

## ***QUESTIONNAIRE***

### **3. Central Authority.**

3.1. Under Article 2 of the Convention, to receive requests for service of documents coming from the other Contracting States, the Ministry of Justice of the Republic of Lithuania has been designated as the Central Authority:

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3.2. All civil servants working at the Ministry of Justice of the Republic of Lithuania speak the native language – Lithuanian, and, in addition, one or several foreign languages. Officials of the Ministry of Justice can communicate in English, French, German and Russian.

3.3. As regards the legal assistance requests received by the Ministry of Justice of the Republic of Lithuania, under the 1965 Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, they are not systematized and there is no statistical data thereof; however, please be informed that starting with the entry into force of this Convention in respect of the Republic of Lithuania on 1 June 2001, the Ministry of Justice from foreign states, Parties to the Convention, received more than 80 requests for service. Requests usually come from the courts of the Federal Republic of Germany, Confederation of Switzerland, Republic of Italia, Kingdom of the Netherlands, also, from the courts of other countries.

### **4. Case-law and reference works**

4.1. Lithuanian has not passed any court rulings passed pursuant to the 1965 Hague Convention. The Ministry of Justice of the Republic of Lithuania can only provide ruling of the Supreme Court of Lithuania of 21 December 2000 No. 28 “On the Case-Law of the courts of the Republic of Lithuania in the application of the private international law provisions” (Case-Law, 2001, No. 14) and a summary review approved thereby (please find it attached), which discusses the procedure of implementation of the Convention concerned (p. 2.3.3., p. 5.4.). However, this ruling of the Supreme Court of Lithuania and the summary review are not translated into English or French.

4.2. There have been no articles, works or any other publications on the analysis of the 1965 Hague Convention published in Lithuania. This Convention is subjected to discussion and examination in the context of civil procedure, private international law and publications on these areas of law:

1. Mikelenas V. Introduction to Private International Law. Vilnius: Justitia, 2001.

2. Mikelenas V. Civil Procedure. Part Two. Vilnius: Justitia, 1997.

Also, on 14 August 2001 the Ministry of Justice issued an official letter (circular letter) to Lithuanian courts regarding the application of the Hague Conventions, which briefly discusses and the 1965. Hague Convention (please find a copy attached). In individual cases, The Ministry of Justice also issues officials letters to Lithuanian courts regarding the application of the 1965 Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters.

## **5. Handbook**

5.1. The Ministry of Justice of the Republic of Lithuania would like to express its approval of this proposal by the Permanent Bureau and believes opinion that information constantly provided in the Internet and updated will be useful for the competent institutions of the States, Parties to the Convention, in the application of the 1965 Hague Convention.

In the view of the Ministry of Justice of the Republic of Lithuania, it is very important that the web site of the Permanent Bureau would expressly provide information submitted by the States Parties to the Convention, about the Central Authorities, receiving requests for service of documents from foreign authorities, with all their requisites, particularly in cases where a state designates a few Central Authorities, i.e. the criteria according to which a request for service should be forwarded to one or another Central Authorities designated by the state.

5.2. Yes, it seems satisfactory.

5.3. In the view of the Ministry of Justice of the Republic of Lithuania, the Handbook presents all the necessary information relating with the application of the 1965 Hague Convention.

5.4. We would think that updating of this Handbook is important when the practice of application and implementation methods of the Convention by the Parties to the Convention has changed, also, when they have changed Central Authorities, document transmission channels, methods of serving the documents, etc.

5.5. The Ministry of Justice cannot provide a list of links to such Internet sites. Please be informed that the procedure for processing requests from foreign courts or other institutions to provide legal assistance in Lithuania is regulated by Article 802 of the Code of Civil Procedure of the Republic of Lithuania, and the procedure for serving judicial and extra-judicial documents in civil or commercial cases is regulated by Articles 117-132 of the Civil Procedure of the Republic of Lithuania. Code of Civil Procedure of the Republic of Lithuania approved by Law No. IX-743, 28 February 2002 (Off. Gazette, 2002, No. 36-1340).

