



LIETUVOS RESPUBLIKOS SOCIALINĖS APSAUGOS IR DARBO MINISTERIJA

MINISTRY OF SOCIAL SECURITY AND LABOUR
REPUBLIC OF LITHUANIA

Questionnaire on the Hague Convention of 25 October 1980
on the Civil Aspects of International Child Abduction

I. Implementing legal acts

(a) Is implementing legislation necessary to bring the Convention into force in domestic law?

(b) If so, has the necessary legislation been enacted, and is it in force? (Please provide a copy or indicate where copies of the legislation may be obtained.)

In accordance with analysis of the provisions set forth in Article 135, paragraph 1, and Article 138, paragraph 3, of the Constitution of the Republic of Lithuania, Article 11, paragraphs 1 and 2, of the Law on International Agreements of the Republic of Lithuania and Article 1.13, paragraph 1, of the Civil Code (hereafter CC) and the established unified practice of courts of the Republic of Lithuania, Lithuania has a monistic system of domestic law. Under this system norms of international law are directly applicable within the country and have precedence over domestic law. Therefore, in order to bring the Hague Convention of the Civil Aspects of International Child Abduction (hereafter the Convention) into force in Lithuania and to make it an integral part of the legal system of the Republic of Lithuania, the *Seimas* of the Republic of Lithuania has to ratify the Convention by a law, while a special law that would transfer the provisions of an international agreement into the Lithuanian law and secure compliance with international obligations is not necessary.

The Convention was ratified by Law of the Republic of Lithuania No IX-793 „On Ratification of the Convention of the Civil Aspects of International Child Abduction” on March 19, 2002.

II. Locating children

Agencies involved and the processes available for the location of missing children

The Police Department under the Ministry of the Interior and its subordinate police authorities organize and conduct the location of persons, including children, whose whereabouts are not known, in the Republic of Lithuania. In accordance with the Civil Procedure Code of the Republic of Lithuania (hereafter CPC), in executing court decisions adopted in civil cases the process of locating a debtor or a child is announced by a bailiff's order (see question V for more information on bailiffs' activities).

In locating persons, police authorities act in accordance with the Instruction for Locating Persons approved by Order No. 9RN of the minister of the interior of the Republic of Lithuania of July 4, 2000. In locating persons, data contained in state registers and state or municipal information systems, operational measures and methods, mass media and other possibilities can be used.

The Police Department under the Ministry of the Interior can announce an international search through Interpol. The Lithuanian National Branch of Interpol under the International Communication Service of the Lithuanian Criminal Police Bureau conducts searches of lost persons on an international scale.

The State Border Protection Service under the Ministry of the Interior controls persons and vehicles crossing the state border, participates in implementing the control of state migration processes and co-operates in the prevention of child abduction and wrongful removal from or into the country.

III. Central Authority

(a) The designation and contact details of the Central Authority.

By Resolution No 1322 of the Government of Lithuania of August 21, 2002, the Ministry of Social Security and Labour is appointed in charge of the performance of the functions of the Central Authority set forth in the Convention.

Address:

11 A. Vivulskio Str.
2693 VILNIUS
Lithuania

Website: www.socmin.lt

Tel.: +370 5 2664201

Fax: +370 5 2664209

E-mail: post@socmin.lt

(b) Contact persons within the Central Authority

The Children and Youth Division under the Family, Children and Youth Department of the Ministry of Social Security and Labour:

Asta Juškėnaitė (tel. +370 5 2664225, e-mail: AJuskenaite@socmin.lt, languages spoken: Lithuanian, English and Russian);

Audra Mikalauskaitė (tel. +370 5 2664265, e-mail: AMikalauskaite@socmin.lt, languages spoken: Lithuanian, English and Russian).

(c) Please indicate measures taken to ensure that the Central Authority is in a position to carry out the functions set out in Article 7 of the Convention

A list of competent institutions engaged in the prevention, control and investigation of child abduction and wrongful removal or retention has been compiled. Any persons or organizations and central institutions performing the duties set forth in the Convention can approach these institutions with the view to protecting a child from wrongful removal or retention and delivering information available to them.

The forms of applications concerning the return of a child abducted and the right of access in accordance with the Hague Convention of the Civil Aspects of International Child Abduction were approved by Decree No A1-92 of the minister of social security and labour on June 5, 2003.

The contact information of the above-mentioned competent institutions, the forms of requests in the Lithuanian and English languages and other information about the Convention are posted on the website of the Lithuanian Central Authority - www.socmin.lt.

