CC, the right to adopt a child may be exercised only by married couples. An unmarried person may be allowed to adopt a child only in exceptional cases.

28. Does it make any difference if the partner of the parent holding parental responsibilities is of the same sex?

Yes. The Lithuanian law does not recognize partnerships between persons of the same sex. If the partners are of the same sex, the court shall refuse the adoption of a child to the partner on the basis of the best interest of the child.⁵ A partner who is the same sex as the parent of a child may not obtain parental responsibilities.

29. How, if at all, is the attribution of parental responsibilities in the partner affected by the ending of his or her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q 28

In the event of Q 27, the answer is as follows: if the partner acknowledged his (or her) paternity (maternity) or has adopted a child, i.e. he or she has acquired parental authority, the ending of relationship has no effect on his or her parental responsibilities. However, the ending of such relationship may cause some problems related to the exercise of parental responsibilities, e.g. regarding the determination of the child's place of residence, the contacts with the child, and the participation of the parents in the maintenance of the child, etc. In such cases Art. 3.193 Lithuanian CC should be applied by analogy: parents shall make an agreement on the place of residence of the child and their mutual duties in maintaining their underage children, as well as on the procedure, amount and form of such maintenance. Such agreement shall be approved by the court (Art. 3.53 Lithuanian CC). In the absence of such agreement between the parents, all questions shall be decided by the court on the application of one of the parents.

In respect of Q 28, the question does not have any relevance because partnerships between persons of the same sex are not allowed, and the partner may not obtain parental authority.

30. To what extent, if at all, is the parent holding parental responsibilities and his or her partner free to agree upon the attribution of parental responsibilities after the ending of his or her relationship with the partner? Distinguish according to the different relationships referred to in Q 27 and Q 28

In the event of Q 27, the answer is as follows: if the partner has acknowledged his (or her) paternity (maternity) or has adopted a child, i.e. he or she has acquired parental authority, the parents may agree on the exercise of their parental rights and duties in respect of their child. The rules which regulate the legal consequences of divorce shall be applicable by analogy. Parents shall have the right to make an

⁵ See also Judgment of the European Court of Human Rights in the case *Fretté v. France*, 26.02.2002.

agreement on the place of residence of a child and their mutual duties in maintaining their underage children as well as on the procedure, amount and form of such maintenance. The court shall refuse to approve such agreement if this agreement contradicts the interests of the child or violates the principle of equality of the rights and duties of parents (Art. 3.53 Lithuanian CC). However, in no case may the parents waive their rights or duties in respect of the child by means of such agreement. Parental responsibilities are statutory obligations and may be not waived. Agreements between parents to disclaim or waive of parental duties and rights are void because they violate mandatory rules and are against public policy and good morals (Art. 1.80, 1.81, 3.159 Lithuanian CC).

In respect to Q 28, the question does not have any relevance because partnerships between persons of the same sex are not allowed, and the partner may not obtain parental responsibilities.

31. Under what conditions, if at all, can other persons not being a parent or a partner of a parent holding parental responsibilities, obtain parental responsibilities (e.g. members of the child's family, close friends, foster parent...)? Specify, where such other persons may obtain parental responsibilities, if it is in addition to or in substitution of existing holder(s) parental responsibilities

Two different situations must be distinguished. First: the parents of a child are not separated from the child and their parental authority is not restricted by the court judgment. In this case, some other persons may obtain some elements of parental authority in addition to the holder(s) of parental authority, but only in exceptional cases. Second: the parents are separated from the child or their parental authority is restricted by a court judgment. In this case, guardians or curators substitute the parents of the child.

