LITHUANIA

by *Katarzyna Bogdziewicz*

I. Introduction

The Lithuanian legal system follows the civil law tradition. The majority of family law issues fall within the purview of the judiciary. Notaries handle succession matters that do not involve disputes. **1**

Article 1 of the Lithuanian Law on the Notarial Profession (1) defines the notariat as a group of notaries entrusted with the authority to legally establish uncontested subjective rights and legal facts pertaining to natural and legal persons, organisations, and their subdivisions. Their responsibility is to safeguard the legitimate interests of these entities and the State. As stipulated in Article 2 of the Law on the Notarial Profession, a notary is an individual duly authorised by the State to execute the duties outlined in this legislation. Their duties consist of certifying that civil legal relationships involve authorised transactions and documents. In civil disputes, a notary may additionally serve as an authorised intermediary (mediator) in an effort to achieve an agreement. As stated in Article 12 of the Law on the Notarial Profession, notaries operate with their independence unaffected by public authorities and administrations; their obligations are solely governed by the law. The operations of notaries are regulated by the Constitution of the Republic of Lithuania, this legislation, as well as other laws of the Republic of Lithuania, government resolutions, legal acts of the Minister of Justice, chamber of notary resolutions, and other applicable legal instruments. Lastly, in accordance with Article 41 of the Law on the Notarial Profession, an interested party may file an appeal with the court that is within the area of the notary's office if they hold the opinion that an executed notarial deed or the refusal to execute a deed is erroneous. **2**

The primary legislation governing matters of family and succession in the Republic of Lithuania is the Civil Code. The focus of Book Three of the Code is familial matters, while Book Five addresses succession. The Civil Code, the Law on Registration of Civil Status Acts, (2) and the Rules on the **3**

---

(1) The Law on the Notarial Profession [Lietuvos Respublikos notariato įstatymas], 1992, No I-2882, available in Lithuanian: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1695/asr>.

(2) The Law on the Registration of Civil Status Acts [Lietuvos Respublikos civilinės būklės aktų registravimo įstatymas], 2015, No XII-2111, available in Lithuanian: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/cab232019db711e591078486468c1c39/asr>.

Registration of Civil Status Records (3) govern civil registry matters. Ultimately, the recently enacted Law on Writing a Person's Name and Surname in Documents (4) addressed issues pertaining to names.

4 Notably, case-law may have a legally binding effect. In multiple cases, the Constitutional Court of the Republic of Lithuania has clarified that the continuity of jurisprudence is a prerequisite for the constitutional principle of the rule of law. Thus, courts are obligated to adhere to their own precedents, which are decisions rendered in similar cases, when rendering decisions in the pertinent categories. (5) The Supreme Court of Lithuania, in developing the rules of application of a precedent, has also adopted a consistent practice according to which, when deciding whether the practice set out in the rulings of the Supreme Court has been complied with, it is necessary to establish whether: (1) the same provisions of law have been the subject of different judgments; (2) the same provisions have been applied in the context of an identical legal regulation of the legal relationship at issue; (3) all the applicable and legally relevant provisions of law have been analysed and applied in the judgment or order of the court; and (4) the provisions have been analysed in detail in the reasons given by the court in its judgment; (5) such provisions are duly substantiated by reasoning from the rules of law, legal doctrine and case-law; (6) the provisions of law have been applied to the same facts; (7) the statements in the judgments or orders are either substantive, determining the outcome of the case on the basis of the facts, or are merely recitals, arguments, or other incidental reasonings. (6)

5 The judicial system of the Republic of Lithuania consists of tribunals of general jurisdiction and courts with special jurisdiction. District courts, the Supreme Court of Lithuania, and the Court of Appeal of Lithuania are examples of judiciary bodies endowed with general jurisdiction. These tribunals hear criminal and civil proceedings. District courts possess the authority to adjudicate cases pertaining to administrative offences within

---

(3) Rules on the Registration of Civil Status Records [Civilinės būklės aktų registravimo taisyklės], 2016, No 1R-334, available in Lithuanian: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/65a5ecc0cd4111e69185e773229ab2b2/asr>.

(4) The Law on Writing a Person's Name and Surname in Documents [Lietuvos Respublikos asmens vardo ir pavardės rašymo dokumentuose įstatymas], 2022, No XIV-903, available in Lithuanian: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/32ec5f92790211ecb2fe9975f8a9e52e?jfwid=xo46sndtc>.

(5) Rulings of the Constitutional Court of 28 March 2006 and of 24 October 2007. All rulings of the Constitutional Court of the Republic of Lithuania are available in English: <https://lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2023>.

(6) Rulings of the Supreme Court of the Republic of Lithuania of 8 December 2009, in civil case No 3K-3-552/2009; of 20 December 2010 in civil case No 3K-7-385/2010; and of 2 May 2012 in civil case No. 3K-3-218/2012.

their purview. The Supreme Administrative Court of Lithuania and regional administrative courts are instances of courts with special jurisdiction that are responsible for resolving disputes that arise from administrative legal relations.

6 Notaries have recently been granted the authority to render decisions in specific family matters, replacing courts. The Civil Code of the Republic of Lithuania (7) underwent an amendment in 2022, which resulted in the transfer of competences in matters of divorces by mutual consent to notaries. The latter was the result of courts releasing non-contentious cases to lessen their workload. (8) As stipulated in Article 3.51, the dissolution of a marriage through mutual agreement of the spouses (before a notary) is permissible under the following circumstances: 1) it has been over one year since the matrimonial ceremony; 2) both partners have reached an agreement regarding the implications of the divorce, including matters such as property division; 3) both partners are capable of making decisions regarding this matter; and 4) in cases where neither partner has lived a conjugal life for over one year nor do they have joint minor children, the marriage is dissolved by mutual consent of the partners in a joint agreement.

7 There is no definition of 'court', 'decision', or 'judicial function' under Lithuanian law. The aforementioned concepts are frequently cited by scholars and case-law in relation to the recognition of foreign judgments. (9) Nonetheless, the Supreme Court examined in one of its decisions whether the notaries of Lithuania qualify as 'courts' for the purposes of the Succession Regulation. The Supreme Court posited that the notary's authority is conferred by law solely to legally establish subjective rights and legal facts pertaining to natural and legal persons, in order to safeguard the legitimate interests of said persons and the State. (10) It is worth noting that, while 'legally to establish' is used in the English version of the Law on the

---

(7) The Civil Code of the Republic of Lithuania [Lietuvos Respublikos civilinis kodeksas], 2000, VIII-1864, English translation (for the version in force on 30 June 2022), available online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/512506f2684411eea182def3ac5c11d6?jfwid=f6r2n5zks>.

(8) Katažyna Bogdzevič, Natalija Kaminskienė, Laima Vaigė, 'Non-Judicial Divorces and the Brussels II bis Regulation: To apply or not to apply?' (2021) International Comparative Jurisprudence 7(1), 31–39.

(9) Eg, Remigijus Jokubauskas, Mykolas Kirkutis, Egidija Tamošiūninė, Vygintas Višinskis (eds), *Užsienio teismų pripažinimas ir leidimas vykdyti Lietuvos Respublikoje* (Vilnius 2020).

(10) Ruling of the Supreme Court of Lithuania of 4 November 2020 in civil case No e3K-3-422-378/2020.

Institution of Notaries, (11) as well as in the E.E. case, (12) 'confirm' or 'certify' would be more appropriate. (13) It appears to be consistent with the Supreme Court's interpretations in other cases. The Court has repeatedly stated that the concept of a notary's functions presupposes that the notary does not examine personal disputes, does not establish disputable circumstances, and that, if doubts or disagreements arise regarding a person's rights or legal facts, they must refuse to certify such rights or facts. Thus, a notary may only certify particular rights or facts if they are certain of their content and legality. (14)

8 According to the Law on the Notarial Profession, the notary's status necessitates heightened diligence, caution, and care. Additionally, the notary is obligated to strictly adhere to legal requirements and decline to perform any notarial act that violates or fails to comply with the stipulations of the law. This understanding of the notary's role suggests that they do not mediate disputes between individuals, do not establish circumstances that are the subject of a dispute, and are obligated to decline attesting when there are any uncertainties or disagreements regarding the legal rights or facts. In order to certify specific rights or facts, a notary must be completely certain of their veracity and compliance with the law. Due to the fact that Lithuanian notaries lack the authority to resolve disputes between parties, establish obscure and obvious facts, or render decisions on disputed facts, the panel of judges concluded, in accordance with the aforementioned interpretations, that the issuance of a national inheritance certificate by Lithuanian notaries does not constitute the execution of judicial duties.

II. Family law

9 The Lithuanian Civil Code became effective on 1 July 2001. This event marked a noteworthy achievement in light of the transition from the Soviet legal systems to the contemporary Lithuanian legal systems. Numerous amendments have been made to it since its adoption on 18 July 2000;

---

(11) The translation is available on the website of the Lithuanian Parliament (Seimas): <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.90284?jfwid=swznzpvms>. It is a translation of the first version of the Law on the Notarial Profession and does not include its later amendments.

(12) Case C–80/19 *E.E.* ECLI:EU:C:2020:569.

(13) As it is used in the literature, eg, Agnė Limantė, 'The E.E. Decision Sheds Light on Notaries Acting as 'Courts' and on a Few Other Notions Within the Context of the Succession Regulation' (2021) European Papers 6(1), 45–55.

(14) Ruling of the Supreme Court of 3 May 2011 in civil case No 3K-3-219/2011; ruling of the Supreme Court of 6 December 2013 in civil case No 3K-3-643/2013.

however, the most significant modification, as viewed through the lens of non-judicial justice, was implemented in 2022. In regards to family matters, Book Three of the Civil Code contains almost exhaustive regulations. It governs matrimonial affairs, adoption, guardianship, parentage, and the rights and responsibilities of other family members. Initially, court jurisdiction was extended to all family matters; nevertheless, as previously stated, a portion of the uncontested matters were transferred to notaries. Lithuanian law does not provide a possibility to register or dissolve partnerships.

10 The Civil Procedure Code ([15]) provides special provisions for family matters. As a result of the strong public interest in the regulation of family relations, the legislature makes substantial exceptions to certain civil procedure principles in family proceedings. ([16]) Proceedings in family matters have the following particularities: the court is actively involved; the possibility of changing the subject-matter or cause of action, or bringing a counterclaim; the prohibition of default judgments; the limitation of the principle of publicity of court proceedings; child participation in court proceedings and the possibility for the child to express their views in court; often obligatory participation of the children protection institution; preparation for trial – at a preparatory hearing. ([17]) It is important to note that civil procedural rules are supplemented by Civil Code norms. For instance, Article 3.178 of the Civil Code requires the court to hear the child in child-related disputes. It is worth mentioning that this requirement only applies in cases where there is a dispute between the parties. Even in circumstances where both spouses divorce by mutual consent, the court may hear the case orally, especially if the family has minor children and the court wishes to hear their viewpoints, such as regarding their place of residence. ([18]) However, a case-law analysis reveals that even in such circumstances, the court typically dissolves marriages in writing.

11 However, it is worth noting that in many family cases, particularly non-contentious ones, the court follows a simplified procedure. This includes cases involving parent-child disputes, divorces by mutual consent, and

---

([15]) The Code of Civil Procedure of the Republic of Lithuania [Lietuvos Respublikos civilinio proceso kodeksas], 2002, IX-743, Lithuanian version is available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.162435/asr>.

([16]) Marius Jonaitis, 'Atskirų kategorijų bylų nagrinėjimo ypatumai pagal naująjį Lietuvos Respublikos civilinio proceso kodeksą' (2003) Jurisprudencija 42(34), 124.

([17]) Egidija Tamošiūnienė, 'Procesiniai šeimos bylų nagrinėjimo ir teismo sprendimų vykdymo ypatumai' in Egidija Tamašiūnienė & Inga Kudinavičiūtė-Michailovienė (eds), *Šeimos bylų nagrinėjimo ir teismo sprendimų vykdymo ypatumai* (Vilnius 2013) 283–305.

([18]) Valentinas Mikelėnas, *Šeimos teisė* (Vilnius 2009) 236.

adoptions. (19) Generally, when the procedure is simplified, the hearing is conducted in writing, unless particular provisions stipulate otherwise (eg, only oral hearings are permissible in the case of adoption). For instance, in divorce by mutual consent, usually the court decides in writing even if spouses have minor children and have to decide on their maintenance, access rights and place of residence.

12 The general procedures for appeals apply to both regular and simplified family proceedings.

13 Article 301(1) of the Civil Procedure Code states that judgments and orders of a court of first instance that have not yet come into force are subject to appeal, unless the Code specifies otherwise. The decision of the court may be subject to review. A detailed enumeration of grounds for the review procedure can be found in Article 366 of the Civil Procedure Code.

