

Unlawful removal/ retention of children

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With the rise in marriages concluded and cohabitation between residents of different countries all over the world, there are more and more international families established in today's society. Latvia is no exception. At the same time, the number of disputes about the custody and access rights arising from these relationships is also growing. Often one of the parents sees only one solution and makes a unilateral decision - to take to the child with them to live in another country, usually, in their country of origin. In this way, the other parent of the child is prevented from exercising their custody and access rights with the child. The negative consequences also affect the child, who is prevented from maintaining actual relationship with both parents. Namely, this results in a violation of both national state and international legal norms. Latvia has become a party to several international documents that provide for a special procedure to ensure the safe return of the child in their country of residence, which is where the dispute between the parents regarding the place of residence of the child and custody rights must be resolved.

This information will help you to understand how to act and where to seek help in case of unlawful removal of a child to another country that is not the country of residence of the child.

NEWS: Campaign against separation of international families



As the mobility of the population of the European Union is growing, and thus also the number of international families is increase, there are often situation where these families separate. The separation of a family is a complex and difficult process, so the European Union implements a range of measures to simplify this legal situation.

In accordance with the information provided by the European Commission, each year there are 140 000 separated international families recorded. The separation process in itself causes a range of emotional and practical difficulties, but, if the families are international, namely, made up of representatives of different countries, additional issues associated with different state legal systems come into play.

Commissioner for Justice, Fundamental Rights and Citizenship Vivienne Reding, in cooperation with the European Parliament Mediator for International Parental Child Abduction Roberta Angelilli, has initiate an awareness-raising campaign on matters concerning custody, visitation rights and parental child abduction to inform the public on actions to be taken in these situations.

Regulatory enactments



Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter - the Convention) is in force in Latvia since 1 February 2002.

The Convention is an international documents that provides for a mechanism for the return of the child to their country of residence, as well as respecting the custody and access rights of the other parent with the aim to protect the child from the harmful effects caused by the unlawful removal or retention. The nationality of the child is not important. The Convention states that the court decision on the return of the child is in no way considered to be a decision determining the custody of the child and/or access rights.

The full text of the Convention in Latvian, Russian, English and German is available here: Hague Convention of 25 October 1980 -

Convention is applicable to the relations between Latvia and the following states

As at 6 June 2014, the Convention is in force between Latvia and the following states - Albania, United States of America, United Kingdom, Argentina, Armenia, Australia, Austria, Bahamas, Belarus, Belgium, Belize, Brazil, Bulgaria, Czech Republic, Chile, Denmark, Dominica, France, Gabon, Georgia, Greece, Guatemala, Honduras, Croatia, Estonia, Italia, Israel, Ireland, Iceland, Japan, New Zealand, Canada, Cyprus, Columbia, Costa Rica, Hong Kong Special Administrative Region of the People's Republic of China, Macao Special Administrative Region of the People's Republic of China, Lesotho, Lithuania, Luxembourg, Malta, Morocco, Mexico, Monaco, Republic of Moldova, the Netherlands, Norway, Panama, Peru, Poland, Portugal, Romania, Salvador, San Marino, Serbia, Singapore, Slovakia, Slovenia, Finland, Spain, Seychelles, Switzerland, Thailand, Trinidad and Tobago, Turkey, Ukraine, Hungary, Uruguay, Uzbekistan, Germany, Venezuela, Sweden.

States that have not joined the Convention

In the event the child has been brought to a state that is not a party to the Convention and there is no bilateral agreement between these states in place, the possibilities depend on the legislation of the relevant state. Individuals can seek help at the competent authorities of the state - Ministry of Justice, embassy, court, bar association or non-governmental organizations.

More detailed information about the Member States of the Convention can be found on the Hague Conference on Private International Law website <http://www.hcch.net>

Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

The Regulation (EC) No 2201/2003 is in force in all Member States of the European Union and is applicable since 1 March 2005. It is binding to all Member States of the European Union. It supplements the Convention with its individual provisions.

The Regulation is not applicable in legal relation with Denmark.

