

ACCESS TO JUSTICE FOR CHILDREN: LITHUANIA

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The Lithuanian Parliament (the Seimas) ratified the CRC on 3 July 1995. The Constitution states that ratified international agreements are a constituent part of Lithuania's legal system.¹ In addition, according to the Law on International Treaties, ratified international treaties, such as the CRC, shall have the force of law in Lithuania.²

B. Does the CRC take precedence over national law?

No.

C. Has the CRC been incorporated into national law?

No. Although the CRC is not incorporated in Lithuanian law, the rights, freedoms and obligations of children are set out in the Law on Fundamentals of Protection of the Rights of the Child adopted in 1996, which is expressly based on the Convention.³ Its stated purpose is "the improvement of legal protection of children within the country, through establishment of principles in defence of the rights and freedoms of the child, co-ordinated with the Constitution of the Republic of Lithuania and international law norms and principles."⁴

D. Can the CRC be directly enforced in the courts?

Yes. As part of the national legal system the CRC can be and has been directly enforced by the courts.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

Yes. On at least one occasion the CRC has been cited in a district court in a case concerning custody arrangements for a child.⁵ The Supreme Court has also

¹ Constitution of the Republic of Lithuania 1992, Article 138, available at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

² Law on International Treaties of the Republic of Lithuania 1991, Article 12, available at: http://www.servat.unibe.ch/icl/lh02000_.html.

³ Law on the Fundamental Protection on the Rights of the Child 1996, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=382481&p_tr2=2.

⁴ Law on the Rights of the Child, Article 1.

⁵ L.S. v. N.V., Kedainiai District Court, 2-21-550/2011, summary available at: <https://www.crin.org/en/library/legal-database/lv-v-nv>.

rendered decisions citing the CRC in matters of international transfer of children,⁶ right to housing of children born out of wedlock,⁷ and ascertaining the paternity of a child.⁸

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Yes, in certain circumstances. If a child believes that his parents are abusing his rights, then the child may apply to a state institution for protection or, after attaining the age of 14, may bring the matter before a court.⁹ Furthermore, in considering any question related to a child, the child, if capable of formulating his or her views, must be heard directly or, where that is impossible, through a representative.¹⁰ The child's wishes shall be given paramount consideration when making a decision regarding the appointment of a child's guardian/curator or adoption of the child.¹¹

Where the violation amounts to a crime, there are no legal restrictions on a child to report a crime to the local police, or by filling in a report online, or by using the confidential telephone help lines.¹² Furthermore, a child victim's representative has a right to participate in the proceedings and help the child victim to defend his/her interests.¹³ By law, the legal representatives of a child crime victim can be parents, foster parents, guardians, or representatives of institutions mandated to take care of the victim.¹⁴

In 2000, the Seimas created a Children's Rights Ombudsperson responsible for investigating violations of children's rights, defending the rights and legitimate interests of children, and supervising the actions of public authorities in relation to children.¹⁵ The Ombudsperson can investigate complaints concerning acts or omissions that violate the rights of children, misuse of powers of officials or bureaucrats, acts of prosecutors or pre-trial investigation officers that violate the

⁶ *S. R., V. R. v. Lithuania*, 2009 06 26, 3K-3-314/2009, LAT, summary available at: <https://www.crin.org/en/library/legal-database/sr-vr-v-lithuania>.

⁷ *A.D. (R.Z.) v. V. D. (M.F.)*, 2008 10 09, 3K-3-383/2008, LAT, summary available at: <https://www.crin.org/en/library/legal-database/ad-rz-v-vd-mf>.

⁸ *I.B. v R.R.*, 2004 91 21, 3K-7-607/2004, LAT, summary available at: <https://www.crin.org/en/library/legal-database/ib-v-rr>.

⁹ Civil Code, Article 3.164, available at: <http://www.law.yale.edu/rcw/rcw/jurisdictions/euron/lithuania/frontpage1.htm>.

¹⁰ *Id.*

¹¹ *Id.*

¹² European Commission, *Study on children's involvement in judicial proceedings: Contextual overview for the criminal justice phase – Lithuania*, June 2013, at p. 9, available at: <http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Lithuania.pdf>.

¹³ Criminal Procedure Code, Article 50, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319053&p_query=&p_tr2= and European Commission, *Study on children's involvement in judicial proceedings*, at p. 14.