14 Article 385(2) of the Civil Procedure Code states that the marriage is deemed dissolved on the date the court's judgment to dissolve it becomes effective. The judgment becomes effective within 30 days of its issuance. The court shall transmit that decision electronically to the civil registry office that registered the marriage, no later than the subsequent business day following the date the court's ruling to dissolve or nullify the marriage entered into force. This electronic transmission enables the civil registry office to record the dissolution of the marriage in adherence to the procedure prescribed by the Law on Registration of Acts of Civil Status of the Republic of Lithuania.

15 The establishment of international jurisdiction for Lithuanian courts and notaries primarily adheres to bilateral agreements and international conventions, including the Hague Convention on the Protection of Children and the EU Regulations (Brussels IIb Regulation and the Maintenance Regulation).

16 The Civil Procedure Code also encompasses regulations pertaining to international jurisdiction. According to Article 784 of the Civil Procedure Code, Lithuanian courts have jurisdiction over family cases if at least one of the spouses is a Lithuanian citizen or a stateless person with habitual residence in Lithuania. In the event that both partners have their habitual residence in Lithuania, exclusive jurisdiction over their family matters shall rest with the courts. In cases involving family matters, the jurisdiction of the Lithuanian courts extends to foreign spouses who are habitually resident in Lithuania.

17 According to Article 785 of the Civil Procedure Code, Lithuanian courts will only hear issues involving legal relations between parents and children or adoption if at least one of the parties is a Lithuanian citizen or a stateless person with habitual residence in Lithuania. If both parties are habitually

---

(19) Artūras Driukas and Virgilijus Valančius, *Civilinis procesas: teorija ir praktika. IV tomas* (Vilnius 2009) 402.

resident in Lithuania, the dispute shall be resolved exclusively by the courts in Lithuania. In addition, cases involving legal relations between parents and children and adoption fall under the jurisdiction of the Lithuanian courts when both parties are foreign nationals with habitual residence in Lithuania. Notably, the Lithuanian Civil Procedure Code makes no provision for the application of *lis pendens*. According to Article 781, in the event that the courts of the Republic of Lithuania possess the jurisdiction to adjudicate civil cases as defined in the Civil Procedure Code, this authority shall not be revoked if an identical case is pending before a foreign court. Regarding notaries, there are no specific provisions regarding jurisdiction or *lis pendens*. Nevertheless, one could argue that notaries are obligated to adhere to the jurisdictional provisions outlined in the aforementioned legal instruments, provided that their conduct does not contradict those provisions.

A. *Divorce and legal separation*

18 Spouses who mutually agree to the divorce and meet the criteria outlined in Article 3.51 of the Civil Code are eligible to have their divorce decreed by a notary. A notary shall certify the separation by common consent of the spouses, as stipulated in Article 3.73 of the Civil Code. The sole avenue through which a marriage can be annulled is through judicial process, as stated in Article 3.37 of the Civil Code.

19 It is noteworthy that while the divorce case is pending before the notary, there is no legal requirement for the notaries to inform the judicial authorities. This is due to the fact that the jurisdiction of notaries and courts in divorce cases are distinct. Put simply, if the court is required to render a decision on divorce under legal provisions, the notarial process is not applicable. Similarly, if the notarial process is accessible, it is not possible to petition for a divorce through the judicial process. According to Article 137(2) of the Civil Procedure Code, the court will refuse to accept a claim if the person who has applied to the court has not followed the procedure for the earlier settlement of disputes out of court as prescribed by law for such cases. Based on the aforementioned rule and Article 3.51 of the Civil Code, courts in recent case-law have refused to dissolve marriages if a notarial divorce is possible. ([20])

20 A definition of a court or a judgment is not provided by Lithuanian law. Nevertheless, case-law indicates that the Civil Procedure Code's general

([20]) Ruling of the Vilnius District Court of 16 March 2023 in civil case No e2S-668-430/2023; ruling of the Vilnius District Court of 11 January 2024 in civil case No e2S-124-560/2024.

provisions regarding the recognition of foreign judgments may be applied to non-judicial decisions. To illustrate, the Supreme Court recognised a divorce decree rendered by a municipality (specifically, the Sumida District of Tokyo City, Japan) in one case. (21)

1. *Formal and substantive requirements*

21 Divorce may be granted in accordance with the Lithuanian legislation through mutual consent, the request of one spouse, or due to the fault of one or both spouses. In a notarial proceeding, divorces by mutual assent are the only viable option. In Article 3.51, the conditions for a divorce by mutual consent are outlined. The subsequent conditions must be fulfilled: 1) the marriage has been concluded for over one year; 2) both spouses have reached an agreement regarding the consequences of the divorce, including matters such as property division, child support, and maintenance; 3) both partners possess the necessary capacity to take appropriate action in this regard. These requirements apply to both the judicial and notarial procedures of divorce by mutual consent. Furthermore, in order to initiate a divorce proceeding via notarial process, the following conditions must additionally be met: the spouses have not maintained a common household for more than one year, have not lived a conjugal life and have no minor children in common. All the prerequisites listed above apply to marriages concluded in Lithuania as well as abroad.

22 According to the provisions outlined in Article 3.55, the district court of the applicant's place of residence may be petitioned by one of the spouses to dissolve the marriage, provided that at least one of the subsequent conditions is met: 1) the spouses have been separated for more than one year; 2) a court ruling after the marriage has declared one of the partners incapacitated or partially incapacitated; (3) a court ruling has declared one of the partners missing; 4) one of the partners has been imprisoned for a non-premeditated crime for more than one year. In the interest of a spouse who is incapable in this regard, their guardian, the public prosecutor, or a guardianship and care institution may submit a petition for divorce. A spouse who possesses limited capacity in this regard may file for divorce with the guardian's consent. In situations where the guardian declines to provide consent, the court may grant permission for the person with limited capacity to petition for divorce, upon the petitioner's request.

23 Finally, if the marriage is dissolved due to the fault of the other spouse (Article 3.60 of the Civil Code), a spouse may file for divorce with a

(21) Ruling of the Court of Appeal of the Republic of Lithuania of 27 June 2011 in civil case No 2T-212/2011.

declaration of guilt. A partner shall be held liable for the dissolution of the marriage if they have significantly neglected their responsibilities as a spouse to the extent that it is no longer possible for the partners to cohabit.

24 If certain circumstances, even if they are beyond the control of the other spouse, make cohabitation intolerable/impossible or likely to be substantially detrimental to the interests of their minor children, or if the spouses are no longer interested in continuing to live together, one of them may apply to the court for a declaration of legal separation (Article 3.73(1) of the Civil Code). The law does not require the spouses to live in different houses, it is sufficient that they do not continue a conjugal life. (22) Both spouses may apply jointly to the court for a declaration of legal separation if they have concluded an agreement on the consequences of the separation in which they have discussed the residence, maintenance and upbringing of minor children, the division of matrimonial property and the maintenance of each other. Where the previously mentioned conditions are met, but the spouses do not have minor children in common, the separation shall be certified by common consent of the spouses by a notary (Article 3.73(2) of the Civil Code).

2. *Procedural steps – judicial procedure*

25 When examining a divorce by mutual consent, two distinct procedures must be considered: judicial and non-judicial. If both spouses are capable of acting in the area of divorce, their marriage was concluded at least one year before initiating the divorce, and the spouses have reached an agreement regarding the consequences of the divorce but the additional requirements for a notarial procedure are not met (eg, they have minor children), the divorce may be obtained only through a judicial procedure. When this occurs, the spouses draft the agreement in which they deliberate on all pertinent consequences of the divorce. The pertinent provisions regarding this matter are outlined in Article 3.53. According to Lithuanian law, the spouses have a right to divorce, therefore, if there is no doubt that the marriage has ended, the court will decide to dissolve it. (23) When the spouses no longer live together and it cannot be anticipated that they will reside together again, the marriage is dissolved. The marital union is deemed effectively dissolved upon the failure of both partners to live together or engage in conjugal activities for a period exceeding one year. It is crucial to highlight that within the context of judicial proceedings, the duration of abstaining from cohabitation and

(22) Valentinas Mikelėnas et al, *Lietuvos Respublikos civilinio kodekso komentaras. Trečioji knyga. Šeimos teisė* (Justitia 2002) 158.

(23) Valentinas Mikelėnas, *Šeimos teisė* (Vilnius 2009) 236.

maintaining a common household may be reduced to less than one year, on the condition that the spouses substantiate the effective dissolution of the marriage. Conversely, in the event of a divorce via notarial process, a minimum of one year must pass since the effective dissolution of the marriage.

26 Article 381(4) of the Civil Procedure Code specifies that the special procedure is applied to an application for divorce by common consent of both spouses (Article 3.51 of the Civil Code) or by one spouse (Article 3.55 of the Civil Code). In addition to approving the agreement on the consequences of the dissolution of the marriage submitted by the spouses, the court is required to do so in accordance with section 3.53 (3) of the Civil Code. The agreement shall address the following matters: maintenance for the minor children and each other, the place of residence for minor children, their participation in their education, and arrangements for the minor children's access to the separated parent. The judgment shall incorporate the terms and conditions of the agreement. The judgment has *res judicata* effects. However, upon a significant alteration in circumstances (eg, illness, unemployment, etc), either one of the former spouses or the former spouses may petition the court for a modification of the agreement's provisions regarding the consequences of the divorce. It is worth emphasising that only the terms governing the consequences can be amended; the decision regarding the divorce itself cannot. [24]

27 If the agreement regarding the consequences of the divorce significantly undermines the rights and legitimate interests of one of the spouses or the minor children, or is contrary to public policy, the court will halt the divorce proceedings until the parties can reach a new agreement. If the spouses do not comply with the court's instructions regarding the content of the agreement within six months after the stay date, the application will be left unexamined. In such a case, the spouses can reapply for divorce by mutual consent, or one of them can apply for divorce under the conditions laid down in the Civil Code. [25] The agreement between spouses is governed by the principle of privity of contract, which states that rights and obligations are created only for the parties who have entered into the contract, with the exception of circumstances specified in the law. [26] The Supreme Court has stated in its case-law that a contract regarding the consequences of divorce,

---

[24] Egidijus Laužikas, Vaklentinas Mikelėnas, Vytautas Nekrošius, *Civilinio proceso teisė. II tomas* (Justitia 2005) 468–469.

[25] Valentinas Mikelėnas et al, *Lietuvos Respublikos civilinio kodekso komentaras. Trečioji knyga. Šeimos teisė* (Justitia, 2002) 120.

[26] Valentinas Mikelėnas, *Šeimos teisė* (Vilnius 2009) 238.

similar to any other contract, is subject to the principle of privity of contract: the contracting parties possess the authority to ascertain their own rights and obligations. As a result, the parties have no authority to concur upon the rights of individuals who are not parties to the contract at the time of its formation. When one or both spouses have creditors, their consent should be obtained on any provisions of the agreement that could potentially affect the creditors' rights.

28 According to Article 3.54 of the Civil Code, the court shall take steps to reunite the spouses. The court may impose a six-month time restriction for the couples' reconciliation at the request of one of them or on its own initiative. In such cases, the divorce process will be stayed. The proceedings will be reopened when the court-imposed time limit has expired, at the request of one of the spouses. If neither partner requests the dissolution of the marriage within one year of the start of the reconciliation period, the divorce application will be denied. If the spouses have not cohabited for more than one year, if establishing a time limit for reconciliation would be substantially contrary to the interests of one of the spouses or their children, or if both spouses request that the proceedings be heard on the merits, no time limit for reconciliation shall be established. If the parties agree to reconcile, they have to notify the court. The parties' written declaration of reconciliation shall be affixed to the file, and the oral statement shall be recorded in the hearing minutes. The court will dismiss the lawsuit by order once it receives the parties' statement of reconciliation. No appeal shall lie against the court's orders staying and ending proceedings in the event of reconciliation. An order of the court ending the proceedings does not exclude a subsequent application for divorce or legal separation.

29 According to Article 540 of the Civil Procedure Code, divorce cases shall be heard orally by the court, at the request of one of the spouses or by mutual consent, unless it determines that hearing the case by written procedure would not jeopardise the stability of the family relationship, the interests of the children, or the spouses. When oral proceedings are in progress, they are not recorded. In practice, disputes involving divorces by mutual consent are typically resolved through a written procedure. The court hears applications filed in accordance with the procedure for divorce by mutual consent or at the behest of one of the spouses within 30 days of the date of receipt. In the event that creditors of either spouse or one of them file claims during the divorce proceedings, the actions are stayed until the creditors' claims are resolved.