When a child is unlawfully moved from one EU Member State (hereinafter - the Member State of Origin) to another Member State (hereinafter - the Recipient Member State), after the unlawful removal or retention of the child, the Regulation provides that the jurisdiction in deciding the matter of the custody of the child remains with the Member State of Origin - in cases, where the court of the Recipient Member State decides to return the child to the Member State of Origin or decides not to return the child to the Member State of Origin pursuant to the provisions of Article 13 of the Convention.

When a request on the return of the child to the country of origin is submitted to the court of the Recipient Member State, it shall apply the Convention, as well as the provisions of the Regulation. If the court decides that the child should not be returned, it shall immediately send the copy of the decision to the competent court of the Member State of Origin, which shall notify the parties. The aforementioned court - at the request of the party - may examine the matter of custody. If, as a result of the custody proceedings, this court makes a decision on the return of the child, it shall be recognized and enforced by the Recipient Member State without delay. No official recognition is required.

Full text of the Regulation in Latvian and English is available here:

Regulation (EC) No 2201/2003 -

Guidelines on the application of Regulation (EC) No 2201/2003 -

According to the purposes of the Convention, “custody” includes the rights and obligations to take care of the child and their property and to represent the child in their personal and material relationships, including - the right to determine the place of residence of the child.

In turn, the “access rights” include the child’s right to maintain personal relationship and direct contact with any of the parents, including - the rights of both parents to bring the child for a specific period of time to a location that is not the place of residence of the child.

How is custody and access rights regulated in the Latvian law?

As per Section 177 of the Civil Law of the Republic of Latvia, until reaching age of majority, a child is under the custody of his or her parents. Custody is the rights and duties of parents to care of the child and his or her property and to represent the child in his or her personal and property relations.

Care for a child means his or her care, supervision and the right to determine his or her place of residence.

Care of the child shall mean his or her maintenance, i.e., ensuring food, clothes, dwelling and health care, tending of the child and his or her education and rearing (ensuring mental and physical development, as far as possible taking into account his or her individuality, abilities and interests and preparing the child for socially useful work).

Supervision of the child means care for the safety of the child and the prevention of endangerment from third persons.

By the right to determine the place of residence of the child is understood the choice of the geographic place of residence and choice of dwelling.

Care for the property of the child means care for the maintenance and utilization of the property of the child by preserving and increasing it.

In turn, pursuant to the provisions of Section 178 of the Civil Law, parents living together shall exercise custody jointly.

If the parents are living separately, the joint custody of the parents continues. Daily custody shall be implemented by the parent with which the child is living.

In respect of issues which shall significantly affect the development of the child the parents shall take a joint decision. The differences of opinion between the parents shall be resolved by an Orphan's and Custody Court unless otherwise provided for in the law.

The joint custody of the parents shall terminate upon the establishment on the basis of an agreement between the parents or a court adjudication of the separate custody of one parent.

Pursuant to Section 178¹ of the Civil Law the parent with whom the child is located in separate custody has all the rights and duties, which arise from custody.

Disputes between parents regarding custody rights shall be decided taking into account the interests of the child and ascertaining the views of the child if only he or she is able to formulate such.

Pursuant to Section 181 of the Civil law of the Republic of Latvia child has the right to maintain personal relations and direct contact with any of the parents (access rights).

Each of the parents has a duty and the right to maintain personal relations and direct contact with the child. This provision shall be applicable also if the child is separated from the family or does not live together with one of the parents or both of the parents. The parent who does not live with the child has the right to receive information regarding him or her, especially information regarding his or her development, health, educational progress, interests and domestic circumstances.

A child has the right to maintain personal relations and direct contact with brothers, sisters and grandparents, as well as with other persons with which the child has lived with for a long time in an undivided household if such conforms to the interests of the child.

Any person shall have a duty to refrain from such activities that may negatively influence the relationship of the child with one of the parents.

What is unlawful removal of the child and what is unlawful retention of the child?

Unlawful removal - removal of the child from their habitual place of residence or the person exercising custody to reside permanently abroad without the consent and knowledge of such person.

Unlawful retention - avoiding to return the child to their habitual place of residence (the country of the permanent residence of the child), thus, preventing the other persons who has the custody of the child to exercise their rights.

Central authority 

Each of the Members States has a designated Central authority for the implementation of the Convention.
The Central authority of Latvia is the Ministry of Justice.