IV. Judicial procedures

(a) Which courts/administrative bodies consider applications for return orders or the right of access under the Convention?

Applications concerning return of children or the right of access under the Convention are considered in court (Article 22 of the CPC provides that courts resolve, in accordance with the manner set forth in the CPC, disputes arising from civil, family, work, intellectual ownership, bankruptcy, restructuring and other relationships of private law).

Pursuant to the rules of jurisdiction of civil cases laid down in the CPC, civil cases related to the implementation of the Convention are dealt with at first instance in district courts.

(b) What measures exist to ensure that return applications will be dealt with expeditiously at first instance and on appeal?

Under Article 72 of the CPC all courts are bound to secure that a civil case is heard during the shortest possible period of time, that the investigation of a civil case is not protracted and that a civil case is settled during one court session. This article also provides that time limits can be prescribed by law for investigating individual categories of civil cases. Article 73 of the CPC requires that procedural actions be carried out during the time limits established by law. In cases where the time limits of court proceedings are not established by law, they are determined by court decisions. The right to carry out court proceedings ceases to have effect upon the expiration of the time limit established by law or by court decision for the performance thereof, while the omission of the time limit established for the fulfilment of a certain procedural duty does not relieve one from the fulfilment thereof (Article 75 of CPC). In addition to that, pursuant to Article 307 of the CPC an appeal can be lodged within thirty days from the first date of the adoption of a court decision at first instance. If the applicant's place of residence or whereabouts is in a foreign state, an appeal can be lodged within forty days from the first date of the adoption of a court decision at first instance. The CPC also lays down the conditions for the renewal of the term of lodging an appeal.

Article 7 of the CPC establishes the principle of concentration and economy of legal proceedings which means that the court is bound to take measures set forth in the CPC as are necessary to prevent the protraction of legal proceedings, to secure that a case is settled during one court session, provided this does not harm an appropriate investigation of the case, and to secure that the enforced court decision is executed during the shortest possible period of time and in the most economical manner possible.

Persons participating in legal proceedings are bound to exercise the procedural rights conferred upon them in an honest way and to abstain from abusing these rights, to have concern for a prompt investigation of the case, to transmit to court in a thoughtful and timely manner the evidence and arguments upon which their requirements or reproof are founded, taking into consideration the course of the case.

The principle of co-operation as prescribed in Article 8 of the CPC means that in co-operating with persons involved in a case the court is bound to take measures in accordance with the procedures set forth by the CPC in order to secure that the case is investigated in an appropriate manner.

All of the above-mentioned measures have to secure a prompt investigation of cases in all courts.

(c) What facilities are available to foreign applicants to assist them in bringing their applications before the courts, and in particular is legal aid available and on what conditions?

Article 5, paragraph 1, of the CPC provides that every interested person (without distinction as to citizens, persons without citizenship, foreigners, permanent residents, etc.) has a right to appeal to court in accordance with the manner established by law in order to obtain protection of his or her violated or disputed right or interest protected by law. The Law on the Legal Status of Aliens of the Republic of Lithuania states that an alien is any person other than a national of the Republic of Lithuania irrespective of whether he has citizenship of any foreign state or is a stateless person. Such persons enjoy the rights and freedoms provided by the Constitution of the Republic of Lithuania, the aforesaid and other laws of the Republic of Lithuania and international agreements.

Article 11 of the CPC contains an important provision that persons who do not speak the national language have a right to use the services of an interpreter during court proceedings. The services of an interpreter rendered during court proceedings are paid for from the state budget.

By ratifying the Convention, Lithuania declared that, pursuant to Article 42 and Article 26, paragraph 3, of the Convention it shall not be bound to assume any costs referred to in Article 26, paragraph 2, of the Convention resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by the system of legal aid and advice of the Republic of Lithuania.

The Law on Legal Aid Guaranteed by the State of the Republic of Lithuania defines the designation of state-guaranteed legal aid, the basis of the provision thereof, types of legal aid and persons entitled to such aid. State-guaranteed legal aid can be provided for citizens of the Republic of Lithuania, foreign residents permanently residing in Lithuania and in some cases for stateless persons. State-guaranteed legal aid is provided only for persons who cannot, due to their property status, protect their rights and interests protected by law in a proper fashion or when Lithuanian laws or international agreements provide for the provision of state-guaranteed legal aid irrespective of property status.

In 2000 the *Seimas* of the Republic of Lithuania ratified the Convention of International Access to Justice of 1980. Under this Convention nationals of any Contracting State are entitled to legal aid for court proceedings in civil and commercial matters in each Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State. Contracting States are bound to carry out necessary administrative measures or to take such steps as are necessary to obtain the determination of applications for legal aid by a competent authority.

