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LEGAL REGULATION OF THE PARENTAL AUTHORITY  
RESTRICTION IN NATIONAL AND INTERNATIONAL PERSPECTIVE

*REGULATION JURIDICA DE LA LIMITACTION DE LA PATRIA  
POTESTAD DESDE LA PERSPECTIVA NACIONAL E  
INTERNACIONAL*

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ABSTRACT

The article analyses the aspects of the legal regulation of the restriction of parental authority, the concept of the restriction of parental authority, the content of parental authority, the main rights of the child in the application of the restriction of parental authority, and seeks to reveal the main problems that affect the application of the restriction of parental authority. The article draws attention to the different forms of limitation of parental authority. The article concludes that the restriction of parental

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authority is not comprehensive in ensuring the rights and legitimate interests of the child.

*Keywords:* Limitation of parental authority, child rights, interests of the child.

## RESUMEN

El artículo analiza los aspectos de la regulación jurídica de la limitación de la patria potestad, el concepto de limitación de la patria potestad, el contenido de la patria potestad, los principales derechos del menor en la aplicación de la limitación de la patria potestad, y trata de revelar los principales problemas que afectan a la aplicación de la limitación de la patria potestad. El artículo llama la atención sobre las diferentes formas de limitación de la patria potestad. El artículo concluye que la restricción de la patria potestad no es completa a la hora de garantizar los derechos e intereses legítimos del menor.

*Palabras clave:* Limitación de la patria potestad, derechos del niño, intereses del niño.

*Sumario:* I. Introduction. II. Concept of limitation of parental authority, rights of the child, parental authority, best interests of the child. III. The legal mechanism for limiting parental authority. IV. Legal and practical problems faced by courts in cases concerning the restriction of parental authority. V. Conclusions. VI. References.

## I. INTRODUCTION

Novelty and relevance. The application of the institute of limitation of parental authority is a consequence of the failure to fulfil parental responsibilities. The Constitution of the Republic of Lithuania provides, that „the family is the foundation of society and the state. The state protects and nurtures the family, motherhood, fatherhood and childhood“<sup>3</sup>. This provision reflects the legislator's intention to protect the family and its members. It is now in the interest of the State that children grow up in a family, which is why the levels of threat have been abolished in favour of an assessment of the child's situation. The subject of the

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<sup>3</sup> Lietuvos Respublikos Konstitucija. Paskelbta valstybės aide 1992-11-10, Nr. 220-0. Galiojanti suvestinė redakcija nuo 2022-05-22. (1992).

restriction of parental authority is relevant because it has been dealt with in a superficial way. There is a lack of in-depth research on the use of the institution of parental authority and its consequences for children and their rights and legitimate interests. There is a lack of indepth research on the use of the institution of parental authority and its consequences for children and their rights and legitimate interests.

The lack of more rigorous research on the limitation of parental authority, both at international and national level, is worrying and undermines the possibility of adequately identifying the harm caused to children's rights and legitimate interests by the application of the institution of limitation of parental authority. The need for protection of children's rights is evident in the analysis of statistics for 2021. The analysis revealed that 589 children were subjected to physical violence and 28 children were neglected, and that the use of the institution of the restriction of parental authority is an inappropriate consequence of the exercise of parental authority<sup>4</sup>.

The problem of identifying parental violence against children. Parental violence against children can take many forms - physical, psychological and sexual. This means that it is difficult to detect parental violence against children in practice because it is hidden. The child, as a weaker person, is vulnerable due to his or her lack of full capacity, and the State must therefore help to identify violence against children in order to protect the child's interests. In practice, parental violence against children is identified when a pre-trial investigation for domestic violence is initiated.

The purpose of the study. Identify the aspects of the legal regulation of the restriction of parental authority.

Research tasks: 1) to define the concept of the limitation of parental authority in order to clarify the main elements of the content of parental authority and the fundamental rights and legitimate interests of the child; 2) to assess the conditions for the legal regulation of the mechanism for the application of the process of limitation of parental authority; 3) following an analysis of the case law on the application of the restriction of parental authority, provide guidelines for the

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<sup>4</sup> Nusikalstamų veikų žinybinis registras. Open access. (2021). Available online: [file:///C:/Users/User/Downloads/statistiniu-duomenu-apie-2021-m-uzregistruotas-nusikalstamas-veikas-kuriu-padarymu-itariami-kaltinami-nepilnameciai-apie-nepilnamecius-kurie-itariami-kaltinami-padare-nusikaltstama-veika-bei-nuo-nusikaltstamu-ve%20\(4\).pdf](file:///C:/Users/User/Downloads/statistiniu-duomenu-apie-2021-m-uzregistruotas-nusikalstamas-veikas-kuriu-padarymu-itariami-kaltinami-nepilnameciai-apie-nepilnamecius-kurie-itariami-kaltinami-padare-nusikaltstama-veika-bei-nuo-nusikaltstamu-ve%20(4).pdf), [accessed 2024 12 03].

improvement of legislation to improve the protection of children's rights and legitimate interests. Research methods – comparative analysis method, problem-solving method, logical analytical method, generalisation method.

## II. CONCEPT OF LIMITATION OF PARENTAL AUTHORITY, RIGHTS OF THE CHILD, PARENTAL AUTHORITY, BEST INTERESTS OF THE CHILD

Article 38 of the Constitution of the Republic of Lithuania establishes parental responsibility, to bring up children to be decent people and loyal citizens, and to support them until they reach the age of majority<sup>5</sup>. This constitutional provision is fundamental in the Republic of Lithuania and constitutes the whole essence of parental authority. No national or international legislation provides for the limitation of parental authority, and it is therefore appropriate to review the views and reflections of foreign authors on the perception of parental authority. The concept of parental authority, *patria potesta*, dates to ancient Roman times and was then concentrated in the hands of the family father<sup>6</sup>.

In the past, parental authority was seen in terms of the exercise of parental rights by parents over their children, linked to economic, moral and educational notions<sup>7</sup>. In the Polish Constitution, the term "parental authority" was used to refer to the subordination between parent and child<sup>8</sup>. Over time, as states changed their conceptions of the family, a new social context emerged, replacing parental authority with parental duties and responsibilities<sup>9</sup>. It is important to note that the period of parental responsibility is not defined and is understood as the moral and material custody of the child<sup>10</sup>. The general duration of the continuity of parental authority is until the child reaches the age of majority<sup>11</sup>. Another author, Yaffe, considers that parental authority is based on the right of parents to control

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<sup>5</sup> Lietuvos Respublikos Konstitucija. Paskelbta valstybės aide 1992-11-10, Nr. 220-0. Galiojanti suvestinė redakcija nuo 2022-05-22. (1992).

<sup>6</sup> Kamp, John B. "Patriarchy and Gender Law in Ancient Rome and Colonial America." *Iowa Historical Review* 8.1 (2020) : 43-57.

<sup>7</sup> Guercini, Luana. "Responsabilità genitoriale e inadempimenti." *Quaderni Forensi Veliterni* 2.2 (2020) : 1-8.

<sup>8</sup> Helland, Trond, et al. "A comparative analysis of the child protection systems in the Czech Republic, Lithuania, Norway, Poland, Romania and Russia." (2020) : 1-72.

<sup>9</sup> Guercini, Luana. "Responsabilità genitoriale e inadempimenti." *Quaderni Forensi Veliterni* 2.2 (2020) : 1-8.

<sup>10</sup> Kiral, Bilgen. "The Rights and Responsibilities of Parents According to the Views of Teachers." *Asian Journal of Education and Training* 5.1 (2019): 121-133.

<sup>11</sup> Kiral, Bilgen. "The Rights and Responsibilities of Parents According to the Views of Teachers." *Asian Journal of Education and Training* 5.1 (2019): 121-133.

their children's behavior in various social contexts, e.g. science<sup>12</sup>.

The grounds for the restriction of parental authority are set out in Article 3.180, Part 1 of the Civil Code of the Republic of Lithuania, which sets out the following conditions:

- a) parental neglect of their duty to bring up their children;
- b) parents abusing their power;
- c) parents are cruel to their children;
- d) parents are immoral and neglect their children.