## **6. Scope of the Convention (Article 1)**

6.1. The Ministry of Justice of the Republic of Lithuania does not have the competence to answer this question since the 1965 Hague Convention, in respect of Lithuania, came into effect and was applied only from 1 June 2001.

6.2. After Lithuania started to apply the Hague Convention, the scope of the phrase “in civil or commercial matters” did not give any rise to difficulties for the competent Lithuanian authorities. The interpretation of these notions was determined by certain spheres of regulation of the Civil Code and Code of Civil Procedure of the Republic of Lithuania, i.e. property relations of persons (natural and legal) and personal non-property relations pertaining thereto, as well as family relations; examination of civil, labour, family, intellectual property, bankruptcy, restructurization cases, other cases regarding private legal relations, judgement adoption and enforcement, procedure for the examination of requests for recognition and enforcement of foreign judgements and arbitration decisions in the Republic of Lithuania.

6.3. Analogous to question 6.1.

6.4. Analogous to question 6.1.

6.5. No, there emerge no difficulties of this type.

## **7. Forwarding Authority**

7.1. Under Article 3 of the Convention, the courts of the Republic of Lithuania of all instances examining civil or commercial case are competent to forward a request for service of documents to the foreign Central Authority, i.e. district courts of cities and regions (in total – 54), county courts (in total– 5), the Lithuanian Court of Appeals and the Lithuanian Supreme Court.

7.2. In the view of the Ministry of Justice of the Republic of Lithuania, cooperation between Central Authorities subject to “special circumstances” is sufficient”.

In addition, we consider that cooperation between Central Authorities would be purposeful in cases when the forwarding competent authority, due to certain reasons, cannot solve the question by direct contact with the foreign Central Authority (e.g., the answer to the request for service of documents has not been received for unreasonably long time, the documents have not been served due to unidentified reasons, etc.).

## **8. Methods for service used by the Central Authority**

8.1. Under Article 5 (1)(a) of the Convention, methods for the service of documents to individuals as set forth in Articles 117, 118, 119, 120 of the Code of civil Procedure, are the following:

- 1) The court serves procedural documents by registered mail, through bailiffs, couriers, and in certain cases – by telecommunication terminal equipment (Article 117 of the Code of Civil Procedure of the Republic of Lithuania);
- 2) In cases when a party or a third person conducts the proceedings through a representative, procedural documents relevant to the case are served only to

the representative (Article 118 of the Code of Civil Procedure of the Republic Of Lithuania);

- 3) Where both parties to the proceedings are represented by lawyers, a lawyer of one party forwards the procedural document relevant to the case directly to the lawyer of the other party (Article 119 of the Code of Civil Procedure of the Republic of Lithuania);
- 4) In the case of procedural complicity, when there is no single representative appointed by the accomplices, the court has the right to propose to the accomplices that they should appoint one of the accomplices or any other entity as an authorized person for receiving procedural documents relevant to the case.

Under Article 5 (1)(b) of the Convention, documents could be served to an individual in Lithuania by the method indicated by the requesting state provided this particular method has not been prohibited by the laws of the Republic of Lithuania or on condition that this particular method does not contradict the public order of the Republic of Lithuania. (Article 802(2) of the Code of Civil Procedure of the Republic of Lithuania).

Documents can be personally served to the addressee, who voluntarily accepts them, in the court, through a court courier or through a bailiff.

8.2. There are no special requirements for translation of forwarded documents; however, the Ministry of Justice of the Republic of Lithuania as the Central Authority, in pursuance of Article 5 (3) of the Convention, can require translation of documents into Lithuanian.

