

**Information by Lithuania on migration and rights of the child prepared in reply to the
OHCHR request of 18 February 2010 in order to prepare study pursuant to HRC
resolution 12/6 “Human Rights of Migrants: Migration and the Human Rights of the
Child”**

1. Challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration, including in relation to:

a) the situation of separated and unaccompanied migrant children

6487 persons, 1155 of who were under 19 years old, have immigrated to Lithuania in 2009.

	2008	2009
Total number	9 297	6 487
Total number (0-19 years old)	1407	1155
0-4	427	380
5-9	266	213
10-14	267	214
15-19	447	348

It is worth mentioning, that citizens of the Republic of Lithuania are also considered as immigrants, if they have declared their leave from the country for the period longer than 6 months. 4821 citizens of the Republic of Lithuania have immigrated into Lithuania during 2009. Consequently, only 1666 of the persons immigrated into Lithuania were citizens of foreign countries.

22 thousands of people declared their emigration from Lithuania in 2009. 19,3 thousand of them were older than 15 years old. So 2,7 thousand children have been declared emigrating from Lithuania. In 2008 one unaccompanied minor alien (citizen of Democratic Republic of Congo) asked for asylum in the Republic of Lithuania. In 2007 five unaccompanied minors asked for asylum (4 citizens of Uzbekistan and 1 citizen of Vietnam). In 2008 fourteen refugees have got the status of refugee, three of them were children.

The issue of the legal status of the unaccompanied minor alien in the Republic of Lithuania is regulated by the Law No. IX-2206 “On the Legal Status of Aliens” of 29 April 2004 (hereinafter – the Law). According to the Point 16 of the Article 2 of this Law **unaccompanied minor alien** means an alien under the age of 18 who enters the Republic of Lithuania

unaccompanied by parents or other lawful representatives or accompanied by the above-mentioned persons, however is left unattended in the Republic of Lithuania. The Law marks out two groups of unaccompanied minors: unaccompanied minor alien foreign nationals and unaccompanied minor asylum seekers.

According to the Article 32 of the Law, unaccompanied minor aliens, regardless of the lawfulness of their stay in the territory of the Republic of Lithuania, must be taken into temporary guardianship/custody for the period of the child's stay in the Republic of Lithuania. The temporary guardian/custodian of an unaccompanied minor alien shall represent the interests of the unaccompanied minor alien. The establishment of the temporal guardianship is organized by the municipality's child rights protection service in accordance with the norms of the Civil Code of the Republic of Lithuania, Regulation of the Organization of Child's Guardianship approved by the Ruling No. 405 of the Government of the Republic of Lithuania of 27 March 2002, Regulation of the Organization of the Child's Temporal Guardianship approved by the Order No. AI-145 of the Minister of Social Security and Labour of the Republic of Lithuania.

According to the Article 3.253 of the Civil Code of the Republic of Lithuania a temporary child guardianship (curatorship) means care for and upbringing of a child temporarily deprived of parental care, also representation and protection of the child's legitimate interests in the family, social family or institution. Part 2 of the Article 3.250 of the Civil Code establishes that the State institution for the protection of the child's rights shall be responsible for the determination of children in need of guardianship/curatorship and their registration. The Institution shall place a child under temporary guardianship/curatorship within three days of the receipt of information about the child's need of guardianship/curatorship. Pursuant to the Point 13 of the Regulation of the Organization of the Child's Temporal Guardianship, temporary guardianship shall be established by the order of the director of the municipality.

According to the Law unaccompanied minors seeking asylum are accommodated at premises of the Refugees' Center or at the guardian's place. Neither the Law, nor legislation provide details on the issue of accommodation of unaccompanied minors not seeking asylum, rather they foresee a general principle stating that such unaccompanied minors must be accommodated. In practice unaccompanied minor aliens not seeking for asylum shall be accommodated in the foster home or in the foster family or social family where he/she shall receive the necessary social and psychological assistance. Point 6 of the Regulation of the Organization of the Child's Temporal Guardianship settles that a list of the foster home and families which can take the children at any time shall be endorsed by the order of the Director of the on presentation of the department of the social assistance of the municipality.

- b) Access to social services (ensuring, inter alia, protection of the right to health, housing, education, water and access to sanitation), including for migrant children in an irregular situation

Under the law, primary and basic secondary education is compulsory to all children up to the age of 16 and is guaranteed by the state to all Lithuanian citizens and nationals of other countries who have been granted a right to reside or temporarily settle in the country. In documents prepared by the Ministry of Education and Science on the organization of schooling in Lithuania, the children of the above mentioned categories of people are referred to as ‘children of foreign nationals to have arrived to work or get settled in Lithuania’. That is a general term to refer to the children of migrant workers, refugees and asylum seekers as well as other people who may have arrived in Lithuania because of other reasons.

On 4 June 2003, the Lithuanian Minister of Education and Science passed an order (No ISAK-789) regarding the implementation of school-based measures for the children of immigrants who arrived to take employment or settle down in Lithuania.