In the first case, when a child has parents whose parental authority is not restricted by the court, nor there are separated from the child, no other persons may obtain parental responsibilities, save in very few exceptional cases:

- if the parents of a child are minors, a guardian shall be appointed to the child. In such cases, the guardian shall obtain the parental responsibilities in addition to the parental responsibilities of the parents (Art. 3.158 Lithuanian CC);
- close relatives of a child, e.g. the grandparents, adult brothers or sisters of the child shall have the right to contact the child if such contacts are consistent with the child's interests (Art. 3.172, 3.176 Lithuanian CC);
- circumstances permitting, an adult sibling and grandparents of a child shall maintain their minor sibling and grandchildren deprived of parents maintenance (Art. 3.236 Lithuanian CC). In this case, the duty of maintenance is additional to the parents' duty.

In the second case, if the parents are separated from a child or their parental authority is restricted by a court judgment, the person appointed as guardian or curator of the child shall obtain parental responsibilities in substitution of the parental authority of the child's parents (Part 2, Art. 3.160 Lithuanian CC).

32. Under what conditions, if at all, can a public body obtain parental responsibilities? Specify, where it is so obtained, if it is in addition to or in substitution of existing holder(s) of parental responsibilities

Yes. Such situation is possible through the establishment of an institutional guardianship (curatorship) of a child in the case of the separation of the parents from a child or in the event of the restriction of the parents' parental authority by a court judgment (Art. 3.261 Lithuanian CC). However, such form of guardianship (curatorship) is used only in those cases when there is no possibility of placing the child under guardianship (curatorship) in a family (Art. 3.261 Lithuanian CC).

When the child is separated from the parents, the parents lose their right to live together with the child or demand the return of the child from other persons. The parents may exercise their other rights in so far as that is possible without living together with the child (Art. 3.180 Lithuanian CC). This means that parental responsibilities of a public institution exist in addition, as well as in the substitution to the parental authority of parents.

In the event of temporary or unlimited restriction of parental authority of parents, the parents lose their rights. However, they shall retain the right of visitation, except where that is contrary to the child's interests. This means that in such cases the parental responsibilities of the public body exist in substitution to the parental authority of the parents.

33. To whom are the parental responsibilities attributed in the case of:

(a) The death of a parent holding parental responsibilities?

To the surviving parent, if his or her parental authority is not restricted or he or she is not separated from the child, i.e. to another parent holding parental responsibilities. If the surviving parent is separated from the child, or his or her parental authority is restricted, the parental responsibilities shall be attributed to the guardian (curator) of the child.

(b) The death of both parents of whom at least one was holding parental responsibilities at the time of the death?

To the guardian (curator) of the child.

34. To what extent, if at all, may the holder(s) of parental responsibilities appoint a new holder(s) upon his or her/their death? If such an appointment is permitted, must it take place in a special form, e.g. will?

Despite the fact that appointment of a guardian (curator) of a child is the exclusive competence of a court (only in exceptional cases, i.e. in the event of temporary guardianship (curatorship), the guardian (curator) may be appointed by the local government (municipality) (Art. 3.264 Lithuanian CC), the parents are allowed to express their wishes regarding the guardian (curator) of the child in the event of their death. These wishes must be established in a will. According to Part 4 of Art. 3.265 Lithuanian CC, the guardian (curator) of the child shall be appointed taking into consideration the wish of the child's deceased parent(s) as expressed in his (their) will. However, such wishes are not obligatory for the court or municipality. The court or municipality may appoint another person as a guardian (curator) of a

child if the person designated by the dead parents of a child does not correspond to the requirements established by Art. 3.269 Lithuanian CC (e.g. the person is older than 65 years or is suffering from chronic alcoholism, etc.), or if the appointment of such person as a guardian (curator) will be against the interests of the child.

D. THE EXERCISE OF PARENTAL RESPONSIBILITIES

I. Interests of the child

35. In exercising parental responsibilities, how are the interests of the child defined in your national legal system?

According to Part 3 of Art. 3.159 of Lithuanian CC, parental authority may not be used contrary to the interests of a child. Art. 3.164 Lithuanian CC provides a general rule that all questions related to a child must be decided exclusively in the interests of the child. The positive law does not provide a legal definition of the notion 'interests of the child'. The content of this notion is explained by the legal literature and court practice. In general, the interests of the child are defined as a complex of material, living, educational, emotional and other circumstances which are most favourable for the development of the personality of the child.⁶

II. Joint parental responsibilities

36. If parental responsibilities are held jointly by two or more persons, are they held equally?

Yes. The constitutional principle of equality (Art. 29 of the Lithuanian Constitution) in family law means that parental responsibilities, when held by two or more persons, are held equally (Art. 38 of the Lithuanian Constitution, Art. 3.156 Lithuanian CC).