It is not necessary to translate the forms filled in according to the Convention (request for service, confirmation of serving the document, summary of the document); however it is desirable that documents, the service of which to an individual in Lithuania is requested, should be translated into Lithuania. Otherwise, pursuant to Article 802 (2) of the Code of Civil Procedure of the Republic of Lithuania, the document shall be served to the addressee only if the addressee expresses his will to accept it.

Article 802 (2) of the Code of Civil Procedure of the Republic of Lithuania:

*„2. If a foreign court or any other authority applies to the court of the Republic of Lithuania regarding the service of a procedural document, which has not been translated into Lithuanian, to individuals in the territory of the Republic of Lithuania, the document shall be served on condition that the addressee expresses his will to accept it. If the individual refuses to accept the procedural document, the possible consequences of such refusal shall be explained to him.“*

8.3. Laws of the Republic of Lithuania do not confer to the Ministry of Justice of the Republic of Lithuania any administrative powers to speed up the procedures of serving documents. Foreign legal assistance requests for the service of documents in Lithuania are executed by courts, the administrative control of the activities of which, carried out by the Ministry of Justice as an executive authority, would be in contradiction to the principles of the independence of courts and separation of powers, Constitution of the Republic of Lithuania, and other laws.

It is to be noted that in cases of urgency, the Ministry of Justice sends requests for the service of documents to competent Lithuanian courts by fax, draws the attention of the court executing the request to the urgency of the request, etc.

The Ministry of Justice of the Republic of Lithuania does not exercise control over the requests for the service of documents to individuals in foreign countries by Lithuanian courts forwarded to foreign Central Authorities and does not supervise the execution thereof; however, bearing in mind the status of the Ministry as the Central Authority under the 1965 Hague Convention, the Ministry renders methodological help to Lithuanian courts in drafting requests for the service of documents on the basis of this Convention and assists in applying with the said requests to foreign Central Authorities (consults the courts, sends unified forms, helps to sort out declarations of other states regarding the 1965 Hague Convention and to ascertain their Central Authorities, etc). Also, as mentioned in Para 7.2, the Ministry of Justice of the Republic of Lithuania, where necessary, would apply to the foreign Central Authority for the purposes of speeding up the execution of a specific request by a Lithuanian court for the service of documents.

8.4. In the process of serving documents (evidence) from foreign states to persons in Lithuania, charges are incurred for their forwarding in Lithuania and returning of the confirmation about the service to the requesting court; these charges are compensated from the funds of the forwarding authority (the Ministry of Justice of the Republic of Lithuania and the court executing the request.

The costs of a court errand to serve documents through a bailiff are laid down in Para No. 2 14 of the table in the Instruction for the Execution of Judgements (approved by Order No. 432 of the Minister of Justice of the Republic of Lithuania of 31/12/2002) and amount to 30 Lt. These costs have to be covered by the party of the proceedings requesting this particular method for serving the documents.

In cases where documents to the addressee are served in the court (in the district court of the town or region according to the recipient's place of residence; this method is usually used for the execution of requests received on the basis of the 1965 Hague Convention in Lithuania), recipients arrive at the Lithuanian competent court executing the service to take their documents on their own funds.

## **9 Translation requirements**

9.1. In the view of the Ministry of Justice, this provision of Article 5(3) of the Convention does not make judicial assistance in practice more cumbersome.

9.2. The Ministry of Justice of the Republic of Lithuania approves of the expediency of such a Recommendation. In our opinion, in cases of requests for the service of documents to a person in a foreign country, who, to the requesting court's knowledge, understands the language in which the document has been drawn up, it is not expedient to require additional translation of that document into the language of the requested state (except for forms filled out within the framework of the Convention, which, as it is desirable, should be filled out in the language understandable to the Central Authority receiving them).

In addition, we think that translation of the forwarded document is not necessary when serving it to an individual in a foreign country in the language set forth in Article 8 (2) of the Convention.

9.3. In our opinion, this Recommendation could be implemented in a way analogous to the Recommendation mentioned in Para 17.4.

