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**National Report: Lithuania**

**Research Project:** Protection of international families with links to the European Union post-Brexit: Collaborative Scotland-EU partnership

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Hague Conventions, which are researched in this report:

1. **Convention of 25 October 1980 on the Civil Aspects of International Child Abduction**

/ “*Konvencija dėl tarptautinio vaikų grobimo civilinių aspektų*”. In force in Lithuania since 1/09/2002

1. **Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children**

/ “*Konvencija dėl jurisdikcijos, taikytinos teisės, pripažinimo, vykdymo ir bendradarbiavimo tėvų pareigų ir vaikų apsaugos priemonių srityje*”. In force in Lithuania since 1/09/2004

1. Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations

/ “*1970 m. birželio 1 d. Hagos konvencija dėl santuokos nutraukimo ir separacijos pripažinimo*”. Lithuania is not a party to this Convention

1. **Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance**

/ “*2007 m. lapkričio 23 d. Protokolas dėl išlaikymo prievolėms taikytinos teisės*”. Lithuania is bound by the EU accession. 1/08/2014

1. Convention of 13 January 2000 on the International Protection of Adults

/ “*2000 m. sausio 13 d. Konvencija dėl tarptautinės suaugusiųjų apsaugos*”. Lithuania is not a party to this Convention

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## **General questions**

1. **Are there any data available in your jurisdiction on the number of international family cases involving EU Members States and international family law cases involving third States? If so, please briefly outline the data.**

Data on international family cases involving EU Members States and international family cases involving third states is not collected in Lithuania. After the desk search, I also contacted the National Judicial Administration to verify this, and they confirmed that there is no collected data on cross-border family cases (family proceedings where one of the parties is a foreigner or one or both of the parties live abroad).

However, we can get some idea from the statistics. For instance, as to divorce cases, according to statistics, divorce numbers with foreign nationals in recent years were as follows[[1]](#footnote-1):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Year | Total number of divorces | Both Lithuanian citizens | One of the spouses is EU citizen | One of the spouses is non-EU citizen |
| 2021 | 7 822 | 6 974 | 204 | 562 |
| 2020 | 7 544 | 6 848 | 135 | 449 |
| 2019 | 8 683 | 7 780 | 219 | 556 |
| 2018 | 8 640 | 7 799 | 203 | 545 |
| 2017 | 8 518 | 7 726 | 188 | 530 |

As there was no possibility of out-of-court divorces in Lithuania until 2023, all divorce cases that proceeded in Lithuania had to reach courts (divorce before the notary is foreseen only as of 1 January 2023).[[2]](#footnote-2)

As for family cases involving children, the majority of them reach social services led by the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour, therefore, it is worth to look at their statistics. According to the Annual Report[[3]](#footnote-3), in 2021, the Service received 232 notifications concerning 322 children in foreign countries and Lithuania who were in need of international protection measures. In 2021, out of 232 notifications, 165 concerned 228 children (71%) in foreign countries who were in need of international protection measures and 67 concerned 95 children (29%) in Lithuania who were in need of international protection measures. Almost half of the situations concern the EU countries, and half – non-EU countries. As for non-EU countries, around 80-85 percent of cases were linked to the UK, and the rest (just a few cases per state) – concerned Norway, Belarus, Russia, the US, the Philippines, and Nigeria.

The State Child Rights Protection and Adoption Service also performs the functions of a central authority for the fulfilment of the obligations laid down in the 1980 Hague Convention and the 1996 Hague Convention, as well as in the Regulation Brussels IIter. In 2021, the Office received 29 applications for the return of children allegedly abducted from Lithuania and 16 applications for the return of children allegedly abducted to Lithuania. In the cases of children allegedly abducted from Lithuania, most of the children were removed to the UK (12 to England and 1 to Northern Ireland out of 38). Only 4 other cases were linked to non-EU countries. The UK was also the country from which the majority of allegedly abducted children came from.

In addition to reported data, a search on cross-border family cases was made in the official case law database LITEKO.[[4]](#footnote-4) For the period 1/1/2021-31/12/2021 the search engine gave 3751 decisions. When the search term “foreign” was included (a term typically appearing in cases with a foreign element, e.g. respondent who lived abroad, or the property was in a foreign state), 472 cases were listed. However, the search engine does not give the option to filter the cases by country involved.[[5]](#footnote-5)

1. **How is the adjudication of international family law cases organised in your jurisdiction?**

The court system of the Republic of Lithuania is made of courts of general jurisdiction and courts of special jurisdiction. The Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*), the Court of Appeal of Lithuania (*Lietuvos apeliacinis teismas*), the regional courts (*apygardų teismai*) and the district courts (*apylinkių teismai*) are courts of general jurisdiction dealing with civil and criminal cases. District courts also hear cases of administrative offences. The regional courts, the Court of Appeal, and the Supreme Court of Lithuania have the Civil Division and the Criminal Division. The Supreme Administrative Court of Lithuania (*Lietuvos vyriausiasis administracinis teismas*) and Regional administrative court (*Regionų apygardos administracinis teismas*) are courts of special jurisdiction, and they do not deal with family cases.[[6]](#footnote-6) There are no specialised family courts in Lithuania.

Family law cases fall under the category of civil cases and are dealt with by courts having jurisdiction in civil cases. Article 25 of the Lithuanian Code of Civil Procedure[[7]](#footnote-7) establishes that all civil cases in Lithuania are heard by district and regional courts as courts of first instance. However, in international child abduction cases, jurisdiction lies with the Vilnius Regional Court, its ruling can be appealed to the Court of Appeal.[[8]](#footnote-8)

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

## Article 13(1)(b)

1. **Are you aware of how often the “grave risk of harm” defence under Article 13(1)(b) is used successfully in your jurisdiction? If so, please comment on the frequency of successful defences under Article 13(1)(b) in your jurisdiction.**

In international child abduction cases, jurisdiction lies with the Vilnius Regional Court acting as a court of the first instance. Its rulings can be appealed to the Court of Appeal.

The search engines gave 6 relevant court rulings rendered in 2018-2022, where Article 13(1)(b) of the Hague Convention was cited as a defence in the cases on the return of the child. From those rulings, 5 of the decisions were issued in 2022 and one in 2019. It should be noted that this is just a part of all abduction cases as some court decisions are not made public due to the non-public nature of the case (earlier, before GDPR came into force, there were more decisions accessible with more information in them; currently, many decisions are not published and a lot of information is deleted from them).

I have also contacted the Court of Appeal to verify this information. The Court of Appeal has presented me with a list of 37 decisions in child abduction cases (giving me numbers of the cases) that the Court of Appeal adopted in 2018-2022. Most of the cases, however, were not public and I could not find them using a public search engine. Nevertheless, if we look at the publicly available cases of the year 2022 only, “grave risk of harm” defence was referred at least in 5 out of 12 child abduction cases.