The order specifies that in general education schools education of immigrant children is provided in compliance with the General Education Plans for Schools of General Education approved by the Minister of Education and Science and other legal acts. The order stresses the necessity of creating the conditions for all immigrant children with no command of Lithuanian by offering them intensive courses for learning the receiving country’s official language as the main language of instruction and the opportunities, if possible, to learn the mother tongue. It also indicates that the additional financing is provided for the education of immigrant children.

Republic Of Lithuania Law on Health Insurance 21 May 1996 No. I-1343 Vilnius. Article 6. Persons Eligible for the Compulsory Health Insurance and Persons Covered by the Compulsory Health Insurance. The following persons shall be eligible for the compulsory health insurance:

1) citizens of the Republic of Lithuania and foreign nationals permanently residing in the Republic of Lithuania;

2) foreign nationals temporarily residing in the Republic of Lithuania, provided that they legally employed in the Republic of Lithuania, as well as under-age members of their families;

3) The following persons shall be regarded as the persons covered by the compulsory health insurance (hereinafter referred to as the “insured” (**version of subparagraph 1 of paragraph 3 of Article 6 after 1 January 2010**):

persons listed in paragraph 4 of this Article who are insured with State funds:

Version of paragraph 4 of Article 6 after 1 January 2010:

a) full-time pupils and students of schools of general education, vocational, post-secondary and higher education of the Republic of Lithuania, as well as citizens of the Republic of Lithuania and foreign nationals and stateless persons permanently residing in the Republic of Lithuania, who are full-time students of schools of higher education of the member states of the European Union;

b) unaccompanied under-age foreign nationals;

c) foreign nationals who have received additional or temporary protection in the Republic of Lithuania: persons under 18 years of age, persons for whom the illness or body condition included in the list approved by the Ministry of Health, has been diagnosed, single parents raising under-age children, women during pregnancy 70 days before child birth (after 28 pregnancy weeks and further) and 56 days after child birth.

Requirements for the temporary accommodation buildings for illegal immigrants and asylum seekers are defined in the Lithuanian Hygiene Norm HN 61-2005 “Foreigners’ Registration Centre. Hygiene Standards and Rules” approved by the Order of the Minister of Health No. V-836 from 28 October 2005. General hygiene requirements for the premises, the standards for supply of personal care products, nutrition, health care services provision and other issues related to immigrants living conditions in the Foreigners’ Registration Centre are regulated by this Order.

Drinking water safety and quality standards are defined in the Lithuanian Hygiene Norm HN 24:2003 “Requirements for Drinking Water Safety and Quality” approved by the Order of the Minister of Health No V-455 from 23 of July 2003. European Union legislation was transferred in this act.

With reference to above mentioned information, these legislations of the Republic of Lithuania ensure health and other safety conditions for the foreigners including children.

The Law does not provide for any exceptions to unaccompanied minor aliens during their arrival, identification, asylum procedure and the period of integration, except for the need to appoint a guardian to such unaccompanied minors.

Pursuant to the Part 2 of the Article 32 of the Law, unaccompanied minor aliens, regardless of the lawfulness of their stay in the territory of the Republic of Lithuania, shall have the following rights:

1) to be provided with free accommodation and be supported in the manner established by the Minister of Social Security and Labour of the Republic of Lithuania;

- 2) to study at general education and vocational schools in accordance with the procedure laid down by the Minister of Education and Science;
- 3) to be provided with free basic medical aid in the manner prescribed by the Minister of Health;
- 4) to be provided with free social services in the manner prescribed by the Minister of Social Security and Labour;
- 5) to receive State-guaranteed legal aid unless the laws of the Republic of Lithuania provide otherwise;
- 6) to contact the representatives of non-governmental or international organisations of the Republic of Lithuania.

The Law also obliges the Migration Department under the Ministry of Interior Affairs to contact representatives of Lithuanian non-governmental organizations and the temporary guardian of the unaccompanied minor foreign national and immediately organize the search of the family members of the minor. The issue of the unaccompanied minor's legal status in the Republic of Lithuania is processed simultaneously with the search for family members of the unaccompanied minor foreign national.

c) Access to the rights of identity, including birth registration

The child's right to a name and surname from birth is enshrined in Article 9 of the Law on Fundamentals of Protection of the Rights of the Child and paragraph 1 of Article 3.161 of the Civil Code. The child's naming procedure is established under Articles 3.166-3.167 of the Civil Code. A name and surname (when surnames differ) to each child is given on agreement of parents. In case of disagreement between the father and the mother on the child's name/surname, a decision on the child's name/surname is passed by the court. In addition, when registering the birth of a child whose parents' identity is not known, the child shall be given a name by the state child rights protection institution.