9.4. In the view of the Ministry of Justice, full translation of the document is necessary in all cases when the addressee does not understand the language in which the document has been drafted. In cases where translation of the document which is to be served is not required on the basis of reasons specified in Para 9.2 of the questionnaire, translation of its summary into the language understandable to the Central Authority of the requested state is sufficient.

9.5. In the view of the Ministry of Justice of the Republic of Lithuania, for the purposes of facilitating legal cooperation between the justice authorities of the Contracting States, no additional legalization of the translation of the forwarded document or endorsement thereof with an apostille should be required. In our opinion, endorsement of the translation by an official (sworn) translator, or, where translation is carried out by a court translator, endorsement thereof by the court's stamp would suffice.

## **10. Timing**

10.1. It is the usual practice that in the Republic of Lithuania requests for the service of documents are executed within a period of one month. But, taking into consideration the fact that after that the documents have to be returned to a foreign competent court which requested the service of documents to a person in Lithuania, it is desirable that in forwarding such a request to the Central Authority of the Republic of Lithuania a period of 1,5–2 months should be allowed for the execution thereof.

In individual cases, the procedure of the service of documents in the Republic of Lithuania can run on, for example, in cases when the addressee has not been found, or the addressee after having been summoned to the court, fails to appear, etc.

10.2. The Ministry of Justice of the Republic of Lithuania could not identify substantial differences (save for the differences in languages, Central Authorities, size of the states' territories, which sometimes determines the timing of the execution of requests).

10.3. The Ministry of Justice does not have any proposals as to the improvement of the procedures for mutual assistance.

## **11. Alternative transmission channels**

11.1. The Ministry of Justice has no statistical data as to frequency of the use of documents transmission through diplomatic channels as specified under Article 8 of the Convention because:

- 1) In cases when documents of a Lithuanian court have to be served to a national of the Republic of Lithuania living in abroad, the competent Lithuanian court directly applies with a request for the service of documents to the diplomatic mission of the Republic of Lithuania in that state;
- 2) In cases when judicial and extra-judicial documents of a foreign state have to be served to a national of that state in the Republic of Lithuania, the competent foreign court or another authority applies directly to the diplomatic mission of this state in the Republic of Lithuania; in such cases the Ministry of Justice of the Republic of Lithuania does not control the service of documents.

We believe that in practice the number of cases when documents are served to the addressees through diplomatic representatives are not abundant. Sometimes, the Ministry of Justice receives requests from foreign courts or other competent authorities for the service of documents to individuals in Lithuania through diplomatic channels (e.g. from Germany).

11.2. The Ministry of Justice of the Republic of Lithuania, in acceding to the 1965 Hague Convention, declared that it objects to the service of documents in the territory of the Republic of Lithuania by the methods specified under Article 10 of the Convention. Respectively, Lithuanian courts do not make use of this method for the service of documents abroad.

Due to these reasons, the Ministry of Justice of the Republic of Lithuania cannot express its opinion on the interpretation and application of Article 10 (a) of the Convention.

11.3. –11.4. See Para 11.2.

## **12. Judicial and extra judicial documents.**

### **12.1.**

In fact, there is no such a distinction in our country's legislation between judicial documents producing procedural effects and those that do not. Therefore, the Convention is applied to all the judicial documents.

**12.2.** Since according to Article 3 of the Convention, the authority or judicial officer competent under the law of the State in which the documents originate forward to the Central Authority of the State addressed a request, the Ministry of Justice has no statistics on the volume of extrajudicial documents forwarded abroad under this Convention.

## **13. Date of service-double dates.**

**13.1. and 13.2** The Country's domestic law system does not provide for the dual-dating system.

## **14. Exequatur**

**14.1.** Since the Republic of Lithuania before ratifying this Convention has emphasized and noted which of the methods of the service of documents are applicable in our country, it would be not possible to deny the enforcement of the foreign judgement on grounds of breach of public policy on the service of procedure applied, even though that service has been performed by the methods provided for under the Convention.