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Information about the central authorities of other countries is available here: http://www.hcch.net/index_en.php?act=conventions.authorities&cid=24

Preventive measures 

Preventive measures before the child has been unlawfully removed from Latvia abroad.

In the majority of cases the removal of the child happens suddenly and unexpectedly. Initial signs may include changes in the behavior of the other parent - excessive attention in childcare, difficulties in the divorce proceedings and inability to agree on the custody and/or access rights, or - openly planning to move the child to different country. It should be noted that this list is by no means exhausting, as the causes can be different and difficult to predict. However, in many cases this unpleasant surprise can be avoided. The following precautionary measures can promote and ensure the legal protection of your interests:

try to agree with the other parent on the custody and/or access rights of the child:

for example, to make a voluntary agreement (verbal, written or authorized by a notary).

family conflicts can also be solved by using the opportunities provided by mediation during which a neutral third party - a mediator - uses various methods and skills to help the parties find a mutually acceptable resolution to the dispute by listening to the desires and needs of both parties.

More detailed information can be found here: www.mediacija.lv;

In some cases, where it may be required for the court to protect the well-being of the child before the making of the final decision in the divorce or marriage annulment proceedings, as well as custody and access rights proceedings until the judgement is made, the parties may request the court to pass a temporary ruling determining the place of residence of the child, the custody of the child, exercise of access rights and prohibition to remove the child from the country pursuant to the provisions of the Civil Procedure Law.

Having found that the child has been unlawfully removed from Latvia to abroad and it has been done by the other parent of the child and the parents of the child have joint custody - both parents are indicated in the birth certificate of the child and the court has not decided to restrict/terminate the custody of either parent - the State Police cannot initiate criminal proceedings, because no criminal liability is provided for such a removal under the laws of the Republic of Latvia.

If you have concerns that the other parent of the child or a person who has custody of the child plans to remove the child to another country to reside there permanently without your consent and no personal identify document has been issued to this child or you are keeping this document, there is a possibility to restrict the issuance of a personal identity document of your child to the other parent:

Pursuant to the provisions of Section 10 of the Personal Identification Documents Law, you may request the Office of Citizenship and Migration Affairs not to issue the personal identity document of your child (if he/she is younger than 14 years of age) to the other parent. Upon the receipt of such application, the Office of Citizenship and Migration Affairs will not issue the personal identity document of your child to the other parent for one month from the day of the receipt of the application.

In this time, you may request the court to set a prohibition to remove the child from the country until the court proceedings concerning the custody of the child, potential access rights and place of residence are finished.

If you have already submitted a request to the court on making the decision on the prohibition to remove the child from the country, then, in order to prevent the issuance of a personal identity document, you must submit to the Office of Citizenship and Migration Affairs a document confirming that such a request has been submitted to the court.

If the court has already made a decision to prohibit the removal of the child, this decision and your request not to issue the personal identity document must be submitted to Office of the Citizenship and Migration Affairs

In the final two cases, the Office of Citizenship and Migration Affairs will not issue the personal identity document of your child to the other parent until the making of the final ruling in the case.



The person, who believes that the removal of their child from Latvia to abroad or retaining the child abroad without their knowledge and consent is a violation of their custody or access rights, has the following options:

1. Turn to the Ministry to prepare a request to return the child to Latvia or a request to ensure the right of access to the child.
2. To turn to the Central Authority of the state to which the child has been removed or where the child is being retained, requesting to return the child to Latvia or to ensure the right of access to the child.
3. To turn to the court of the state to which the child has been removed or where the child is being retained, requesting to make a decision on the return the child to Latvia or ensuring the right of access to the child.

The aforementioned options are not inter-related and the person may use any one of them without using the others.

The Ministry accepts requests regarding:

the return of a child/children from abroad to Latvia (Latvian form [\[one child\]](#) [\[two children\]](#), English [\[one child\]](#) [\[two children\]](#)] and German [\[one child\]](#) [\[two children\]](#), [the sample for filling out the form is available here](#));

the ensuring the access rights to a child residing abroad (Latvian form [\[one child\]](#) [\[two children\]](#), English [\[one child\]](#) [\[two children\]](#)] and German [\[one child\]](#) [\[two children\]](#), [the sample for filling out the form is available here](#));

The request to return the child to Latvia from abroad may be submitted by any individual, institution or authority which notifies about the unlawful removal or retention of the child in violation of custody rights.