Article 3.180, Part 3 of the Civil Code of the Republic of Lithuania stipulates that the court shall take into account the circumstances of the case in the event of a violation of the conditions of Article 3.180, Part 1 of the Civil Code of the Republic of Lithuania, and may impose measures of a preventive nature on the parents, such as the temporary or unlimited restriction of the parental authority. The temporary restriction of parental authority is imposed when the court considers that the parents are likely to change in the future. An indefinite restriction of parental authority shall be imposed if the court finds that the parents are harming the child's development, are neglecting the child and there is no evidence that the parents will change<sup>13</sup>. In Serbia, the restriction of parental authority is linked to the deprivation of parental rights, so parental law is the sum of the rights and duties of parents in raising a child. Deprivation of parental rights only deprives one or both parents of the right to exercise the right, but not of the obligations which the parents remain obliged to fulfil, such as child support<sup>14</sup>. Thus, Article 3.180 of the Civil Code of the Republic of Lithuania establishes an exhaustive list and conditions for the restriction of parental authority. The restriction of parental authority is applicable in the presence of at least one of the circumstances provided for in the said Article, and is therefore an extreme measure to be applied by the court to the parents of a child when they violate the provisions of Article 3.180, Part 1 of the Civil Code of the Republic of Lithuania, i.e. avoiding their duty to bring up their children, abusing their authority, cruelly treating the child, neglecting the child and behaving in an immoral way towards the child.

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<sup>12</sup> Yaffe, Yosi. "Parental authority: A contemporary integrative-theoretical conceptualization." *A closer look at parenting styles and practices* (2020): 73-96.

<sup>13</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>14</sup> Petrovic, Biljana, Milan Jecmenic, et al. "DEPRIVATION OF PARENTAL RIGHTS IN SERBIAN LAW." *Economic and Social Development: Book of Proceedings* (2021): 174-181.

For a long time, childhood has not been of interest to researchers as an object of research. There was no need to get to know the child, as he or she was not considered a mature personality, but as times have changed, so have the opinions of scientists. Later, it was observed that the education of a child shapes his character and helps him to develop. Changes in the perception and evaluation of the child as a person have also led to changes in the field of child protection<sup>15</sup>. The Republic of Lithuania ratified the Convention on the Rights of the Child on 20 November 1989. This decision confirmed the legislator's desire to increase the focus on the protection of the rights and legitimate interests of the child, not only at national but also at international level<sup>16</sup>. The Law on the Protection of the Rights of the Child of the Republic of Lithuania establishes the concept of a child as a person under the age of 18 years<sup>17</sup>. As the topic under discussion is the process of limiting parental authority and its specificities, it is important to discuss the fundamental rights of the child and to make comparisons between them. Article 3.161 of the Civil Code of the Republic of Lithuania establishes the fundamental rights of the child, namely the right to life, healthy development, a name, a surname, the right to know one's parents, to live with them, to communicate with one's own relatives, and to be brought up by, and to have material support and communication with, one's parents. The child also has a right to property, except for the mandatory provision that the property of the child and the parents is subject to the principle of separation<sup>18</sup>.

Article 6 of the Convention on the Rights of the Child states that States that have ratified the Convention on the Rights of the Child recognise the right of the child to life and undertake to ensure this right<sup>19</sup>. Many democracies have enshrined the right to life in their constitutions, making the right to life an absolute right<sup>20</sup>. Understanding the importance of life requires identifying the point at which life is protected. The Constitution of the Republic of Lithuania establishes the fact of the protection of life, but does not specify the moment of its protection. According to Article 2.3 of the Civil Code of the Republic of Lithuania, the beginning of life is linked to the inhalation of the newborn, while the Law on

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<sup>15</sup> Palmieri, Valerio. "Il ruolo dell'educatore nel pensiero di Korczak." *CQILA Rivista* 40 (2023): 79-88.

<sup>16</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>17</sup> Lietuvos Respublikos vaiko teisių apsaugos pagrindų įstatymas. Paskelbtas valstybės žiniuose 1996-03-14, Nr. I – 1234. Galiojanti redakcija nuo 2024-01-01 iki 2024-06-30. (1996).

<sup>18</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>19</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>20</sup> Dzhuska, Kaminska, et al. "Modern concept of understanding the human right to life." *Wiadomości Lekarskie* 72.2 (2021): 1337-1342.

the Birth of a Child refers to the removal of the foetus from the woman's body with the signs of vitality, such as respiration and a heartbeat. International law does not refer to the moment of life because in countries where abortion is legalised before the child is born, the life of the child is not protected<sup>21</sup>.

Looking at national legislation, life is very much linked to a child's right to healthy development, i.e. the right to health. The child's right to healthy development is detailed in Article 6 of the Framework Law on the Rights of the Child: „1) providing special care and protection for pregnant women, mothers and newborns; 2) measures to provide a healthy and safe environment for the child; 3) health care for children and their parents; 4) preventing childhood diseases through qualified health care; 5) creating the legal and organisational preconditions for the production of, and access to, child-friendly food of good quality; 6) developing healthy lifestyle habits in your child; 7) other statutory guarantees of child healthcare “<sup>22</sup>. Health promotion includes a healthy diet, vaccinations against communicable diseases, and preventive health check-ups for children<sup>23</sup>.

Healthy development, i.e. developing your child's mental and physical abilities, is important for their growth. Educational institutions help to do this. Pre-primary, primary and secondary education is good for a child's language and social development, and the state ensures that children receive free education<sup>24</sup>. Article 41 of the Constitution of the Republic of Lithuania establishes a mandatory rule of law that education is compulsory for persons under 16<sup>25</sup>. In line with the legislator's provision, it is up to the parents, who are the legal representatives, to ensure the exercise of this right. The example of Indonesia can be used as a comparative perspective on children's rights. As globalisation in Indonesia has led to a moral decline that is detrimental to the personality development of children (e.g. children are more likely to be violent), the Indonesian government has initiated a reform aimed at shaping the character and changing the thinking of

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<sup>21</sup> Latakaitė, Greta, and Lidiya Rimzhus. "Abortas–apsisprendimo laisvė ar nusikaltimas?." *Teisės mokslo pavasaris 2023* (2023): 7-28.

<sup>22</sup> Lietuvos Respublikos vaiko teisių apsaugos pagrindų įstatymas. Paskelbtas valstybės žiniuose 1996-03-14, Nr. I – 1234. Galiojanti redakcija nuo 2024-01-01 iki 2024-06-30. (1996).

<sup>23</sup> Europos Sąjungos vaiko teisių strategija (2021). Available online: [https://commission.europa.eu/document/3f5b8720-5e4e-49a6-9660-795efff97842\\_lt](https://commission.europa.eu/document/3f5b8720-5e4e-49a6-9660-795efff97842_lt), [accessed 2024-12-03].

<sup>24</sup> Europos Sąjungos vaiko teisių strategija (2021). Available online: [https://commission.europa.eu/document/3f5b8720-5e4e-49a6-9660-795efff97842\\_lt](https://commission.europa.eu/document/3f5b8720-5e4e-49a6-9660-795efff97842_lt), [accessed 2024-12-03].

<sup>25</sup> Lietuvos Respublikos Konstitucija. Paskelbta valstybės aide 1992-11-10, Nr. 220-0. Galiojanti suvestinė redakcija nuo 2022-05-22. (1992).

young people<sup>26</sup>. According to the famous thinker Aristotle, a society can make progress in educating children through habituation, so positive values are formed through action, i.e. when children learn<sup>27</sup>.

Article 2.20 of the Civil Code of the Republic of Lithuania stipulates that every individual has the right to have a name. This right includes the right to a surname, first name and nickname. A natural person shall be given a name after his or her birth by means of registration in accordance with the procedure laid down by law at the Civil Registry Office. The law establishes a time limit of three months for the registration of a child's name. The child's name shall be given by mutual consent of the parents. In the event of a dispute over the child's name, it shall be given by the court<sup>28</sup>. Article 3.166, Part 4 of the Civil Code of the Republic of Lithuania provides for an exception - when the child's parents are unknown, the child is given a name by the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour<sup>29</sup>. This is rare in practice, and happens when the child's parents leave the child at the life box. The procedure for giving a child a surname is laid down in Article 3.167 of the Civil Code of the Republic of Lithuania, which stipulates that children shall be given the surname of their legal representatives, and in the case of different surnames, the surname of one of the parents or a double surname. In the event of a dispute, the surname shall be assigned to the child by the court<sup>30</sup>.