If the addressee's State has not required that the documents would be translated into some particular language in this concrete situation, the addressee's State cannot refuse enforcement of the foreign judgement on the grounds that the service has not been translated.

## **15. Exclusion of application of the Convention between the parties.**

**15.1.** According to Para 3 of Article 138 of the Constitution of the Republic of Lithuania international agreements that were ratified by the Seimas (Parliament) of the Republic of Lithuania is a constituent part of the Lithuanian legal system. Besides, according to the Law on International Agreements, it is compulsory to enforce the effective international agreement. Besides, following the above-mentioned Law, in case of collision of the national and international legislation, the international agreements shall be applied. Thus, there are no laws, regulations or administrative provisions permitting the parties exclude application of the Convention between themselves by agreements or contracts.

## **16. Fax and electronic mail.**

### **16.1**

- a) The Ministry of Justice as the Central Authority, as requested State, shall accept the request forwarded to it by fax and by e-mail.
- b) The Ministry of Justice has never used, as requesting State, fax or e-mail to forward request for service. However, the fax as a means for transfer of a request may be used in case of urgency.

### **16.2. Form of service**

- a) In our State service from abroad may be performed by e-mail or fax.
- b) The use of e-mail instead of postal channels can be contemplated, since the new Code of Civil Procedure of the Republic of Lithuania establishes that the service of judicial procedural documents can be performed by means of telecommunication equipment if it is established in the laws, regulations or administrative provisions. This can be performed only if there is consent of the party involved in the case.
- c) Referring to the subparagraph b, our domestic law accepts service performed by e-mail or fax.

### **16.3. Form of the certificate**

- a) The Ministry of Justice has never used e-mail for sending of the certificate of due performance of service. In urgent cases the fax is used for sending of the certificates.
- b) Yes, as requesting State, we would accept receipt by fax or e-mail of a certificate of service abroad.

**16.4.** Article 117 of the Code of Civil Procedure of the Republic of Lithuania establishes that:

“The procedural documents of the court are served by means of post, by bailiffs, couriers and by other means established in this Code and in cases foreseen in laws, regulations or administrative provisions the procedural documents may be served by means of telecommunication equipment. Procedural documents may be served by means of telecommunication equipment only if there is consent of the party involved in the case.

If the person involved in the case agrees, the court may issue him the procedural document for the purpose that he would serve it to the addressee”.

## **16.5.**

In fact, there are no specific procedures subject to specific security requirements in the use of fax and e-mail in the service procedure. In 2000 the Law on Electronic Signature was adopted. However, for the implementation of the law a number of the bylaws should be passed and the certification institution should be established. It regulates the creation, validity and control of the electronic signature. Article 8 of the above-mentioned Law establishes that if the electronic signature was created by the safe signature creation equipment and was certified by a valid qualified certificate, it has the same legal power for the electronic data as the signature on the written documents and it is allowable as a means of averment at the court.

**16.6.** There is no such a clause made by the Republic of Lithuania.

## **17. Model forms**

**17.1.** Yes, we consider that the model forms especially “Request for service abroad of judicial and extrajudicial documents” should be revised. The following information could be changed or added:

1. in the box “Identity and address of the applicant” the word “applicant” could be changed into the word “requesting authority”. That would make the situation clearer for the courts.
2. the segment could be added on the signature of the addressee.

**17.2.** Addition of the information mentioned could be contemplated.

**17.3.** Yes, the Ministry of Justice would be in favour of such a change made.

**17.4.** Adoption of the new Form by way of Recommendation would be more appropriate than ratification of the Protocol to the Convention.

**17.5.** Yes, the electronic forms of the model forms would be useful.

## **18. Reservations and reciprocity.**

**18.1.** The Republic of Lithuania opposes to the direct service through postal channels in the territory of the Republic of Lithuania in accordance with Article 10. If the service of documents would be performed through postal channels in other Contracting States, the Republic of Lithuania would not apply the reciprocity principle.