¹⁴ Criminal Procedure Code, Article 53 and European Commission, *Study on children's involvement in judicial proceedings*, at p. 15.

¹⁵ Ombudsperson for Children's Rights of the Republic of Lithuania, *Co-operation meeting on children's rights*, 29-30 March 2012, Tallinn, at 22, available at: http://oiguskantsler.ee/sites/default/files/ombudsperson_for_children_rights_lithuania_-_audrone_bedorf.pdf.

rights of children.¹⁶

In 2002, the Republic of Lithuania passed regulations under which municipal Child's Rights Protection Agencies can protect rights of the child and represent child's rights before courts.¹⁷

- B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

In general, children under the age of 18 must be represented by their parent, except where the parent has been declared legally incapable by a court judgement.¹⁸ Only children aged 14 or above can apply independently to the court for protection of their rights in cases where the child considers that his or her parents abuse his or her rights.¹⁹

- C. In the case of infants and young children, how would cases typically be brought?

For young children under the age of 14, Child's Rights Protection Agencies can bring actions before the court to represent the child's rights.

- D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Pursuant to Article 12 of the Law on State Guaranteed Legal Aid²⁰ minors who independently apply to courts for defence of their rights and qualify for protection may receive legal aid in the form of representation in court, regardless of property and income levels. Furthermore, legal aid is also provided in cases where representation is compulsory,²¹ such as when the accused in a criminal trial is a minor.²²

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There do not appear to be other conditions or limits on bringing cases in Lithuanian courts.

III. How can children's rights violations be challenged before national courts?

- A. If there is a potential violation of the Constitution or other principles established in

¹⁶ *Id.*, at 29.

¹⁷ *Second Periodic Report of Lithuania to the UN Committee on the Rights of the Child*, CRC/C/83/Add.14, 15 July 2005, para. 28, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f83%2fAdd.14&Lang=en.

¹⁸ Civil Code, Article 3.157, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=245495.

¹⁹ Civil Code, Article 3.164.

²⁰ Law on State Guaranteed Legal Aid 2009, available at: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_law_la_lit_en.pdf.

²¹ Law on State Guaranteed Legal Aid, Article 21

²² Criminal Procedure Code, Article 51.

domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Civil law claims can be filed in the regional or district courts, as explained in part IV.A.

The Constitutional Court has authority to decide whether a law or “other legal acts” adopted by the Seimas and the President are compliant with the Constitution and the laws.²³ However, petitions can only be submitted to the Constitutional Court by a State institution, a group of members of the Seimas or the Ombudsman,²⁴ and therefore this is of limited use to individual complainants.

Complaints to the Children’s Ombudsman should be made in writing, but may also be oral.²⁵ All complaints alleging a violation of the rights or legitimate interests of children will be investigated by the Ombudsman, who may take one of the following decisions:

- i. to refer the complaint to another authority;
- ii. to bring the claim to court;
- iii. where the violation could constitute a crime, to refer the case material to the relevant institutions;
- iv. to issue warnings to those who violated the rights of the child;
- v. to propose according to the law, to change or repeal the decisions takes contrary to the laws of the Republic of Lithuania, international treaties and other legal acts;
- vi. or to dismiss the complaint.²⁶

Finally, Lithuanian children and their representatives can also turn to the European Court of Human Rights which decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.²⁷ Any individual, group of individuals or an NGO who considers to be a victim of a violation of one of these rights may submit a complaint to the Court,²⁸ but the complaint will be admissible only if all domestic remedies have been exhausted.²⁹ Anonymous complaints are not permitted.³⁰ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.³¹ After examining the case, the Court renders a

²³ Constitutional Court of the Republic of Lithuania, *Functions and Powers*, available at: http://www.lrkt.lt/Information1_e.html.

²⁴ Law on the Constitutional Court, Article 31, available at: http://www.lrkt.lt/Documents3_e.html.

²⁵ Official website of the Institution of the Ombudsman for Children Rights of the Republic of Lithuania, *The Complaint Form and Content*, available at: <http://www3.lrs.lt/pls/inter/vaikai?sakId=7878&dokId=110710&kalbId=2>.