The Convention on the Rights of the Child enshrines the child's right to be heard. This right is enshrined in Article 12 of the Convention: „States Parties guarantee the right of a child who is able to formulate his or her own views to express them freely in all matters affecting him or her, and the views of the child are given due weight in relation to his or her age and maturity“<sup>31</sup>. Article 3.177 of the Civil Code of the Republic of Lithuania states: „when dealing with disputes concerning children, the court must listen to the child, who is capable of expressing his or her views, and find out what the child wants“<sup>32</sup>.

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<sup>26</sup> Wadu, Ludovikus Bomans, et al. "Child character building through the takaplager village children forum." *2nd Annual Conference on Social Science and Humanities (ANCOSH 2020)*. Atlantis Press, 2021.

<sup>27</sup> Ibid.

<sup>28</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>32</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).



It should be noted that Lithuanian courts have discretion as to the age at which a child can be heard, as the law does not set an age limit<sup>33</sup>. A child's shame in expressing his or her opinion is individual. It is important to assess the maturity of the child. This maturity is determined by the age of the child. A child aged between 7 and 12 years is able to understand cause and effect<sup>34</sup>. It is established that the right to an opinion is a child's right, but not an obligation, and that the State has a duty to ensure the exercise of this right<sup>35</sup>. It should be noted that hearing the views of the child is linked to the child's right to be involved in matters concerning him or her. There have been attempts worldwide to improve the child's participation in decisions affecting him or her, but research has shown that the emotional well-being of the child is not good as a result of his or her involvement in decisions affecting him or her. When a child is informed of a decision, he or she feels unable to influence the decision because of his or her age and immature status<sup>36</sup>. A child's right to an opinion is therefore a right, not an obligation, and it is the State that must help ensure that this right is exercised. Having discussed the content of the child's right to an opinion, it is important to add that this right is linked to another principle of the best interests of the child<sup>37</sup>. Article 3 of the Convention on the Rights of the Child establishes the fundamental rule that the best interests of the child shall be a primary consideration in any action taken in respect of the child<sup>38</sup>. The case law of the Constitutional Court establishes that childhood is a constitutional value and the State is obliged to ensure the protection of the rights of the child; therefore, the State's aim and main objective is to ensure the best interests of the child<sup>39</sup>. The content of this fundamental norm is clarified in the legal doctrine of the Constitutional Court, which establishes the State's obligation to ensure that the legislator, when adopting legislation relating to the protection of the rights of the child, is guided

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<sup>33</sup> Limantė, Agnė, and Aistė Račkauskaitė-Burneikienė. "Vaiko išklausymo reikalavimas šeimos byloje." *Teisė* 106 (2018): 99-113.

<sup>34</sup> Jasinskaitė, Beatričė, and Monika Ubavičiūtė. "Vaiko atvaizdo naudojimas reklamai socialiniuose tinkluose." *Teisės mokslo pavasaris 2021: Vilniaus universiteto Teisės fakulteto studentų mokslinė draugija: [straipsnių rinkinys]* (2021): 162-181.

<sup>35</sup> Ibid.

<sup>36</sup> Bijleveld, Ganna, et al. "Exploring the essence of enabling child participation within child protection services." *Child & Family Social Work* 25.2 (2020): 286-293.

<sup>37</sup> Ruškus, Jonas, et al. "VAIKO BALSO REIKŠMĖ VAIKO IR ŠEIMOS GEROVĖS POLITIKOS IR JOS ĮGYVENDINIMO KONTEKSTE." *Social Work. Experience & Methods/Socialinis Darbas: Patirtis ir Metodai* 27.1 (2021).

<sup>38</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>39</sup> Stripeikienė, Janina. "Vaiko interesus atitinkantis teisingumas: samprata, prielaidos ir kai kurie probleminiai aspektai." *Jurisprudencija* 28.1 (2021): 33-51.

by the principle of the primacy of the interests of the child<sup>40</sup>.

The best interests of the child must not be understood as the fulfilment of all the child's wishes. The best interests of the child are the totality of all the rights and interests recognised in the child<sup>41</sup>. Another right of the child to know his/her parents is enshrined in Article 3.161, Part 2 of the Civil Code of the Republic of Lithuania. Article 7 of the Convention on the Rights of the Child states that the child shall, if possible, know his or her parents<sup>42</sup>.

This right therefore guarantees the child's identity. The next right protected for children is the right to maintenance. Parental maintenance obligations are enshrined in national and international law. Article 27 of the Convention on the Rights of the Child also provides for the fulfilment of this obligation by stating that the parents of the child must ensure the child's living conditions<sup>43</sup>. Nationally, the obligation to maintain a child is regulated by Article 38 of the Constitution of the Republic of Lithuania, which stipulates that a child's parents have a duty to maintain their children until they reach the age of majority<sup>44</sup>. The constitutional provision does not establish the moment from which the parents' obligation to maintain the child arises, which is therefore provided for in Article 3.200 of the Civil Code of the Republic of Lithuania, which stipulates that the beginning of the maintenance shall be determined as from the date of the creation of the right to the maintenance<sup>45</sup>. The obligation to maintain a child therefore starts from the day the child is born. It should be noted that the obligation to maintain the child remains after separation from the parents or after the restriction of parental authority, except in the case of adoption<sup>46</sup>.

Parental duties under Article 38 of the Constitution of the Republic of Lithuania „to bring up children to be decent people and loyal citizens, and to support them until they reach the age of majority“<sup>47</sup>. This is the first indication of

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<sup>40</sup> Ibid.

<sup>41</sup> Senigaglia, Roberto. "La semantica giuridica della responsabilità genitoriale." *Annali online della Didattica e della Formazione Docente* 10.15-16 (2018): 6-19.

<sup>42</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>43</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>44</sup> Lietuvos Respublikos Konstitucija. Paskelbta valstybės aide 1992-11-10, Nr. 220-0. Galiojanti suvestinė redakcija nuo 2022-05-22. (1992).

<sup>45</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>47</sup> Lietuvos Respublikos Konstitucija. Paskelbta valstybės aide 1992-11-10, Nr. 220-0. Galiojanti suvestinė redakcija nuo 2022-05-22. (1992).

the content of parental authority. Article 3.155 of the Civil Code of the Republic of Lithuania establishes the components of parental authority: „children are under the care of their parents until the age of majority or emancipation; parents have the right and the duty to bring up and care for their children in a decent manner, to take care of their health, to support them, and, taking into account their physical and mental condition, to create conditions conducive to their full and harmonious development, so as to prepare the child for an independent life in society“<sup>48</sup>. In order to understand the exclusive right and duty of parents in the upbringing of their children, it is important to know that children are under parental care until they reach the age of majority, as they do not have civil legal capacity. The Civil Code of the Republic of Lithuania sets out the cases in which children under the age of 18 may be recognised as having legal capacity, for example when they marry or become emancipated. The grounds for entering into marriage before the age of 18 are laid down in Article 3.14 of the Civil Code of the Republic of Lithuania, and the grounds for emancipation are laid down in Article 2.9 of the Civil Code of the Republic of Lithuania: 1) parenting and childcare; 2) child health care; 3) child maintenance; 4) ensuring the child's development and preparation for independent life in the State<sup>49</sup>.

The first element of parental authority is the duty of parents to bring up and look after their children. This is enshrined in Article 18 of the Convention on the Rights of the Child, which states that the State shall impose on parents the duty to bring up their children and that parents shall assume responsibility for the upbringing of children<sup>50</sup>. It is a peculiarity of child upbringing that no legal act prescribes how children should be brought up, which is why it is necessary to be guided by Article 38, Part 1 of the Constitution of the Republic of Lithuania, which emphasises that children should be brought up to be honest people and loyal citizens<sup>51</sup>. Another element is the duty to ensure the child's health. Article 3.155, Part 2 of the Civil Code of the Republic of Lithuania stipulates that parental obligations are equal<sup>52</sup>. The Law on Health of the Republic of Lithuania states that „health - the physical, moral and social well-being of individuals and

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<sup>48</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>49</sup> Kudinavičiūtė-Michailovienė, Inga, and Egidija Tamošiūnienė. *Šeimos bylų nagrinėjimo ir teismo sprendimų vykdymo ypatumai*. Mykolo Romerio universitetas, 2013.

