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THE LITHUANIAN LEGAL FRAMEWORK FOR GUARDIANSHIP (CURATORSHIP) OF CHILDREN WHO HAVE FLED UKRAINE

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Abstract *The article analyses the guardianship (curatorship) of unaccompanied Ukrainian children fleeing the war in Ukraine, in Lithuanian legislation. It explains the system of guardianship (curatorship) in Lithuania, the grounds for establishing temporary guardianship (curatorship) and presents the forms of guardianship (curatorship) applicable in Lithuania. Further, it briefly describes the process of becoming a guardian (curator). Further, the peculiarities of the establishment of guardianship (curatorship) for individual unaccompanied children and groups of children arriving from Ukrainian childcare institutions is discussed.*

Keywords: *unaccompanied children from Ukraine; guardianship (curatorship) in Lithuania; supervision of guardianship (curatorship)*

Introduction

The importance of the taking all possible measures to ensure the rights of the children fleeing the war in Ukraine is self-evident. It is especially important in case of children travelling to other countries unaccompanied or with persons other than their parents. The Council of Europe states have stressed the need "to intensify efforts, at all levels of governance, to guarantee the effective protection of all human rights and fundamental freedoms of children of Ukraine in the current context in full compliance with the applicable Council of Europe standards, as well as the highest possible standard of reception and care of children of Ukraine hosted in other member states." (Council of Europe, 2023).

Furthermore, the European Commission points out that "particular attention must be given to unaccompanied children. It is important that they are immediately registered upon arrival; they should receive full and safe support and a representative of child protection services should be present as quickly as possible. Family tracing must be a priority." (European Commission, 2023).

According to the Temporary Protection Directive, the term " 'unaccompanied minors' means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States" (Council Directive 2001/55/EC, Art. 2 (f)). According to the EU Commission, within the group of the unaccompanied children, some are to be considered as 'separated'. "A 'separated child' is a child who arrives on the territory of the Member States accompanied by relatives or known (non-related) adults, whereby sometimes the latter have been provided by the parent(s) an authorisation to travel with the child and/or provide temporary care (example: Ukrainian mother traveling with her own children and those of another family)" (European Commission, 2023a, p.1).

In Lithuania, the unaccompanied minor foreigner is "a minor foreigner who arrived in the Republic of Lithuania without his/her parents or other legal representatives, or who, upon

arrival in the Republic of Lithuania, remained without them until those persons started to take care of him/her in an effective manner" (Seimas, 2004, Art. 2(16)).

There are two additional groups of children that do not strictly fit the categories of 'unaccompanied' or 'separated', yet require additional protection and assurances similar to those in the latter categories. These include:

- Children from Ukrainian institutions, frequently arriving in the EU in groups and accompanied by a guardian designated by the competent Ukrainian authorities.
- Children entering the EU territory with a guardian appointed by the competent Ukrainian authorities (European Commission, 2023a, p.1).

One of the first questions that arises if an unaccompanied child arrives is the question of legal representation and care – who will take care of the child and ensure his/her legal representation. The present article will aim to answer this question and introduce the system of guardianship (curatorship) in Lithuania, that is applicable to the Ukrainian children fleeing war and arriving to Lithuania unaccompanied. The article will analyse the system of guardianship (curatorship) in Lithuania in general, as well as its application in case of Ukrainian children, will illustrate the processes of arrival of individual children as well as groups of children. It will then close with the discussion of the supervision of guardianship (curatorship) in Lithuania.

The system of guardianship (curatorship) in Lithuania

According to the Civil Code of Lithuania (2000), Article 3.248, the aim of guardianship (curatorship) is to ensure that the child is brought up and cared for in an environment in which he or she can grow, develop and flourish in a safe and appropriate way. Guardianship (curatorship) of a child is aimed at appointing a guardian for the child to care for, educate, represent and protect the child's rights and legitimate interests; to provide the child with living conditions that are appropriate to the child's age, health and development; and to prepare the child for an independent life within the family and in the community.