V. Enforcement procedures

What procedures and measures exist for the enforcement of:

- (a) a return order?**
- (b) a contact/access order?**

Article 588 of the CPC establishes a general provision that court decisions, verdicts, rulings, judgments or orders shall be executed after their enforcement, except in a case of urgency.

Decisions adopted by courts of first instance come into force after the time limit for filing an appeal with a court of appeal elapses, provided the decision has not been appealed. In the event

when an appeal has been lodged, the decision, if not annulled, comes into force after the completion of the case in a court of appeal, and the ruling of the court of appeal or a new decision comes into force on the day of the adoption thereof. If no appeals can be lodged against the decision or ruling adopted in the case by a court of appeal, the decision or ruling comes into force on the day of the adoption thereof.

If a court decision has to be executed in an urgent manner, this must be indicated in the executive document. In a case of urgency the execution of the court decision or ruling (or part thereof) is commenced prior to the enforcement thereof. Appeals against court decisions or ruling that shall be executed in an urgent manner do not halt the execution thereof.

Enforcement of writs of execution is performed by bailiffs in the manner prescribed by the Law on Bailiffs of the Republic of Lithuania and the Instruction for the Execution of Decisions. The aforesaid Instruction also regulates the manner of the calculation and payment of the costs of the execution of decisions. In order to increase the efficiency of the execution of court decisions, private bailiffs were empowered to take over the activities of court bailiffs starting from January 1, 2003. The state covers administrative costs of legal proceedings for socially supported persons, and in the event of a successful settlement of a case these costs are covered by the debtor. The status of a socially supported person is determined in the same manner as in providing state-guaranteed legal aid.

Pursuant to Article 764 of the CPC, in executing a court decision concerning the transmission of a child, a bailiff acts in the presence of the person to whom the child is transmitted and a representative of the state institution of protection of children rights. This article lays down a requirement to secure the protection of children rights in executing decisions of this kind.

Article 711 of the CPC regulates the execution of decisions obligating the debtor to take or terminate certain measures. If a decision obligating the debtor to take or terminate certain measures which are not related to the transfer of property or funds fails to be executed, the bailiff draws up an affidavit as prescribed in the instructions for the execution of decisions. If the consequences of failure to execute a court decision are indicated in the decision, the affidavit is transmitted to the court of appeals in the territory where the court decision shall be executed and the court adopts a ruling to apply the consequences indicated in the decision on the ground that the debtor has failed to take certain measures. If the court decision obligating the debtor to take or terminate certain measures which the debtor alone can take or terminate fails to be executed during the established time limit, the bailiff transmits the affidavit to the court of appeal in the territory where the court decision shall be executed. Failure to execute a court decision is considered during a court session. The creditor and the debtor are notified of the venue and date of the court session, but their absence does not impede the investigation of reasons for failure to execute the decision. If the court rules that the debtor has failed to execute the court decision, it can impose on the debtor a fine in the amount of LTL1,000 in favour of the creditor and to establish a new time limit for the execution of the court decision. If the debtor fails to comply with the established time limit for a second time or more, the court applies to the debtor analogous measures again. The payment of the fine does not relieve the debtor from the duty to take or terminate the measures indicated in the court decision. In the event when a legal entity fails to execute a court decision obligating the performance or termination of certain measures which are not related to the transfer of property or funds, the court may apply respective measures to the head of the legal entity or to another person responsible for the execution of the court decision.

Article 283 of the CPC empowers courts to legitimate an urgent execution of court decisions or part thereof if, due to special circumstances, delay in executing the court decision threatens to do significant harm to the creditor or if the execution of the court decision can become impossible or very difficult. This clause is very important in executing court decisions concerning the return of children or the right of access under the Convention.

VI. Substantive law

- (a) What are the legal criteria by which custody and contact determinations are made?**
- (b) Is there a difference in the legal status of mothers and fathers in custody or contact cases?**

In accordance with the Civil Code of the Republic of Lithuania representatives of legally incapable underage children are by law parents (adoptive parents), except for parents (adoptive parents) acknowledged as legally incapable by a court decision, and persons appointed as the child's guardians.