37. If parental responsibilities holders cannot agree on an issue, how is the dispute resolved? For example, does the holder of parental responsibilities have the authority to act alone? In this respect is a distinction made between important decision and decisions of a daily nature? Does it make any difference if the child is only living with one of the holders of the parental responsibilities?

The father and the mother shall have equal rights and duties with respect to their children (Art. 3.156 Lithuanian CC). Because of this, all questions related to parental responsibilities shall be decided by the parents by mutual agreement. In the event of lack of agreement, the disputed matter shall be resolved by the court or by another competent authority, such as a state institution on the protection of the rights of the child.

In the event of dispute, the daily decisions may be taken by one of the parents. However, important decisions, e.g. surgery of a child, can only be made by both parents. If the parents disagree regarding an important decision, one of them may

⁶ V. MIKELENAS a.o., *Commentary of Book Three of the Civil Code of Lithuania*, Vilnius: Justitia 2002, p. 313-314

apply for a court order enabling them to make such a decision without the consent of the other of the parent.

The fact that the parents live separately has no legal importance in respect to the adoption of important decisions. However, decisions of daily nature are, in such cases, made by the parent with whom the child lives.

38. If holders of parental responsibilities cannot agree on an issue, can they apply to a competent authority to resolve their dispute? If applicable, specify whether this authority's competence is limited to certain issues, e.g., residence or contact.

Yes. In the event of a dispute, either of the parents may apply to a court for the resolution of their dispute (Art. 30 of the Lithuanian Constitution, Art. 3.165 Lithuanian CC). The court is a competent authority to make decision regarding all disputes between the parents, i.e. the court's authority in this respect is unlimited.

39. To what extent, if at all, may a holder of parental responsibilities act alone if there is more than one holder of parental responsibilities?

Part 3 of Art. 3.165 Lithuanian CC provides that parents decide all questions by their mutual agreement. This means that one of the parents may act alone only in respect to matters of daily nature and only until the other parent makes an objections.

40. Under what circumstances, if at all, may the competent authority permit the residence of the child to be changed within the same country and/ or abroad (so called relocation) without the consent of one of the holders of parental responsibilities?

In a dispute over a child's place of residence, the residence may be changed by the court judgment without the consent of the other parent if such a change is necessary for the protection of the interests of the child (Art. 3.169 Lithuanian CC). The basis for such judgment may be exceptional circumstances such as illness of one of the parents, violence against the child, etc.

41. Under what conditions, if at all, may the competent authority decree that the child should, on an alternating basis, reside with both holders of parental responsibilities (e.g. every other month with mother/father)?

Such court judgments are possible if this corresponds to the interests of the child. Everything depends on the wishes of the child and the possibilities of each holder of parental responsibilities to provide adequate living, educational and other conditions for the child.

III. Sole parental responsibilities

42. Does a parent with sole parental responsibilities have full authority to act alone, or does he or she have a duty to consult:

(a) The other parent

Yes, he or she has full authority to act alone. He or she has no duty to consult the other parent, because the other parent does not have parental authority.

(b) Other persons, bodies or competent authorities?

No, except in those cases where court leave (permission) is obligatory even if both parents have parental authority.

E. CONTACT

43. Having regard to the definition by the Council of Europe (see above), explain the concepts of contact used in your national legal system.