The table below provides information on the cases where Article 13((1(b) of the Hague Convention defence was used, noting whether this defence was successful. Some of those cases are cited in the Report below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Date** | **Case** | **Country** | **Art 13(1)b defence successful?** |
| 1 | 2022 | Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 26 July 2022 Civil case No. e2-816-407/2022 | UK | No  The court ordered return. |
| 2 | 2022 | Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 15 June 2022 Civil case No. e2-670-330/2022 | UK | No  The court ordered return. |
| 3 | 2022 | Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 22 April 2022 Civil case No. e2-474-790/2022 | UK | No  The return was refused on the basis of Article 13(2) of the HC |
| 4 | 2022 | Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 31 March 2022 Civil case No. e2-369-1120/2022 | UK | No  The court ordered return. |
| 5 | 2022 | Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 24 March 2022, Civil case No. e2-362-910/2022 | UK | Yes  (but together with Article 12 of the HC) |
| 6 | 2019 | Vilnius Regional Court (Vilniaus apygardos teismas), 12 February 2019, Civil case No. en2-2537-275/2019 | Italy | No  The return was refused on the basis of Article 12(2) of the HC |

As seen from the table above, only in one case “grave risk of harm” defence under Article 13(1)(b) was used successfully, though together with Article 12. I should note, however, that it is likely that the cases where “grave risk of harm” defence was successfully invoked, especially due to domestic violence, might be seen as more sensitive cases and this could lead to those cases being made not accessible to public.

1. How has the “grave risk of harm” defence under Article 13(1)(b) been interpreted by the courts of your jurisdiction? Are there any notable differences in your jurisdiction that you are aware of as opposed to relevant case-law of the UK Supreme Court[[9]](#footnote-9) and/or the European Court of Human Rights?[[10]](#footnote-10)

The Supreme Court of Lithuania has provided a general definition of ‘grave risk of harm’ exception.[[11]](#footnote-11) It ruled that the ‘grave risk of harm’ referred to in Article 13(1)(b) of the 1980 HC “includes ultimate situations, where a child would not be able to develop normally in the Member State of origin due to the fact that the holder of parental rights and responsibilities does not exercise or exercise inappropriately his/her rights and obligations, and there is a ground to believe that such behaviour would not change in the future (the persons acts inappropriately in the appearance of a child, abuses alcohol, uses drugs or psychotropic substances, etc.) or due to absence of objective conditions for the development of a child in the Member State of origin (e.g. state of war)”. This definition is a well-established case law and is often cited in courts’ decisions.

In Lithuania, the ‘grave risk of harm’ defence was commonly invoked in cases where domestic violence was at issue, or a small child might have been separated from his/her mother due to the return. For instance, in an earlier case before the Court of Appeal of Lithuania, there was no doubt that the mother had indeed abducted the child from the UK, where the family used to live, to Lithuania, her state of origin. However, the mother proved that the father of the child was violent towards her and other persons, often in front of the child, and his actions were hard to foresee. The court ruled that there was a grave risk of physical or psychological harm.[[12]](#footnote-12)

In a recent case[[13]](#footnote-13), in addition to domestic violence, the negative consequences of the separation of a small child from the mother were noted. The couple (not married) lived in the UK with their newborn son. When the baby was one month old, after an incident of domestic violence in November 2020 (registered with the police), the mother moved out and lived at her friend's house. In July 2021, the father with the mother and the child went to Lithuania, and the mother with the child did not return to live in the UK. The court of the first instance ruled that no abduction took place as the child was very small and had his registered residence in Lithuania. On appeal, the court confirmed that the child abduction took place. However, the court noted that the child only had lived in the UK for the first 9 months of his life. The court considered that there is insufficient reason to conclude that a child of 9 months of age perceived his normal living environment as living in the UK, since a child of that age does not normally have strong social ties linked to a specific place of residence and is primarily concerned with his immediate family, who provide him with the necessary daily needs and a sense of physical and emotional security. According to the evidence, the minor child of the parties has been mainly cared for by his mother since his birth and has had a very strong emotional bond with her. In these circumstances, stated the court, the return of the child to the UK would only be possible with the mother (and, as a result, with her other two minor sons from her previous relationship). There was no evidence in the case to suggest that the mother would be in a position to provide the necessary living conditions for herself and her minor children if she were to return to the UK with the three children (there is no detailed analysis as to this in the judgement). Moreover, when the parents lived in the UK, there were pre-trial investigations initiated for assault, bodily harm, violent behaviour, harassment, etc. The decision to refuse the return was adopted, it was based on Article 12 and Article 13(1)b of the Hague Convention.

In another interesting recent case[[14]](#footnote-14), the spouses (the mother – Lithuanian, the father – foreign nationality) had two minor children and lived in the UK. In July 2021, the mother removed the children to Lithuania. The father started abduction proceedings, and in January 2022 the case reached Lithuanian courts. The first instance court ordered the return of children. On appeal, the mother argued that children like living in Lithuania and Article 12 of the Hague Convention should be applied. Referring to Article 13(1)(b), the mother noted that if the children were returned to the UK, there was a risk of physical or psychological harm to the children, or the risk of being placed in another intolerable situation. In her view, the father was not able to take care of the children himself, he was very strict and categorical in his parenting (her arguments: he is of different religion and forbids eating some types of meat, without her agreement he performed their son’s circumcision). Such actions, according to the mother, amounted to psychological violence against the children. The Appeal Court did not agree. It ruled that none of the circumstances cited by the mother (prohibition to eat pork, circumcision of the genitalia of the boy) was such as to constitute extreme cases which would prevent the normal development of the minor children on return to the UK. These circumstances were only related to their father's religious and cultural requirements. There was no evidence that the father has failed to take proper care of the children, has behaved inappropriately in front of them, has abused alcohol, drugs or psychotropic substances, or has caused them irreparable harm by other inappropriate acts during the time the family has been living in the UK. The court thus refused to apply ‘grave risk of harm’ exception.

1. Are you aware of cases in which Article 13(1)(b) has been interpreted inconsistently within your jurisdiction? If so, please briefly elaborate.

Over the last 5 years, Article 13(1)(b) was used only in 6 publicly available cases. When reading them, I was not able to identify any inconsistency in the interpretation of Article 13(1)(b). The judges seem to follow the definition of the ‘grave risk of harm’ as cited above.[[15]](#footnote-15)

1. Please consider Article 13(1)(b) in conjunction with Article 11(4) of the Brussels IIa Regulation.[[16]](#footnote-16) Can you identify a difference in the treatment of the grave risk of harm defence in intra-EU and non-intra EU cases? What do you consider to be the most problematic points?