Article 3.163 of the CPC provides that the implementation of the rights of underage children is first of all secured by *parents*. Parents thus have the custody rights regulated by the Convention, i.e. the right to take care of the child and, first of all, the right to determine the child's place of residence. The mutual rights and duties of parents and children are founded upon the child's birth which is approved on the date of birth of the child. Parental authority under the Civil Code means that parents are bound to take care of their child until the child attains an age of maturity and that parents have the right and duty to bring up and take care of their child in a decent manner, to take care of the child's health, to maintain the child and to create favourable conditions for the child's comprehensive and harmonious development, taking into consideration the child's physical and mental health, so that the child is prepared to lead an independent life in society.

Lithuanian laws establish the principle of *equal parental authority*, i.e. the principle stating that the father and the mother have equal rights and duties in relation to their children, regardless of whether the parents were married or unmarried, the marriage was dissolved or the court nullified the marriage or the parents were separated when the child was born. When the parents are separated, the issue of the child's place of residence has to be resolved. In such cases the child's place of residence is determined by the parents' consent. If a dispute arises between the parents with regard to the child's place of residence, the child's place of residence with one of the parents is determined by court decision. The father or the mother with whom the child is determined to reside will have the rights of custody as provided by the Convention. However, the child whose parents are separated has the right to maintain direct contacts with both parents regardless of the parents' place of residence. So the father or the mother not living together with the child has a right and duty to maintain contacts with the child and to participate in the child's upbringing. In this case the father or the mother enjoys the right of contact provided by the Convention. The Civil Code states that in a case when the parents fail to reach an agreement concerning participation of the father or the mother living apart from the child in the child's upbringing or to maintain contacts with the child, the manner of contact with the child and participation in the child's upbringing is determined by court, taking into consideration the best interests of the child.

Parents (or guardians in the absence of parents) are bound to create conditions for the child to maintain contacts with *close relatives* (in accordance with the Civil Code close relative are parents and children, grandparents and grandchildren, and brothers and sisters) if this is in line with the best interests of the child. If the parents refuse to create conditions for the child to maintain contacts with close relatives, the institution of the protection of children rights can obligate the parents to create conditions for close relatives to maintain contacts with the child. If the parents fail to fulfil this obligation or close relatives do not consent to the decision of the institution of the protection of children rights which refuses to obligate the parents to create conditions to maintain contacts with the child, close relatives can appeal to court.

Adoptive parents are considered to be the parents of the child by law from the enforcement of the court decision concerning the adoption of the child. The adoption of the child abolishes personal and property rights and duties of the parents, the children and relatives thereof by birth and confers mutual personal and property rights and duties upon the adoptive parents, relatives thereof and adoptive children as if they were relatives by birth. So the rights and duties of adoptive parents in relation to the adoptive children provided by law are equal to the rights and duties of biological parents and have to be equally implemented and performed.

The rights of children who are left without parental care are secured by *guardians*. Guardians are legal representatives of the children they are authorised to take care of and protect the child's rights and lawful interests. The manner of determining the child's guardianship is regulated by the Civil Code and the Resolution of the Government of Lithuania "On the adoption of the provisions of the organisation of the child's custody". In accordance with the Civil Code a child's guardianship is the care and upbringing of a child deprived of parental care and entrusted to a natural or legal person in the manner prescribed by law, the creation and maintenance of proper conditions for the child to grow up, and protection and representation of the child's individual and property rights and lawful interests. A child's guardianship can be temporary (care, upbringing and representation of individual and property rights of the child who is temporarily deprived of parental care with the view to returning the child to family) or permanent (assigned for children who are deprived of parental care and who cannot under the existing conditions return to family and whose care, upbringing and representation and protection of the rights and lawful interests are entrusted to other persons). Guardians may not prevent the child from maintaining contacts with their parents if this does not harm the interests of the child.

VII. Social services and child protection services

Please describe the services which exist for the assessment, care and protection of children in the context of international child abduction.

Please indicate the services available for the protection (if necessary) of returning children, as well as the services available (including legal advice and representation) to a parent accompanying the child on return.

Legal information and legal consulting and representation in the Republic of Lithuania are usually provided by private attorney offices or legal consulting firms. Fees for legal services are determined by mutual agreement. The Republic of Lithuania has a functioning system of state-guaranteed legal aid (see question IV(c)).

VIII. Information and training

What measures are being taken to ensure that persons responsible for implementing the Convention (e.g. judges and Central Authority personnel) have received appropriate information and training? (Note: the Permanent Bureau may be contacted for information in relation to forms of assistance which may be available for this purpose.)

Such measures have not been taken yet. However, the provision of persons in charge of the implementation of the Convention with additional information and training would be very beneficial. The Permanent Bureau will be contacted for this purpose.