<sup>50</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>51</sup> Lietuvos Respublikos Konstitucija. Paskelbta valstybės aide 1992-11-10, Nr. 220-0. Galiojanti suvestinė redakcija nuo 2022-05-22. (1992).

<sup>52</sup> Kudinavičiūtė-Michailovienė, Inga, and Egidija Tamošiūnienė. *Šeimos bylų nagrinėjimo ir teismo sprendimų vykdymo ypatumai*. Mykolo Romerio universitetas, 2013.

society“<sup>53</sup>. Given that the child does not have full civil capacity until the age of majority and that his/her parents are his/her legal representatives, parental consent is required in the area of health for the provision of health care to the child<sup>54</sup>.

Another parental responsibility is the maintenance of children. Child maintenance is not only a parental duty but also an obligation, with one party as creditor and the other as debtor. In the present case, the child's parents are the debtors and the child is the creditor. Article 3.139 of the Civil Code of the Republic of Lithuania establishes the procedure for determining the mother of the child<sup>55</sup>. Article 3.192 of the Civil Code of the Republic of Lithuania establishes the period until which parents have to support their children. A child must be maintained by his or her parents until he or she reaches the age of 18 years, unless the child is emancipated or marries two years before reaching the age of majority<sup>56</sup>.

The last element of the content of parental authority is ensuring the development of the child and preparing him/her for independent life in the State. In order to ensure the child's proper development and preparation for independent life in society, it is first necessary to define what the child's well-being is. The interpretation of the child's well-being is linked to the Convention on the Rights of the Child, which establishes that the fundamental principles protecting children are non-discrimination, the best interests of the child, the expression of the child's views and the right to live and grow. More specifically, child welfare covers many areas, but the main ones are ensuring the child's material well-being, health, education, housing, security<sup>57</sup>. Article 41 of the Constitution of the Republic of Lithuania establishes a mandatory rule of law that a child up to the age of 16 is obliged to go to school, and given that the child does not have the capacity to exercise his or her civil capacity, it is up to the child's parents, adoptive parents, or guardians to ensure that the child's parents, adoptive parents, or guardians exercise this obligation<sup>58</sup>. Article 29 of the Convention on the Rights of

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<sup>53</sup> Lietuvos Respublikos sveikatos sistemos įstatymas. Paskelbtas valstybės žiniuose 1994-08-17, Nr. 63-1231. Galiojanti redakcija nuo 2024-02-01 iki 2024-06-30. (1994).

<sup>54</sup> Kudinavičiūtė-Michailovienė, Inga, and Egidija Tamošiūnienė. *Šeimos bylų nagrinėjimo ir teismo sprendimų vykdymo ypatumai*. Mykolo Romerio universitetas, 2013.

<sup>55</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>56</sup> *Ibid.*

<sup>57</sup> Naujanienė, Rasa, and Jonas Ruškus. "VAIKO IR ŠEIMOS GEROVĖS SAMPRATOS ATSPINDŽIAI PRAKTIKOJE." *Social Work. Experience & Methods/Socialinis Darbas: Patirtis ir Metodai* 26.2 (2020).

<sup>58</sup> Lietuvos Respublikos Konstitucija (1999 m. sausio 14 d. Nr. VIII-1029). *Valstybės žinios*, 1992-02-03, Nr. 13-308, 41 str.

the Child states that it is important to ensure the right of the child to education. The exercise of this right contributes to the development of the child's mental and physical abilities, as well as respect for human rights, freedoms and principles. It also fosters respect for the child's biological parents and the State, and promotes the child's awareness of and ability to respect nature<sup>59</sup>.

### III. THE LEGAL MECHANISM FOR LIMITING PARENTAL AUTHORITY

Article 3.179, Part 1 of the Civil Code of the Republic of Lithuania regulates the separation of a child and specifies the conditions for separation: „in cases where the parents (father or mother) do not live with the child due to objective circumstances (illness, etc.) and it is necessary to decide where the child should live, the court may decide to separate the child from the parents (father or mother). If one parent has adverse circumstances and the other parent is able to live with and bring up the child, the child shall be separated only from the parent who is unable to bring up and be with the child“<sup>60</sup>. Because parental mental disorders exist all over the world, some countries separate children from their parents on the grounds of mental disorders, while others do not, because they want the child to grow up in a family. Family support should not only be financial but also psychological, as some mental disorders, such as schizophrenia, prevent parents from working and psychological support is needed to help them deal with life's problems<sup>61</sup>.

According to research conducted by scientists worldwide, it has been noted that in the United States of America, about one million children are without parents because their parents are serving prison sentences. Various studies are currently being carried out in order to determine the impact of this phenomenon on the development of the child<sup>62</sup>. The most common reasons for parental imprisonment relate to possession of narcotic substances and other types of crime<sup>63</sup>. Researchers have found that children with incarcerated parents experience more difficulties than children without incarcerated parents, e.g.

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<sup>59</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>60</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>61</sup> Zarei, Shiva, et al. "Needs of Children of Parents with Schizophrenia." *Preventive Care in Nursing & Midwifery Journal* 11.3 (2021): 32-39.

<sup>62</sup> Poehlmann-Tynan, Julie, and Kristin Turney. "A developmental perspective on children with incarcerated parents." *Child Development Perspectives* 15.1 (2021): 3-11.

<sup>63</sup> Dailey, Anne C., and Laura A. Rosenbury. "The New Parental Rights." *Duke LJ* 71 (2021): 75.

children under the age of five with incarcerated parents are emotionally affected and hostile<sup>64</sup>.

The fact that the parents are imprisoned for a crime introduces an element of guilt, and therefore, from a moral point of view, constitutes a reason for separating the child from his/her parents for other reasons. As regards imprisoned mothers, Baunach considers that imprisonment is not an indicator of parental incapacity, and suggests that the courts should assess the parents' relationship with their children prior to imprisonment and establish a causal link between the offence and the failure to perform parental duties<sup>65</sup>. The researcher's review of case law found that courts in the United States are not categorical towards incarcerated parents, i.e. parental incarceration does not constitute grounds for termination of paternity, and therefore courts do not object to incarcerated parents maintaining contact with their biological children<sup>66</sup>.

Thus, an analysis of national and international legislation and legal doctrine has shown that there is no concept of separation between a child and his or her parents and no exhaustive list of objective and other circumstances, and it is therefore most appropriate to state that the separation of the parents from their children is a measure of a preventive nature, in the absence of an element of parental guilt, where the parents are unable to fulfil their rights and obligations towards the child and to ensure the best interests of the child and the child's residence with them, due to objective and other circumstances, such as illness and mental disorders, long distances, working abroad, lack of social skills, the breakdown of the child's close relationship with the other parent, or the serving of a sentence in a penal institution. Where objective and other circumstances arise, the court decision shall separate the child from the parents or one of them, restricting the child's right to live with them but preserving all the parents' personal and property rights.

Conditions for limitation of parental authority set out in Article 3.180, Part 1 of the Civil Code of the Republic of Lithuania:

1. parents avoid fulfilling their parental responsibilities;
2. parents abusing parental authority;
3. parents are cruel to their children;

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<sup>64</sup> Poehlmann-Tynan, Julie, et al. "A developmental perspective on children with incarcerated parents." *Child Development Perspectives* 15.1 (2021): 3-11.

<sup>65</sup> Baunach, Phyllis Jo. *Mothers in prison*. Routledge, 2020.

<sup>66</sup> Ibid.

#### 4. parents are immoral and neglect their children.

Article 3.180, Part 3 of the Civil Code of the Republic of Lithuania provides that the court shall take into account the circumstances of the case in the event of a violation of the conditions of Article 3.180, Part 1 of the Civil Code of the Republic of Lithuania and may impose preventive measures on the parents, such as the temporary or unlimited restriction of parental authority. A temporary restriction of parental authority shall be imposed where the court considers that the parents are likely to change in the future, and an indefinite restriction of parental authority shall be imposed where the court concludes that the parents are causing adverse damage to the child's development, are not caring for the child, and that there is no evidence that the child's parents will change<sup>67</sup>.

To summarise, no legal act prescribes the wording of the restriction of parental authority, and it is therefore important to take into account the elements of the content of parental authority, such as the upbringing and care of the children, the child's health care, and the child's maintenance, when assessing the concept of restriction of parental authority, ensuring the child's development and preparing the child for independent life in society, as these are the totality of parental rights and obligations in the exercise of parental authority, and breach of these obligations entails parental liability, the conditions for which are laid down in Article 180, Part 1 of the Civil Code of the Republic of Lithuania.