30 Everything that is required of the court to ensure a complete understanding of the case's facts must be done. The court is obligated to ascertain the agreement's legality. In examining a case for dissolution of marriage under

the simplified procedure, the Supreme Court of Lithuania has established that the division of property is not determined; thus, the provisions of Chapter VIII of the Third Book of the Civil Code are not applicable in this instance. Spouses who petition the court for approval of the agreement regarding the consequences of a marriage dissolution are obligated to provide a detailed account of the common property, including both its quantity and value ([27]). Therefore, in order to dissolve their marriage by mutual consent, the spouses are obligated to provide the court with details regarding their assets, including their values and any agreement that was reached regarding their division. In reviewing the terms of the divorce settlement agreement, the court assesses the value of the matrimonial property and, by extension, its division. This evaluation is conducted to ascertain whether the agreement complies with public policy and does not significantly harm the legitimate interests and rights of the minor children of the spouses or one of the spouses (Article 3.53(4) of the Civil Code). Typically, the assessment of the validity of a marital agreement regarding the legal implications of divorce is conducted through oral proceedings. This assessment involves either directly hearing the applicants to determine the grounds for deviating from the principle of equal distribution of matrimonial property, or by clarifying the applicants' position through alternative means (eg, supplementary written submissions). It is noteworthy that the verification process is conducted orally. Article 177 of the Civil Procedure Code defines evidence in a civil case as any factual matter on the basis of which a court establishes, in accordance with the procedure laid down by law, the existence or non-existence of facts in support of the parties' respective claims and defences, and of other matters relevant for the fair determination of the case. The statements of the parties and third parties (whether directly or through representatives), the testimony of witnesses, documentary evidence, physical evidence, records of inspections, expert reports, lawfully obtained photographs, video, and audio recordings, and any other evidence that may be presented shall be used to establish the facts.

31 The judgment concludes the judicial process, in which the court renders decisions on the following matters ([28]): child support, residence, parental involvement in the upbringing of minors, access arrangements for the separated parent, maintenance for one spouse and property distribution, and damages in the event of a claim. A judgment dissolving the marriage is

---

([27]) Ruling of the Supreme Court of Lithuania of 15 March 2011 in civil case No 3K-3-110/2011.

([28]) Both the court and the notary examine the agreements' legality and compatibility with public order. In practice, this check is very formal.

rendered by the court in the event of a divorce by mutual consent; the agreement regarding the consequences of the divorce is appended to this judgment. It is worth noting that if the spouses' creditors become involved in the proceeding and disagree with the spouses' agreement regarding the consequences of the divorce, the court may issue a partial judgment and address the remaining issues later. ([29]) The spouses may file an appeal of the judgment with the court of first instance within 30 days of its issuance. The same procedure applies to separation. **32**

3. *Procedural steps – non-judicial procedure*

Spouses must provide a notary with an agreement outlining the implications of the divorce and a written declaration that they have not cohabitated or shared their home for over one year when petitioning for a divorce by mutual consent. If either spouse has creditors, they are additionally required to provide the notary with proof that they have duly notified all recognised joint creditors, either of their own or one of them, regarding the petition for a divorce by common consent (Civil Code Article 3.54^1). As with the court, before approving the agreement on the consequences of divorce, the notary must offer the spouses an opportunity to reconcile, in which case they must postpone the approval of the agreement on the consequences of divorce for up to six months. The spouses may submit a written rejection of the reconciliation offer and the request to delay the divorce settlement's approval. If the spouses or one of them fails to appear before a notary following the expiration of the postponed period for contract approval, the notary shall not grant approval to the agreement. **33**

The marriage shall be dissolved by common consent of the spouses in accordance with the notarial procedure, with the notary approving the agreement on the consequences of the dissolution of the marriage, provided that such a dissolution of the marriage meets the conditions laid down in the Civil Code, and provided that the agreement on the consequences of the dissolution of the marriage submitted by the spouses does not contravene public policy or materially prejudice the rights and/or legitimate interests of one of the spouses. The agreement regarding the divorce's implications becomes effective one business day after its notarial approval date. **34**

If these issues are not addressed in the marriage contract or if the property, which is considered community property, has not been divided by mutual agreement, certified by notarial deed, or by a court order, the agreement regarding the consequences of the divorce must address the spouses' main- **35**

([29]) Valentinas Mikelėnas, *Šeimos teisė* (Vilnius 2009) 239–240.

tenance of one another, as well as the spouses' surnames following the divorce.

36 When a divorce is completed via the notarial process, particular care is taken to safeguard the interests of the spouses' creditors. According to Article 3.54^3, in cases where the agreement regarding the consequences of divorce pertains to the distribution of the community property of the spouses, prior to seeking notarial approval for this agreement, the spouses are obligated to notify all known joint creditors of either one or both. In addition to a draft agreement outlining the consequences of the divorce, this notification must include the contact information of the notary to whom the application is directed for the agreement's approval. The creditors possess the authority to provide written notice to the spouses and the public notary specified in their notification, along with concrete objections, within 30 days of receiving the information. Their written objections should not compromise the interests of the spouses' joint creditors or one of their creditors. The objections should be reasoned and not affect the method of division of the matrimonial property or any other provisions of the agreement regarding the consequences of the marriage's dissolution. The notary shall refrain from rendering a decision regarding the dissolution of the marriage by mutual consent prior to the time limit specified in this paragraph. The notary will not approve the agreement on the consequences of the divorce if the spouses fail to address the creditors' objections and refuse to modify the terms of the agreement in accordance with them. In such a case, the spouses retain the right to petition the court for a divorce.

37 Given the aforementioned circumstances, it can be asserted that the notary is unable to validate the spouses' agreement prior to 30 days subsequent to the submission of the information to the creditors. Consequently, the length of the notarial process may vary according to whether the spouses have debt obligations. In a hypothetical scenario where both parties meet the necessary criteria to initiate the divorce process via notarial means, have no outstanding debts to creditors, and the agreement does not violate public policy or significantly harm the rights and legitimate interests of one spouse, the notary would have no hesitation in confirming the agreement immediately following its submission. In accordance with Article 29 of the Law on the Notarial Profession, notarial acts are performed promptly upon receipt of the necessary documents for which a fixed fee is levied. The notarial act may be deferred for a duration of 20 calendar days or until the supplementary information or documents are obtained, whichever comes first.

38 As stipulated in Article 36 of the Law on the Notarial Profession, notaries are required to sign and affix their seal to paper documents that they have certified. Consequently, in contrast to the judicial process, no definitive

decision is rendered; rather, a certified agreement stipulating the implications of divorce serves as the sole document; the union is formally dissolved the day following the confirmation of said agreement.

39 It is noteworthy that the notary, in contrast to the court, has restricted access to evidence. In accordance with Article 34 of the Law on the Notarial Profession, the notary possesses the authority to obtain information, documents, and data required to perform notarial acts from State and municipal institutions, State cadastres, registers, and information systems, banks, and other financial institutions, as well as other natural and legal persons. The timely submission of information, documents, and data is required, as specified by the notary. The notary, nevertheless, is unable to hear the testimony of the witnesses.

40 An interested party who believes that a notarial act performed or a refusal to perform a notarial act is improper may file an appeal with the court located in the jurisdiction of the notary's office, as stipulated in Article 41 of the Law on the Notarial Profession.

41 Subject to a substantial change in circumstances (illness, incapacity to work, etc), Article 3.54^4 of the Civil Code permits the former spouses to amend the provisions of the agreement regarding the repercussions of divorce. Additionally, by notarial deed, the agreement regarding the modification of the provisions of the agreement regarding the consequences of the divorce must be finalised. The court has the authority to amend the agreement regarding the implications of divorce at the request of one of the former spouses. The court may, at the request of a former spouse, declare the agreement on the consequences of divorce wholly or partially void and unenforceable if it significantly disadvantages one of the parties and substantially violates the principle of equality of the spouses, in addition to the grounds for contract nullity specified in the first book of the Civil Code. A lawsuit seeking the complete or partial annulment of the contract regarding the consequences of divorce may be initiated within a period of one year from the date the contract became enforceable under those circumstances. The complete or partial annulment of the agreement regarding the implications of divorce shall not impact the dissolution of the marriage as stipulated in this agreement.

42 Creditors of one or both spouses who were not duly notified, in accordance with the procedure specified in Article 3.54^3 (1) of the Civil Code, regarding the agreement on the consequences of the dissolution of the marriage or any amendments thereto, and whose rights have been affected by the provisions

of the agreement, are entitled to the following: a claim within one year from the date they became aware of the agreement's modification. (30)

43 The same procedure applies to separation. However, the legislator additionally requires the spouses to include in the agreement information as to which of them retains the right to reside in the family home.

B. *Parenthood*

44 Lithuanian conceptions of parenthood are limited to the conventional notions of maternity and fatherhood. Furthermore, the complementarity of paternity and maternity is a principle governing family relations in Lithuania, as stated in Article 3.3 of the Civil Code. As stipulated in Article 3.139 of the Civil Code, the woman who gave birth to the infant is considered to be the mother of the child. In situations where the mother's identity is not documented in the child's birth record or where the matter of motherhood has been disputed, a court may determine motherhood through an action initiated by a woman claiming maternal rights, the child's adult child, the child's father, the child's guardian, the guardian's custodian, or a State authority tasked with safeguarding the child's rights. Non-judicial establishment of motherhood does not exist.

45 According to the provisions outlined in Article 3.140 of the Civil Code, in the event that a child is born to a married mother despite having been conceived prior to the union, the mother's spouse/husband is to be listed in the birth certificate as the father of the child. Where the child is born not more than 300 days after the beginning of the separation, or after the annulment or dissolution of the marriage, or after the death of the husband, the former spouse of the mother of the child is recognised as the child's father. If a mother enters into a new marriage within 300 days of the dissolution of the previous union, the new spouse of the mother is recognised as the child's father.

46 If a child is born to an unmarried mother and over 300 days have passed since the dissolution of the prior marriage, the father's name may be included in the birth certificate as the spouse who has duly acknowledged paternity through a court order or a declaration of acknowledgement of paternity in accordance with the procedures specified in the Civil Code.

47 If a child is born to a mother who is married or to a divorced mother within 300 days of the dissolution of the marriage, all parties involved, including the mother, the child's former or current spouse, and the man who affirms

(30) The notarial divorce should thus qualify as an agreement for the purposes of the Brussels IIb Regulation.

paternity, are permitted to submit a joint declaration to a notary. In this declaration, the notary identifies the paternal guardian as the child's father. If the joint declaration is authenticated by the notary, the paternal figure is listed as the child's father, rather than the paternal mother's former or current spouse. By the subsequent business day following the date of statement approval, the notary is obligated to electronically transmit the document to the civil registry office situated in the jurisdiction of the notary's office.

48 Paternity of a child born outside of wedlock can typically be ascertained through a court action or by a man who believes himself to be the father and the child's mother filing an application with a civil registry office or a public notary for a notarial declaration of acknowledgement of paternity or registration of acknowledgement of paternity, respectively. If the child is ten years of age or older, written consent is necessary for the acknowledgement of paternity. Similar to a divorce proceeding, notarial recognition of paternity requires the notary to authenticate the parties' declarations. In cases where the birth of the child has already been registered, both the acknowledgement of paternity and the establishment of paternity (maternity) are to be accompanied by an entry that modifies or supplements the civil status record. This entry rectifies the information regarding the child's parents as it appears in the birth record. Nevertheless, the acknowledgement of paternity may be concurrently recorded with the child's registration. The birth certificate will then contain the complete names of both parents of the child. In regard to the verification of paternity, neither the notary nor the civil registry requires any evidence (such as DNA tests). ([31]) To this end, even a man who is not a biological father can acknowledge the child. In the event that the mother is unable to jointly declare paternity with the father for whatever cause, the non-judicial process remains feasible; however, only provided that the father provides the notary with a report of tests substantiating biological paternity. The court must require the father of the child to provide proof of paternity when dealing with an application for recognition of paternity in which the child's mother is deceased, incapacitated, or otherwise unable to submit the application with the man claiming to be the child's father. However, biological paternity tests are not the only tests that can be utilised to establish paternity in a legal proceeding. Additional proof, such as witness testimony, is deemed valid.

49 If the father declines to acknowledge paternity, the court has the authority to

([31]) Vugar G Mammadov, Gediminas Sagatys and Roy G Beran, 'The Right to Biological Truth versus Stability of the Family' (2021) Journal of Law and Medicine 28(4), 1154–1155.

establish it. An action to establish paternity may be initiated by the child's mother, a child who has attained full legal capacity, the child's guardian (custodian), the State Authority for the Protection of the Rights of the Child, or the progeny of a deceased child, in accordance with section 3.147 of the Civil Code. The judgment pertaining to paternity is rendered by the court and functions as the foundation for amending entries in the civil registry.

50 It is important to note that a paternity ruling has *res judicata* effects. The Supreme Court declared that if the mother first filed to establish the child's paternity and the court denied it, the child cannot submit the same claim as an adult. ([32])

51 The courts are the sole authority authorised to challenge the accuracy of the mother's or father's name as it appears in the birth record, pursuant to Article 3.149 of the Civil Code. The information contained in a child's birth record regarding their mother or father that was inserted into the record pursuant to a final and conclusive judicial decision is immune from contestation. In accordance with Article 3.150 of the Civil Code, in cases where a child is born to married parents or within 300 days of the dissolution of the marriage, in order to contest paternity, one must establish that the individual in question is incapable of being the child's father.