As to a difference in the treatment of the ‘grave risk of harm’ defence in intra-EU and non-intra EU cases, in intra-EU cases the EU regulations are cited; however, I have not noted a major difference in the interpretation or motivation of the courts. What can be noted, however, is that Lithuanian courts rarely analyse the question of ‘protective measures’ or ‘adequate arrangements’ in cases where ‘grave risk of harm’ exception is found to exist.

As for other problematic points, Lithuanian courts sometimes use a different path to refuse the return – in addition to Article 13(1)b they invoke Article 12(2) of the Hague Convention (if one year has elapsed since the unlawful removal or detention and the child has adapted to the new environment). Interestingly, the Lithuanian courts ignore the one-year term prescribed by the Hague Convention. In particular, the view of the Court of Appeal of Lithuania, “the significance of the one-year time limit referred to in Article 12 of the Hague Convention must not be assessed in isolation but in the context of the second paragraph of the recital in the preamble to the Hague Convention and the provisions of other international instruments. It must not be interpreted and applied in a formalistic manner, but must be taken into account in the light of the aim of the exception for the return of a child, namely, to ensure that the best interests of the child, who has adjusted to the child's new environment, are protected”[[17]](#footnote-17). Following such reasoning, the Court of Appeal of Lithuania when interpreting one year term have consistently ruled, that “this is a procedural and formal requirement” and can be ignored for the best interests of the child. As a result, a child (especially a young one), which is abducted just a few months ago might be not returned if it is established that he or she has integrated in Lithuania (speaks the language, goes to school, has friends and extended family, etc.) and it is in his/her best interest to continue residing here. Such a ground of refusal also excludes the possibility of applying the Brussels IIter regulation overruling procedure.

1. **Please consider Article 13(1)(b) in conjunction with Article 11(6)-(8) of the Brussels IIa Regulation.[[18]](#footnote-18) Has the application been smooth and explain why/why not?**

As Lithuanian courts rarely consider adequate arrangements and often refuse the return of a younger child, it is likely that there are foreign court decisions overruling Lithuanian non-return decisions. Perhaps the most famous example of this type of situation in Lithuanian practice was the CJEU *Rinau* case.[[19]](#footnote-19) However, as noted above, a court of the child’s habitual residence before the abduction, might not be in a position to apply Article 13(1)(b) in conjunction with Article 11(6)-(8) of the Brussels IIa Regulation as often Article 12 of the Hague Convention is used in Lithuania to refuse the return.

As to Lithuanian courts referring to the ‘overruling procedure’, I did not find any higher instance Lithuanian court judgement that would be referring to Article 11(6)-(8) of the Brussels IIa Regulation and overruling the non-return decision issued in another EU Member State.[[20]](#footnote-20) That this ‘overruling possibility’ was hardly ever used in Lithuania was also confirmed by the representative of the State Child Rights Protection and Adoption Service whom I contacted.

## Article 13(2)

1. Please consider Article 13(2) - the “child’s views.” What is the main approach in your jurisdiction in respect of matters such as the minimum age of the child to use this provision, possible automatic hearing of the child in non-intra EU cases, court’s approach to the hearing of the child (e.g., direct communication with the judge; through a child psychologist report; separate representation, etc.)? Please note any differences in approach between your jurisdiction and other jurisdictions that you are aware of.

International and EU instruments consistently state that the child's views should be heard according to his or her age and maturity. However, neither the UN Convention on the Rights of the Child, Council of Europe documents, the Charter of Fundamental Rights of the European Union, nor the Brussels IIter Regulation provides a clear indication of the age at which a child should be considered to have attained the appropriate age and maturity. On the contrary, the UN Committee on the Rights of the Child considers that such an age limit is even undesirable.[[21]](#footnote-21)

Countries have very different approaches and practices in this respect. Some countries do not have a minimum age at which a child should be heard (e.g. Croatia, Poland). In other countries, on the contrary, the legislation sets the age at which the child must be heard (Bulgaria and Romania: 10 years, Spain: 14 years, Finland: 15 years). However, in the latter countries, children below such age may also be heard at the discretion of the court.[[22]](#footnote-22)

In Lithuania, the law does not set an age limit for children to be heard, so it is left to the court to assess whether the child is able to formulate and express his or her thoughts. The law only refers to maturity and ability to formulate views. For instance, Article 3.164 of the Civil Code of the Republic of Lithuania (Participation of a minor child in the safeguarding of his/her rights) establishes that when any matter concerning the child is being decided, the child, who is able to formulate his/her own views, must be heard directly or, if this is not possible, through a representative, and his/her wishes must be taken into account in the decision-making process, unless this is contrary to the child's best interests. The wishes of the child must be taken into account when deciding on the appointment of a guardian or adoption. In addition, Article 380 of the Code of Civil Procedure (Children's participation in court hearings) provides that when any matter concerning a child is being decided, a child who is able to formulate his or her views must be heard directly or, if this is not possible, through a representative. The child's views must be taken into account in the decision, provided that this is not contrary to the child's best interests. The child's views may be expressed orally, in writing or in any other way of the child's choice.

Reiterating the law, the Supreme Court of Lithuania underlines that a child's opinion must be assessed not on the basis of the child's age, but on the basis of the child's maturity.[[23]](#footnote-23) Consequently, in each case, the question of whether the child is capable of forming an independent opinion is assessed on an individual basis, focusing not on the age of the child, but on the maturity of the child concerned. If the court finds that the child is capable of forming an independent opinion, it is obliged to hear the child.

In child abduction cases, children of school age seem to be always heard, however, when children are younger, their objection to being returned is less likely to be taken into account. For instance, in a recent case, the court cited the report of social services which, after hearing the children who were aged 6 and 10, concluded that they were not of the age and maturity to make a personal and independent decision on their own as to whether to reside permanently in one or another country, and to be able to understand the consequences of that decision in the long term.[[24]](#footnote-24) On the other hand, in another case a 7 year old child was heard (in fact he was heard three times by social services and was constantly objecting to the return) and his refusal was the basis to apply Article 13(2) of the Hague Convention. In the view of the court, although the child was only 7 years old at the time of the interviews, his maturity and ability to express his opinion made it reasonable for the court to take the child's opinion into account. Such a conclusion was based on the reports of social services which stated that the child was able to use simple sentences to express his/her wishes, needs, and ideas; that the child's comprehension skills were good for his/her age; that although the child was of a young age, the child's opinion should be taken into account; the child had a good memory for facts, and was able to express his or her own opinion; that he justified his wish to stay in Lithuania not only by making general statements, but also by giving reasons (he stated that he felt happy in Lithuania, that his family was in Lithuania, that Lithuania was his home).[[25]](#footnote-25)

