

QUESTIONNAIRE ON THE LEGAL ENFORCEMENT OF RETURN ORDERS UNDER THE 1980 HAGUE CONVENTION AND OF ACCESS/CONTACT ORDERS

I. Legal Bases for the enforcement of Hague orders

1.

The Ministry of Justice of the Republic of Lithuania informs that there are no specific legal acts adopted with regard to enforcement of return orders under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, except for the Law on ratification of Hague Convention on Civil Aspects of International Child Abduction dated 19 March 2002 and the ruling of 21 August 2002 adopted by the Government of the Republic of Lithuania on appointment of the Ministry of Social Security and Labour of the Republic of Lithuania as a Central Authority for the implementation of the functions provided in the above mentioned convention.

2.

According to Article 138 of the Constitution of the Republic of Lithuania, international treaties ratified by the Seimas of the Republic of Lithuania are the constituent part of the legal system of the Republic of Lithuania. Besides, Article 11 of the Law on International Treaties stipulates that an effective international treaty of the Republic of Lithuania must be enforced in the territory of the Republic of Lithuania.

As it was noted above, in fact there are no specific provisions that would regulate the enforcement of return orders. It is regulated by general legislative provisions of the Code of Civil Procedure of the Republic of Lithuania that stipulates the enforcement of court decisions.

Following Article 809 of the Code of Civil Procedure, foreign court decisions are recognised by the Court of Appeals of Lithuania and afterwards such decisions can be enforced. With regard to that, foreign court decisions on a child's return to his parents or legal guardian and on guardian's rights are recognised by the Court of Appeals of Lithuania under the provisions of the Code of Civil Procedure.

With regard to enforcement process, following Article 650 of the Code of Civil Procedure, the enforcement order is presented to a bailiff that a creditor has chosen either by a creditor himself or his representative. Article 651 of the above mentioned Code foresees that a bailiff, after receiving an enforcement order, within three days or, in the event of expeditious execution, shall immediately verify whether there are any obvious obstacles to accept the enforcement order or to enforce it. If there are obstacles to accept the enforcement order, the bailiff issues a warrant under which the execution is refused and shall return the execution order to the person who served it, indicating the reasons for refusal. If there are no obstacles to accept the enforcement order, the bailiff shall accept it and shall begin to perform the enforcement activities.

With regard to the enforcement process of the return order Article 764 of the Code of Civil Procedure of the Republic of Lithuania establishes that while enforcing the court decision regarding return orders, a bailiff performs his enforcement activities in the presence of a person to whom the child is being returned and a representative of the public institution of the Child Rights' Protection. While performing the enforcement activities, the protection of the rights of the child must be guaranteed.

The enforcement costs are also regulated by the Instruction on Enforcement of Decision adopted by the order of the Minister of Justice of the Republic of Lithuania of 31 December 2002 No. 432. The order of the Minister is regarded as the legal act implementing the specific provisions of the Code of Civil Procedure.

It should be also noted, that Article 3.168 of the Civil Code of the Republic of Lithuania establishes the parents' right to demand the return of their children from any person who keeps them against the law or court decision. Following Article 3.272 of the Civil Code, a child's guardian (curator) has the right to demand in court the return of the child from any person who keeps the child unlawfully. This right is guaranteed both to the natural persons who are appointed by a court's decision as guardians or curators and to the Children care institution.

3.

In fact, there are no specific judicial decisions, or any other guides that would govern the enforcement of return orders under the 1980 Hague Convention.

4.

Taking into account that at present there is no practice in this field, no comments can be made on this issue.

II. Enforceability and legal remedies

1.

The decision of the Court of Appeals of Lithuania on recognition can be appealed to the Supreme Court of Lithuania.

2.

The Court of Appeals of Lithuania after the recognition of the foreign court decision issues the enforcement order, which could be produced to the bailiffs in order to enforce it.

3.

The decision on which the Hague return order is based has to be effective and enforceable before the authorisation of the Court of Appeals of Lithuania can be brought.

4.

In case the appeal against the merits of the return order is lodged the procedure in the Court of Appeals of Lithuania may be suspended until the decision on the appeal is reached.

5.

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6.

Taking into account that there is no practice in this field, no comments can be made regarding this issue.

III. Enforcement procedure

A. The order to be enforced and the aims of enforcement

1-2.

According to the data received from the Ministry of Social Security and Labour courts have not heard any cases regarding the return of children according to the Hague Convention of 1980 on the Civil Aspects of International Child Abduction. Therefore it is not possible to answer the questions regarding these matters.

3.

The responsibility for the organization of the repatriation of the child should be established in the child's return order.

B. Actors involved in enforcement

1-2.