The State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour of Lithuania (hereinafter – Service) is responsible for establishing whether a child needs guardianship (curatorship), registers these children and ensures the establishment of guardianship (curatorship) (Seimas, 2000, Art. 3.250 (3)). If it is established that a child is left without parental care, the Service addresses the mayor of municipality with a request to establish guardianship (curatorship) for that child within three working days. The Service is the legal representative of the child deprived of parental care until a guardian (curator) is appointed for the child (Seimas, 2000, Art. 3.250 (4)).

Guardianship is established for children under 14 years of age, and curatorship is established for children over 14 years of age (Seimas, 2000, Art. 3.251). There are two types of child guardianship (curatorship) in Lithuania: temporary guardianship (curatorship) and permanent guardianship (curatorship) (Seimas, 2000, Art. 3.252(1)).

Temporary guardianship (curatorship) for a child involves taking care of, raising, representing, and safeguarding the rights and lawful interests of a child who is temporarily without parental care, whether in a family, foster home, care centre, or childcare institution. The primary objective of temporary guardianship is the eventual reunification of the child with his/her family. The period of temporary guardianship (curatorship) for a child is limited to a maximum of twelve months. However, if it is determined that the parents (either the father or the mother), who are receiving social services and comprehensive assistance, are actively working to modify their behaviour, or if there are other valid grounds to believe that there is a realistic prospect of reuniting the child with their family, the government agency responsible

for safeguarding the child's rights may decide to extend the temporary guardianship (curatorship), but for no more than an additional six months. The total duration of temporary guardianship may not exceed eighteen months.

The Civil Code (Seimas, 2000, Art. 3.254) indicates that temporary custody (guardianship) of a child shall be established when:

1) the child's parents or only parent available are missing and are being sought (until the parents are declared missing or declared dead by a court);

2) the child's parents or the sole parent are temporarily unable to take care of the child because of the illness of both parents or one of them, arrest, imprisonment or any other important reason;

3) the child's parents or parent with sole responsibility for the child neglect the child, do not take interest in the child, ill-treat the child, use violence or abuse parental authority in other way, which endangers the child's physical, mental, spiritual, moral development and safety;

4) the child's parents are unknown (pending the establishment of paternity or close family relations);

5) the child's parents or the only parent available are minors who do not have the legal capacity or have limited legal capacity.

Speaking about the **establishment** of the temporary guardianship (curatorship), the Civil Code (Seimas, 2000, Art. 3.250) indicates that once the court ruling is received, which grants the authority to remove the child from their parents or other legal representatives, a specialist from the Service proceeds by sending a request to the municipality to appoint a guardian (curator) for the child. This request may include a suggested guardian (curator) recommended by the Service. The mayor will make the final decision regarding the appointment of the guardian (curator). In cases where the Service doesn't propose a candidate, the Foster Care Centre[1] may offer a recommendation. Temporary guardianship (curatorship) has a maximum duration of 12 months, with the potential for a 6-month extension.

Permanent guardianship (curatorship) is established for children without parental care who are unable to return to their family under the existing conditions and whose care, upbringing, representation and protection of their rights and legitimate interests is entrusted to another family, family home, foster care centre or a childcare institution.

Permanent guardianship (curatorship) of a child shall be established when:

(1) both parents or the sole parent of the child are deceased; declared dead or declared missing;

(2) the child is separated from his or her parents in accordance with the law;

3) the paternal or family relationship has not been established within three months of the date of the child's discovery;

4) the parents or the only parent available have been declared incapacitated in accordance with the established procedure;

5) both parents or the only parent available have been deprived of parental authority (Seimas, 2000, Art. 3.257).

Speaking about the **establishment** of permanent guardianship (curatorship), The Service submits an application to the court to formalize the establishment of permanent guardianship (curatorship), and it is established by a court decision.

[1] Foster Care Centres (Lith. *Globos centrai*), is one of the forms of child guardianship (curatorship). The centres are the legal representatives of the child, but the child is placed in the family of a guardian on-call, who is a professional foster parent taking care of the child in a family-based environment. Furthermore, they provide services to foster families, adoptive families, social families, guardians on-call and children placed in all these families.