It should be noted that when children are heard by social services, the social services often provide their opinion as to the maturity of the child. When children are heard directly in court, or when there are doubts as to their maturity, their opinion might be evaluated by a psychologist. For instance, in the case cited above, the psychologist issued a written report on the children's statements. In the report, the psychologist stated that the children's testimony raised doubts as to its objectivity in the light of the fact that they were young (6 and 10 y.o) and have been living with their mother for almost two years since the separation of their parents, from whom they may have picked up negative attitudes towards their father and a bias in relation to the dispute that had arisen between the two of them.[[26]](#footnote-26)

In practice, there are two ways of hearing the child's opinion: (i) directly at the court hearing; (ii) indirectly in court (by obliging the social services to hear the child's opinion, or by appointing a forensic expert). In general, in family cases the Supreme Court of Lithuania considers that the court should seek to hear the child directly if his age and maturity allow him to express his thoughts and formulate his answers.[[27]](#footnote-27)

In child abduction cases, when the case reaches the court, social services visit the family to draw the report on the situation and living conditions of the child in Lithuania; they also always hear the children (except very young ones who do not talk). If parents do not allow their children to be heard, the social services note that in their report and a court may oblige the parent to bring the child to court to be heard. Overall, children are typically first heard by social services, and then (less commonly for smaller children) they also may be heard in court if the court considers this necessary.

As a result, in Lithuania children are not always heard directly by judges in child abduction cases. In a recent Appeal Court case[[28]](#footnote-28), the children were heard by social services, which drafted the report (there is no information in the case on how old were the children, but reading the file one of them seemed to be under 5 years old while the other was school age). However, they were not heard directly by the first instance court; moreover, there was also no request from the mother to hear the children, and the mother did not challenge the social services report itself. On appeal, however, she claimed that it was the duty of the first instance court to hear the children. The Appeal Court noted that the mother, considering that the social services did not conduct a full hearing of the children, was entitled to request the first instance court to order the social services to conduct a re-hearing or to initiate a hearing of the children at a hearing. In appeal proceedings, in the view of the court, it was already unreasonable to hear the children, and it would unreasonably delay the proceedings and would be inconsistent with one of the fundamental objectives of the 1980 Hague Convention, namely that the courts should deal expeditiously with the issue of the return of the children to their country of origin and to ensure their prompt return (Articles 1 and 2 of the Hague Convention). The Court of Appeal also referred to the case law of the European Court of Human Rights (ECtHR) that recognises that the court should not be obliged to hear the child at all times at the hearing and should have the discretion to assess the need for a hearing in the light of the particular circumstances of the case and the age and maturity of the child concerned.[[29]](#footnote-29) The Court of Appeal noted that the case law of the Court of Justice of the European Union (CJEU) also takes the view that the court, which has to decide on the return of the child, has the discretion to hear the child. The child's right to express his or her views does not create an absolute obligation for the court to hear him or her in every abduction case.[[30]](#footnote-30)

Hearing the child does require the court always to take child’s views into account. In a recent child abduction case[[31]](#footnote-31), the Court of Appeal repeatedly noted that Article 13(2) of the Hague Convention establishes the right, but not the obligation, of the court to take into account the views of the children when deciding on the return of the children to the State of origin. Article 13(2) of the Hague Convention provides that the court may refuse to order the return of the child if it finds that the child opposes the return and has reached an age and maturity at which it is appropriate to take his or her views into account, but this is for the court to decide.

## Article 4 – “habitual residence”

1. Is the concept of “habitual residence” interpreted differently in your jurisdiction in: 1.) intra-EU cases, 2.) cases involving third states, and 3.) cases involving states that are not contracting parties to the 1980 Convention (i.e., when applying national PIL rules)? Please explain.

The concept of habitual residence seems to have established itself in national case law, and overall it is interpreted consistently. The intra-EU cases, the courts usually cite the CJEU case law and the case law of national courts.

The Supreme Court has underlined that the Brussels IIa Regulation does not contain a concept of habitual residence and that the term ‘habitual residence’ should be interpreted autonomously, in particular in the light of the principles set out in the case law of the CJEU. [[32]](#footnote-32) The Supreme Court has summarised the CJEU guidelines as follows: account must be taken of the individual situation of the person and of the specific circumstances of the case in question[[33]](#footnote-33); the following criteria are relevant for the determination of habitual residence: (i) the duration of the stay in the territory of the State concerned; (ii) the regularity of the stay in the territory of the State concerned; (iii) the conditions of the stay in the territory of the State concerned; (iv) the reasons for the stay in the territory of the State concerned; (v) the citizenship; (vi) place of employment and conditions of work; (vii) the knowledge of the language; (viii) the family and social ties; and (ix) the other relevant circumstances.[[34]](#footnote-34)

Current national courts’ practice for establishing a child’s habitual residence seems to follow the usual patterns in other EU countries which is based on an extensive CJEU case law. This was not, however, always the case. When analysing the Lithuanian court practice of 2004-2015, it was observed that in cases where a Lithuanian family had been settled in a foreign country for several years, for example, in the UK, when they applied to the court in Lithuania for divorce and parental responsibilities, the courts used to decide that the child's habitual residence had remained in Lithuania. This was so even where the child attended an educational institution, the parents were employed, and the family had a home abroad. The parents used to claim that according to them, they were residing in a foreign State (most often – the UK) only temporarily until they earned enough money (often the temporary nature of the situation lasted for 5 years and more, with no concrete plans and no date for return to Lithuania). The courts considered that the child's habitual residence has remained in Lithuania because, for instance, the family owned real estate there, the child returned for holidays, the child spoke Lithuanian and was brought up in accordance with Lithuanian traditions. Even the Supreme Court has raised doubts about whether such conclusions were in line with the objectives and the nature of private international law in the field of family relations.[[35]](#footnote-35) Currently, such practice is changed.

Most of the child abduction cases where the concept of “habitual residence” was analysed, were related to other EU Member States, the UK or other European region states. Currently, the interpretation of the concept of “habitual residence” in cases related to the UK seems to follow the same line of reasoning as that in intra-EU cases. A limited number of cases involving countries that are not contracting parties to the 1980 Convention, makes it difficult to identify any differences in interpretation of the concept of “habitual residence” with regard to those states.

## **Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children**

## Jurisdiction

1. Do the courts of your country examine their jurisdiction *ex officio* or only if raised by the parties?

Pursuant to Article 782 of the Code of Civil Procedure, the court seised of the case must, on its own initiative, verify whether it has jurisdiction over a case with a foreign/international element. Moreover, according to well-established case law, the court, when deciding whether to institute proceedings, must check the jurisdiction of each individual claim in a family case with a foreign/international element.[[36]](#footnote-36)

Therefore, in the cases of parental responsibilities, the courts examine their jurisdiction *ex officio* and apply Brussels IIter Regulation – 1996 Hague Convention – bilateral agreements, or, if none of them applies, – national law. Usually, this is noted in a judgement using such a phrase: “[The Kingdom of Norway] has been a member of the 1996 Hague Convention since [2006], and therefore the Hague Convention, and not the national rules of jurisdiction, apply in the present case”.