52 In order to contest the maternity or paternity determined by a declaration of acknowledgement of paternity, it is sufficient to establish that the child's biological parent is not the declaratory parent.

53 A person who is listed as the child's mother or father in the child's birth record, a person who considers themselves to be the child's mother or father but is not listed in the child's birth record, the parents or legal guardians of a minor who is listed as the child's father in the child's birth record, or a child who has reached the age of majority may file an action for the contestation of paternity (maternity). If the parent or guardian of the child is incapable or has limited capacity in this regard, the child's custodians or guardians may initiate legal proceedings (Civil Code, section 3.151(2)).

54 Special provisions regarding jurisdiction are included in the Civil Procedure Code with regard to parent-child matters, including parenthood. According to Article 785 of the Civil Procedure Code, cases involving legal relationships between parents and children or adoption shall be heard exclusively in the courts of the Republic of Lithuania. This requirement is met when at least one of the parties involved is a stateless person or a citizen of the Republic of Lithuania, and that party must be habitually resident in the Republic of Lithuania. In the event that both parties maintain a habitual residence in the

([32]) Ruling of the Supreme Court of 4 April 2018 in civil case No 3K-3-121-378/2018.

Republic of Lithuania, the Lithuanian courts have exclusive jurisdiction over the mentioned cases. In addition, cases involving legal relations between parents and children and adoption fall under the jurisdiction of the courts of the Republic of Lithuania if both parties are foreign nationals with a habitual residence in the Republic of Lithuania.

C. *Adoption*

55 Only one type of adoption is permitted under Lithuanian law: the complete adoption of a minor child. Article 3.227 stipulates that adoption results in the elimination of personal and property rights and obligations that existed between parents and children and their descendants by descent, while also establishing such rights and obligations between the adoptive parents and their relatives, as well as between adoptive parents and their offspring who are related by descent. The adoptive parents are legally recognised as the child's parents upon the court's adoption decision becoming effective, with the exception of circumstances in which the child resided with the biological parents prior to the adoption. In the latter scenario, the adoptive parents are deemed to be the child's legal guardians from the moment the child moves to live with the adoptive family.

56 The adoption process primarily involves two institutions: the court and the child protection agencies. In accordance with Article 3.217, individuals authorised by the State Authority for the Protection of the Rights of the Child conduct an assessment of the prospective adoptive parents' health, living conditions, and living arrangements, examine whether they are free from the impediments to adoption outlined in Book 3 of the Civil Code, gather information regarding their physical well-being, and form an opinion regarding the prospective adoptive parents' readiness to adopt. Prospective adoptive parents have the option to file an appeal with the court against the conclusion reached by certified persons of the national authority for the protection of the child's rights regarding their preparedness to adopt. The determination regarding the suitability and readiness of the adoptive parents for adoption is made by the court that is hearing the adoption application. Additionally, the State Authority for the Protection of the Rights of the Child provides the court with details pertaining to the adoptive child's family, origin, development, and health.

57 It is noteworthy that prospective adoptive parents may be placed on probation for a duration of six to twelve months prior to the adoption, at their request, self-initiation, or at the request of the State Authority for the Protection of the Rights of the Child. During this period, the child may be placed with the prospective adoptive family for the purposes of maintenance,

housing, and upbringing. If a court order is issued to place the child with a family, the adoption proceedings are halted. It is important to emphasise that the child's placement with the prospective adoptive family should ensure that the child will be able to adapt to a new family. It cannot be done if there are concerns about the prospective adoptive parents' suitability to adopt the child. (33)

58 Adoption proceedings are conducted orally in closed court, as stipulated in the Civil Procedure Code, Article 484(1). Adoption proceedings are required to be conducted in the presence of both the applicants and a representative of the national authority responsible for safeguarding the rights of the child. This representative provides the court with an opinion on the adoption. While biological parents are not involved in the adoption process, their written consent is necessary if they are known, and it is feasible to obtain it. Additionally, written consent from the child is necessary if the child is over the age of ten. In the case of a younger child, written consent is necessary if feasible and if it does not conflict with the child's best interests. The court proceedings typically reach their conclusion and render an adoption decision no later than two months subsequent to the petition's filing date. If the circumstances are extraordinary and it is in the child's best interests to do so, this deadline may be extended. Either the court grants permission to adopt the child, or it denies the adoption petition. Appeals of court decisions are permissible in accordance with the Civil Procedure Code. The judgment of the court becomes effective 30 days subsequent to its issuance. The decision may be subject to the review procedure outlined in Article 366 of the Civil Procedure Code in the event of extraordinary circumstances. In its case-law, the Supreme Court emphasises that an adoption case may only be reopened under extraordinary circumstances, such as when the child's biological parents did not acquiesce to the adoption procedure. (34)

59 The court is obligated to electronically transmit the adoption decision to the civil registry office that recorded the child's birth by the next business day following the date the decision to adopt entered into force. This is to enable the office to proceed with the registration of the adoption in accordance with the procedure specified in Article 487(5) of the Civil Procedure Code and Article 13 the Law on Registration of Acts of Civil Status of the Republic of Lithuania.

60 It is also noteworthy to mention the significance of conflict-of-laws regulations in the context of international litigation. The jurisdiction over the

---

(33) Valentinas Mikelėnas et al, *Lietuvos Respublikos civilinio kodekso komentaras. Trečioji knyga. Šeimos teisė* (Justitia 2002) 425–426.

(34) The ruling of the Supreme Court of 12 January 2023 in civil case No e3K-3-58-943/2023.

adoption relationship is governed by the legislation of the country of the child's habitual residence, as stated in Article 1.33 of the Civil Code. In situations where it is evident that an adoption proceeding as per the legislation of the adoptive parents' or child's country of nationality will not be acknowledged in the State where the adopted child resides habitually, the adoption may proceed in compliance with the legislation of those States, as long as it does not compromise the best interests of the child. Adoption is prohibited in cases where the recognition of the adoption in the other State is uncertain. The jurisdiction of the State where the adoptive parent maintains a habitual residence governs the child's interactions with the adoptive parents and their family members. In addition, the previously mentioned article delineates a regulation regarding jurisdiction. This provision was incorporated into the Civil Code at a time when the Civil Procedure Code was still in manuscript form and no jurisdictional rules existed in this regard. Adoption-related matters fall under the jurisdiction of the courts of the Republic of Lithuania if either the child or the adoptive parents are habitually resident within the Republic of Lithuania.

D. *Parental responsibility*

61 The court renders its final decision on the majority of matters pertaining to parental responsibility, including but not limited to restrictions on parental responsibility, disputes concerning parental authority, and custody. However, other non-judicial institutions are also implicated in specific matters. The nature of their function may vary depending on the inquiry at hand. As an illustration, according to Article 3.250(4) of the Civil Code, the State Authority for the Protection of the Rights of the Child serves as the lawful representative of a child who is deprived of parental care pending the appointment of a guardian or caretaker. The State Authority for the Protection of the Rights of the Child or the public prosecutor may petition the court to impose a suspension on the parents from managing the minor's property if the parents or one of them mismanages the property to the detriment of the minor's property interests (Article 3.185(3) of the Civil Code). Lastly, in the event of a divorce by mutual consent, the maintenance of the child, the other parent's access rights, and the place of domicile for the child are all determined in the parents' agreement concerning the repercussions of the divorce. As was previously stated, this agreement serves as an appendix to the divorce judgment.

62 A child who is able to express their views must be heard directly or, if that is not possible, through a representative, in any matter pertaining to the child, in accordance with Article 3.164 of the Civil Code. The child's wishes

must be considered during the decision-making process, unless doing so would be contrary to what is in the child's best interests. When determining whether to adopt or appoint a guardian, the child's wishes must be the sole determining factor. A child who believes that their parents are acting in violation of those rights may independently seek redress with the State authority charged with safeguarding the child's rights, or, beginning at the age of 14, with the court.

1. *Parental responsibility – general issues*

63 In accordance with the provisions of the Civil Code, parents bear equivalent rights and responsibilities towards their offspring, irrespective of the parents' marital status, annulment, divorce, or separation status (Article 3.156(2) of the Civil Code). This holds true even if the child's place of residence has been determined by a court order favouring one parent or the other. Parental responsibility starts when the child is born, even if parenthood is established later. ([35])

64 Parents bear the responsibility of providing for their child's upbringing, safeguarding their belongings, and acting as the child's representatives. According to Article 3.159 of the Civil Code, a renunciation of rights and obligations towards minor children by the father or mother is deemed invalid. All decisions concerning the children's upbringing are reached through a process of mutual consent between the parents. In cases where a parental disagreement arises, the court presides over the dispute (Article 3.165 of the Civil Code). The child, in general, resides with the parents. In situations involving parental separation, the child's place of residence is established through mutual consent between the parents. In the event of a parental dispute regarding the child's place of residence, the court's ruling designates one of the parents as the child's guardian (Article 3.169 of the Civil Code).

65 A non-custodial parent possesses both the entitlement and responsibility to maintain communication with the child and actively participate in their development. Regardless of the residence of the parents, a child who is separated from one is entitled to consistent and direct communication with siblings. In situations where the parents are unable to reach a consensus regarding the separated parent's access to, and involvement in, the child's upbringing, the court makes determinations regarding access and participation in the child's upbringing.

([35]) Valentinas Mikelėnas et al, *Lietuvos Respublikos civilinio kodekso komentaras. Trečioji knyga. Šeimos teisė* (Justitia 2002) 299.

2. *Restrictions on parental responsibility*

66 When it is necessary to determine where a child should reside and objective circumstances (such as illness) prevent the parents from living together with the child, the court may order the child to be separated from the parents. In the event that one parent is facing adverse circumstances, and the other parent is capable of living together and raising the child, the child is separated only from the parent incapable of taking care of them (Article 3.179 of the Civil Code).

67 In accordance with Article 3.180 of the Civil Code, restrictions on parental responsibility include conditions, procedures, and repercussions. In situations where a parent (father or mother) fails to fulfil their responsibilities regarding parenting, abuses their position of authority, exhibits cruelty towards the children, negatively impacts their moral development, or neglects to provide for the children, the court has the authority to temporarily or permanently restrict parental authority. The latter list of grounds for limitation of parental responsibility is final. (36) In situations where temporary custody of a child has been granted on the basis specified in Article 3.254(3) of this Code, the State Authority for the Protection of the Rights of the Child applies to the court for a restriction of the parent's authority within 60 calendar days of the establishment of temporary custody of the child. However, this requirement does not apply in cases where the parent is making an effort to regain custody of the child subsequent to the establishment of temporary custody. In determining whether to impose a temporary or permanent restriction of parental authority (father's or mother's), the court considers the particular circumstances surrounding the petition for such restriction. A court may order an indefinite deprivation of parental authority if it determines that one or both parents are significantly impeding the child's development or are not providing adequate care for the child, and there is no indication that this will alter in the foreseeable future. When parental authority is temporarily or permanently restricted, the legal personal and property rights of the parents, which are established by kinship, are suspended. The right to visit the child shall be upheld, unless doing so would not be in the child's best interests. Lithuanian case-law prioritises maximum communication with the child. (37)

---

(36) Valentinas Mikelėnas et al, *Lietuvos Respublikos civilinio kodekso komentaras. Trečioji knyga. Šeimos teisė* (Justitia 2002) 350.

(37) Inga Kudinaviciute-Michailoviene, Ausra Maslauskaite, 'Enforcement of Parental Obligations: Legal and Sociological Aspects of Contact and Maintenance Arrangements' in Kalvis Torgans et al (eds), *Constitutional Values in Contemporary Legal Space II. Collection of*

68 When parental authority is indefinitely restricted, the child may be adopted without the separate consent of the parents. The limitation of parental authority is solely applicable to those children and solely to the parent regarding whom the court has rendered the decision.

69 The simplified procedure governs applications for the revocation of the separation of a child from its parents, as stated in Article 3.183. When there are indications that a temporary or permanent deprivation of parental authority is warranted, the application is referred to the court to be adjudicated in contentious proceedings. In actions referred to it by the parents, the court is not bound by the claims made in applications for the restriction of parental authority and the separation of the child from the parents. Rather, the court bases its decision on the circumstances and the child's best interests. The court considers the opinions of minors who have the capacity to articulate those opinions.

70 Child support is awarded, and the child's place of residence is determined by the court in the same decision that restricts parental authority until the court's decision regarding the establishment of guardianship (custody) enters into force. The State Authority for the Protection of Children's Rights and, if required, the public prosecutor, shall petition the court for the continuation of the temporary restriction of parental (paternal or maternal) authority or for the establishment of an indefinite restriction of parental (paternal or maternal) authority no later than within six months from the date the court decision on the temporary restriction of authority enters into force.

71 The State Authority for the Protection of Children's Rights is obligated to participate in the proceedings pertaining to the limitation of parental authority, as stated in Article 3.184. A report on the dispute shall be submitted to the court by the State Authority for the Protection of Children's Rights subsequent to an examination of the family's living conditions. However, this requirement does not apply in cases where the action is initiated by the same national authority for the protection of children's rights. This report is evaluated by the court alongside the remaining evidence in the case.