Speaking about the forms of guardianship (curatorship), the Civil Code lists the following forms:

1) guardianship (curatorship) in the foster family;
2) guardianship (curatorship) in the social family;
3) guardianship (curatorship) in the foster care centre;
4) guardianship (curatorship) in the childcare institution (Seimas, 2000, Art. 3.257(2)).

Children can be placed under guardianship (curatorship) within a **foster family**. These guardians (curators) are individuals who have completed specific training to qualify as guardians (curators) and have been assessed as suitable for this role. The maximum number of children placed under guardianship (curatorship) in a single foster family is limited to three children, with a total of six when including the children of the guardians (curators).

Child guardianship (curatorship) in a **social family** represents a foster care arrangement where a legal entity, known as a social family, is responsible for the well-being of four or more children (with a maximum total of eight children, including the social family's own children) within a family-like setting. The primary objective of the social family is to provide a secure and nurturing environment for a child's growth, development, and overall well-being (Seimas, 2010, Art. 3).

Guardianship (curatorship) within a **Foster Care Centre** is a form of guardianship (curatorship) in which the legal guardian for the child is the Foster Care Centre itself. However, the child is placed in the care of an on-duty guardian, who provides for the child within a family-based environment. The Centre facilitates and coordinates social services and support for both the child and the on-duty guardian as required, as well as cooperates with professionals who assist the child's biological parents to return the child to the family (Ministry of Social Security and Labour, 2018).

In Lithuania, there are two primary types of residential institutional care: community-based children care homes and foster childcare institutions. Typically, this form of guardianship (curatorship) is considered an exceptional measure and is employed only when other forms of guardianship (curatorship) are not available.

For children under the age of 3, guardianship in an institution may be established under specific circumstances, such as when it is necessary for the child's health, when it is essential to keep the child with their siblings, when their parents are minors themselves and under institutional guardianship (curatorship), or in cases of urgent removal from the family when no other form of guardianship (foster family, social family, foster care centre) is immediately viable (Seimas, 2000, Art. 3.261).

Community-based children care homes serve as a vital alternative when a municipality lacks the ability to place a child in a foster family, foster care centre, or social family, or when the assistance and services provided to a child in their biological family have proven ineffective. In such cases, the municipality must ensure that the child has the opportunity to grow up in a family-like environment, and this is achieved through community-based children care homes. These homes are operated by social care institutions specializing in the provision of social services, which adhere to established social care standards and possess the required licensing. (Ministry of Social Security and Labour, 2021).

Foster childcare institutions are institutions authorized to provide foster childcare services. The Ministry of Social Security and Labour has established specific social care standards governing the care provided within these institutions (Ministry of Social Security and Labour, 2007). Approximately 30 percent of children under guardianship (curatorship) and in institutional care are placed in these childcare institutions.

The process of appointing guardians (curators)

The requirements for possible guardians (curators) or founders or participants of social families are enumerated in Article 3.269 of the Civil Code. The persons have to be of 21-65 years of age (with some exceptions), having full legal capacity in this field. Other requirements are related to the behaviour of the person – there should not be a previous history of separation of the possible guardian from his/her foster child, he/she should not be convicted of certain crimes; there are requirements regarding the health of person (Seimas, 2000, Art. 3.269). Furthermore, there are similar requirements for spouses and persons over the age of 16 years living in the same household.

The process of becoming a guardian starts with the preparation phase. The process consists of the initial assessment of the candidate; undergoing a training for future guardians (curators) and preparation of a suitability report of the natural person's suitability to be a child's guardian (curator) or the founder or member of a social family (Government, 2002, Art. 18.).

Potential guardianship candidates submit their applications to the Service. The territorial unit of the Service collects information about these candidates and their family members from different state registries, then assesses whether to provide positive or negative initial evaluation report (Government, 2002, Art. 9-13).