The concept of child-rearing is not defined by international or national law. The introduction of this concept is considered to promote inequality between the child and the adult, as the adult is perceived as the subject and provider of knowledge, while the child is given the product of the adult's performance<sup>68</sup>. Article 38 of the Constitution of the Republic of Lithuania sets out the following parental duties: „to bring up children to be decent people and loyal citizens, and to support them until they reach the age of majority<sup>69</sup>“. This Constitutional provision is the first reference to the totality of the elements of child-rearing. Article 3.155 of the Civil Code of the Republic of Lithuania details the aspects of upbringing: „children are under parental care until they reach the age of majority or emancipation. Parents have the right and the duty to bring up and care for their

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<sup>67</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>68</sup> Pintar, Željka. "Adultized child of early and preschool age in the modern concept of upbringing and education." *Školski vjesnik: časopis za pedagogijsku teoriju i praksu* 71.1 (2022): 199-211.

<sup>69</sup> Lietuvos Respublikos Konstitucija. Paskelbta valstybės aide 1992-11-10, Nr. 220-0. Galiojanti suvestinė redakcija nuo 2022-05-22. (1992).

children in a good manner, to take care of their health, to support them, taking into account their physical and mental condition, to create conditions conducive to their full and harmonious development, in order to prepare the child for an independent life in society<sup>70</sup>. Article 3.165 of the Civil Code of the Republic of Lithuania adds to the elements of the upbringing of children by adding the provision of the conditions for the child's education, and points out that parents, unlike other persons, shall be given priority in the performance of these obligations<sup>71</sup>. Thus, while the concept of child-rearing is not established, the parental duty to bring up children must be linked to elements such as the exercise of the duty to maintain the child, the cultivation of virtue, care for the child's health, and the guarantee of the child's right to education. In conclusion, it is established that parents who fail to fulfil their duty towards their child and to educate him or her give rise to the imposition of a restriction on parental authority, since the element of fault is established.

Article 163 of the Criminal Code of the Republic of Lithuania regulates the restriction of parental authority due to parental abuse of parental authority. This Article states: „whoever abuses the rights or duties of the father, mother, guardian or custodian, or other legal representatives of the child, by physically or mentally abusing the child, by leaving the child unattended for a long period of time, or by any other similar act of cruelty to the child, shall be liable to a fine, or to a restriction or limitation of liberty, or to arrest, or to deprivation of liberty for a term not exceeding five years“<sup>72</sup>. We identify this offence based on the objective and subjective elements of the offence. The objective element of the offence is a dangerous act which consists in the abuse of one's rights and duties. The method of committing the offence is the physical or mental oppression of the child, leaving him or her unattended for a long period of time, and cruel treatment. Physical or mental anguish means mental or physical abuse of a prolonged duration. This feature is also mentioned in case law.

According to the case law of the Supreme Court of Lithuania, physical crushing of a child includes acts such as infliction of physical pain or minor bodily harm, and if a greater degree of bodily harm to a child is established, the

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<sup>70</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>71</sup> Ibid.

<sup>72</sup> Lietuvos Respublikos baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. TAR, 2000-10-25, Nr. 89-2741. Suvestinė redakcija nuo 2024-03-27 iki 2024-10-31. (2000).



consequences are classified separately<sup>73</sup>. Pursuant to Article 13 of the Criminal Code of the Republic of Lithuania, the age of criminal responsibility is 16 years<sup>74</sup>. The subject of the offence is special, which means the child's legal representatives, which can be the child's mother, father, guardian, adoptive parent or stepmother. It is important to note that dilemmas arise with regard to the identification of the special subject. In the case of the Supreme Court of Lithuania in 2022, the prosecutor, in her complaint, noted that the State has not regulated the status of cohabitants and joint children conceived with other partners, and therefore, technically, according to Article 163 of the Criminal Code, a cohabitant cannot be a subject, although he or she is actually exercising paternal authority, and therefore must be punished under this article. Article 163 of the Penal Code should not be limited to the biological relationship of paternity, but should also cover the actual relationship. It is considered that, in criminal law, the stepparents of a child should also be regarded as parents, since they exercise parental rights and duties to bring up the child, which results in a *de facto* family relationship between them. The Court of Appeal was found to have interpreted the subject matter of Article 163 of the Criminal Code too narrowly<sup>75</sup>. Thus, if the elements of this offence are established, the person is prosecuted and subject to the deprivation of parental authority for violating the rights and legitimate interests of the child. Article 3.180 of the Civil Code of the Republic of Lithuania provides for the restriction of parental authority due to cruelty to children, and Article 163 of the Criminal Code of the Republic of Lithuania provides for criminal liability for parents who cruelly treat their children, therefore, the legislator has foreseen that parents abusing their parental authority may be held liable in both civil and criminal proceedings. Article 19 of the Convention on the Rights of the Child states that States Parties shall take all appropriate measures to protect the child from all forms of violence and abuse of parental authority<sup>76</sup>. There are three types of abuse of parental authority: 1) physical or mental crushing of the child; 2) leaving a child unattended for long periods; 3) cruel treatment of a child <sup>77</sup>.

Under Serbian law, abuse is defined as actions by parents that go beyond their rights, such as physical or emotional violence against a child, exploitation of a

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<sup>73</sup> The decision of the Šiauliai District Court 2020 -04-01 in the case No. 1A-103-744/2020. R.V. v. R.V.

<sup>74</sup> Lietuvos Respublikos baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. TAR, 2000-10-25, Nr. 89-2741. Suvestinė redakcija nuo 2024-03-27 iki 2024-10-31. (2000).

<sup>75</sup> The decision of Lithuania Supreme Court 2022-11-29 in case No. 2K-7-196-303/2022. D.K. v. S.V.

<sup>76</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>77</sup> Lietuvos Respublikos baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. TAR, 2000-10-25, Nr. 89-2741. Suvestinė redakcija nuo 2024-03-27 iki 2024-10-31. (2000).

child by forcing him or her to work hard, or encouraging a child to commit crimes. There is no definitive list of examples of parental abuse, as life is unpredictable and each situation is assessed individually<sup>78</sup>. Researchers identify different forms of child abuse, such as bullying, keeping a child at home, and assigning difficult tasks<sup>79</sup>. It is considered that the form of cruelty to the child should be linked to the forms of violence. Article 3 of the Framework Law on the Protection of the Rights of the Child of the Republic of Lithuania establishes the following forms of violence against a child: 1) physical violence; 2) psychological violence; 3) neglect. These forms of violence are linked to abusive forms of parental authority<sup>80</sup>.

Article 3.180, Part 1 of the Civil Code of the Republic of Lithuania stipulates that parental authority shall be limited on the grounds of immoral behaviour of parents<sup>81</sup>. This Article establishes that parental authority is limited on the grounds of neglect. Child neglect can take many forms, such as psychological abuse and maltreatment. Child neglect is manifested by the failure to perform certain acts and is perceived as neglect of the child to the detriment of the child. It is the failure to meet the child's emotional and psychological needs<sup>82</sup>. Article 2 of the Framework Law on the Protection of the Rights of the Child of the Republic of Lithuania establishes the concept of violence against a child: „the direct or indirect intentional infliction of physical, psychological or sexual harm on a child, whether by act or omission, if this has resulted in the death of the child, or has caused damage to the child's health or normal development, or has resulted in pain or danger to the child's life, health or normal development, or has brought the child into disrepute and/or dignity. Child abuse also includes neglect of a child. Acts of physical force and physical or mental pain inflicted on a child shall not be considered to constitute violence if they are intended to prevent a greater risk to the child's safety, health or life and cannot be achieved by other means“<sup>83</sup>. It is clear from the wording of this Article that child neglect is considered a form of

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<sup>78</sup> Petrovic, Biljana, Milan Jecmenic, et al. "DEPRIVATION OF PARENTAL RIGHTS IN SERBIAN LAW." *Economic and Social Development: Book of Proceedings* (2021): 174-181.

<sup>79</sup> Grinevičiūtė, Kristina. Tėvų ar kitų vaiko atstovų baudžiamoji atsakomybė už žiaurų elgesį su vaiku. Diss. Mykolas Romeris University, 2016,79.