1. Do you consider the approach taken by the courts of your country to be different from the approach taken in other countries, especially non-EU countries? Please mention any notable examples of case law that demonstrate the difference.

I am not aware of a different approach in other countries. In most cases, the jurisdiction of courts in parental responsibility cases is linked to the habitual residence of the child (Article 5 of the 1996 Hague Convention).

1. Is the process of determining jurisdiction by the courts of your country different intra-EU cases and cases involving third countries? Please mention any notable examples that demonstrate such differences.

Usually, non-EU countries that appear in Lithuanian family cases are European countries party to the 1996 Hague Convention (most often – the UK and Norway). From a brief analysis of the case law (which is limited, some of the cases are not public), it appears that the principles of establishing the jurisdiction (based on the habitual residence of the child) are similar to those applied in the cases linked to EU countries.

It should be noted that in relations with states with which Lithuania has concluded international legal assistance treaties, the international legal assistance treaty will be applied instead of the 1996 Hague Convention, unless a contrary declaration is made by the States Parties to a such bilateral treaty (Article 52 of the 1996 Hague Convention). Where a bilateral treaty is applied, it might grant priority to the child’s nationality over the habitual residence.

Going further than Lithuanian case law, one jurisdictional difference in intra-EU cases and cases involving third countries could be noted from the recent CJEU judgement in *CC* (Case C-572/21). In this case, the dispute on parental responsibilities concerned a child who, during the proceedings, transferred his habitual residence from Sweden to Russia. The CJEU reminded that in intra-EU cases, under Article 8(1) of the Brussels IIa Regulation (Article 7 of the Brussels IIter), jurisdiction in matters of parental responsibility is conferred on the courts of the Member State in which the child is habitually resident at the time the court is seised. This jurisdiction is retained throughout the proceedings (*perpetuatio fori* rule, that court does not lose jurisdiction even if there is a change in the place of habitual residence of the child concerned during the proceedings). However, this is not so when a child legally changes his or her habitual residence and moves to a third state. In *CC,* the CJEU ruled that Article 8(1) of the Brussels IIa Regulation, read in conjunction with Article 61(a) thereof, must be interpreted as meaning that a court of a Member State that is hearing a dispute relating to parental responsibility does not retain jurisdiction to rule on that dispute under Article 8(1) of that regulation where the habitual residence of the child in question has been lawfully transferred, during the proceedings, to the territory of a third State that is a party to the 1996 Hague Convention.

## Applicable law

1. Do the courts of your country apply applicable law rules *ex officio* or only if raised by the parties?

Brussels IIa (and Brussels IIter) Regulation only provides for rules concerning jurisdiction, recognition and enforcement of decisions in parental responsibility matters. However, it contains no rules as to the applicable law. The applicable law is regulated by an international legal instrument – the 1996 Hague Convention. Since 2016, when Italy ratified it, all EU Member States are the Contracting States of the 1996 Hague Convention.

Under Article 15 of the 1996 Hague Convention, the application of *lex fori* is the general rule. Only in exceptional cases, when protection of the person or the property of the child so requires, the court may also take into consideration the law of another State, with which the situation has a substantial connection. Such a link between jurisdiction and applicable law simplifies the determination of applicable law as establishing jurisdiction in a country will in most cases mean that the law of that State will be applied to parental responsibilities. In all cases of parental responsibilities that I came across, Lithuanian law was applied.

See also the answer to question 18.

It can also be noted here that Lithuanian courts not only apply applicable law rules *ex officio* in family cases, but, under the law, they should be pro-active in family cases. In line with Article 376 of the Code of Civil Procedure (Role of the Court), the court seised of the case has the power to take evidence not relied on by the parties on its own initiative if, in its opinion, it is necessary for a fair determination of the case. The court must take measures to reconcile the parties and to protect the rights and interests of the children. The court may, on its own initiative, grant interim measures of protection, order compensation for damages, substitute one interim measure for another, or revoke interim measures of protection. Furthermore, the court, taking into account the circumstances of the case which form the basis of the claim and which have come to light at the hearing, shall have the right to exceed the claims brought, i.e. it may grant more claims than were brought, and may decide on claims which were not brought but which are directly related to the subject matter of and the grounds for the claim brought. If one of the alternative claims provided for by the law is brought in the case, the court, if it finds that there are no grounds for granting the claim, may, on its own initiative, apply an alternative remedy provided for by law for the protection of the person's (or the child's) rights or legitimate interests.

1. How do you consider the approach taken by the courts of your jurisdiction to be different from the approach taken in other jurisdictions, especially non-EU jurisdictions? Please mention any notable examples of case law that demonstrate the difference.

I am not aware of a different approach in other countries. Article 15 establishes one main connecting factor (*lex fori* which in many cases will correspond to the habitual residence of the child), which applies unless the child changes his or her habitual residence.

1. Do you consider the process of determining applicable law by the courts of your jurisdiction to be different in intra-EU cases and cases involving third states? If so, what are the differences? Please mention any notable examples that demonstrate such differences.

Habitual residence of the child is the main connecting factor for jurisdiction in parental responsibility cases for intra-EU and 1996 Hague Convention countries. After establishing jurisdiction, *lex fori* would be the applicable law. For other countries, if a Lithuanian court would establish its jurisdiction in a parental responsibility case, it would most likely proceed with Lithuanian law (unless a bilateral treaty would provide it differently).

## Recognition and Enforcement

1. How does the ease of recognition and enforcement of foreign judgments compare between intra-EU (Brussels IIa Regulation) and third states’ judgments (1996 Convention)? Are you aware of any examples of relevant cases decided by the courts of your jurisdiction?

I am not aware of any considerable differences thereof.

## International cooperation of authorities

1. Please comment on how international cooperation is approached in your jurisdiction, noting any case law or other secondary sources you consider important. E.g. are separate or the same authorities responsible for these instruments?

As noted above, the State Child Rights Protection and Adoption Service performs the functions of a central authority for the fulfilment of the obligations laid down in the 1980 Hague Convention and the 1996 Hague Convention, as well as in Regulation Brussels IIter. I have contacted a representative of the State Child Rights Protection and Adoption Service to get her opinion on this question. I was informed, that in all EU and 1980 and 1996 Hague Convention cases the central authorities contact their counterparts directly, with long-standing relations formed with countries from where most cases come. In some situations, such direct contacts are extended to the local level.