**18.2.** The Republic of Lithuania opposes to the direct service through consular channels, unless the documents are to be served upon a national of the State in which the documents originate. If the service of documents would be performed through consular channels in other Contracting States, the Republic of Lithuania would not apply the reciprocity principle.

## **19. Article 25: Bilateral and multilateral agreements.**

**19.1.** With respect to international service there are 9 international bilateral agreements:

1. The agreement between the Republic of Lithuania and the Republic of Moldova on legal assistance and legal relations in civil, family and criminal matters.
2. The agreement between the Republic of Lithuania and the Republic of Poland on legal assistance and legal relations in civil, family, labour and criminal matters.
3. The agreement between the Republic of Lithuania and the Republic of Byelorussia on legal assistance and legal relations in civil, family and criminal matters.
4. The agreement between the Republic of Lithuania and Ukraine on legal assistance and legal relations in civil, family and criminal matters.
5. The agreement between the Republic of Lithuania and the Federation of Russia on legal assistance and legal relations in civil, family and criminal matters.
6. The agreement between the Republic of Lithuania and the Peoples of China on legal assistance and legal relations in civil and criminal matters.
7. The agreement between the Republic of Lithuania and the Republic of Kazakhstan on legal assistance and legal relations in civil, family and criminal matters.
8. The agreement between the Republic of Lithuania and the Republic of Uzbekistan on legal assistance and legal relations in civil, family and criminal matters.
9. The agreement between the Republic of Lithuania and the Republic of Azerbaijan on legal assistance and legal relations in civil, family and criminal matters.

There is also one multilateral agreement with respect to international service:  
The agreement between the Republic of Lithuania, the Republic of Estonia and the Republic of Latvia on legal assistance and legal relations.

19.2. The Republic of Lithuania is not a party of the Inter-American Convention on Letters Rogatory.

19.3. The Republic of Lithuania will become the member of the European Union on 1 May 2004. Only since then the Regulation No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters shall apply. The Regulation No. 1348/2000 shall be applied between the Member States regarding the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Whereas the 1965 Convention on the service of judicial and extrajudicial documents in civil or commercial matters shall be applied between the Republic of Lithuania and the third countries (non-member states).

19.4. The Republic of Lithuania is not the member of the AALCO.



## LIETUVOS RESPUBLIKOS TEISINGUMO MINISTERIJA

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Lietuvos apeliaciniam teismui  
Lietuvos apygardu teismams  
Lietuvos apylinkiu teismams

2001 08 14

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### DEL HAGOS KONVENCIJU

Teisingumo ministerija informuoja, kad Lietuvos Respublikos Seimas 2000 04 13 ratifikavo 1970 03 18 Konvencija del irodymu civilinese arba komercinese bylose paemimo užsienyje („Valstybes žinios“, 2000, Nr. 44-1242), kuri 2000 10 01 isigaliojo Lietuvos Respublikos atžvilgiu. Lietuvos Respublikos Seimas 2000 05 09 ratifikavo 1965 11 15 Konvencija del teisminiu ir neteisminiu dokumentu civilinese arba komercinese bylose iteikimo užsienyje („Valstybes žinios“, 2000, Nr. 44-1252), kuri 2001 06 01 isigaliojo Lietuvos Respublikos atžvilgiu. 2001 03 23 taip pat buvo ratifikuota Konvencija del išlaikymo pareigoms taikytinos teises („Valstybes žinios“, 2001, Nr. 38-1290), kuri 2001 09 01 isigalios Lietuvos Respublikos atžvilgiu.