<sup>80</sup> Lietuvos Respublikos vaiko teisių apsaugos pagrindų įstatymas. Paskelbtas valstybės žiniuose 1996-03-14, Nr. 33 – 807. Galiojanti redakcija nuo 2024-01-01 iki 2024-06-30. (1996).

<sup>81</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>82</sup> Katiševskaja, Samanta, and Rasa Naujanienė. "VAIKO NEPRIEŽIŪROS DAUGIALYPIŠKUMAS SOCIALINIO DARBO PRAKTIKOS POŽIŪRIU." *Social Work. Experience & Methods/Socialinis Darbas: Patirtis ir Metodai* 27.1 (2021).

<sup>83</sup> Lietuvos Respublikos vaiko teisių apsaugos pagrindų įstatymas. Paskelbtas valstybės žiniuose 1996-03-14, Nr. 33 – 807. Galiojanti redakcija nuo 2024-01-01 iki 2024-06-30. (1996).

violence. Article 3 of the Framework Law on the Protection of the Rights of the Child of the Republic of Lithuania specifies the forms of violence as physical, psychological, sexual violence and neglect<sup>84</sup>.

Physical neglect of a child is thus understood as accidental injuries to the child, such as various bruises. Emotional neglect is perceived as a parent's disregard for the child's emotions. Sexual neglect is the inappropriate contact of a child with another person. Social neglect refers to parental neglect of the child's education, i.e. failure to fulfil the child's right to education<sup>85</sup>. Medical neglect is a parent's failure to care for a child's health <sup>86</sup>. The concept of child neglect is enshrined in Article 3 of the Framework Law on Protection of the Rights of the Child: „neglect means the persistent failure or negligence on the part of the parents or other legal representatives of the child, or the person responsible for the child's care, to meet the child's basic physical, emotional and social needs, which has resulted in the death of the child, or in the impairment of the child's health or normal development, or in the endangering of the child's life, health or normal development“<sup>87</sup>.

Article 3, Part 1 of the Convention on the Rights of the Child stipulates that the best interests of the child must be a primary consideration in all actions concerning the child<sup>88</sup>. Article 9, Part 1 of this law imposes an obligation on Member States to ensure that a child is not unreasonably separated from his or her parents, unless the best interests of the child are at stake. Article 3, Part 1 of the Convention on the Rights of the Child stipulates that the best interests of the child must be a primary consideration in all actions concerning the child. Article 9, Part 1 of this law imposes an obligation on Member States to ensure that a child is not unreasonably separated from his or her parents, unless the best interests of the child are at stake <sup>89</sup>.

Thus, the use of one form of parental authority restriction must be justified, as the separation of the child from his/her parents is a measure of a serious nature. The Civil Code of the Republic of Lithuania provides for two types of restriction of

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<sup>84</sup> Ibid.

<sup>85</sup> Katiševskaja, Samanta, and Rasa Naujanienė. "VAIKO NEPRIEŽIŪROS DAUGIALYPIŠKUMAS SOCIALINIO DARBO PRAKTIKOS POŽIŪRIU." *Social Work. Experience & Methods/Socialinis Darbas: Patirtis ir Metodai* 27.1 (2021).

<sup>86</sup> Ibid.

<sup>87</sup> Lietuvos Respublikos vaiko teisių apsaugos pagrindų įstatymas. Paskelbtas valstybės žiniuose 1996-03-14, Nr. 33 – 807. Galiojanti redakcija nuo 2024-01-01 iki 2024-06-30. (1996).

<sup>88</sup> Vaiko teisių konvencija. Paskelbta valstybės žiniuose 1995-07-21, Nr. 60-1501. (1989).

<sup>89</sup> Ibid.

parental authority: 1) separating a child from his or her parents; 2) limitation of parental authority. Separation is used when there is no parental fault and it is necessary to separate the child due to objective circumstances, such as parental illness, imprisonment, work abroad or a breakdown in the relationship. It is important to note that there is no exhaustive list of circumstances, which are determined on an individual basis. In contrast to the separation of a child from his or her parents, the deprivation of parental authority is subject to a finding of parental culpability, which is why, when assessing parental actions contrary to the rights and interests of the child, the legislator distinguishes between two forms of deprivation of parental authority. Article 3.180, Part 3 of the Civil Code of the Republic of Lithuania specifies the types of restriction of parental authority - temporary and indefinite<sup>90</sup>. Indefinite deprivation of parental authority applies when the court concludes that the parents are causing harm to the child and will not change their behaviour<sup>91</sup>. The difference between temporary and indefinite deprivation of parental authority is that when indefinite deprivation of parental authority is imposed, the child is entered in the register of children available for adoption and can be adopted without the parents' consent<sup>92</sup>.

To summarise, it is established that there are two forms of deprivation of parental authority: separation of the child from his/her parents and restriction of parental authority. The difference between these forms is that the restriction of parental authority is based on the fault of the parents, whereas the separation of the child from the parents is based on objective circumstances. The analysis of national and international legislation and doctrines has therefore shown that there is no concept of separation of the child from the parents and no exhaustive list of objective circumstances, and that it is therefore most appropriate to state that the separation of the parents from the children is a measure of a preventive nature in the absence of an element of fault on the part of the parents in the case of objective circumstances, such as illness and mental disorders, distance from the place of residence, employment abroad, lack of social skills, the breakdown of the close relationship between the child and one of the parents, or the serving of a sentence in a prison, the parents do not fulfil their rights and obligations towards the child and are unable to ensure the child's best interests and the child's place of residence with them. In objective and other circumstances, the court decision

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<sup>90</sup> Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2000-09-06, Nr. 74-2262. Suvestinė redakcija nuo 2024-05-1. (2000).

<sup>91</sup> Ibid

<sup>92</sup> Ibid.

separates the child from both or one parent, but preserves all the parents' personal and property rights. It should be noted that two types of proceedings may be brought before the court for the separation of a child from its parents. Pursuant to Article 3.182, Part 1 of the Civil Code of the Republic of Lithuania, an application may be submitted to the court<sup>93</sup>, and an action is submitted to the court in accordance with Article 400 of the Code of Civil Procedure of the Republic of Lithuania <sup>94</sup>, therefore, this conflict of laws must be resolved by the legislator laying down one specific form, so that it is clear to the parties involved in the case which procedural documents to submit to the court.

The conditions for the restriction of parental authority are laid down in Article 3.180 of the Civil Code of the Republic of Lithuania - parental failure to fulfil their duty to bring up their children, abuse of parental authority, cruel treatment of the child, detrimental influence on the child due to immoral behaviour and neglect. An analysis of the conditions for the restriction of parental authority has shown that the failure of the parents to fulfil their parental responsibility for bringing up the child leads to the restriction of parental authority. Although the concept of child-rearing is not laid down, the parental duty to bring up children should be linked to elements such as the maintenance of the child, the development of the child's virtues, the care of the child, the care of the child's health, and the safeguarding of the child's right to an education. An analysis of the conditions for the restriction of parental authority in the case of abuse of parental authority and cruel treatment of the child has shown that the violation of this condition is punishable by criminal liability under Article 163 of the Criminal Code of the Republic of Lithuania. The analysis of the objective and subjective elements of the offence under this Article has shown that the subject of the offence in this offence is perceived only in terms of the paternal parental relationship, i.e. the blood relationship, and that it should also include factual relationships, and that therefore, in the context of the criminal law, the child's stepparents should also be considered as the parents, as they exercise the parental rights and duties of bringing up the child, and as a consequence of this, factual family relations are formed. The concept of child neglect is enshrined in Article 3 of the Law on the State Framework for the Protection of the Rights of the Child of the Republic of Lithuania, which defines child neglect as the persistent failure or

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<sup>93</sup> Ibid.

<sup>94</sup> Lietuvos Respublikos civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. TAR, 2002-04-06, Nr. 36-1340. Suvestinė redakcija nuo 2024-04-01 iki 2024-06-30. (2002).

negligent failure or neglect by the child's representatives to meet the child's essential physical, emotional and social needs to the detriment of the child. Child neglect has many aspects, such as physical, emotional, sexual, social and medical.