Following Article 18 of the Code of Civil Procedure of the Republic of Lithuania all valid court decisions, rulings, orders or decisions are obligatory to governmental and municipal institutions, civil/public servants or officers, individuals and legal entities and must be executed throughout the territory of the Republic of Lithuania.

An enforcement order filed in accordance with the procedure established in the Code of Civil Procedure constitutes the enforcement grounds. No enforcement actions may be taken in the absence of an enforcement order (Article 586 of the Code of Civil Procedure).

A general provision foreseen in Article 588 of the Code of Civil Procedure states that court decisions, judgements, rulings, decisions and orders are executed only after they have come into force unless the court decides on their urgent execution.

If the enforcement of a procedural court decision is urgent, this should be marked in the enforcement order (Article 588 of the Code of Civil Procedure). In urgent cases the enforcement of court decisions or rulings (or any parts thereof) is commenced at once, prior to their coming into force. Appeals filed against decisions or rulings subject to urgent enforcement do not suspend the enforcement (Article 282 of the Code of Civil Procedure).

After a court decision on execution becomes effective, the court of the first instance, upon a written request filed by the applicant, issues to him an enforcement order. In urgent cases and pursuant to a written request filed by the applicant, an enforcement order may be issued to him by the court of the first instance that has passed the decision or a court of the appellate or cassational instance not later than on the next working day after the decision has been passed (Article 646 of the Code of Civil Procedure).

An enforcement order or a court enforcement order may be conveyed to the bailiff either by the applicant or by the applicant's representative. Other executory documents may be delivered for enforcement by their issuer or the issuer's officer as well as by the applicant (Article 650 of the Code of Civil Procedure).

The bailiff, who has received an enforcement order, shall verify within 3 days (and in urgent cases immediately) that there are no manifest hindrances to accept the document and to begin the enforcement (Article 651 of the Code of Civil Procedure).

3.

a) i)

Following the Code of Civil Procedure of the Republic of Lithuania, decisions are enforced by bailiffs. Bailiffs' activities fall under the regulation of the Code of Civil Procedure, the Law on Bailiffs and Instruction on the Enforcement of Decisions.

Article 764 of Code of Civil Procedure stipulates that while enforcing the court decision regarding return orders, a bailiff performs his enforcement activities in the presence of a person to whom the child is being returned and a representative of the public institution of the Child Rights' Protection. Moreover, enforcement of such actions must guarantee the protection of the rights of the child. Moreover, for the purposes of enforcement of the court's decision on child's return, other persons may also be invited, for example, a psychologist or a social worker.

a) ii)

This information cannot be submitted, since the surrender of the child according to the court's decision and this Convention has not take place.

b)

There are no special social or psychological services available to prepare the child and/or the defendant for the return in order to de-escalate or even avoid enforcement by coercive measures. However, in such cases the person has the opportunity to apply to psychological or social services which deal with the problems of children in general.

c)

As mentioned in sub item i, item a, point 3 of Article 764 of Code of Civil Procedure, the bailiff shall perform the acts of enforcement upon presence of the person to whom the child is surrendered.

4.

Article 27 of the Law on Bailiffs establishes that the lawfulness of the procedural steps of a bailiff shall be controlled by court in accordance with the procedure set out in the Code of Civil Procedure. In observance of Article 594 of Code of Civil Procedure, procedural acts of the bailiff shall be controlled by the judge of the district court in the territory assigned to the bailiff. Instructions of the judge to eliminate procedural violations shall be binding upon the bailiff and not subject to appeal, unless the Code of Civil Procedure establishes otherwise.

Organisation of the bailiffs' work shall be controlled by the Ministry of Justice and the Bailiffs Chamber of Lithuania in the manner established by the Minister of Justice. Other authorities shall also be entitled to supervise the bailiffs' activities in the manner established by laws. Therefore, supervision of bailiffs' acts by courts depends upon the territory of the bailiff's activity, which corresponds to the territory of one or more district courts, rather than upon the court, which produces an order. Legal acts do not establish control of the Central Authority over the bailiffs' acts.

C. The enforcement procedure proper**1.**

The bailiff shall start the enforcement: (i) in urgent cases not later than on the next day after the acceptance of an executory document, and (ii) in other cases not later than within 5 days of the acceptance of an executory document (Article 653 of the Code of Civil Procedure).

In the process of discharging his duties, the bailiff first of all must notify the debtor¹ that an executory document has been filed for enforcement and the enforcement will begin if the debtor fails to perform all the pertinent actions within the period set by the bailiff. For the enforcement of decisions which require from the debtor to refrain from certain actions no deadlines are established and the debtor is urged to execute the decision immediately after the delivery to him of the notification unless it is otherwise provided for in the executory document (Article 659 of the Code of Civil Procedure).