In case of positive initial evaluation, the next step in preparation for guardianship is the training for future guardians. The training of future guardians (curators) is mandatory to the guardian and his/her spouse (Government, 2002, Art. 18; Art. 21). The training is organized according to the programme established by the Service, and taught by persons certified by the Service (State Child Rights Protection and Adoption Service, 2018).

After the training the final conclusion on the ability of the candidates to become guardians (curators) is prepared by the Foster Care centre (Government, 2002, Art. 22). The information about the new guardian is submitted to SPIS system, which is a centralised system for the appointed guardians (curators).

The arrangements of guardianship (curatorship) for individual unaccompanied children from Ukraine

Every child fleeing the war in Ukraine has the right to receive temporary protection and is allowed entry into Lithuania. These children are not obligated to possess a travel document, health insurance, visa, residence permit, or any other documentation that would typically be required for entry and stay in Lithuania (Seimas, 2004, Art. 92).

After the start of the war in Ukraine, on 12 April 2022, the governments of Lithuania and Ukraine have signed an agreement between the Ministry of Social Security and Labour of the Republic of Lithuania and the Ministry of Social Policy of Ukraine on Cooperation in the Field of Protection of Children Affected by the War in Ukraine due to the Russian Federation's Armed Aggression (hereinafter – Cooperation Agreement) aimed at protecting children coming from Ukraine to Lithuania. The parties agreed to cooperate "on ensuring the protection of children's rights, who due to the hostilities were temporarily displaced from the territory of Ukraine to the Republic of Lithuania, and also on providing their return to Ukraine upon cessation of martial law on its territory or, if possible and necessary, prior to its termination or abolition." (Agreement on Cooperation, 2022, Art. 2).

Article 3 of the Cooperation Agreement (2022) foresees the obligation of registration of children. It indicates that all children entering from Ukraine to Lithuania shall be registered as soon as possible by authorized persons/bodies and organisations of Lithuania and Ukraine as

well as by the diplomatic missions or consular offices. Furthermore, it is indicated in Article 3 that children coming from Ukraine will not be placed for adoption for the duration of martial law in Ukraine without the approval of the Ukrainian Authorities (Agreement on Cooperation, 2022, Art. 3).

Speaking about the arrival of individual children who arrive to Lithuania without their parents, the Cooperation Agreement indicates that Ministry of Social Security and Labour ensures that children who arrived without their parents are appointed a temporary guardian (curator) as soon as possible according to the law of the Republic of Lithuania (Agreement on Cooperation, 2022, Art. 4). Here, two groups of children may be distinguished – children who had a guardian appointed according to Ukrainian law, and children who arrive without an appointed legal guardian.

For children who arrive with their legal guardian appointed according to Ukrainian law, in order to avoid the recognition procedure in Lithuania of such guardian, the Lithuanian State Child Rights Protection and Adoption Service (further – Service) urgently applies to the mayor of municipality with a request to reappoint such guardian as a temporary guardian (curator) under the law of Lithuania (European Union Agency for Fundamental Rights, 2023, p. 15).

For children who arrive without an appointed guardian, the Service starts the procedure of appointment of a temporary guardian (curator) according to the legal regulation of Lithuania, as indicated above – it addresses the mayor of municipality regarding the appointment of a guardian (curator) for the child. The representatives of the Service firstly search for a suitable candidate among the persons with whom the child arrived and who might be his/her relatives or persons with close emotional ties with the child. They also search for possible relatives who are in Lithuania who have arrived in Lithuania earlier (European Union Agency for Fundamental Rights, 2023, p. 35). Only if such persons are not found, the Service appoints a Lithuanian guardian (curator).

The Law on the Legal Status of Foreigners foresees that in cases of war, national emergency or extraordinary situation due to mass influx of foreigners the requirements set out in Civil Code are not applied for foreigners who are to become guardians (curators) of unaccompanied children, if those persons are not residents of Lithuania. The residents of Lithuania in this case do not have to provide health certificate in order to become guardians (curators), and may be provisionally appointed as legal representatives of unaccompanied children until their readiness to become guardians (curators) be fully approved, if this does not contradict the best interests of the child. (Seimas, 2004, Art. 140^{27}).