3. *Disputes regarding children*

72 Disputes pertaining to children are governed by Articles 3.173–3.178 of the Civil Code. These provisions address matters such as the child's place of residence, disputes between separating parents concerning access to, and participation in, the child's upbringing, disagreements concerning the child's

---

Research Papers in Conjunction with the 6th International Scientific Conference of the Faculty of Law of the University of Latvia (University of Latvia 2017) 118.

contact with relatives, and disputes concerning the child's name and surname. The court resolves disputes concerning the child's identity, place of residence, and access rights through a simplified procedure. The resolution of conflicts pertaining to the ability of children to interact with their relatives is the responsibility of the State Authority for the Protection of Children's Rights.

73 As stipulated in Article 3.176, the State Authority for the Protection of Children's Rights may compel parents to grant contact with the child's close relatives and other relatives with whom the child shares an emotional bond, in the event that the parents refuse to agree to such contact. If such contact is against the child's best interests, the State Authority for the Protection of Children's Rights may deny parental requests to permit contact with the child's close relatives and other relatives with whom the child has emotional attachments. In situations where the parents fail to adhere to the directives of the State Authority for the Protection of Children's Rights or when the child's close relatives or other emotionally connected relatives disagree with the Authority's refusal to order the parents to facilitate access to the child, the child's close relatives or other emotionally connected relatives may submit an application to the State Authority for the Protection of Children's Rights.

E. *Matrimonial property regimes*

74 The Civil Code distinguishes between matrimonial property regimes established by law and by contract. In the absence of a matrimonial agreement, the assets of the partners are governed by the statutory property regime, as outlined in Article 3.82 of the Civil Code. The legal regime governing the property of the spouses may be established through the execution of a marriage contract (Civil Code, Article 3.83 (1)).

75 The Civil Code establishes a specific institution of family property, which can be seen as an autonomous legal regime of property rather than an alternative form of personal or community property. One of the main features of this institution is that family property must be used exclusively for the common needs of the family. ([38]) Family property refers to a portion of the estate, regardless of the matrimonial property regime in place. The use of family property shall be limited to the family's common requirements. Family property consists of the following items, which are owned by either one or both spouses: 1) the family home; 2) movable property, including furniture,

([38]) Inga Kudinavičiūtė-Michailovienė, 'Šeimos narių teisės į gyvenamąją patalpą įgyvendinimas ir gynimas' (2009) Socialinių mokslų studijos 3 (3), 199.

that is intended to provide for the requirements of the family household. Moreover, the ability to utilise the family home is acknowledged as family property. As of the date of registration of the marriage, the property mentioned earlier shall attain the legal classification of family property. However, for the spouses to invoke this status against legitimate third parties, it is necessary for the immovable property to have been officially registered in the public registry as family property.

76 Additionally, the Lithuanian Civil Code specifies particulars regarding the property of individuals who are registered partners. Article 3.230 permits partners to possess property that is utilised jointly. This may consist of immovable property that is owned by both partners, rented by one of them, or both, as well as furniture and other domestic items that are jointly acquired and utilised (excluding items used individually by the partners). In cases where previously mentioned immovable property or rights are registered in the name of one of the cohabitants, the two cohabitants may jointly request the relevant public register to amend the entry to reflect the joint use of the property or rights by both partners. A public notary certifies the authenticity of the signatures provided by the cohabitants in the aforementioned request. The partners possess the authority to reach a notarial agreement stipulating the manner in which the property obtained and utilised collectively is to be divided subsequent to the termination of their cohabitation. *Mutatis mutandis*, the provisions pertaining to contractual matrimonial property are applicable to said contract. Without a notarial-attested agreement on the division of property, all assets acquired or utilised by the partners during their cohabitation may be divided at the request of one of the partners, in accordance with a court order, at the conclusion of their cohabitation, or upon the death of one of the partners.

77 It is noteworthy that the registration of partnerships is not permitted under Lithuanian law. Consequently, the aforementioned provisions may only be applicable if the partnership is officially registered outside of Lithuania.

1. *Matrimonial property regime established by law (statutory matrimonial regime)*

78 The statutory matrimonial property regime stipulates, pursuant to Article 3.87(1) of the Civil Code, that property obtained by the spouses subsequent to their marriage becomes their joint property. Articles 3.88–3.89 of the Civil Code establish a distinction between the rights and objects comprising joint property and those constituting private property of the spouses. However, individual property may be recognised as the joint property of spouses under certain circumstances. This is possible through a judicial process. A dispute

between the spouses concerning the management of their joint property may also necessitate court intervention. If one spouse declines to grant the other consent for a transaction that necessitates the consent of the other, the concerned spouse may petition the court for authorisation to proceed with the transaction (Civil Code, Article 3.93(1)). Furthermore, in accordance with Article 3.94(2) of the Civil Code, in the event that one spouse is absent or unable to jointly manage the community property for other significant reasons, the other spouse may petition the court for authorisation to manage the property. The court may grant an authorisation for a single action, specifying the period of time for which the authorisation is granted. ([39])

79 If one spouse is incapable of overseeing the joint property or is doing so unprofitably, the other spouse may petition the court for the spouse's removal from the property management. Should the spouse provide evidence that the requested action is essential for the operation of the joint matrimonial enterprise or to provide for the needs of the family, the court grants the petition. A spouse who has been barred from administering the community property by the court may reapply to the court for permission to do so (Article 3.95 of the Civil Code) once the circumstances that led to their exclusion have ceased to exist.

80 If one spouse manages or neglects their personal property in an unreasonable and negligent fashion, thereby putting the family's interests at risk through significant depreciation or loss, the other spouse may petition the court to appoint an administrator of the property. Upon request, the spouse may also be designated as the administrator. If the conditions that originally prompted the appointment of an administrator no longer hold true, either spouse may petition the court to revoke the administration of the property (Article 3.97(2) of the Civil Code).

81 A list of grounds for the termination of joint matrimonial property is specified in the Civil Code. For example, it may occur subsequent to the equitable distribution of communal assets as determined by a court order or a mutual agreement between the partners.

82 Article 3.116 of the Civil Code states that property designated as community property can be divided among spouses through mutual agreement, a court order at the petition of one spouse, or their creditors. This provision applies regardless of the marital status of the spouses. Spouses' shares in their common property are considered equal. Nevertheless, in accordance with Article 3.123 of the Civil Code, a court may deviate from the principle of equal shares of the community property of the spouses by granting a greater

([39]) Valentinas Mikelėnas, *Šeimos teisė* (Vilnius 2009) 173.

portion to one spouse, while considering other pertinent factors such as the financial situation of one of the spouses or the welfare of minor children. In addition, these factors must be considered by the court when determining the way in which the community property is divided. A court order or the mutual agreement between the spouses regarding the division of marital property is required to be recorded in the register of marriage contracts (Article 3.125 of the Civil Code). Claims for the division of matrimonial property, excluding immovable property, are subject to a five-year statute of limitations beginning on the date the spouses began living apart (Article 3.129 of the Civil Code).

2. *Contractual matrimonial property regime*

83 A matrimonial contract may be signed either prior to the registration of the marriage (pre-nuptial agreement) or at any point subsequent to its registration (post-nuptial agreement), as stipulated in Article 3.102 of the Civil Code. The matrimonial contract must be concluded in notarial form. Moreover, the contract, as well as amendments thereto, must be registered in the register of marriage contracts.

84 A marriage contract that was executed prior to the marriage's registration becomes enforceable on the date the marriage is registered. It is worth mentioning that the law does not specify how long before marriage a pre-nuptial agreement may be drafted. (40) In the case of a post-nuptial agreement, unless it specifies otherwise, the date of the marriage contract's conclusion is its effective date. By mutual agreement of the spouses, a marriage contract may be modified or terminated at any time in the same manner as when it was initially executed. The marriage contract may be amended or terminated by a court decision at the request of one of the spouses, provided that the grounds for modification or termination are specified in the general rules applicable to contracts (Article 3.106 of the Civil Code). A marriage contract may also be deemed completely or partially invalid in accordance with the Civil Code's general principles for declaring contracts void (Article 3.108 of the Civil Code).

III. Succession law

85 The primary comprehensive regulations pertaining to succession are outlined in Book Five of the Civil Code of Lithuania. Significant provisions are also outlined in the Civil Procedure Code and the Law on the Notarial Profes-

(40) Valentinas Mikelėnas, *Šeimos teisė* (Vilnius 2009) 215.

sion. Notaries are responsible for matters such as the validation of wills, the issuance of a certificate of the right of inheritance and of a certificate of the right of ownership for the surviving spouse in respect of the deceased person's share of the matrimonial community property, and the handling of inheritance proceedings. (41) If a dispute arises in relation to these matters, it is for the court to decide on them. The court also carries out certain other actions related to the right of succession: it establishes facts of legal significance (concerning the acceptance of the inheritance by taking actual possession of the property), decides on the extension of the time limits for the acceptance of the inheritance, authorises the acceptance of the inheritance in the name of a minor or an incapacitated person, and appoints the administrator of the succession estate. (42) It is crucial to emphasise that, in accordance with the EU Succession Regulation, Lithuanian notaries are not regarded as courts and do not carry out judicial duties, act in delegation of authority by a judicial authority, or operate under the supervision of a judicial authority. (43)

86 The Supreme Court commenced its examination by referring to Article 3(2) of the Succession Regulation. The subsequent factors were predominately determined by the Law on the Notarial Profession. In order to safeguard the legitimate interests of the State and uncontested rights and facts of natural and legal persons, notaries are authorised by Article 1 of this legislation to establish such matters. A notary is obligated to exercise heightened diligence and caution in their work, to rigorously adhere to the law, and to decline to perform notarial acts that violate or fail to comply with the law. This conception of a notary's duties assumes that the notary refrains from resolving conflicts between the involved parties, from establishing circumstances that are subject to dispute, and from attesting to legal facts or rights of individuals if there are uncertainties or disagreements. In order for a notary to certify particular rights or facts, their veracity and legality must be beyond any reasonable doubt.

87 As stipulated in Article 26(1)(2) of the Law on the Notarial Profession, notaries are authorised to issue (national) succession certificates in the performance of notarial acts. According to prior Supreme Court case-law,

---

(41) Svajonė Šaltauskienė, 'Paveldėjimo teisė: lyginamieji aspektai' in Gediminas Sagatys (ed), *Lietuvos Respublikos civilinis kodeksas: pirmieji dešimt galiojimo metų* (Vilnius 2013) 651.

(42) Svajonė Šaltauskienė, 'Paveldėjimo teisė: lyginamieji aspektai' in Gediminas Sagatys (ed), *Lietuvos Respublikos civilinis kodeksas: pirmieji dešimt galiojimo metų* (Vilnius 2013) 651.

(43) The ruling of the Supreme Court of 4 November 2020 in civil case No e3K-3-422-378/2020.

the facts stated in notarised documents are presumed to be true and cannot be rebutted until those documents (or portions thereof) are deemed invalid in accordance with the legally prescribed procedure (Article 26(2) Law on the Notarial Profession).

88 When an heir disputes a succession matter, the matter is resolved in a court in accordance with Article 12 of the Law on Courts. (44) Specifically, this Law designates the Supreme Court of Lithuania, regional and district courts, and courts of general jurisdiction over such disputes. The Supreme Court reached the conclusion that the issuance of a national succession certificate does not authorise the performance of judicial functions, given that Lithuanian notaries lack the authority to rule on the issues that led to the dispute between the parties, to establish facts that are not clear and obvious, and to decide on disputed facts. Consequently, insofar as notaries do not qualify as courts as defined by the Succession Regulation, they are not subject to its jurisdictional regulations. In order to establish a standardised procedure for cross-border inheritance disputes, the Supreme Court noted that the legislature could require Lithuanian notaries to adhere to the jurisdictional rules outlined in the Succession Regulation. However, in their absence, cross-border succession cases in Lithuania must adhere to national law regulations.

89 Given these circumstances, it is the responsibility of notaries to ascertain jurisdiction in accordance with the domestic regulations on jurisdiction outlined in the Civil Procedure Code or the bilateral agreements to which Lithuania is a signatory. Legislative efforts have been ongoing in recent times to establish national provisions that would permit Lithuanian notaries to employ the jurisdictional rules of the EU Succession Regulation.

A. *Devolution of the estate*

1. *Acceptance and waiver of the inheritance*

90 The Civil Code regulates the acceptance, waiver, and liability with regard to the debts of successors in Articles 5.50–5.67. Article 5.50 of the Civil Code stipulates that the heir must accept the succession in order to acquire it. It is prohibited to accept the succession in part, with a condition, or with a reservation. It is presumed that the heir has accepted the succession when they either take physical possession of the inherited property or file a declaration of acceptance with the notary. It is necessary for these actions to be completed within a period of three months from the date the succession

(44) The Law on Courts of the Republic of Lithuania [Lietuvos Respublikos teismų įstatymas], 1994, I-480.

takes place. However, their legal ramifications shall only become apparent if the succeeding heirs do not accept the succession by operation of law or testament. Within three months of their birth date, heirs born subsequent to the event of the inheritance are required to acknowledge the inheritance. Acceptance of the succession must be reported to the register of wills ([45]) by the notary within three business days of the acceptance date.