²⁶ Official website of the Institution of the ombudsman for Children Rights of the Republic of Lithuania, *Complaints investigation*, available at: <http://www3.lrs.lt/pls/inter/vaikai?sakId=7878&dokId=110703&kalbId=2>.

²⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Articles 19 and 32, available at: http://www.echr.coe.int/Documents/convention_ENg.pdf.

²⁸ European Convention on Human Rights, Article 34.

²⁹ European Convention on Human Rights, Article 35.

³⁰ *Id.*

³¹ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

judgements which is binding on the state³² and also has powers to award monetary compensation to the victims of human rights abuses.³³ It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

B. What powers would courts have to review these violations, and what remedies could they offer?

Available remedies include: (a) acknowledgement of rights; (b) restoration of the previous stature before the violation of the right; (c) prevention of actions, violating rights of others, prohibition of actions; (d) adjudication to execute the obligation in nature; (e) termination or modification of the legal relationship; (f) adjudication of material and moral damage; (g) recognition of legal acts of the state or municipal institutions as void; or (h) other means of redress.³⁴

Where the Constitutional Court has found that a law is inconsistent with the Constitution, that law will cease to apply from the date of publication of the Court's judgement.³⁵

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Research did not identify any legal provisions addressing this issue.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

The Lithuanian Civil Procedure Code provides that class actions may be filed in order to protect the public interest in the situations provided for by law.³⁶ However, no further laws have been adopted to regulate the filing of class actions and courts in Lithuania have refused to hear class action suits.³⁷

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Research did not identify any legal provisions addressing this issue.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

³² European Convention on Human Rights, Article 46.

³³ European Convention on Human Rights, Article 41.

³⁴ Civil Code, Article 1.138.

³⁵ Law on the Constitutional Court, Article 72, available at: http://www.lrkt.lt/Documents3_e.html.

³⁶ Civil Procedure Code, Article 49(6), available at: <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=162435&Condition2=>

³⁷ LAWIN, *Is class action possible in Lithuania?*, available at: <http://www.lawin.com/en/publications/Legal%20updates/is-a-class-action-possible-in-lithuania/>.

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

The Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts are courts of general jurisdiction dealing with both civil and criminal cases.

District courts are courts of first instance, unless a regional court has jurisdiction over a particular matter,³⁸ such as claims exceeding 100,000 Lit. The regional courts also hear appeals from the district courts.³⁹

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

The filing process entails paying up front court costs, including a “stamp duty” - a percentage from the amount of a claim that is payable by a plaintiff - upon institution of legal proceedings.⁴⁰ No provisions waiving the requirement for stamp duty to be paid in relation to cases brought on behalf of children could be identified.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Despite the rapid development of pro bono work in the country, there is no legal provision addressing it and awareness among the public of the existence of such services is low.⁴¹

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The general limitation period for civil actions is ten years,⁴² however, a shorter time period of three years applies to actions for compensation of damages.⁴³

There are no special provisions that allow young adults to bring cases after the statute of limitations has expired and the UN Committee on the Rights of the Child

³⁸ National Courts Administration, *Judicial system of the Republic of Lithuania*, available at: <http://www.teismai.lt/en/courts/judicial-system/>.

³⁹ *Id.*

⁴⁰ European e-justice portal, *Cost of proceedings - Lithuania*, available at: https://e-justice.europa.eu/content_costs_of_proceedings-37-lt-maximizeMS-en.do?member=1.

⁴¹ Pro Bono Institute, *A Survey of Pro Bono Practices and Opportunities in 71 Jurisdictions*, at p. 167, available at:

<http://www.probonoinst.org/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

⁴² Civil Code, Article 1.125.

⁴³ *Id.*

has recommended that such provisions are introduced in relation to the offences established by the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.⁴⁴

- E. Evidence. What sort of evidence is admissible/ required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

According to the Code of Civil Procedure, statements of parties or third persons (in person or by representative), testimonies of witnesses, written evidence, real evidence, inspection protocols and expert reports may all be presented as evidence.⁴⁵ The Court may also collect evidence on their own initiative in family law cases, if it considers this necessary to decide the dispute fairly.⁴⁶ The Civil Procedure Code provides that expert evidence is admissible, but only the court can appoint experts.⁴⁷

According to Article 3.164 of the Civil Code, in considering “any question related to a child,” the child, if capable of formulating his or her views, must be heard directly. Where that is impossible, the child must be heard through a representative.⁴⁸ In custody disputes, “the court must hear the child capable of expressing his or her views and ascertain the wishes of the child.”⁴⁹

It appears that children may testify at trial, as the law stipulates that: a “witness may be any person, no matter what his age and family ties with persons involved in the case, which may be known of any circumstances which have a connection with the case.”⁵⁰ In the context of criminal trials, the court may hold a closed hearing if the witness has been granted anonymity in order to protect their private life.⁵¹ However, research did not identify any provision concerning the specific procedures for hearing evidence by children.