The request to ensure access rights to a child residing abroad may be submitted by any individual whose lawful access rights to a child residing abroad have been restricted/prevented.

In order to submit a request on the return of the child from abroad to Latvia, the following preconditions must be met:

The Convention must be in force between Latvia and the relevant country to which the child has been removed or in which the child has been retained;

the applicant must have statutory custody rights and/or access rights in regard to the child and the applicant has actually exercised such rights;

the habitual place of residence of the child until removal was Latvia;

the child is under the age of 16;

the application must be submitted as soon as possible from the moment the unlawful removal/retention has taken place, so that the application would be submitted to the foreign court not later than within one year from the unlawful removal/retention.

The application must include the information about:

the applicant;

the child;

the person removing/retaining the child;

the actual and legal grounds for the return of the child (especially, in regard to the matters of the permanent residence of the child, the custody and access rights and the exercising of such rights),

any available information about the location of the child (where and with whom the child is living or, possibly, - hiding).

The following documents must be added to the application:

copy of the birth certificate of the child (!!! if the child has been removed to Ireland, the copy of the certificate of birth must be translated into English and certified by a notary);

certification of the permanent residence of the child (for example, reference from the kindergarten or school, if the child has attended any, reference from the family doctor under whose supervision the child has been and who the child has attended, as well as other similar justifying documents);

photos of the child and the other parent or other person who has unlawfully removed or retained the child;

if there is not enough space in the application form, you can add in a separate annex, a detailed description of the circumstances of the removal/retaining of the child, how did the applicant and the person who has removed/retained the child used their custody rights until the removal/retaining of the child, has the child previously resided in the country to which they have been removed or are being retained;

other documents important for the case (for example, court decisions or judgements, references from the police etc.).

If the applicant is unable to ensure the translation of the application and the attached documents, it shall be provided by the Central authority.

The Ministry shall review the application on the return of the child to the country of permanent residence (checking if the application conforms with the general requirements of the Convention) within three working days and, within 10 working days shall transfer it to the relevant competent Central authority in the country to which the child has been removed.

After the transmission of the application, the Ministry shall continue to cooperate and take measures to ensure the return of the child to their country of residence as soon as possible.

In turn, the Central authority of the recipient Member State, in cooperation with the competent authorities, establishes the location of the unlawfully removed child, if necessary, takes temporary measures for the safety of the child, tries to ensure voluntary return of the child or find a solution through settlement, ensures the exchange of information about the living conditions of the child, sends the materials to the court for examination of the case, as well as ensures and promotes provision of legal aid and advice.

The procedure by which the Ministry implements the activities set out in the Convention is determined by the Cabinet Regulation No. 322 "Procedures by which the Latvian Central Authority in Conformity with the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction Shall Perform the Activities Referred to Therein and Cooperate with the Other State and Local Government Authorities".

The text of the Cabinet Regulation is available here - <http://likumi.lv/doc.php?id=157313>

Costs:

Pursuant to the provisions of the Convention, no fee is charged for the submission of an application. However, it should be noted that the applicant may be required to cover the expenses that have been or will be incurred in the course of the return of the child to the country of residence. This may include travel expenses, costs of legal representation abroad etc.

Legal aid abroad:

The Central authority of the foreign country provides the following for the applicant submitting the request on the return of the child from abroad to Latvia:

completely free legal aid (for example, United Kingdom, Ireland, Cyprus);

legal aid for a reduced fee (for example, Germany, USA, Sweden).

The applicant themselves may hire a legal representative abroad by covering the related expenses.

In order to obtain (free) legal aid provided by a foreign country, in some countries the applicant must complete a specific survey, indicating their income, financial state (for example, Germany, USA, Sweden) and adding the supplementary documents. Such a formality is also required when submitting a request to ensure access rights (for example, in the United Kingdom, Ireland).