## **Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations**

1. ~~If relevant, please comment on the use, operation, and notable case law concerning the 1970 Convention in your jurisdiction. Otherwise, please comment on what you consider to be the obstacles to your jurisdiction becoming a Contracting Party to the Convention.~~

Lithuania is not a party to this Convention.

## **Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance**

1. We note that there is limited case law in the UK interpreting the 2007 Maintenance Convention. Are you aware of any case law that links to the UK or is otherwise significant for this jurisdiction? If so, please briefly outline such case law.

The case law in Lithuania is also limited. The case law search engine has identified only two recent cases where the 2007 Maintenance Convention was applied. One of the cases related to Belarus[[37]](#footnote-37) and one – to the United States.[[38]](#footnote-38) Both cases concern the interpretation and application of the legal norms governing the recognition and enforcement of foreign judgments in Lithuania.

In the case related to Belarus, [[39]](#footnote-39) there were several questions covered. The first was related to the relationship between the 2007 Hague Convention and the bilateral treaty between Belarus and Lithuania. The second question analysed the procedure for the recognition and enforcement of judgments under the 2007 Hague Convention and the procedure for appeals against judgments given in the course of that procedure. The third question examined the guarantee of the right to due process in court proceedings in Belarus in the context of the decision on recognition and enforcement of a judgment in the Republic of Lithuania.

The case related to the US[[40]](#footnote-40) examined the legal framework, the documents to be produced, the substance of the procedure and the procedure for appealing against the recognition and enforcement of part of a US judgment.

## Applicable law (especially where different from the *lex fori*)

1. We understand that a challenging point can be establishing the contents of foreign law when the applicable law is different from the *lex fori*. For example, when a party purports to apply foreign law in UK courts, that party must plead foreign law as facts before the court. What are the methods and techniques used by the courts of your jurisdiction to establish the contents of foreign law?

Though this question is put under the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, I will answer it as a general question.

According to Article 1.10(1) of the Civil Code, foreign law is applicable to civil relations when it is provided for by (i) international treaties of the Republic of Lithuania; (ii) agreements between the parties; or (iii) laws of the Republic of Lithuania.

Article 1.12 of the Civil Code and Article 808 of the Code of Civil Procedure sets out the following rules for determining the contents of foreign law:

1. In cases provided for by international treaties or laws of the Republic of Lithuania, foreign law shall be applied, interpreted and its content determined by the court *ex officio* (on its own initiative). According to the case law, this rule is also applied in case the application of foreign law is provided by EU law.[[41]](#footnote-41)
2. If the application of foreign law is provided for by an agreement between the parties, all evidence relating to the content of the applicable foreign law shall be submitted by the party invoking the foreign law, taking into account the official interpretation of that law, the practice of its application and the doctrine in the relevant foreign state. At the request of a disputing party, the court may assist him/her in gathering information on the applicable foreign law.
3. If the court or the disputing party relying on foreign law fails to fulfil the obligation to provide evidence on the content of the foreign law, Lithuanian law shall apply.
4. In exceptional cases where it is necessary to take urgent interim measures to protect a person's rights or property until the law applicable to the dispute and its content have been determined, the court may resolve the immediate issues by applying Lithuanian law.

Thus, where the application of foreign law is determined by the agreement of the parties (e.g. in a matrimonial property agreement), the burden of proving the content of the foreign law rests with the parties; where the burden arises out of the Lithuania's obligations under international treaties, EU law or under national law, it is for the court to establish the content of foreign law. However, since determining the content of foreign law (through international cooperation, translations, etc.) can be extremely time-consuming, the Supreme Court suggests that even where the duty to assert the content of foreign law rests on courts, the courts should clarify to the parties the possibility of submitting their evidence on the content of the foreign law.[[42]](#footnote-42)

The Supreme Court lists the following ways in which a court can obtain information about the content of foreign law[[43]](#footnote-43):

1. Information on the legal systems of the EU Member States is available on the European e-Justice Portal. By logging on to this website and selecting the area of interest (for example, in divorce cases, selecting ‘Going to court’ and ‘Divorce’), the specific country whose law is to be consulted is then selected;
2. Information on the content of foreign law can be obtained in accordance with the provisions of the 1968 European Convention on Information on Foreign Law;
3. The content of the law of a foreign state with which an international legal assistance treaty has been concluded can be obtained through the legal aid assistance provided for in the treaty (if the treaty also includes the provision of information on the law in force in the country);
4. In cases where Lithuania and the state whose content of law is to be determined are not bound by any international agreement, the court may apply to the competent authority of the foreign state in accordance with the procedure laid down in Articles 801 to 803 of the Code of Civil Procedure.
5. The court may request the competent foreign authority (for example, a court) to provide information on the basis of goodwill.
6. If you are aware of case(s) where UK law (either the law of England and Wales or Scots law) was the applicable law, how did the court(s) interpret the said UK law?

I was not able to identify any family law case where UK law would be applied.

1. In the same context, do you consider the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters and/or the 1968 European Convention on Information on Foreign Law (‘the London Convention’) to be a useful tool?

In 2022, 1970 Convention was mentioned by Lithuanian courts in cases where evidence was needed from Switzerland and from Turkey (the cases are not family law cases). In earlier cases, on the basis of this Convention several other requests for legal assistance have been made to foreign ministries.[[44]](#footnote-44) It is hard to identify from the case law how useful this Convention was in practice (court decisions are not detailed in this regard), but they show that this Convention is being used from time to time.

Similarly, Lithuanian courts from time to time also refer to the 1968 Convention on Information on Foreign Law. For instance, in 2022, a court of first instance, in accordance with the 1968 Convention, requested the competent authorities of Spain to gather evidence on the content of Spanish law. It requested for the information on the rules of Spanish law relevant to the dispute between the parties and on the practice of interpretation and application of those rules, by means of extracts from the legislation and the case law.[[45]](#footnote-45) In particular, the court asked such questions as what is the limitation period for actions for compensation for damage to property sustained in an accident in Spain? When does the limitation period begin to run for claims for compensation for damage to property caused by an accident in Spain? What circumstances suspend the limitation period for claims for compensation for damage to property caused by an accident in Spain? From what date does the limitation period continue to run after its suspension?, etc. In 2020, for instance, requests for information on the basis of 1968 Convention were also made to the UK authorities.[[46]](#footnote-46)

Please note that the cases mentioned above were not family cases.

## Recognition and enforcement

1. If you are aware of case(s) where recognition and enforcement was sought in jurisdictions outside the EU, please comment on the procedural or other practical differences between the Brussels IIa Regulation and the 2007 Maintenance Convention regimes. Where relevant, please comment also on pertinent cases under the Lugano Convention.

I am not aware of such cases.

## **Convention of 13 January 2000 on the International Protection of Adults**

Lithuania is not a party to this Convention.