If the debtor fails to execute the decision within the established period, not later than within 10 days after the deadline the bailiff shall start the enforcement (e.g., the debtor is obligated to perform or refrain from certain actions or any other statutory measures are applied) (Article 624 of the Code of Civil Procedure).

2.

See the answer above (III. C 1.).

3.

There is no possibility to impose coercive measures against the person without the legal basis for such measures. In the case of the return of the child the child's return order could be enforced only after the decision of the Court of Appeals of Lithuania to recognize the foreign court decision.

4.

Article 620 of Code of Civil Procedure provides that in cases concerning surrender of the child when his whereabouts are unknown, the bailiff must announce the debtor's or the child's search via police. The Instruction on Enforcement of Orders (approved by Order No. 432 of the Minister of Justice of the Republic of Lithuania on December 31, 2002) stipulates that the search is announced by a decree of the bailiff who enforces the order. In addition to other mandatory documents, the decree shall also specify the child's last location (place of residence) known to the bailiff, as well as other circumstances that are important for determining the whereabouts of the child. The bailiff shall refer the decree on the announcement of search for the child or the person who has the child to the local police commissariat.

¹ The debtor is a person who must perform or refrain from the actions specified in the enforcement order (Article 642 of the Code of Civil Procedure).

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.

While 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. While locating persons, data contained in state registers and in 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 Relations 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.

5.

See answers to Questions 1 and 2, Item B, Part III and Question 1, Item C, Part III.

It should be also noted that court decisions of non-pecuniary nature are enforced in conformity with the general procedural rules laid down in Chapter LVII of the Code of Civil Procedure (Execution of Decisions of Non-Pecuniary Nature) (Article 763 of the Code of Civil Procedure) with all the established exceptions.

Article 771 of the Code of Civil Procedure regulates enforcement of decisions which obligates the debtor to perform or discontinue certain actions unrelated to transfer of property or other funds. In the case of failure by the debtor to abide by the decision under which he/she must perform or discontinue certain actions unrelated to transfer of property or other funds, the bailiff shall issue a written statement (act) in the form provided in the Instruction on the Enforcement of Decisions. When the decision provides for the measures to be applied against the debtor for non-execution of the decisions as set forth in Article 273 of the Code of Civil Procedure, the written statement (act) is transferred to the local court of the place of execution of the decision and the local court rules on the enforcement of the established measures against the debtor due to his/her failure to perform certain actions.

In the process of the enforcement, the applicant and the debtor have the right enter into a settlement agreement (Article 595 of the Code of Civil Procedure).

When both parties (the applicant and the debtor) in the enforcement process do not speak Lithuanian, upon their written request the bailiff may hire an interpreter to participate in the enforcement (Article 597 of the Code of Civil Procedure).

In the process of the enforcement, the applicant and the debtor may be represented by their attorneys, assistant attorneys or any other persons whose powers of attorney have been documented according to the procedure set forth in the Code of Civil Procedure (Article 599).

6-7. According to the Article 771 of the Code of Civil Procedure in the case of the non-execution the court having the jurisdiction in the place of the execution can impose a fine up to 1.000 litas.

8. There is no possibility to obtain court decision prior to the recognition of the foreign court decision in the case of the request to return a child.

D. Costs

1.

The costs that are incurred for the enforcement are the part of the court proceedings, since the enforcement of the decision is a constituent part of the civil process. Following Article 610 of the Code of Civil Procedure of the Republic of Lithuania, all the enforcement costs are covered by the creditor, except the cases when the enforcement costs are suspended. After the decision is enforced, these costs are recovered from the debtor. Following the Instruction on Enforcement of Decision adopted by the order of the Minister of Justice of the Republic of Lithuania of 31 December 2002 No. 432 all the enforcement costs are divided into three groups: administrative costs, factual costs and the salary to a bailiff for the enforcement of the enforcement order. The creditor has to pay the latter costs together with the VAT. The costs are paid only for the services performed by a bailiff that are listed in the above-mentioned Instruction. It should be also mentioned, that Article 764 of the Code of Civil Procedure of the Republic of Lithuania establishes that while enforcing the court decision regarding return orders, a bailiff performs his enforcement activities in the presence of a person to whom the child is being returned and a representative of the public institution of the Child Rights' Protection. While performing the enforcement activities, the protection of the rights of the child must be guaranteed.

2.

Following Article 610 of the Code of Civil procedure of the Republic of Lithuania, all the enforcement costs are covered by the creditor, except the cases when the enforcement costs are suspended. After the decision is enforced, these costs are recovered from the debtor. Following the provisions of the above-mentioned Instruction, the enforcement activities are started when the enforcement costs are paid to a bailiff, except the cases when a bailiff and the creditor agree on the suspension of the enforcement costs. In case the legal aid was granted to a person, while submitting the enforcement order to a bailiff, a creditor has to submit to a bailiff the documents proving that he/she is a recipient and then a bailiff adopts a special document with regard to exemption from the enforcement costs.