91 As stipulated in Article 5.51, the heir is considered to have accepted the succession upon assuming possession of the property and commencing to manage it as if it were their own (by owning, using, and disposing of it, maintaining it, paying taxes, petitioning the court to declare their intention to accept the succession and appointing an administrator of the estate, and so forth). Upon acquiring any portion of the estate, including an object, the heir is considered to have acquired the entire estate.

92 The heir who has acquired ownership of the property shall be permitted to renounce the succession by filing a declaration to that effect with the notary of the location where the succession occurs, within the time limit specified for the acceptance of the succession (within three months after the occurrence of the inheritance). Under these circumstances, the heir shall be considered to have acquired ownership of the estate for the benefit of the remaining successors.

93 In accordance with Article 5.60 of the Civil Code, within three months from the date of the inheritance, the heir at law or the heir designated in the will may elect to waive the inheritance. Waivers of an inheritance, in whole or in part, with conditions and reservations, are not permitted. The repercussions of waiving the inheritance are equivalent to those of declining to receive the inheritance. By registering a declaration with the notary of the location where the inheritance occurs, the heir may waive the inheritance. Nevertheless, in the event that the heir has submitted a declaration of acceptance of the inheritance to the notary in the location where the inheritance transpired or requested a certificate of the right of inheritance, the inheritance may not be relinquished.

94 It is important to note that notaries do not resolve succession disputes. The issuance of the certificate of succession is restricted to instances that are beyond dispute.

95 If the heir specifies in the application for acceptance of the succession submitted to the notary that they wish to accept the succession in accordance with the inventory of the estate, the inventory of the estate shall be prepared in accordance with the procedure provided for in Articles 5.53 and 5.54 of

---

([45]) The register of wills is not an authority but the centre of registers is a company that administers different registers.

the Civil Code, and the heir's liability for the debts of the deceased are determined accordingly. If at least one heir has accepted the succession according to the inventory, all the other heirs are deemed to have accepted the succession according to the inventory. (46)

96 In summary, the heir must submit an application to the notary within three months to accept or waive the succession. The application should include an assertion regarding the acceptance of the succession in accordance with the inventory. In the absence of further dispute among the heirs, the notary will then proceed to issue a certificate of succession. The succession certificate contains details of the deceased, the heir(s), the basis of the succession and a description of the property constituting the estate. Testamentary wishes and obligations are not entered in the succession certificate but are communicated to the heir by the notary. The succession certificate also does not include inherited obligations and the heir's share thereof. (47) The certificate might be challenged in the court.

2. *Testamentary succession*

97 Official and personal wills are recognised under Lithuanian law (Civil Code, Article 5.27). Article 5.28(1) of the Civil Code defines official wills as those that are executed in triplicate in writing and attested by a public notary or a consular official of the Republic of Lithuania in the country where they are to be executed. While specific circumstances may permit the official will to be certified by another individual (eg, a ship's commander), it is still mandatory for such documents to be deposited with a notary. From the moment they are deposited with a notary, they have the same legal effect as official wills certified by a notary. (48)

98 A personal will is defined by Article 5.30(1) of the Civil Code as a testamentary document signed by the testator and consisting of the following: the testator's name, the date (month, year), and day of the will's drafting, the location where the will was drafted, and an expression of the testator's wishes. For the purpose of the personal testament, the testator may entrust it to a consular officer of the Republic of Lithuania situated in a foreign jurisdiction or a public notary. It is necessary to ascertain the identity of the testator prior to accepting the will for preservation. In order for a personal

---

(46) Ruling of the Supreme Court of 28 March 2011 in civil case No 3K-3-135/2011.

(47) Eglė Čaplinskienė, 'Notarų funkcijos paveldėjimo bylose' in Sandra Venclovienė (ed), *Notariato teisė* (Lietuvos notarų rūmai, 2014) 261.

(48) Svajonė Šaltauskienė, 'Paveldėjimo teisė: lyginamieji aspektai' in Gediminas Sagatys (ed), *Lietuvos Respublikos civilinis kodeksas: pirmieji dešimt galiojimo metų* (Vilnius 2013) 672.

testament deposited for safekeeping to be considered an official testament, it must meet the subsequent conditions at the moment of depositing:

(1) the will is transmitted by the testator, who affirms that the document constitutes their final testament and will;
(2) the will is deposited in a sealed envelope, stamped with the stamp of the accepting institution, and both the testator and the person accepting the will put their signatures on the envelope;
(3) a document attesting the acceptance of the will for safekeeping provides confirmation that the conditions outlined in paragraph 2(2)(1) and (2) of this Article have not been violated, describing the acceptance of the will. Both the testator and the official who received the will for safekeeping affix their signatures to the deed.

99 The secure deposit box of the accepting office shall be utilised to store the accepted will. The will may be revoked by the testator at any time. The testator may designate a representative to receive the will in accordance with a special power of attorney. In the absence of adherence to the procedure specified in this Article regarding the deposit of personal wills, such wills are submitted to the court for confirmation within one year of the testator's death. In this situation, only the court-approved will is enforceable.

100 Upon becoming aware of the death of the testator, the notary of the place of the opening of succession shall immediately establish the day for the announcement of the will and inform the known successors and other interested persons about it. If the envelope containing the will is stamped, it is necessary to write a protocol where it must be noted whether the envelope and the stamps are intact. In the event that there are several wills, all of them shall be announced. (Civil Code subsection 5.33).

101 The notary responsible for opening the will promptly notifies the heirs and other interested parties who were not present during the will's opening of its contents and take necessary measures to determine their place of residence.

102 As required by law, the immediate family of the deceased is granted heirship privileges in Lithuania. According to the provisions outlined in Article 5.20 of the Civil Code, dependent children (adoptees), spouse, parents (adoptive parents), and children (adoptive children) of the deceased are entitled to inherit half of the share that they would have received in the succession as per the law (their mandatory share), notwithstanding any allocation to the contrary in the will. The amount of the mandatory share is determined by considering the value of the inherited property, which includes the value of common domestic furnishings and utensils.

103 Article 5.17(1) of the Civil Code stipulates that an attempt to nullify a will or portions of a will may solely be initiated by the other successors at law or as stipulated in the will who would be entitled to inherit in the event that the

will or portions were annulled. The case is deliberated by the court using a streamlined procedure.

B. *Certificates of succession*

104 The notary-issued certificate of succession serves as proof of the heir's or legatee's position. Upon delivery of a certificate to the heir or legatee, the entirety (or a portion thereof) of the property inherited by the heir is detailed. (49) In accordance with Article 1.75 of the Civil Code, an heir who inherits property that is required to be registered in the public register may not enforce the inheritance's right of ownership against third parties until after the property has been duly registered in the public register. The aforementioned certificate functions as evidence of ownership when modifications to ownership are recorded in the public registry.

105 The successors are provided with the succession certificate three months subsequent to the succession date. A certificate of the right of succession may be issued to natural persons in the event of inheritance by operation of law or bequest, provided that the notary has evidence that there are no additional heirs besides the individuals applying for the certificate of the right of succession prior to the expiration of three months from the date of the occurrence of the succession. A court is the sole authority that can declare a certificate of succession invalid, given that its issuance carries legal consequences. Even with the consent of all beneficiaries, a certificate of succession cannot be revoked by a notary. (50)

106 In the process of issuing the certificate of the right of succession, the notary is tasked with the following responsibilities: to authenticate the deceased's death and the time and location of the inheritance; to examine the composition and location of the inheritance; to determine whether the inherited property belonged to the deceased by right of ownership; to assess the number of co-owners, liens, and other pertinent details by consulting public registers and other official sources. (51) To substantiate the aforementioned conditions, the notary can demand evidence from the applicants.

107 Additionally, notaries in Lithuania have the authority to issue European Certificates of Succession. Formal documentation is not provided for the request to issue said Certificate. The documents that are necessary are

---

(49) Eglė Čaplinskienė, 'Notarų funkcijos paveldėjimo bylose' in Sandra Venclovienė (ed), *Notariato teisė* (Lietuvos notarų rūmai 2014) 261.

(50) Petrauskaitė Daina, 'Paveldėjimas' in Vytautas Pakalniškis, Leonas Virginijus Papirtis (eds), *Civilinė teisė. Bendroji dalis* (Vilnius 2008) 541.

(51) Vytautas Nekrošius, *Notariato teisė* (Dangerta 1997) 87–91.

enumerated in Article 65 (3) of the Succession Regulation. The subsequent steps are identical to those required to issue a national certificate.

108 The will is executed by an individual designated as the executor by the testator, an heir, or a court-appointed administrator of the estate. In the event that a testamentary executor is designated, the notary has to furnish said executor, upon request, with a certificate attesting to their designation as executor of the will. In the event that the will executor is granted authority over a restricted portion of the estate, it is imperative that this information is explicitly included in the certificate that is granted to them.

C. *Administration of estates*

109 The will is executed by an executor, heir, or administrator of the estate designated by the testator, in accordance with Article 5.37 of the Civil Code. An individual may not be appointed executor of a testamentary instrument against the testator's wishes; however, an executor-in-charge may not renounce their responsibilities without sufficient justification. One or more executors may be appointed by the testator. A secondary executor may also be appointed by the testator if the primary executor is incapable of carrying out their responsibilities. In this instance, the secondary executor's consent must be conveyed in either an entry within the will or in a statement appended to the will. A signatory to the testator's will is ineligible to serve as executor.

110 In the absence of an executor designation by the testator or if the designated executor or heir is incapable of fulfilling their responsibilities, the district court of the jurisdiction where the succession has emerged designates an administrator of the estate. This individual performs all tasks required to execute the will. The individual who has initiated the will's execution is not permitted to halt its execution without justification.

111 In accordance with Article 5.38 of the Civil Code, the executor of the will carries out every action required to execute the will's provisions. In the absence of the appointment of an administrator of the estate or the identification of the heirs, the executor of the will performs the following duties as an heir: administering the estate, preparing an inventory of the estate, discharging debts from the estate, collecting debts from the debtors of the deceased, supporting dependents financially, searching for heirs, determining whether the heirs accept the estate, and so forth. The provisions of a will serve as a manual of instructions for the executor of that will. Prior to carrying out the administration of the will, the executor consults the successors. In cases involving the execution of a will, the district court of the location where the succession took place has jurisdiction to adjudicate. The

executor of a will is to carry out their responsibilities with the same degree of diligence with which they attend to their personal affairs. Should the executor be compensated for their services, they additionally bear responsibility to the beneficiaries and other interested parties for any detriment resulting from their negligent deeds.

112 In cases where the testator appoints multiple executors without explicitly delineating their respective rights and responsibilities, they act jointly. In any disagreements regarding the implementation of the will, a court of law has jurisdiction. By way of a common agreement, the executors are jointly and severally liable for any actions carried out. In cases where the testator has delegated the execution of a specific portion of the will to another executor of the will or given that executor a specific mandate, that executor is held liable solely for their own actions.

113 The expenses related to the execution of a will are the responsibility of the estate. Aside from what the testator may specify in their will, an executor carries out their responsibilities without compensation.

114 As stipulated in Article 5.42 of the Civil Code, in the event that the executor of the will or the administrator of the estate fails to fulfil their responsibilities adequately or infringes the interests of the testator's creditors, heirs, beneficiaries of the testamentary exception, or other interested parties, the court situated at the location of the succession has the authority to dismiss the executor of the will and appoint an administrator, at the petition of the latter.

115 As stipulated in Article 5.55 of the Civil Code, circumstances in which the bequest comprises a farm, a sole proprietorship, or where the debts of the deceased may surpass the estate's value permit the heir who has accepted such bequest to petition the court of the estate's place of origin to designate an administrator of the estate. This application may also pertain to an administrator designated to handle matters concerning the commencement of bankruptcy proceedings or the initiation of auctions. Under such circumstances, the estate is used exclusively to satisfy the debts of the deceased. The administration of the estate is constituted by order of the district court of the location from which the estate originated. The court designates the administrator of the estate and establishes their compensation through said order.

116 If the estate is of modest value and the expenses associated with administration would exceed the estate's value, or if a significant portion of the estate would be allocated to administrative costs, the establishment of an administration shall be precluded. If the estimated expenses of administration exceed the value of the estate, the administration of the estate is revoked. The administrator of the estate is subject to the same rights and responsibilities as the executor of the will (Article 5.38 of the Civil Code). Additionally, they are bound by the provisions outlined in Chapter XIV of Book IV of the Civil

Code, *mutatis mutandis*. When there are multiple successors, they are required to submit a joint application for the administration of the estate. The establishment of an administration of the estate is prohibited once the successors have assumed possession of the property. In the aforementioned situations, should the administration of the estate not be established or revoked, an inventory of the estate is prepared, and the remaining obligations of the deceased are satisfied exclusively with funds from the estate. In the event of a dispute among the successors regarding the administration of the estate, the court issues a suitable order to resolve the matter.