The arrangements of guardianship (curatorship) for groups of children arriving from Ukraine

The Cooperation Agreement details the responsibilities of Ministry of Social Security and Labour of the Republic of Lithuania and Ministry of Social Policy of Ukraine. Ministry of Social Policy of Ukraine is responsible for the organisation of movement of children from Ukraine to the Republic of Lithuania, officially informs the Republic of Lithuania about the movement of children and cooperates in coordinating the return of groups of children back to Ukraine in the agreed manner (Agreement on Cooperation, 2022, Art. 4 (2.1)). The Ministry of Social Security and Labour is responsible for the reception of children, ensuring full protection of their rights according to Lithuanian legal acts, furthermore, it also ensures that groups of children who arrive to Lithuania from Ukraine (for example, a group of children living together in one institution of guardianship (curatorship) etc.) would not be separated from each other,

unless it is contrary to the best interests of children. (Agreement on Cooperation, 2022, Art. 3.6).

The arrival of the groups from Ukrainian childcare institutions used to start by the transmission of information by the Ministry of Social Policy of Ukraine to the Ministry of Social Security and Labour of Lithuania about the groups of children who are arriving, indicating the number of children, their age and other characteristics (European Union Agency for Fundamental Rights, 2023, p. 20). Furthermore, the Ministry of Social Security of Lithuania consults with municipal administrations and searches for a municipal legal entity authorized to provide childcare services, which may accept the group of children from Lithuania. When the group arrives from Ukraine at the place of residence – the premises of municipal childcare, the representatives of the Service visit the children to monitor the situation. The Service then applies to municipal administration (of the territory where the childcare institution is established) with a request to establish guardianship (curatorship) for all children in the group and to nominate the legal entity that hosts the children from Ukraine as guardian (curator) for all children in the group. Temporary guardianship (curatorship) is established by the decree of mayor of municipality (European Union Agency for Fundamental Rights, 2023, p. 20).

The staff who have arrived from Ukrainian institutions may be employed by the Ukrainian childcare institutions that have been appointed the guardians (curators) of children. They do not have to undergo any accreditation or similar procedures if they have worked in such institutions in Ukraine, however, they have to adhere to the standards applicable in Lithuanian childcare institutions which are in force in Lithuania (European Union Agency for Fundamental Rights, 2023, p. 20).

Supervision of the guardianship (curatorship)

The Civil Code of Lithuania and other legal acts indicate an obligation of institutions to monitor all types and forms of childcare. The Service is responsible for this process. It carries out the supervision of guardianship (curatorship) in cooperation with the administrations of municipalities, foster care centres, childcare institutions, other state and municipal institutions and NGOs which work in the field of child protection (Seimas, 2000, Art. 3.267).

The regulations for the organisation of child guardianship (further – Regulations) foresee that the process of supervision may be carried out in the following forms:

1) Visits of a child who is in guardianship (curatorship);
2) Revisions of child temporary guardianship (curatorship);
3) Revisions of child permanent guardianship (curatorship) (Government, 2002, Art. 71).

The Regulations foresee that after the establishment of **temporary guardianship** (curatorship) of a child, the territorial department of the Service visits the fostered child for the first time not later than one month after the date of the adoption of the decision of the mayor of the municipality on the establishment of the temporary guardianship (curatorship) and the next time - according to the need, but at least once every six months, starting from the day of establishment of temporary guardianship (curatorship). If the territorial department of the Service, one year after the establishment of temporary guardianship, decides to continue temporary guardianship for a period not exceeding six months, the child shall be visited at least once during the extended period of temporary guardianship. (Government, 2002, Art. 73).

Once permanent guardianship (curatorship) of a child has been established, the child under guardianship (curatorship) is visited for the first time no later than one month after the date of the establishment of permanent guardianship (curatorship) by the court, and for the

subsequent visits - as needed, but at least twice during the first year of permanent guardianship (curatorship), and at least once a year during the second year and the subsequent years of permanent guardianship (curatorship).