#### IV. LEGAL AND PRACTICAL PROBLEMS FACED BY THE COURTS IN CASES CONCERNING THE RESTRICTION OF PARENTAL AUTHORITY

Analysis of problems related to violence against children. Violence against children is a common phenomenon that is not always visible because it is hidden from the child's legal representatives, so in practice, the manifestations of violence are usually detected when the child suffers negative consequences. In the European Court of Human Rights case D. P. v. Lithuania No. 27920/08, the police investigator of the Kaunas City Police brought a criminal case against A. P. in 2001. In the case, it was established that the defendant had beaten his spouse ten times in the period from 1995 to 2003, he had beaten the minor children R. P. and E. P. four times, and he had beaten K. P. once. In 2003, the Kaunas District Court found A. P. guilty and sentenced him to two years' imprisonment suspended for two years. The defendant appealed, and the Kaunas Regional Court sent the case back to the Kaunas District Court for a new trial. The father's violent actions had caused harm to the children, as a psychological-psychiatric examination had revealed that the children had developed depression and post-traumatic stress syndrome. In the light of the changes in the legal framework of the Criminal Code, the offence has been reclassified under Article 138, Part 2, 1, 3 and 5 of the Criminal Code. As the statute of limitations had expired, the court found that the case had been brought by the interrogator and not by the court or the public prosecutor, and that there had been a violation of criminal procedure<sup>95</sup>.

In 2007, the Kaunas District Court discontinued the criminal case because the statute of limitations for prosecution had expired. The case raises the problematic issue of the expiry of the statute of limitations, i.e. whether the expiry of the statute of limitations for prosecuting a person is a ground for not punishing a person for child abuse. The applicant appealed against the court's decision to discontinue the criminal proceedings because the defendant's violent acts continued and because the defendant incited his child R.P. to commit suicide. The Kaunas Police conducted a pre-trial investigation on incitement to suicide and did

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<sup>95</sup> The decision of European Court of Human Rights 2013-10-22 No. 27920/08 D. P. v Lithuania.

not establish the elements of a criminal offence, therefore the Kaunas Regional Court discontinued the criminal case against A.P., where the defendant was accused of minor bodily harm, pursuant to Article 38, Part 2, 1, 3 and 5 of the Criminal Code (due to the statute of limitations having expired). The applicant appealed to the Supreme Court of Lithuania, which upheld the lower court's reasoning on the termination of the proceedings on the grounds that the case was time-barred<sup>96</sup>.

In 2007, the applicant applied to the Kaunas City Police<sup>97</sup>, because her husband ignored a court order banning him from contact with the children. He terrorised the children, which led to his son's suicide attempt and his admission to a psychiatric hospital. The public prosecutor opened a pre-trial investigation into incitement to suicide, but closed the investigation after finding no evidence of a criminal offence. In 2008, the Kaunas District Court banned the defendant from contact with his daughters, and in 2009, the applicant's son voluntarily withdrew from life. The applicant and her daughters brought an action for compensation for the damages they had suffered as a result of the actions of A. P. The Supreme Court of Lithuania awarded compensation to the applicants.

The applicant brought an action before the ECtHR alleging a violation of Article 6 of the Convention, i.e. a violation of the judicial procedure the delay of the trial until the limitation period had expired. In this case, the government submitted a unilateral declaration stating that it accepts responsibility for Articles 3 and 6 of the Convention and agreed to pay compensation to the victim and requested that the Court to remove the petition from the list of petitions. The Government indicated that it intended to take measures in the future, to ensure compliance with the provisions of the Convention, as domestic violence is classified as, as an offence of public importance, and therefore this type of offence must be investigated in the context of criminal proceedings and not private prosecutions<sup>98</sup>.

In the other case, the Utena District Court ruled on the indefinite restriction of parental authority, the establishment of the child's place of residence, and the award of child support. The parties to the case were the plaintiff, the State Child Rights and Adoption Service (hereinafter referred to as the Service), and the defendants E. K., Ž. The factual circumstances of the case are that the defendants,

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<sup>96</sup> The decision of European Court of Human Rights 2013-10-22 No. 27920/08 D. P. v Lithuania.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

the parents of the child, in 2019 applied to the Director of the Molėtai Independent Living Home for temporary accommodation, which the Director granted permission for. The child and his biological parents were placed in the Molėtai Children's Home for Independent Living. The Service carried out a threat level assessment of the family in 2019 and identified the first level of threat to the child. The Service was informed that the child's father had used physical violence against the child, and a pre-trial investigation under Article 140, Part 3 of the Criminal Code was opened. The defendant and her son were left in the Molėtai Children's Home for Independent Placement<sup>99</sup>. Subsequently, the family underwent a second threat level assessment, which found that the defendant had been violent towards the child, i.e. she had deliberately broken the child's leg while changing the child's nappy, which led to the child's hospitalisation.

The assessment of the facts of the case shows that the defendant has a behavioural disorder, which makes her unable to control her emotions and to raise the child independently. In 2019, the Service received a notification from the child's mother that she had abandoned the child. The court ordered the child to be removed from her parents, placed in care and placed in the Molėtai Children's Home for Independent Placement. The case establishes that the defendants lack social parenting skills and are not fulfilling their parental responsibilities and are not taking care of the child. The defendants have submitted their replies. The father of the child agreed with the application, while the mother of the child objected to the amount of child support to be ordered, as her income is lower than the amount of child support sought. The case alleges that the rights and interests of the child have been undermined by the parents' lack of social skills. The child's guardians stated in their reply that the lack of social skills of the biological parents caused the child to have seizures and to be afraid of the dark. The child now feels safe and well in the foster family and the persons concerned have expressed their wish to adopt the child. The court upheld the action in part<sup>100</sup>.

The case law of the Supreme Court of Lithuania establishes that the court, when deciding on a case concerning the restriction of parental authority, must establish the factual circumstances and carry out an assessment thereof. In the above-mentioned case, it was established that the child's biological parents were young, unemployed, had no home of their own and lacked social skills. The court

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<sup>99</sup> The decision of Utena District Court 2020-07-17 Case No. E2-1251-1093/2020 V. M. v. E. K. ir Ž. M.

<sup>100</sup> The decision of Utena District Court 2020-07-17 d. Case No. E2-1251-1093/2020.



found that the defendants had evaded their obligations and neglected the child. Two conditions for the restriction of parental authority were established. Parental fault in the form of neglect of the child, failure to cooperate with social workers, failure to provide child support and failure to fulfil the obligation to educate the child. The Court finds that the most appropriate measure in this situation is the indefinite restriction of parental authority<sup>101</sup>. In 2018, the Vilnius Regional District Court heard a criminal case of physical violence against a minor child. The accused father of the child stated that the violent acts were the result of the divorce process and the children's indiscipline, which is why the accused hit the child on the back. The child's biological mother testified in the case that she heard the child crying and ran to the child's room where she saw two red marks on the child's back. The witness contacted the law enforcement authorities because she was afraid of the accused<sup>102</sup>.

During the trial, the accused submitted a reconciliation report with a request to discontinue the case, but the prosecutor disagreed with his request. Article 38 of the Criminal Code of the Republic of Lithuania exempts a person from liability if he/she has admitted having committed a criminal offence, has voluntarily repaid the damage, and has reconciled with the victim. In the present case, the legal question is whether the totality of the conditions for exemption from criminal liability is sufficient to justify the defendant in avoiding responsibility for violence against his child. The Court found that where all the grounds for exemption from criminal liability are present, the court has the discretion, but not the obligation, to exempt the person from criminal liability. According to the Court, the defendant's claim that the violence against the child was a one-off incident was not sincere, since, according to the evidence in the case, the perpetrator used violence against the child for educational purposes. The Court decided to find the defendant guilty under Article 140, Part 3 of the Criminal Code of the Republic of Lithuania and to impose a fine on him and to oblige him to participate in a programme to modify his violent behaviour<sup>103</sup>.

In a 2008 case, the Supreme Court of Lithuania decided on the conditions for the application of temporary restriction of parental authority. The facts of the case are that the applicant claimed that the defendant had left the family with his daughters in 2004 and had not communicated with them for about four years.

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<sup>101</sup> Ibid.

<sup>102</sup> The decision of Vilnius Regional District Court 2018-09-14 d. Case No. 1-1363-983/2018 V. M. v. Ž. M.