The right of contact is a personal right of the parent who lives separately from the child to see the child, to communicate with the child, and to be involved in the child's education. On the other hand, this is also a personal right of a child whose parents are separated to have constant and direct contact with both parents irrespective of their place of residence (Art. 3.170 Lithuanian CC). The father or the mother with whom the child resides may not interfere with the other parent's contacts with the child. The right to contact also includes the right of the father or mother who lives separately from the child to receive information about the child from all the institutions and authorities concerned with the child's education, training, health care, protection of the child's rights, etc.⁷

Parents may also maintain contact and be involved in the education of a child who is placed in a special situation (detention, arrest, imprisonment, in-patient clinic, etc) in the procedure laid down by special laws (Art. 3.171 Lithuanian CC).

44. To what extent, if at all, does the child have the right of contact with:

(a) A parent holding parental responsibilities but not living with the child?

The child has such a right, except in cases when, under the judgment of the court, the contact with the parent not living with the child is against the interests of the child.

(b) A parent not holding parental responsibilities?

The child has such a right if the contact with the parent not holding parental responsibilities (e.g., parent whose parental authority is restricted) is not against the interests of the child (Art. 3.179-3.180 Lithuanian CC).

(c) Persons other than parents (e.g. grandparents, stepparents, siblings, etc...)?

Parents shall be obliged to create conditions for the children to associate with their close relatives (grandparents, adult siblings, etc) and other relatives provided that it is consistent with the children's interests (Art. 3.172 C.C).

⁷ Supreme Court of Lithuania, 27.11.2002, case *F.Baskiene v. V. Miniotas*, www.lit.lt

45. Is the right to have contact referred to in Q 43 also a right and/or a duty of the parent or the other persons concerned?

Yes, it is both a right and a duty of the parents having parental responsibilities, because effective performance of parental responsibilities is possible only if there are effective contacts between a child and his parents. Other persons have the right of, but not the duty to, contact.

46. To what extent, if at all, are the parents free to make contact arrangements? If they can, are these arrangements subject to scrutiny by a competent authority?

Yes, parents are free to make contact arrangements. These agreements are subject to court control. The court takes control if these agreements violate the rights of the child or the rights of one of the parents.

47. Can a competent authority exclude, limit or subject to conditions, the exercise of contact? If so, which criteria are decisive?

Yes, the court shall have the right to exclude or limit the parents right of contact if the child's interests so require. The main criteria in such cases are the interests of the child. Such measures may be used as provisional measures of protection (Art.3.65 Lithuanian CC), also in the event of separation of the parent from the child due to objective reasons (e.g. serious illness of the parent), as well as in the cases of restriction of parental authority (Art. 3.179-3.180 Lithuanian CC). Minimal contact with the child may be ordered only in cases where constant maximal contact is prejudicial to the child's interests.

48. What if any, are the consequences on parental responsibilities, if a holder of parental responsibilities with whom the child is living, disregards the child's right to contact with:

(a) A parent?

In this situation, a parent living separately from the child has the right to apply to a court for judgment and enforcement of his or her and the child's right to contact by means of compulsory execution of the court judgment (Art. 3.170 Lithuanian CC).

(b) Other persons?

Other persons, such as grandparents, have the right to apply to the state institution for the protection of the right of contact with the child. If the parents fail to comply with the decision of the state institution for the protection of the rights of the child, these persons have the right to apply to the court for a court judgment.

F. DELEGATION OF PARENTAL RESPONSIBILITIES

49. To what extent, if at all, may the holder(s) of parental responsibilities delegate its exercise?

Delegation of the exercise of parental responsibilities is not allowed because these responsibilities are personal and statutory obligations which may only be exercised by the holder of parental responsibilities. If the holder of parental responsibilities is

not able to exercise these responsibilities because of objective reasons, e.g. serious illness, he or she must be separated from the child, and a guardian (curator) of the child must be appointed.

50. To what extent, if at all, may a person not holding parental responsibilities apply to a competent authority for a delegation of parental responsibilities?

No person may apply for such delegation because these responsibilities are not subject to delegation. However, every interested person shall have the right to inform the state institution for the protection of the rights of the child about the necessity of the establishment of guardianship (curatorship) for a child whose rights and interests need protection.