~~Recognition and enforcement~~

1. ~~Please comment on how recognition and enforcement of measures of protection are approached in your jurisdiction. If possible, please refer to examples from case law.~~
2. ~~Please comment on how and to what extent foreign powers of attorney are capable of recognition and enforcement in your jurisdiction. If possible, please refer to examples from case law.~~

~~Applicable law~~

~~We note that determining the law applicable to~~ *~~ex lege~~* ~~powers of representation highlights several existing issues, which are explored in the following questions.~~

1. ~~Is it possible for~~ *~~ex lege~~* ~~powers of attorney to arise under the 2000 Convention in your jurisdiction?~~
2. ~~How is the above question classified in your jurisdiction, as a matter of personal law or protection?~~
3. ~~What do you consider the greatest pitfall of the 2000 Convention to be in this regard?~~

## **Cooperation and training**

1. Do you consider the cross-border cooperation between courts and other authorities involved in handling international family cases under the Hague Conventions listed above to be efficient?

In intra-EU cases and in the case of Hague Countries with whom cooperation is regular (the UK, Norway), the cooperation seems to work well. It is more complicated with regard to the countries that are appearing less often in family cases.

1. Can you compare its functioning among EU Member States on one hand and between EU Member States and third states on the other hand?

I do not have precise information in this regard. See also my answer to question 27.

1. Is the usage of modern technologies in cross-border cooperation equally represented in EU and non-EU cooperation?

In the EU, several useful tools have been developed, such as European Judicial Network[[47]](#footnote-47) or European Judicial Atlas in civil matters[[48]](#footnote-48). In non-EU cooperation, however, most of the cooperation goes through the ministries of justice using official communication means.

1. What steps should be taken to make cross-border cooperation more efficient, timely and successful?

Recently many online tools have been developed to foster cross-border cooperation of institutions. However, personal contacts should not be forgotten. Therefore, I see international events for judges and their research teams as necessary – not only to exchange views on national practices, to learn from each other and get informed about challenges faced by colleagues abroad but also to strengthen personal contacts that would encourage to refer to cross-border cooperation when needed.

1. Is judicial training in international family matters contributing to better understanding, interpretation and uniform application of EU Regulations and/or Hague Conventions listed above?

Judicial training is always important and should be organised and implemented regularly. Regretfully, since 2020 many training courses have been held online, which, in my opinion, considerably lowers their effectiveness. In my opinion, and as confirmed by the Supreme Court Research Department, in Lithuania, there are not many training events held in the area of private international family law.

Another issue to be mentioned in this context is the training of social services working with children. These are important institutions in cross-border family cases involving children, therefore, training on international family law should also include relevant social services. In Lithuania, social services are not receiving much training on international family law, and the representative of the State Child Rights Protection and Adoption Service whom I contacted noted that only a few recent training courses included social services (two of those training were organised by the EU co-funded projects).

1. Is information on the Hague Conventions listed above accessible to judges and other relevant officials in your country? For example, is the information available to them in their language, and do they possess skills to find the information in the digital format from reliable online sources?

Yes, the information is accessible; the instruments applied in Lithuania are translated into Lithuanian, and there are several Supreme Court reviews explaining the instruments and their application. Moreover, the Ministry of Justice has compiled a useful list that can be referred to find sources.[[49]](#footnote-49) However, there are not many academic publications in the Lithuanian language as in recent years many academics switched to writing in English (publications in rated journals or books of recognised publishers are valued more for their career purposes).

I also believe that finding information in digital format is not an issue, especially as the higher courts (e.g. Supreme Court, the Court of Appeal) have their research units helping the judges, which is also important when searching for information.