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

“The average length of the civil proceedings in regional courts as the first instance courts usually varies from 2 to 9 month. The legal proceeding in the court as the appellate instance court usually takes from 3 to 6 months. The civil proceeding in the Supreme Court of Lithuania lasts on the average 4 months. The enforcement of the final court judgement takes from 3 to 5 month. [...] Thus, the average length of the civil legal proceeding in Lithuanian courts could vary from 12 to 23 months as it depends on particular situation and the nature of dispute.”⁵²

⁴⁴ CRIN, *Child Rights References in the Universal Periodic Review: Lithuania*, available at: <http://www.bettercarenetwork.org/violence/search/closeup.asp?infoID=25770#bb>.

⁴⁵ European Judicial Network in civil and commercial matters, *Taking of evidence and mode of proof - Lithuania*, available at: http://ec.europa.eu/civiljustice/evidence/evidence_lit_en.htm#5.a%29.

⁴⁶ Civil Procedure Code, Article 376.

⁴⁷ Civil Procedure Code, Article 217.

⁴⁸ Civil Code Art. 3.164.

⁴⁹ Civil Code Art. 3.177.

⁵⁰ Civil Procedure Code, Article 189.

⁵¹ Civil Procedure Code, Article 9(2).

⁵² LAWIN, *Litigation and Dispute Resolution: Lithuania*, at p. 2, available at: <https://www.international-arbitration-attorney.com/wp-content/uploads/brief-summarylitigation-anddisput>

Research did not identify any legal provision mandating speedier resolution of cases concerning children's rights.

G. Appeal. What are the possibilities for appealing a decision to a higher court?

Appeals may be brought to the regional courts, the Court of Appeal, and the Supreme Court of Lithuania. Appellate courts have the power to review issues of fact and law.⁵³ The petition for appeal must be filed within 30 days of the judgment of the lower court.⁵⁴ There is also a process by which a "separate complaint" can be filed at the appellate level in order to resolve other issues relating to the same case on appeal.⁵⁵ Examples include the renewal of a procedural deadline or an issue of litigation costs. This appeal must be filed within seven days of the decision by the lower court.⁵⁶ If a child is a party to the suit, the child should be able to appeal (Article 305 and 338).⁵⁷

Decisions by the Constitutional Court are final and may not be appealed.⁵⁸

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Courts in Lithuania follow past precedent in reaching decisions.⁵⁹

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

Research did not identify any other concerns or challenges.

V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

No relevant additional factors could be identified.

This report is provided for educational and informational purposes only and should not be construed as legal advice.

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⁵³ Official Website of the Court of Appeal of Lithuania, *About the Court*, available at: <http://www.apeliacinis.lt/en/title.html>.

⁵⁴ Official Website of the Court of Appeal of Lithuania, *Information for the participants*, available at <http://www.apeliacinis.lt/en/information-for-the-participants.html> (referencing Article 307 of the Civil Procedure Code.)

⁵⁵ Id. ("What are the differences between the petition for appeal and the separate complaint?")

⁵⁶ Id. ("What are the terms and the order of the petition for appeal (separate complaint) to be lodge?")

⁵⁷ Id. ("Who can appeal against decisions reached by regional courts in the civil cases?")

⁵⁸ Law on the Constitutional Court, Article 59, available at: http://www.lrkt.lt/Documents3_e.html.

⁵⁹ Ambrasienė, D. and Cirtautienė, S., The role of judicial precedent in the court practice in Lithuania, *Jurisprudence Research Journal*, Vol. 116 No. 2 (2009), available at: <https://www3.mruni.eu/ojs/jurisprudence/article/view/1562>.