G. DISCHARGE OF PARENTAL RESPONSIBILITIES

51. Under what circumstances, if at all, should the competent authorities in your legal system discharge the holder(s) of his or her/their parental responsibilities for reasons such as maltreatment, negligence or abuse of the child, mental illness of the holder of parental responsibilities, etc? To what extent, if at all, should the competent authority take into account a parent's violent behaviour towards the other parent?

There are two forms of discharge of parental responsibilities in Lithuanian family law: separation of the parents from their child and restriction of parental authority.

Separation of the parents from the child is possible without the fault of the parents if the parents do not live with the child and are unable to exercise their parental responsibilities for objective reasons, e.g. mental or other serious illness of the parents (Art. 3.179 Lithuanian CC).

The restriction of parental authority (temporary or unlimited) is possible only on the basis of the fault of the parent(s). The restriction of parental authority is possible where the parent(s) fail in their duties to bring up their children, abuse their parental authority, treat their children cruelly, produce a harmful effect on their children by their immoral behaviour, or do not care for their children (Art. 3.180 Lithuanian CC). A parent's violent behaviour towards the other parent is treated as immoral behaviour which produces a harmful effect on the child and, as a rule, is taken into account by the court when deciding these cases.⁸

Unlimited restriction of parental authority is possible only where the court makes a conclusion that the parent(s) inflicts very great harm on the development of the child or does not care for the child, and no change in the situation is forthcoming.

52. Who, in the circumstance referred to in Q 51, has the right or the duty to request the discharge of parental responsibilities?

⁸ Supreme Court of Lithuania, 23.10.2002, case *R. Ceplinskiene v. S. Kavaliauskas*, www.lat.lt

Such a right and a duty are granted to the state institution for the protection of the rights of the child, a public prosecutor, one of the child's parents or close relatives of the child (Part 1, Art. 3.182 Lithuanian CC).

53. To what extent, if at all, are rights of contact permitted between the child and the previous holder of parental responsibilities after the latter has been discharged of his or her parental responsibilities?

The parent, who was separated from the child, or whose parental authority was restricted, retains the right of contact with the child, except where that is contrary to the child's interests. The court makes the relevant decisions.

54. To what extent, if at all, can the previous holder (s) of parental responsibilities, who has been discharged of his or her parental responsibilities, regain them?

This is possible in the event of the separation of a parent from the child if there is a substantial change of circumstances in the reason for the separation, e.g. in the event of recovery from illness.

In the event of temporary restriction of parental authority, regaining of parental responsibilities is possible if the parent substantially changes his or her behaviour in respect of the child.

In the event of unlimited restriction of parental authority, regaining of parental responsibilities is not possible (Art. 3.180 Lithuanian CC).

H. PROCEDURAL ISSUES

55. Who is competent authority to decide disputes concerning parental responsibilities, questions of residence of the child or contact? Who is the competent authority to carry out an investigation related to the circumstances of the child in a dispute on parental responsibility, residence or contact?

The competent authority to decide the above-mentioned disputes is the court of first instance (Art. 26 Lithuanian Code of Civil Procedure).

The competent authority for the investigation of the above-mentioned matters is the state institution for the protection of the rights of the child, which functions in each region (local government) (Art. 3.178 Lithuanian CC). This institution also takes mandatory participation in all court cases involving the rights of the child.

56. Under what conditions, if any, may legally effective decision or agreement on parental responsibilities, the child's residence or contact, be reviewed by a competent authority? Is it, e.g., required that the circumstances have changed after the decision or agreement was made and/or that a certain period of time has passed since the decision or agreement?

Part 3 of Art. 3.53 Lithuanian CC provides for the single ground for the review of the agreement or court judgment in such cases, i.e. a substantial change of circumstances. For instance, the agreement or court judgment regarding the place of residence of the child may be changed if instances of violent behaviour against the child by the parent with whom the child lives are proved (Art. 3.169 Lithuanian CC). Agreement or court judgment regarding the maintenance of the child may be changed in the event of the illness or injury of the child, a substantial change of the financial situation of one of the parents, etc. (Art. 3.201 Lithuanian CC).