IV. Status of natural persons

A. *Name changes*

1. *Substantive requirements*

117 According to Lithuanian law, a natural person's name may be modified in one of two circumstances: when their family status changes or is acquired (as governed by the Civil Code, the Law on the Registration of Civil Status Acts, and the Rules on the Registration of Civil Status Records; for instance, marriage, divorce, adoption, or child acknowledgement); when their name or surname is changed in an administrative procedure (in accordance with the Rules on Changing a Person's Name and the Law on Writing a Person's Name and Surname in the Documents of the Republic of Lithuania ([52]), the Rules on Writing a Person's Name and Surname on Identity and Other Documents ([53])).

118 A name change is permissible in accordance with the provisions of the Civil Code for the following reasons:

- — concluding a marriage (Article 3.31 of the Civil Code);
- — dissolving a marriage (Article 3.69 of the Civil Code); and
- — adoption (Article 3.228 of the Civil Code).

119 It is noteworthy that a child is entitled to the surname of their parents (Article 3.167(1) of the Civil Code). If the parents have different surnames,

---

([52]) Law on Writing a Person's Name and Surname in the Documents of the Republic of Lithuania [Lietuvos Respublikos asmens vardo ir pavardės rašymo dokumentuose įstatymas], 2022, XIV-903, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/32ec5f92790211ecb2fe9975f8a9e52e?jfwid=xo46sndtc>.

([53]) Rules on Writing a Person's Name and Surname on Identity and Other Documents [Asmens vardo ir pavardės rašymo asmens tapatybę patvirtinančiuose ir kituose dokumentuose taisyklės] 2022, 424, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/efc0e036c6e811ecb69ea7b9ba9d787b?jfwid=11kq9466hk>.

they may choose to grant the child the surname of one of them or both (Article 3.167(2) of the Civil Code). The court will determine the child's surname if the parents are unable to reach a consensus on this (Article 3.167(2) of the Civil Code).

120 In accordance with Article 2 of the Rules on Changing a Person's Name ([54]), stateless persons, foreign nationals, and Lithuanian citizens are all entitled to modify their given name and/or surname. A person can apply for the modification of their name at the age of 16. However, if the person wants to modify the name because of transsexuality, the eligible age is 18. It is worth mentioning that according to the Rules, modifications to the civil status records maintained for a stateless individual or a citizen of a foreign State may solely be made at the civil registry offices of the Republic of Lithuania or at diplomatic missions and consular offices of the Republic of Lithuania. An exhaustive list of circumstances for name changes is provided in the Rules. According to Articles 9 and 91 of the Rules, a person may change their name if:

- they wish to have the surname of their parents or one of them (Article 9(1));
- they wish to have the surname of a grandparent, great-grandparent or other ancestor in the direct line of descent, or the surname of one of them;
- they wish to have a binomial surname;
- they wish to have the surname of a stepfather (stepmother), former guardian (former or current guardian);
- they have a form of surname that does not correspond to their gender;
- they wish to have a different surname on the basis of the existing surname (with a different ending or a different suffix, without a suffix or with a suffix), if the preferred surname is in traditional usage;
- after the registration of a marriage, they wish to take the surname they share with their spouse, or the hyphen(s) of their spouse's binomial (plural) surname, in place of the existing surname;
- after the registration of a marriage, they wish to add to their existing surname the surname of their spouse or the chosen suffix of their spouse's binomial (plural) surname;
- they wish to regain any surname previously held;
- they wish to acquire a form of surname which does not indicate marital status, or vice versa;

([54]) Rules on Changing a Person's Name [Asmens vardo ir pavardės keitimo taisyklė], 2016, 1R-333, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/fee03400ccd711e6a2cac7383cbb90a3/asr>.

— they wish to acquire the same surname, but ungrammatical (without the Lithuanian ending like -ienė, -ūtė, -čius), in place of their non-Lithuanian surname (with a Lithuanian ending), or vice versa, to acquire the same surname, but grammatical, in place of their non-Lithuanian surname (without Lithuanian ending);
— they wish to give up the suffix(es) of their existing binomial (polynomial) surname;
— they wish to interchange the suffixes of an existing binomial (plural) surname;
— the applicant has acquired or changed their name and/or surname in a foreign country where they reside or have resided or of which they are or have been a national;
— the applicant wishes to have their name and/or surname written in Lithuanian characters in accordance with the pronunciation (transcription rules into Lithuanian);
— they wish to write their name and/or surnames in the Latin alphabet (without diacritical marks).

According to Article 9^2 of the Rules, an applicant who has been recognised as transsexual may change their name if they wish to have the forms of the other gender's name and surname. **121**

It is worth mentioning that, until 2022, if a Lithuanian citizen changed their name or surname to a name of foreign origin, it had to be written in the Lithuanian alphabet according to pronunciation. Therefore, for instance, the letter 'w' was changed to 'v', 'x' to 'ks', and 'q' to 'kv', and double letters like 'll' to a single letter. (55) The Law on Writing a Person's Name and Surname in the Documents of the Republic of Lithuania changed the former rules on writing names of Lithuanian citizens and allowed the spelling of the name and surname in the Latin alphabet (without non-Lithuanian diacritical marks) irrespective of whether they were acquired in Lithuania or in a foreign State. (56) **122**

2. *Procedural steps*

In order to modify their name or surname, an individual must submit an application to the civil registry or, in the case of residing overseas, to the consulate. The process of modifying one's name or surname can be completed remotely. In contrast, in order to modify both the given name and **123**

(55) These changes could alter the name significantly. For instance, the name 'William' would be written as 'Viljam', 'Maximillian' as 'Maksimiljan'.

(56) Katažyna Bogdzevič, 'Teisiniai pokyčiai asmenvardžių rašymo srityje' in Lyra Jakulevičienė and Vytautas Sinkevičius (eds), *Lietuvos teisės 2022. Esminiai pokyčiai* (Vilnius 2022) 302.

surname, the applicant is required to submit the application in person (Article 16 of the Rules). In accordance with Article 20 of the Rules, foreign-issued documents must be translated into Lithuanian and apostille-certified or legalised, unless international treaties of the Republic of Lithuania and legal acts of the European Union provide otherwise. Furthermore, as stated in Article 22, the civil registry office must receive documents attesting to the records of civil status deeds when the surname is changed to the surnames of parents or other ancestors. These documents must establish that the applicant's desired surname was previously held by their parents, grandparents, great-grandparents, other forefathers, or other forefathers in the line of descent, if not already included in the register. In contrast, in cases where a surname change is initiated pursuant to the provisions outlined in subparagraph 9.4 of the Rules, supporting documentation must be submitted to the civil registry office to verify that the individual in question is the stepfather/stepmother, and was (or is), or currently serves as, the applicant's legal guardian. Additionally, written consent in the form of a form-free agreement from the stepfather/stepmother or legal guardian is required for the application.

124 If a person's name is changed due to transsexuality, a certificate issued by a Lithuanian health care institution stating that the person has been recognised as transsexual, or a medical document issued by a health care institution in a Member State of the European Union, must be presented to the civil registry.

125 Pursuant to Article 28 of the Rules, in the event of a name and surname change, a name change file is created. The application or a copy of the application submitted electronically through the civil registry information system is stored in the file, which also contains all pertinent information pertaining to the name and surname change. If the civil registry office's archives do not include records of civil status acts pertaining to surname and name changes, the civil registry office is obligated to procure the required duplicates from the State archives or an alternative civil registry office. It is necessary to restore a misplaced civil status record in adherence to the regulations outlined in the register of civil status records, which have been approved by the Minister of Justice.

126 When there is any ambiguity concerning the correct spelling of personal names, the State Lithuanian Language Commission is to be consulted.

127 With the conclusion(s) in the prescribed format regarding the change of name and/or surname, the case is closed. The staff member who drafted the conclusion affixes their signature to it, and it is approved by the head of the civil registry office, or another duly authorised official of that office.

128 In order to modify their current name and to reflect their transsexual orientation, or a foreign origin of a name or surname, or to write a name or

surname in the Latin alphabet (without diacritical marks), approval from the Ministry of Justice is necessary. Under such circumstances, the report must bear the signature of the head of the civil registry office, or another duly authorised civil registry office official. The file accompanied by the duly signed report shall be submitted to the Ministry of Justice.

129 An authorised civil servant, designated by the Minister of Justice, is responsible for granting approval or issuing a denial of the conclusion. An appeal may be filed against the approval or denial of the conclusion in accordance with the procedure specified in the Civil Procedure Code of Lithuania. In the event that the civil registry office decides against permitting the change of name and/or surname, it is required to provide written notification to the applicant within a period of three working days.

130 Documentation of a surname and/or name change is achieved by appending or updating the individual's most recent civil status record. In situations where authorisation from the Ministry of Justice is necessary, a modification of name and/or surname must be officially documented by the civil registry office by the business day following the date the decision to change the aforementioned information was adopted. In such instances, the registration deadline is the next business day following the date the certified conclusion is received by the civil registry office. The applicant shall be duly notified by the civil registry office that has recorded the change of name and/or surname within a period of three business days.

B. *Gender recognition*

131 Gender recognition issues have been on the agenda of legislators for quite some time. According to Article 2.27 of the Civil Code, in cases where medically feasible, an unmarried adult may alter their sex. A written request of this nature is required. By law, the conditions and process for gender reassignment are to be established. Such a law, however, has never been enacted.

132 An individual who identifies as transsexual is permitted to alter their given name or surname in accordance with the Rules governing the process of name changes. Changing a gender indicator, on the other hand, is exclusively feasible via the judicial process. An individual desiring to modify their gender-marker approaches the civil registry with a request to update the records accordingly. Upon obtaining a denial, they can proceed to contest the decision in court. Lately, the majority of courts have rendered favourable decisions in such cases. The courts do not mandate gender reassignment surgery in order to modify civil status records; rather, they rely solely on a

medical determination of transsexuality and the individual's self-identification, and recognition of their preferred gender. (57)

C. *Protection of adults*

133 The Civil Code contains regulations concerning the protection of adults. Guardianship is established to implement, protect, and defend the rights and interests of a natural person who is incapacitated in a particular area, pursuant to Article 3.238. A person's guardianship encompasses the guardianship of their property; however, in the event that it becomes necessary, an administrator may be designated to oversee and manage the property. A curatorship is established to safeguard and advocate for the rights and interests of a natural person with limited capacity in a particular field, as stated in Article 3.239. A curator is responsible for both the individual and their property; however, if necessary, an administrator may be designated to oversee and manage the property. Individuals who have been deemed incapable or of having limited capacity in a specific domain by a court and are residing in institutions of care, education, or guardianship remain under the supervision and management of the appropriate institution until a permanent guardian is designated (Article 3.241(2) of the Civil Code).

134 Without a specific mandate, a curator and a guardian serve as the *ex lege* representatives of their wards and guardians, safeguarding the rights and interests of individuals who lack legal capacity or have limited legal capability in a particular area. An individual who is deemed incapacitated or has limited capacity in a specific domain is required to have an immediate guardian or guardianship appointed by the court in that domain. It is noteworthy that, in accordance with Article 789 of the Civil Procedure Code, cases involving natural persons who have been declared incapacitated or limited in a particular field, declared dead, or declared missing, but have a habitual residence in Lithuania, may only be heard in the courts of the Republic of Lithuania.

135 In accordance with the provisions of Article 3.242(3), the appointment of a guardian or curator is restricted to a natural person who possesses the requisite legal capacity to do so, and such an appointment can only be made with the written consent of the natural person in question. Consideration shall be given to an individual's moral and other qualities, capacity to perform the duties of guardian or curator, relationship with the person for whom guardianship or care is being established, the wishes of the ward or the

(57) For instance, ruling of the Vilnius District Court of 2 April 2017 in civil case No E2YT-5326-987/2017.

person under care, the wishes of the guardian or curator, and any other pertinent circumstances when appointing a person to the position of guardian or curator.

136 Pursuant to the provisions outlined in Article 3.246, a curator or guardian may be relieved of their responsibilities in the event that such an individual is incapable of carrying them out due to personal or immediate family illness, financial hardship, or other compelling circumstances. Furthermore, in the event that a guardian or curator fails to fulfil their responsibilities in a suitable fashion, neglects to safeguard the rights and interests of the ward or the individual under curatorship, or exploits their authority for personal gain, said individual or organisation may have their guardian or curator status revoked. The guardian or curator are obligated to provide compensation for any harm caused to an individual who is impaired or has limited capacity in a particular area as a result of their actions as guardian or curator. A court order may terminate or remove the guardian or curator from their responsibilities, with the exception of situations in which a transitory guardianship or curatorship has been established for the individual. The court has the authority to petition the guardian or curator, in addition to the guardianship and curatorship authorities, to remove the guardian or curator from their responsibilities. The public prosecutor, a person who is incapable or has limited capacity in a particular area, or the authorities responsible for guardianship and curatorship have the authority to petition the court for the removal of a curator or guardian.