Pirmoji mineta Konvencija numato galimybe Susitariancios Valstybes teisminems institucijoms prašyti kompetentingos kitos Susitariancios Valstybes istaigos paimti irodymus arba atlikti kita teisini veiksma, išskyrus teismo dokumentu iteikima ar teismu sprendimu pripažinima, vykdyma ir laikinuju ar apsaugos priemoniu taikyma, civilinese arba komercinese bylose. Teisines pagalbos prašymai yra siunciami tiesiogiai prašyma vykdancios valstybes centrinei istaigai, neperduodant ju per jokia kita tos valstybes istaiga. Tokie prašymai turi buti paruošti remiantis Konvencijos 3 str. ir 4 str. reikalavimais. Teisines pagalbos prašymai vykdomi nedelsiant. Jie vykdomi remiantis nacionaline teise, t.y. užsienio valstybiu teismu prašymai surinkti irodymus Lietuvoje vykdomi pagal Civilinio proceso kodekso nuostatas, todėl Lietuvos teismas, vykdydamas užsienio valstybes teismo prašyma apklausti liudytoja, turi teise Civilinio proceso kodekso 71 str. numatytais atvejais ir tvarka ji atvesdinti i teisma (Konvencijos 10 str.). Ivykdžius teisines pagalbos prašyma, tai patvirtinantis dokumentas ir surinkti irodymai siunciami prašyma pateikusiai istaigai tais paciais kanalais, kuriais ši naudojasi.

Atkreiptinas demesys i tai, kad pagal Konvencijos 39 str. 4 d., Konvencijos nuostatos galioja tik prisijungianciosios valstybes ir tu Susitarianciu Valstybiu, kurios pareikš priimancios prisijungima tarpusavio santykiams, todėl siunciant teisines pagalbos prašyma valstybes-Konvencijos dalyves centrinei istaigai, butina pasitikslinti, ar Konvencija jau galioja Lietuvos Respublikos ir prašomosios valstybes tarpusavio santykiams. Pastebetina ir tai, kad Konvencijos 2 str. numato Susitariancios Valstybes pareiga paskirti centrine istaiga, o Konvencijos 4 str. 4 d. itvirtina teise nurodyti kalba arba kalbas, kuriomis teisines pagalbos prašymai gali buti siunciami jos centrinei istaigai. Todel kiekvienu atveju rekomenduotina pasitikslinti, kokia prašomosios valstybes institucija (os) yra paskirta centrine istaiga ir kokia kalba butina siusti teisines pagalbos

prašymus. Lietuvos Respublika, vadovaujantis Konvencijos 4 str. 4 d., pareiškė, kad Teisingumo ministerija priims teisinės pagalbos prašymus, surašytus lietuvių, anglų, prancūzų ir rusų kalbomis arba esant prašymu ir juos lydinciu dokumentu vertimui į minetas kalbas, todėl prašymai, paruošti šiomis kalbomis ir atitinkantys Konvencijos reikalavimus, turės būti vykdomi Lietuvos Respublikos teritorijoje.

Antroji mineta Konvencija reglamentuoja teisiniu ir neteisiniu dokumentu pateikimą užsienio valstybėse esantiems subjektams, t.y. detalai sureguliuoja kokia tvarka ir kokie dokumentai turi būti siunčiami kompetentingai Susitariančios Valstybės institucijai. Atkreiptinas dėmesys į tai, kad Konvencijos 3 str. įgalina kompetentingą instituciją arba teismo pareigūną perduoti valstybės, į kurią kreipiamasi, centrinei institucijai prašymą ir kitus dokumentus tiesiogiai, t.y. ne per prašanciosios valstybės centrinę instituciją. Prašymo pateikti užsienyje teisinius arba neteisiškus dokumentus forma, liudijimo forma ir pateikimo dokumento santraukos forma yra minėtame „Valstybės žiniu“ numeryje, tačiau pagal Konvencijos 7 str. 1 d. reikalavimus, standartinės formos nuostatos turi būti rašomos prancūzų arba anglų kalba, todėl Teisingumo ministerija paruošė minėtų dokumentų formas lietuvių, anglų ir prancūzų kalbomis, kurias galima rasti adresu internete: [www.min.tm.lt](http://www.min.tm.lt) Mineta prašymą ir pateikimo dokumento santrauka reikia užpildyti vadovaujantis Konvencijos 7 str. 2 d. reikalavimais. Taip pat atkreiptinas dėmesys į tai, kad prašymas ir pateikiami dokumentai turi būti pateikiami dviem egzemplioriais. Liudijimą užpildo kompetentinga prašomosios valstybės institucija.