<sup>103</sup> Ibid

According to the applicant, the defendant had a negative impact on his daughters by insulting them and not taking care of them. In the proceedings, the defendant filed a counterclaim for the establishment of access arrangements with his daughters. The district and appellate courts upheld the claim and rejected the counterclaim, and temporarily restricted parental authority. The Kaunas Regional Court found that the defendant did not care for his daughters and did not provide them with maintenance. The defendant's behaviour made his daughters feel insecure. The defendant lodged a cassation appeal and the applicant filed a defence to the cassation appeal<sup>104</sup> a complaint stating that the defendant had threatened and insulted her daughters. The present case raises a question of law as to the correct application of the substantive rules of law in the case of the restriction of parental authority. The Supreme Court has established that the grounds for limiting parental authority are laid down in Article 3.180 of the Civil Code of the Republic of Lithuania. In order to limit parental authority, it is necessary to establish parental culpability and failure to fulfil the obligation to care for the children. The Court held that the failure of a parent to fulfil his or her parental responsibilities towards his or her children through negligence or indifference constitutes fault. The Court finds that the Courts of First Instance and Appeal correctly applied the rules of law relating to the temporary restriction of parental authority<sup>105</sup>.

The case of physical and sexual violence against children is set out in the Klaipėda District Court criminal case of the defendant who committed seven offences in violation of Articles 140, Part 3, 138, Part 2, 153, Part 1, 158, Part 4, 149, Part 4, 150, Part 4 and 259, Part 2 of the Criminal Code. The facts of the case are that in the period from 2012 to 2014 and in the period from 2014 to 2016, while under the influence of narcotic substances, the accused M.G. committed violent acts against his daughter I.G., i.e. he struck her in various parts of her body, causing her physical pain. In the period from 2012 to 2014, the accused kicked his spouse's son, D.G., and, after sitting on him, struck him, and in the period from 2014 to 2016, used physical violence against the minor, which was manifested by various acts, namely, hitting the child with his fists in various parts of the body, hitting the child's fingers with a carriage, and cutting the child's fingers with a knife intended for cutting paper<sup>106</sup>.

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<sup>104</sup> The decision of Lithuania Supreme Court 2008-05-30 in case No. 3K-3-236/2008. M. G. v A. S.

<sup>105</sup> Ibid.

<sup>106</sup> The decision of Klaipėda County Court 2018-02-01 in case No. 1-30-255/2018.

Between 2012 and 2014, and between 2014 and 2016, while under the influence of narcotic substances, the accused committed an act of violence against his young daughter A. A., which manifested itself in various acts, i.e. hitting the child in various parts of the body, cutting her fingers with a knife intended for cutting paper, hitting her legs with a whip and a hose, hitting her with a brick. The analysis of the case has revealed a continuity of the accused's actions against the victims and a lack of remorse, i.e. the accused has continuously violated the interests and rights of the children through his acts of crime against them. The commission of other offences involves sexual violence. Between 2012 and 2014 and between 2014 and 2016, M.G., under the influence of narcotic substances, fulfilled his sexual passion with his daughter I.G., i.e. he touched and caressed her body while naked and touched the minor's genitals with his sexual organ. Between 2014 and 2016, while under the influence of narcotic substances, the accused showed pornographic videos to his daughter. The accused M.G. in the period from 2012 to 2014 and from 2012 to 2016, while under the influence of narcotic substances, in his home, demonstrated on his computer an unspecified number of videos of pornographic content to his under-age daughter A.A., and asked her to touch his genital organ. It has been established that the accused committed the offence of sexual abuse against his young daughter on numerous occasions by using physical violence, i.e. by hitting her at least once in the head with his fist, kissing her and raping her. M.G. also illegally disposed of narcotic substances, cannabis<sup>107</sup>.

The issue in this case was whether the sexual and physical violence suffered by the children had gone unnoticed. In the light of the witnesses' testimonies, it appears that the teachers took note of the children's behavioural changes and external injuries, but that no preventive measures were taken and that the children, intimidated by their stepfather, concealed the violent acts committed against them. The Court stated that the satisfaction of sexual passion by other forms of physical contact is most often manifested in the form of irritation to the male or female genitalia. In the present case, the Court found that the acts of sexual violence against the minor were repeated, so that several acts of sexual intercourse or several acts of sexual penetration are considered to constitute a single offence of a continuous nature. The Court, having assessed the circumstances of the case, found that at the beginning of the offences, when his daughter was about four years old and his stepdaughter was ten years old, the

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<sup>107</sup> Ibid.

defendant was aware that his daughter and stepdaughter would not be able to defend themselves because of their immaturity and felt impunity.

In summary, it is established that children are weaker persons due to their young age and incapacity and are therefore unable to defend their rights and interests independently in the event of a violation of the rights and interests of the child. The State must take action to protect the rights of the child, as failure to do so has negative consequences for children's health <sup>108</sup>. To summarise, it is established that in case law, the problem of establishing parental violence against children is often encountered in the context of limiting parental authority. Violence against children takes many forms, such as physical or psychological abuse or sexual abuse. See it has been observed that before the negative consequences for children occur, the identification of violence simply it is difficult to detect violence because it is hidden. The negative effects on children over time also have an impact on their health. An analysis of case law shows that violence against children is caused by parental behavioural disorders, addictions to alcohol and drugs, a lack of social skills, and parenting attitudes that are passed down through generations. In the case law of cases involving the deprivation of parental authority, it has been observed that the guilty party is not always held accountable, e.g. in cases where the statute of limitations has run out, which is a ground for discontinuing the criminal proceedings, and the victim does not receive justice, leaving him or her with detrimental consequences that affect his or her physical and psychological well-being.

## V. CONCLUSIONS

The definition of the concept of the restriction of parental authority has shown that no legal act establishes the wording of the restriction of parental authority, and therefore it is most appropriate to define the restriction of parental authority as an extreme preventive measure of preventive nature to be applied by the court exclusively for a limited period of time or of an indefinite duration in the event of a violation of at least one of the conditions for the restriction of parental authority, such as the avoidance of the duty of upbringing of the children, the abuse of parental authority, the abuse or abuse of power of the parent, the abuse of the parent, the abuse of the parent, cruelty to or the abuse or abuse of power of

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<sup>108</sup> The decision of Klaipėda County Court 2018-02-01 in case No. 1-30-255/2018.

the parent, or the failure to take care of the child.

An analysis of Article 3.155 of the Civil Code of the Republic of Lithuania reveals that the content of parental authority consists of the following aspects: the child's health care, the child's maintenance, the child's upbringing, the child's maintenance, the child's upbringing and care, the child's development, and the preparation of the child's development and the child's readiness for an independent life. An analysis of national Lithuanian legislation shows that the restriction of parental authority takes two forms. These are the separation of the child from the parents in the absence of parental fault and the restriction of parental authority in the presence of parental fault. The second type of parental authority restriction can be of a fixed term and of an indefinite term.

Having assessed the conditions of the legal regulation mechanism for the application of the procedure for the restriction of parental authority, it has been established that the conditions for the restriction of parental authority set out in Article 3.180, Part 1 of the Civil Code of the Republic of Lithuania are exhaustive. The difference between the limitation of parental authority for a fixed period and the limitation of parental authority for an indefinite period is that the limitation of parental authority for a fixed period is applied as a preventive measure, while the limitation of parental authority for an indefinite period is applied when the child is being harmed, when the parents are not caring for the child and when there is no evidence that the parents' behaviour will change.

The empirical study found that in practice, the restriction of parental authority is applied due to the problem of violence against children, and this problem should be addressed by correcting the Civil Code of the Republic of Lithuania by introducing the possibility of imposing incapacitation for parents who abuse alcohol and narcotic substances.

Thus, an analysis of national and international legislation and legal doctrine has shown that there is no concept of separation between a child and his or her parents and no exhaustive list of objective and other circumstances, and it is therefore most appropriate to state that the separation of the parents from their children is a measure of a preventive nature, in the absence of an element of parental guilt, where the parents are unable to fulfil their rights and obligations towards the child and to ensure the best interests of the child and the child's residence with them, due to objective and other circumstances, such as illness and mental disorders, long distances, working abroad, lack of social skills, the breakdown of the child's close relationship with the other parent, or the serving of

a sentence in a penal institution. Where objective and other circumstances arise, the court decision shall separate the child from the parents or one of them, restricting the child's right to live with them but preserving all the parents' personal and property rights.

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