Speaking about Ukrainian children, the revision process is carried out according to the abovementioned legal acts. It should only be noted that as the permanent guardianship (curatorship) is not established to Ukrainian children, the provisions of supervision of permanent guardianship (curatorship) do not apply.

During the supervision, the representatives of the territorial divisions of the Office meet with the child, talk to him/her without restrictions, listen to his/her opinion on the conditions of guardianship (curatorship), his/her relationship with the guardian (curator), his/her relationship with his/her parents or close relatives, other relatives and other persons with whom he/she has an emotional bond, listen to the views of the child's guardian (curator) on the implementation of the guardianship (curatorship), his/her relationship with the child and with his/her parents or close relatives, other relatives with whom the child has an emotional bond, and find out what help the guardian (curator) needs; an assessment of how the guardian (curator) takes care of the child's physical and mental safety, health and education, educates the child, cooperates with the foster care centre, the territorial department of the Office and other interested State and municipal institutions, how he/she uses the funds allocated for the maintenance of the fostered child, and manages the child's property, whether he/she does not hinder the child's contact with his/her parents, provided that this is not detrimental to the child's interests, maintains contact with the child's parents, informs the child's parents or close relatives, if they so wish, about the child's development, health, education and other important matters, takes care of the child's leisure time, taking into account the child's age, health, growth and aptitudes, prepares the child for an independent life; assess the relationship of other persons living with the child's guardian to the child in care (Government, 2002, Art. 76).

Conclusions

The aim of guardianship (curatorship) is to ensure that the child is brought up and cared for in an environment in which he or she can grow, develop and flourish in a safe and appropriate way. Guardianship is established for children under 14 years of age, and curatorship is established for children over 14 years of age (Seimas, 2000, Art. 3.251). There are two types of child guardianship (curatorship) in Lithuania: temporary guardianship (curatorship) and permanent guardianship (curatorship). The forms of guardianship (curatorship) are in foster family, in social family, in foster care centre and in the childcare institution.

The requirements for possible guardians (curators) or founders or participants of social families are enumerated in Article 3.269 of the Civil Code. The preparation phase of becoming a guardian (curator) consists of the initial assessment of the candidate; undergoing a training for future guardians (curators) and preparation of a suitability report of the natural person's suitability to be a child's guardian (curator) or the founder or member of a social family.

The agreement between the Ministry of Social Security and Labour of the Republic of Lithuania and the Ministry of Social Policy of Ukraine on Cooperation in the Field of Protection of Children Affected by the War in Ukraine due to the Russian Federation’s Armed Aggression regulates the questions of protecting children coming from Ukraine to Lithuania, including their guardianship (curatorship) arrangements, in addition to the legal acts applicable in Lithuania. The agreement indicates the obligation of registration of children, and indicates that the Ministry of Social Security and Labour is responsible for the arrangements regarding guardianship (curatorship) of such children. The guardians (curators) were appointed according to Lithuanian legal regulation as soon as possible after the arrival of Ukrainian children in

Lithuania. Most appointed guardians were from Ukraine, persons travelling with unaccompanied children or their relatives in Lithuania.

The arrival of the groups from Ukrainian childcare institutions started by the transmission of information by the Ministry of Social Policy of Ukraine to the Ministry of Social Security and Labour of Lithuania about the groups of children who are arriving. The Ministry of Social Security and Labour of Lithuania contacted municipal administrations in order to find suitable institution for hosting the group of children arriving. The legal entity authorized to provide childcare services was appointed as the guardian (curator) of all children in the group, by the request of State Child Rights Protection and Adoption Service, and by the decision of mayor of municipality.

Both individual unaccompanied children who were placed under guardianship (curatorship) in Lithuania as well as groups of children were visited regularly by the representatives of State Child Rights Protection and Adoption Service carrying out the supervision of guardianship (curatorship) according to the same rules as applied in case of guardianship (curatorship) of Lithuanian children.

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