Kompetentingas Lietuvos teismas, vykdydamas teisinės pagalbos prašymą, liudijimą užpildo laikantis Konvencijos 6 str. 2 d. reikalavimų. Užpildytas liudijimas ir vienas dokumentų egzempliorius siunčiami taip pat tiesiogiai pareiškėjui.

Siunčiant teisinės pagalbos prašymus patartina detalai išanalizuoti kiekvienos valstybės deklaracijas, kuriose nurodoma, kuri institucija (os) yra paskiriama centrinei institucijai pagal Konvencijos nuostatas, kokia kalba turi būti paruošti pateikiami dokumentai ir pan. Pavyzdžiui, atsižvelgiant į Konvencijos 18 str., Vokietijos deklaracijoje yra nurodyta, kad teismo dokumentai turi būti siunčiami federaliniu žemiu centriniams institucijoms, o pateikiamas dokumentas turi būti parengtas vokiečių kalba arba pridetas jo vertimas į vokiečių kalbą.

Kai reikia surinkti įrodymus ar pateikti dokumentus valstybėje, su kuria Lietuva yra pasirašiusi teisinės pagalbos sutartį ir kuri yra Konvencijos dalyvė, gali būti taikomos teisinės pagalbos sutarties nuostatos, kadangi minėtos Hagos Konvencijos Susitariančios Valstybės leidžia sudaryti ir kitokius susitarimus.

Atsižvelgiant į Hagos Konvenciją preambulės minimus tikslus, Konvencijai aiškinamuosius raštus bei į tai, kas išdestyta aukščiau, teisinės pagalbos prašymai, vadovaujantis Konvencijai nuostatomis, turi būti siunčiami tiesiogiai prašomosios valstybės centrinei institucijai, t.y. ne per Lietuvos Respublikos teisingumo ministeriją. Tačiau, siekiant kaupti ir sisteminti informaciją apie Lietuvos Respublikos teismų bendradarbiavimą su užsienio valstybėmis, maloniai prašytume atsiųsti visu teisinės pagalbos prašymu, siunčiamu pagal minetas Konvencijas, kopijas Teisingumo ministerijai.

Trečioji mineta Konvencija reglamentuoja tik išlaikymo pareigoms taikomą teisės normų kolizijas, t.y. Konvencija unifikotai nustato, kurios valstybės nacionaline teise reglamentuoja išlaikymo pareigas. Konvencijos nustatyta teise yra taikoma nepaisant jokių abipusiškumo reikalavimų ir nepaisant to, ar ji yra Susitariančios Šalies teise, ar ne. Lietuvos Respublikos išlygoje yra nurodyta, kad vadovaujantis Konvencijos 15 straipsniu, Lietuvos Respublikos valdžios institucijos taikys vidaus teisę, jei ir asmuo, turintis teisę į išlaikymą, ir asmuo, turintis išlaikymo pareigą, yra Lietuvos Respublikos piliečiai pagal Lietuvos Respublikos pilietybės įstatymą ir jei asmens, turinčio išlaikymo pareigą, įprastinė gyvenamoji vieta yra Lietuvos Respublikoje.

Konvencijose dalyvaujanciu valstybiu saraša, paskirtas centrinės istaigas, padarytas išlygas bei pareiškimus, siunciamiems dokumentams keliamus reikalavimus bei visa kita informacija, susijusia su Konvencijomis, galima rasti adresu internete: <http://hcch.net>.

Viceministras

Gintaras Švedas