1. ‘Ištuokos - Oficialiosios Statistikos Portalas’ <https://osp.stat.gov.lt/lietuvos-gyventojai-2022/santuokos-ir-istuokos/istuokos> accessed 2 December 2022. [↑](#footnote-ref-1)
2. In 2021, first instance Lithuanian courts rendered 8958 decisions in total in divorce cases. There is no reported data on the number of family cases in appeal courts (only the number of civil cases is available). ‘Statistika - Lietuvos Teismai’ <https://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/statistika/106> accessed 2 December 2022. [↑](#footnote-ref-2)
3. Annual Report (2021) of State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour. Available at: https://vaikoteises.lrv.lt/uploads/vaikoteises/documents/files/Administracinė%20informacija/Ataskaitos/Metinės%20veiklos%20ataskaitos/2021%20m\_%20veiklos%20ataskaita%20.pdf [↑](#footnote-ref-3)
4. LITEKO; Searched for the following categories: 2021; 3.1 Matters relating to marriage; 3.2 Matters relating to the rights and obligations of children and parents; 3.3 Matters relating to the maintenance of other family members; 3.1.1. 3.1.2. reduction of the age of marriage; 3.1.3. annulment of marriage; 3.1.4. divorce by common consent of both spouses; 3.1.5. divorce at the request of one spouse; 3. 3.1.6. the dissolution of the marriage due to the fault of one or both spouses; 3.1.7. the separation of the spouses; 3.1.8. the division of the matrimonial property; 3. 3.1.9. the modification or dissolution of the marriage contract; 3.1.10. the civil liability of the spouses for their property obligations; 3.1.11. other proceedings relating to marriage; 3.2.1. 3.2.2.3. on the recognition of paternity; 3.2.3. on the contestation of paternity; 3.2.2. on the establishment of paternity; 3.2.4. on the name of the child; 3.2.5. on the establishment of the child's place of residence; 3.2.6. 3.2.7. the child's contact with close relatives; 3.2.8. the separation of children and parents; 3.2.9. the limitation of parental authority for a limited period; 3. 3.2.10. on the indefinite limitation of parental authority; 3.2.11. on the rights and obligations of parents with regard to property belonging to their children; 3.2.12. on the award of maintenance for minor children; 3.2.13. on the obligation of parents to maintain their children after they have reached the age of majority; 3.2.14. on the obligation of adult children to maintain their parents; 3.2.15. on other cases concerning the rights and obligations of children and parents; [↑](#footnote-ref-4)
5. It should be noted that there are three main case law search engines in Lithuania. The first one, LITEKO, is the main one used by courts, however, it is excellent to access concrete cases, but does not give many options when researching cases for academic purposes. Another engine is INFOLEX, a commercial engine, typically used by lawyers. The third one is E-TEISMAI, which was a very handy engine until 2020, however, no cases are included after that date. [↑](#footnote-ref-5)
6. See further about Lithuanian judicial system in the official Lithuanian judicial system website: <https://www.teismai.lt/en/courts/judicial-system/>. [↑](#footnote-ref-6)
7. Valstybės žinios, 2002-04-06, Nr. 36-1340. [↑](#footnote-ref-7)
8. Lietuvos Respublikos civilinį procesą reglamentuojančių Europos Sąjungos ir tarptautinės teisės aktų įgyvendinimo įstatymas. Valstybės žinios, 2008-11-29, Nr. 137-5366 [↑](#footnote-ref-8)
9. In particular, *Re D (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, *Re E* [2011] UKSC 27, and *Re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10. [↑](#footnote-ref-9)
10. In particular, *X v Latvia* Application no. 27853/09, Grand Chamber [2013]. [↑](#footnote-ref-10)
11. Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) 25 August 2008, No. 3K-3-403/2008 [↑](#footnote-ref-11)
12. Court of Appeal of Lithuania (Lietuvos Apeliacinis teismas), 31 January 2013, No. 2-753/2013 [↑](#footnote-ref-12)
13. Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 24 March 2022 Civil case No. e2-362-910/2022 [↑](#footnote-ref-13)
14. Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 31 March 2022 Civil case No. e2-369-1120/2022 [↑](#footnote-ref-14)
15. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 25 August 2008, Civil case No. 3K-3-403/2008. [↑](#footnote-ref-15)
16. Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, Article 27. [↑](#footnote-ref-16)
17. For example, the Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 3 January 2013, civil case No 2-6/2013; Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 11 February 2014, civil case No 2-372/2014; Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 5 October 2015, civil case No 2-1833-516/2015; Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 30 December 2016, civil case No 2-2132-236/2016; Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 17 November 2017, civil case No 2-1955-178/2017. [↑](#footnote-ref-17)
18. Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, Article 29. [↑](#footnote-ref-18)
19. CJEU, *Rinau*, C-195/08 PPU, ECLI:EU:C:2008:406. [↑](#footnote-ref-19)
20. In this judgment, for instance, there is a reference to Article 11(7) made by a first instance court, but no futher analysis was made; the non-return decision of a foreign state court was not overruled, as in the custody case the court considered that the mother should remain the residential parent: Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 3 December 2020, Civil case No. e3K-3-483-611/2020. [↑](#footnote-ref-20)
21. https://www.unicef.org/lac/media/22071/file/Implementation%20Handbook%20for%20the%20CRC.pdf. [↑](#footnote-ref-21)
22. Ubertazzi, B. Hearing of the child (Articles 11(4), 23(a)). In Honorati, C.(ed.), *Jurisdiction in Matrimonial Matters, Parental Responsibility and International Abduction. A Handbook on the Application of Brussels IIa Regulation in National Courts*. Torino, Giappichelli, 2018. [↑](#footnote-ref-22)
23. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 29 May 2014, civil case No. 3K-3-308/2014. [↑](#footnote-ref-23)
24. Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 26 July 2022 Civil case No. e2-816-407/2022 [↑](#footnote-ref-24)
25. Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 22 April 2022 Civil case No. e2-474-790/2022 [↑](#footnote-ref-25)
26. Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 26 July 2022 Civil case No. e2-816-407/2022 [↑](#footnote-ref-26)
27. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 8 December 2016, civil case No. 3K-3-502-916/2016. [↑](#footnote-ref-27)
28. Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 31 March 2022 Civil case No. e2-369-1120/2022 [↑](#footnote-ref-28)
29. Judgment of the European Court of Human Rights (Grand Chamber) of 8 July 2003 in the case of Sahin v. Germany (Application No 30943/9)) [↑](#footnote-ref-29)
30. CJEU, Joseba Andoni Aguirre Zarraga v Simone Pelz (Case C-491/10). [↑](#footnote-ref-30)
31. Court of Appeal of Lithuania (Lietuvos apeliacinis teismas), 31 March 2022 Civil case No. e2-369-1120/2022 [↑](#footnote-ref-31)
32. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 29 December 2016, civil case No 3K-7-443-969/2016. [↑](#footnote-ref-32)
33. CJEU, Case A (C-523/07), paragraph 37. [↑](#footnote-ref-33)
34. CJEU, Case B. M. v. R. Ch. (C-497/10 PPU), paragraph 51 [↑](#footnote-ref-34)
35. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), An Overview of the Application of International and European Union Law to the Question of Jurisdiction on Family Proceedings. 2018 [↑](#footnote-ref-35)
36. When analysing Lithuanian case law, it could be noted that international situations occur more often between citizens of the Republic of Lithuania residing outside Lithuania than between persons of different nationalities residing in different states. [↑](#footnote-ref-36)
37. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 8 September 2022, civil case No e3K-3-289-421/2022. [↑](#footnote-ref-37)
38. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 2 July 2020, civil case No e3K-3-184-969/2020. [↑](#footnote-ref-38)
39. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 8 September 2022, civil case No e3K-3-289-421/2022. [↑](#footnote-ref-39)
40. Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas), 2 July 2020, civil case No e3K-3-184-969/2020. [↑](#footnote-ref-40)
41. Supreme Court of Lithuania, “Overview of the application of international and European Union law to the question of jurisdiction in family proceedings” (*Tarptautinės ir Europos Sąjungos teisės taikymo sprendžiant jurisdikcijos nustatymo klausimą šeimos bylose apžvalga)*. „Teismų praktika“ (43), 2016. [↑](#footnote-ref-41)
42. Supreme Court of Lithuania, “Overview of the application of international and European Union law to the question of jurisdiction in family proceedings” (*Tarptautinės ir Europos Sąjungos teisės taikymo sprendžiant jurisdikcijos nustatymo klausimą šeimos bylose apžvalga)*. „Teismų praktika“ (43), 2016. [↑](#footnote-ref-42)
43. Supreme Court of Lithuania, “Overview of the application of international and European Union law to the question of jurisdiction in family proceedings” (*Tarptautinės ir Europos Sąjungos teisės taikymo sprendžiant jurisdikcijos nustatymo klausimą šeimos bylose apžvalga)*. „Teismų praktika“ (43), 2016. [↑](#footnote-ref-43)
44. E.g. Panevezys regional court (Panevėžio apygardos teismas) 14 June 2016, No. e2A-439-227/2016 [↑](#footnote-ref-44)
45. Vilnius regional court (Vilniaus apygardos teismas) 12 May 2022, No. e2A-724-562/2022 [↑](#footnote-ref-45)
46. Vilnius regional court (Vilniaus apygardos teismas) 14 January 2020, No. 2A-93-803/2020 [↑](#footnote-ref-46)
47. https://e-justice.europa.eu/content\_european\_judicial\_network\_in\_civil\_and\_commercial\_matters-21-en.do [↑](#footnote-ref-47)
48. https://e-justice.europa.eu/321/EN/european\_judicial\_atlas\_in\_civil\_matters?init=true [↑](#footnote-ref-48)
49. https://tm.lrv.lt/lt/teisine-informacija/tarptautbendrad/teisinis-bendradarbiavimas [↑](#footnote-ref-49)