3.

Repatriation of the child is considered as factual costs that a bailiff incurs during the process of the enforcement. This kind of enforcement costs is paid by the creditor; these costs are later recovered from the debtor. In fact, the advance payment is a condition for enforcement, except the applicant is exempted from these costs or these costs are suspended, following the above-mentioned Instruction. Moreover, the Instruction foresees the exemption from the enforcement costs, except the factual costs, if the natural person is recognised as welfare recipient. The Ministry of Justice of the Republic of Lithuania pays the enforcement costs for a recipient to a bailiff. In fact, according to the above-mentioned Instruction, the enforcement activities are started when the enforcement costs are paid to a bailiff, except the cases when a bailiff and the creditor agree on the suspension of the enforcement costs.

4.

Following Article 646 of the Code of Civil Procedure of the Republic of Lithuania, when the decision becomes effective, the enforcement order is issued by the court to the creditor under his/her written application. According to Article 650 of the above-mentioned Code, the enforcement order is presented to a bailiff that a creditor has chosen either by a creditor himself or his representative. After the enforcement order is submitted to a bailiff, the creditor is informed about the enforcement costs following the provisions of the above-mentioned Instruction. The applicant can be informed about the enforcement costs using any means of communication.

5.

As it was mentioned above, following Article 764 of the Code of Civil Procedure of the Republic of Lithuania, while enforcing the court decision regarding return orders, a bailiff performs his enforcement activities in the presence of a person to whom the child is being returned and a representative of the public institution of the Child Rights' Protection. While performing the enforcement activities, the protection of the rights of the child must be guaranteed.

6.

Taking into account that there is no practice in this field, no comments can be made regarding this issue.

IV. Statistical information

According to the data available to the Ministry of Social Security and Labour courts have not heard any cases regarding the return of children according to the Convention of 1980 and no related orders were made, so there is no possibility to provide the required statistical information.

V. Co-operation

1-2.

There are no agreements adopted in this sphere.

3.

- Ministry of Social Security and Labour of the Republic of Lithuania, acting as Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction (Vivulskio st. 11, LT-03610, Vilnius, tel. (+370 5) 266 4200, fax (+370 5) 266 4209, E-mail: tpost@socmin.lt.)
- Bailiffs Chamber of Lithuania (Konstitucijos ave. 12 - 214, LT-09308, Vilnius, tel. (+370 5) 275 00 67, fax (8 ~5) 275 00 68, E-mail: asta@alar.lt)
- Services of Child's Rights Protection are established in every municipality administration
- Agency of Child's Rights Protection Controller (Subačiaus st. 5, Vilnius, tel: (+370 5) 2107176, fax: (370 5) 2107176)
- Court of Appeals of Lithuania (Gedimino ave. 40/1, Vilnius, tel.: +370 5 2663479)

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VI. Training and education for professionals

1.

Ministry of Justice of the Republic of Lithuania and Lithuanian Judicial Training Centre are responsible for the training of judges. It should be noted that several times a year the seminars are organised to judges with regard to family law matters in general and including some specific issues such as enforcement of the return orders.

2.

The Ministry of Justice of the Republic of Lithuania and Lithuanian Judicial Training Centre are responsible for the training of judges, therefore, the training for judges is provided by these institutions.

3.

These trainings usually take the form of seminars. This year the training on family law, mainly concerning the issues regarding 1980 Hague Convention and other international agreements and conventions took place in May and in October. The training on family law usually occur twice or thrice a year. These kinds of seminars are usually provided only for judges.

4.

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VII. Other information

1-4.

The required material has not been prepared yet.

5.

The Ministry of Social Security and Labour of the Republic of Lithuania, acting as Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction (Vivulskio st. 11, LT-03610, Vilnius, tel. (8~5) 266 4200, fax (8~5) 266 4209, E-mail: tpost@socmin.lt.) and Bailiffs Chamber of Lithuania (Konstitucijos ave. 12 - 214, LT-09308, Vilnius, tel. (8~5) 275 00 67, fax (8 ~5) 275 00 68, E-mail: asta@alar.lt) are the institutions which may provide the addition information on the enforcement of the return orders, if needed.

6.

In our opinion, formulation of the principles of enforcement of the child's return orders according to the Convention of 1980 in Lithuania should also include the matters of enforcement of orders related with surrender to the applicant of unlawfully removed children under the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

7.

According to our information there are no indicated changes.

VIII. Orders granting rights of contact/access/visitation

Enforcement of contact orders under the Convention of 1980 is subject to the same provisions likewise child surrender orders.