V. Conclusions

137 In Lithuania, the judiciary has been mostly responsible for implementing justice. However, there are apparent tendencies in which some cases have been removed from the courts and assigned to non-judicial bodies. The most noteworthy example is the transfer of divorce by mutual consent from the judiciary to the notarial procedure. The Civil Code establishes precise conditions for when spouses can dissolve their marriage using the notarial procedure. For the time being, it is uncertain if this reform will have a substantial impact on the courts' workload or make divorce by mutual consent easier or speedier.

138 The other key issue that notaries have always handled is succession. In uncontested cases, Lithuanian notaries issue succession certificates. Following the ruling of the Court of Justice of the European Union, the Lithuanian Supreme Court determined that Lithuanian notaries are not 'courts' under the EU Succession Regulation, with one of the most fundamental justifications being that they exclusively deal with undisputable issues. However, this

problem may be debatable, as courts under the Regulation are interpreted functionally. Thus, the Supreme Court could have considered, for example, whether, if succession was entrusted to the courts, they would act in a different manner than notaries. Probably, the answer would surprise the Court itself. Even more perplexing is the fact that under the Brussels IIb Regulation, Lithuanian notaries may be called 'courts' despite the fact that their operations are identical to those in succession cases. This could be a difficult nut to crack in the future.

139 Finally, in some circumstances (personal status), civil registrars are involved. For example, they make decisions about changing a person's name. However, they do not operate completely independently; in some situations, they require permission from the Ministry of Justice.

EXTRA-JUDICIAL ADMINISTRATION OF JUSTICE IN CROSS-BORDER FAMILY AND SUCCESSION MATTERS

Comparative and Policy Perspectives

Edited by
Elena Bargelli, Anatol Dutta, and François Trémosa

in cooperation with
Paul Patreider and Elisa Stracqualursi

Lefebvre Giuffrè

EXTRA-JUDICIAL ADMINISTRATION OF JUSTICE IN CROSS-BORDER FAMILY AND SUCCESSION MATTERS

Comparative and Policy Perspectives

Edited by
Elena Bargelli, Anatol Dutta, and François Trémosa

in cooperation with
Paul Patreider and Elisa Stracqualursi

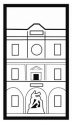
Lefebvre Giuffrè

ISBN 9788828873938

This book is an output of the project "The concept and role of 'court' in the age of dejudicialization. Reinforcing EU Family and Succession Law" (CODE.FS) which was funded by the EU under the JUST-2021-JCOO call (project ID: 101046578).

An open access version of this book is available online, thanks to funding from the LMU Open Access Fund.





Università di Pisa
Dipartimento di Giurisprudenza



ELI
European Law Institute



LMU Ludwig-Maximilians-Universität München

FSC

© Copyright Giuffrè Francis Lefebvre S.p.A. Milano - 2025
Via Monte Rosa, 91 - 20149 MILANO - www.lefebvregiuffre.it

The total or partial translation, adaptation, or reproduction by any means (including photocopying and microfilm) and electronic storage, is reserved for all countries.
An online version of this work is published under a Creative Commons Open Access License (CC-BYNC-ND 4.0), which permits re-use, distribution and reproduction in any medium for non-commercial purposes, provided appropriate credit to the original work is given. If you create a derivative work by remixing, transforming or building upon the material, you may not distribute this without permission.
To view a copy of this license, visit https://creativecommons.org/licenses/by-nc-nd/4.0/.

Printed by LegoDigit s.r.l. - Lavis (TN)

FOREWORD

It is a long-standing prejudice among lawyers, but also among society as a whole, that the administration of justice is primarily a matter for the courts and that other authorities are called upon only in exceptional cases or for ancillary measures. However, this is nowadays no longer true in many Member States of the European Union. In family and succession law in particular, the administration of justice has, in numerous cases, been transferred in whole or in part to non-judicial bodies – notaries, civil status officers, child protection agencies, etc – to an extent that it is appropriate to speak of a 'de-judicialisation' of the administration of justice. The extent of this development varies greatly between Member States, and there is no uniform situation. These differences, which have left their mark on the case-law of the Court of Justice of the European Union, raise two fundamental questions. On the one hand, it is often unclear whether and to what extent existing European Union instruments on judicial cooperation in family and succession matters apply to proceedings and measures ('acts') of extra-judicial administration of justice in cross-border cases, and secondly, the question arises as to whether the EU should not make use of its competences to adopt legislation in order to create uniform rules or at least guidelines for this area of the administration of justice.

Answering these questions requires precise knowledge and a thorough analysis of the legal situation in the Member States of the Union. The European Law Institute's project 'Extra-Judicial Administration of Justice in Cross-Border Family and Succession Matters' (2020–2025), which has resulted in this book and was co-funded by the European Union, provides the foundation for this. Based on country reports that describe the legal situation in 16 Member States on the basis of a questionnaire, a Comparative Report analyses convergences and divergences in the course of the 'de-judicialisation' of the administration of justice, while at the same time providing a comparative overview of the main features of current family and succession law in representative Member States of the Union.

On this basis, policy recommendations have been formulated by the Project Group as the core element and pioneering achievement of the Project. They are addressed to the EU and the Member States and contain guidelines for the development of Union law and Member States' law when acts in family and succession matters are reserved to courts in at least one Member State but fall within the competence of other authorities, or the parties themselves, in other Member States. The proposals aim, *inter alia*, to strengthen non-judicial bodies, provide for compliance with minimum pro-

cedural standards and call for the extension of EU principles on jurisdiction and the recognition of effects between Member States. Also pointing to the future is the proposal to extend the jurisdiction of the Court of Justice of the European Union so that an authority of a Member State that participates in an act in family and succession matters is considered as a 'court or tribunal' for the purposes of Article 267 of the Treaty on the Functioning of the European Union. Indeed, the involvement of the Luxembourg Court would ensure the uniform application and interpretation of EU law provisions on the extra-judicial administration of justice and strengthen their constitutional safeguards. Thus, the outcome of the Project has the potential to give a new dimension to the administration of justice in family and succession matters in the EU.

CHRISTIAN KOHLER
Former Director General at the Court of Justice of the European Union, *Honorarprofessor*, Saarland University, Germany

PREFACE

This volume collects the results of a collaborative research project on the extra-judicial administration of justice in cross-border family and succession matters led by the editors. The Project was conducted by the University of Pisa and the Ludwig Maximilian University of Munich under the auspices of the European Law Institute (between 2020 and 2025) and was funded by the European Union (between 2023 and 2025). Cornerstones of the Project were workshops in Pisa (July 2023) and Munich (September 2024) and a conference in Vienna (February 2025), where the results of the Project were presented and discussed. The main outcomes of the Project, 16 country reports, a comparative report and our policy recommendations, are published in this book.

We are indebted to many individuals and institutions for their support: the European Law Institute, in particular, Christiane Wendehorst for her valuable input as the Institute's Scientific Director; the members of the Council of the European Law Institute for their feedback on the drafts; Tomasz Dudek for guiding us smoothly through the jungle of the Institute's processes as the Senior Legal Officer in charge of our Project; our country reporters (1) for their insights into a dynamic and broad area of the law; the members of our Advisory (2) and our Consultative Committee (3) as well as the participants of our workshops for their ideas; Donna Stockenhuber for the language revision of the text; and our universities – the University of Pisa

---

(1) Stéphane Berre, Katarzyna Bogdziewicz, Nicola Chiricallo, Nataša Erjavec, Laura Esteve Alguacil, Aron Johanson, Merel Jonker, Katarzyna Kamińska, Tiina Karm, Kathryn O'Sullivan, Paul Patreider, Rute Teixeira Pedro, Frank Høgholm Pedersen, Wendy Schrama, Elisa Stracqualursi, Lars Thøgersen, Laima Vaigė, Ioan Luca Vlad, Eleni Zervogianni.

(2) Frédérique Ferrand, José-Maria Gomez-Riesco Tabernero de Paz, Tobias Helms, Costanza Honorati, Matthias Neumayr (Assessor), Pascal Pichonnaz (Assessor), Walter Pintens, Ilaria Pretelli (Assessor), Jens Martin Scherpe (Assessor, until March 2024), Andrea Schulz, Maciej Szpunar, Camelia Toader, and Ilaria Viarengo.

(3) The Association of Notaries of the Republic of Poland (represented by Wiktor Karpowicz), Marina Androulaki, Arvind Babajee, Małgorzata Balwicka-Szczyrba, Joaquín Bayo Delgado, Yurii Bilousov, Mircea Bob-Bocsan, Robert Bray, Tomasz Chmielewski, Gregor Christandl, CORPME (represented by Marta Hernández), Olga Cvejić Jančić, Elena D'Alessandro, Irina Dikovska, Giulia Donadio, Christiana Fountoulakis (Chair), Cristina González Beilfuss, Lukas Heckendorn Urscheler, Francisco Javier Jiménez Muñoz, Jens Kleinschmidt, Thalia Kruger, Antonio Legerén Molina, Elena Marinică, Giuseppe Marino, Lineke Minkjan, Daniele Muritano, Jose Pau, Natalia Rueda, Carlo Rusconi, Sharon Shakargy, Stacie Stong, and Irina Zlatescu.

and the Ludwig Maximilian University of Munich – as well as the European Commission for their financial support.

Munich, Pisa, and Toulouse

THE EDITORS

LIST OF CONTRIBUTORS

EDITORS

Elena Bargelli *(University of Pisa, Italy)*
Anatol Dutta *(Ludwig Maximilian University of Munich, Germany)*
François Trémosa *(Notary, France)*

in collaboration with

Paul Patreider *(Ludwig Maximilian University of Munich, Germany)*
Elisa Stracqualursi *(University of Pisa, Italy)*

CONTRIBUTORS

Stéphane Berre *(Université Jean Moulin Lyon 3, France)*
Katarzyna Bogdziewicz *(Mykolas Romeris University, Lithuania)*
Nicola Chiricallo *(University of Ferrara, Italy)*
Nataša Erjavec *(Notary, Slovenia)*
Laura Esteve Alguacil *(Universitat de València, Spain)*
Aron Johanson *(Ludwig Maximilian University of Munich, Germany)*
Merel Jonker *(Utrecht University, the Netherlands)*
Katarzyna Kamińska *(University of Silesia in Katowice, Poland)*
Tiina Karm *(University of Tartu, Estonia)*
Kathryn o'Sullivan *(University of Limerick, Ireland)*
Paul Patreider *(Ludwig Maximilian University of Munich, Germany)*
Frank Høgholm Pedersen *(University of Copenhagen, Denmark)*
Rute Teixeira Pedro *(University of Porto, Portugal)*
Wendy Schrama *(Utrecht University, the Netherlands)*
Elisa Stracqualursi *(University of Pisa, Italy)*
Lars Thøgersen *(Ministry of Social Affairs and Housing, Denmark)*
Laima Vaigė *(Uppsala University, Sweden)*
Ioan-luca Vlad *(Lawyer, Romania)*
Eleni Zervogianni *(Aristotle University of Thessaloniki, Greece)*

TABLE OF CONTENTS

Foreword V
Preface VII
List of Contributors IX
Abbreviations XI

Part I
INTRODUCTION AND COMPARATIVE REPORT

ANATOL DUTTA, PAUL PATREIDER, *De-judicialisation in family and succession matters – an introduction and comparative report* 3

Part II
NATIONAL REPORTS

PAUL PATREIDER, *Austria* 57
FRANK H PEDERSEN, LARS THØGERSEN, *Denmark* 181
TIINA KARM, *Estonia* 213
STÉPHANE BERRE, *France* 301
ARON JOHANSON, *Germany* 327
ELENI ZERVOGIANNI, *Greece* 431
KATHRYN O'SULLIVAN, *Ireland* 511
NICOLA CHIRICALLO, ELISA STRACQUALURSI, *Italy* 545
KATARZYNA BOGDZIEWICZ, *Lithuania* 601
MEREL JONKER, WENDY SCHRAMA, *The Netherlands* 645
KATARZYNA KAMIŃSKA, *Poland* 681
RUTE TEIXEIRA PEDRO, *Portugal* 725
IOAN-LUCA VLAD, *Romania* 799
NATAŠA ERJAVEC, *Slovenia* 851
LAURA ESTEVE ALGUACIL, *Spain* 929
LAIMA VAIGĖ, *Sweden* 993

Part III
POLICY RECOMMENDATIONS

ELENA BARGELLI, NICOLA CHIRICALLO, ANATOL DUTTA, PAUL PATREIDER, ELISA STRACQUALURSI, FRANÇOIS TRÉMOSA, *The extra-judicial administration of justice in cross-border family and succession matters — policy recommendations* 1047