If your child has been removed from Latvia to abroad



The procedure of the return of the child to the foreign country from Latvia is similar to the return of the child from abroad to Latvia. If the child whose habitual place of residence is abroad has been unlawfully removed to Latvia or is being retained in Latvia, the person who believes that their custody or access rights have been violated may turn to the Central authority of the foreign state of the habitual residence of the child, requesting to return the child to the state of habitual residence, if the relevant state is a Member State of the Convention and the Convention is in force between this state and Latvia. The same person may turn to the Ministry or the competent court of Latvia, requesting to return the child from Latvia to the relevant foreign country.

The foreign Central authority shall transfer the request to the Ministry, who will perform further activities to ensure a safe return of the child to their country of habitual residence.

Having assessed the conformity of the application of the Central authority of the foreign country, the Ministry shall send the application of the submission of the request to Latvia regarding the return the child to the foreign country to the competent city (district) court of the Republic of Latvia - depending on the place of residence of the person who has removed the child or the location of the child pursuant to the provisions of the Civil Procedure Law.

At the same time, the Ministry shall send a request to the competent Orphan's and Custody Court, requesting it to confirm the location of the child, establish the living conditions of the child, as well as to establish the opinion of the person removing the child on the possibility of a peaceful resolution of the current situation and voluntary return of the child from Latvia to the relevant foreign country from which the child has been unlawfully removed.

If the court finds that the child has been unlawfully removed to Latvia or retained in Latvia, it shall make a decision on the return of the child to the country where their permanent place of residence is in any of these cases:

the time period from the unlawful removal of the child to Latvia or retention in Latvia does not exceed one year since the relevant person or authority learned about the location of the child;

the time period from the unlawful removal of the child to Latvia or retention in Latvia exceeds one year, but the child has not settled in Latvia.

In so far it is permitted by the Convention and the Council Regulation No 2201/2003 in force in the Member States of the European Union, the court can make a decision not to return the child to the country of their permanent place of residence, if the court finds that:

more than a year has passed since the relevant person has learned or been able to learn the location of the child, but in this time period the they have not turned to the relevant authority regarding the return of the child to the country of their permanent place of residence;

the child has settled in Latvia and their return does not meet the interests of the child.

At the same time, in accordance with the provisions of Article 13 of the Convention, the competent court may decide not to return the child to the country of their permanent place of residence also in cases where the person or an authority objecting to the return of the child proves in court that:

the person, institution or other authority, who has taken care of the child, has not used their custody rights at the time of the removal or retention of the child or has agreed or not objected to the removal or retention;

there is a serious risk that the return of the child may cause them physical or psychological harm or otherwise unbearable situation to the child;

the court learns that the child objects to the return and has reached the relevant age and degree of maturity to express their opinion.

Pursuant to the provisions of the Hague Convention, the Ministry ensures free legal aid to the applicant at the competent court of the Republic of Latvia in regard to the review of the case concerning the return of the child to their permanent place of residence.

The person, who has removed/retained the child, must provide legal aid at their own expenses, if necessary.

[State legal aid to individuals who have become victims of violence.](#)

Information about Sworn Advocates practicing in Latvia can be found on the website of the Council of the Sworn Advocates of Latvia - www.advokatura.lv

In case the person is unable to provide legal aid for themselves, such a person may turn to the Legal Aid Administration <http://www.jpa.gov.lv/> with a request to provide state ensured legal aid.

State ensured legal aid in different types of cases.

In accordance with the provisions of the State Ensured Legal Aid Law, the following individuals are entitled to state ensured legal aid:

a citizen of Latvia;

a not citizen of Latvia;

a stateless person;

a European Union citizen who is not a citizen of the Republic of Latvia but resides legally in the Republic of Latvia;

a third-country national who is not a citizen of a European Union Member State, if he or she legally resides in the Republic of Latvia and has received a permanent residence permit;

a person who has the right to legal aid ensured by the Republic of Latvia in accordance with the international agreements entered into by the Republic of Latvia;

an asylum seeker, a refugee and a person who has been granted alternative status in the Republic of Latvia.

The aforementioned natural persons are entitled to state ensured legal aid, if these persons are unable to partly or fully ensure the protections of their rights due to their special situation, material condition and level of income. The Cabinet provides in what cases the special situation, material condition and level of income of a person is considered to be suitable for ensuring legal aid.

The state provides legal aid to any person who has obtained the status of a low-income or a needy person.

State Ensured Legal Aid Law.

Statistics 



From 2008 to 2017