57. What alternative disputes solving mechanisms, if any, e.g. mediation or counselling, are offered in your legal system? Are such mechanisms also available at the stage of enforcement of a decision/agreement concerning parental responsibilities, the child's residence or contact?

There are no special alternative dispute resolution mechanisms provided in the law. However, Art. 3.54 Lithuanian CC and Art. 231, 376 Lithuanian Code of Civil Procedure impose a general duty on the court to take all necessary measures to reconcile the parties in family disputes. Such settlement is possible at any stage, including the enforcement procedure. However, the judge does not act as a mediator in such cases.

58. To what extent, if at all, is an order or agreement on parental responsibilities, the child's residence or contact enforceable and in practice enforced? Describe the system of enforcement followed in your national legal system. Under what conditions, if at all, may enforcement be refused?

Court judgments, agreements approved by the court, and settlement agreements approved by the court in the above-mentioned cases are enforceable documents which are enforced under the general procedure laid down by Part VI of the Lithuanian Code of Civil Procedure of 2002.

In practice, those documents are enforced. The enforcement procedure is executed by private bailiffs. When enforcing enforceable documents, the bailiffs may request support from the police, e.g. in the event one of the parents does not execute the court judgment to place the child for the supervision of the other parent. If the child is involved in the enforcement procedure, the bailiff must inform the state institution for the protection of the rights of the child. In such cases, the employees of this institution take part in the enforcement proceedings (Art. 764 Lithuanian Code of Civil Procedure).

59. To what extent, if at all, are children heard when a competent authority decides upon parental responsibilities, the child's residence or contact, e.g. upon a dispute, when scrutinizing an agreement, when appointing or discharging holder(s) of parental responsibilities, upon enforcement of a decision or agreement?

According to Art. 3.164 of C.C, in considering any question related to a child, the child, if capable of formulating his or her views, must be heard directly or, where that is impossible, through a representative. Thus it is the duty of a court (as well, as of any other institution, including bailiffs), imposed by mandatory legal rule, to

hear the child in all the above-mentioned cases, including the enforcement procedure.

60. How will the child be heard (e.g. directly by the competent authority, a special appointed expert or social worker)?

As a general rule, the child must be heard directly by the judge in oral proceedings. In the interests of the protection of the child's private life, such hearings are normally closed. If the court so decides, the teachers of the child or psychologist may take part in such a hearing. However, in exceptional circumstances, e.g. in the event of the hospitalization of the child, the child may be heard by the employees of the state institution for the protection of the rights of the child. In such a case, the state institution for the protection of the rights of the child shall present to the court all the necessary information (minutes, etc.).

61. How, if at all, is the child legally represented in disputes concerning:

(a) Parental responsibilities?

The child shall be represented by the parent with whom he lives or by the guardian (curator).

(b) The child's residence?

The child shall be represented by the parent with whom he lives or by the guardian (curator).

(c) Contact?

The child shall be represented by the parent with whom he lives or by the guardian (curator). In all the three above-mentioned situations, the court shall have the right to appoint an *ad hoc* guardian (curator) of the child if there is a conflict between the interests of the child and the parent with whom the child lives. In all the above-mentioned situations, the participation of the state institution for the protection of the rights of the child is mandatory.

62. What relevance is given in your national system to the age and maturity of the child in respect of Q 51-61?

The age of the child has no relevance in those cases. The decisive role is the capability of the child to express his or her opinion, views and wishes. E.g., if a child of 4 years is able to express its opinion, such a child must be heard. The decision about the child's capability to formulate its views is adopted by the judge on the basis of the facts of the case. The judge, when deciding this question, may order psychological expertise or ask the opinion of the child's teachers or other persons related to the child.