Paragraph 3 of Article 3.161 of the Civil Code directly establishes the child's right to know his parents unless that contradicts his interests or the laws provide otherwise. This law is also established in Article 9(1) of the Law on Fundamentals of Protection of the Rights of the Child: From birth the child shall have the right to a name, surname, nationality and citizenship, a right to family and other ties linked to his individual identity and their preservation. Chapter X of Part IV of the Third Book of the Civil Code governs the general principles of establishing the legitimate affiliation of the child, which is the basis of the mutual rights and duties of the child and his parents.

Preservation of identity is enshrined in the Law on Citizenship. Pursuant to Article 11(2) of the Law on Citizenship, a child, who is found or is residing in the territory of the Republic of Lithuania, both of whose parents are unknown, both parents or the single parent the child had is dead or declared missing, both parents or the single parent the child had is declared according to the established procedure incapacitated, parental (paternal or maternal) authority is indefinitely restricted and the child is put under permanent guardianship (curatorship), shall be a citizen of the Republic of Lithuania unless circumstances come to light for which the child would acquire a different status. Under Article 8(2) of the said law, if both parents lose citizenship of the Republic of Lithuania, the citizenship of their children who have not reached the age of 18 years (14 years under the old version of the law) shall change accordingly. Yet, this provision shall not apply if due to the change of the parents' citizenship the child would remain without a citizenship.

2. Examples of best practice in the implementation of the international framework for the protection of the rights of the child in the context of migration, with particular regard to:
 - a) National legislation, policies and practice, including mechanisms to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

The principle of non-discrimination is enshrined in the Law of the Republic of Lithuania on the Legal Status Aliens (No IX-2206 of 4 April 2004) which establishes that aliens are equal before law without distinction as to gender, race, nationality, language, origin, social status, religion, beliefs or opinions. This principle applies with respect to asylum-seeking children, too. Pursuant to Article 71 of the above-mentioned Law, asylum-seeking children have the right: to be provided with accommodation at the Foreigners' Registration Centre or Refugee Reception Centre and to use the services provided by them; to have their documents processed and notarised in relation to the examination of the asylum application; to make use of legal aid guaranteed by the state, unless laws of the Republic of Lithuania establish otherwise; to receive compensation for the use of public transport where the use is linked to the examination of the asylum application; to receive interpretation services free of charge; to receive free immediate medical aid and social services at the Foreigners' Registration Centre or Refugee Reception Centre; to receive a monthly monetary allowance in the manner laid down by the Minister of Social Security and Labour; to contact and

meet representatives of the Office of the United Nations High Commissioner for Refugees; to study at general education and vocational training schools; to exercise other rights guaranteed under international treaties, laws and other legal acts of the Republic of Lithuania.

Pursuant to Article 43 of this Law, a child who has been granted refugee status and a permanent residence permit has a right to invite his/her parents to live in the Republic of Lithuania.

Article 67(2) of the Law sets that an underage child has the right to apply for asylum personally or an application for asylum can be filed in the name of the child by any member of the family who is of full age. In accordance with Article 67(3) of the Law, an unaccompanied underage child who has applied for application shall be taken into temporary custody according to the procedure established by laws of the Republic of Lithuania.

Pursuant to Article 77(3) of the Law on the Legal Status of Aliens, the principle of a safe third country does not apply to unaccompanied underage asylum-seekers (safe third country is defined as a state which is not the alien's country of origin but is a state party to 1951 Convention relating to the Status of Refugees and/or 1967 Protocol relating to Refugee Status as well as 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and/or 1966 International Covenant on Civil and Political Rights, and is implementing the provisions of the above-mentioned instruments and providing a real possibility under its national laws to apply for and be granted asylum according to the established procedure). Article 77(3) of the Law also establishes that unaccompanied underage asylum-seekers are neither subject to the principle of a safe country of origin (defined as the alien's country of origin in which, by virtue of its legal system, applicable legal norms and political relations, a person is not threatened by the risk of persecution on the grounds of race, religion, nationality, belonging to a certain social group or political opinions, or inhuman or degrading treatment or punishment or violation of the fundamental human rights and freedoms, nor there is a risk of chaotic acts of violence at times of international or internal armed conflicts) nor the principle of manifestly unfounded asylum application. That means that asylum applications filed by unaccompanied underage children are examined with particular scrutiny and accelerated examination procedures may not be applied; the deadline for examination of such applications is 3 months and can be extended, if necessary, to up to 6 months.

Pursuant to the provisions of the Law, an underage alien may be detained only as a measure of last resort, in consideration of the best interests of the child. Asylum applications filed by unaccompanied underage persons are examined as a matter of priority. Public servants responsible for examining asylum applications of unaccompanied underage persons must contact different authorities of the Republic of Lithuania or foreign countries other than the asylum-seeker's country

of origin to find out the whereabouts of the unaccompanied underage asylum-seeker's parents or other close relatives, unless this is against the child's interests.

Pursuant to the Rules of Providing Accommodation to Unaccompanied Underage Asylum-Seekers at the Refugee Reception Centre approved by Order No 1V-21/A1-2 of 2 February 2005 of the Minister of the Interior of the Republic of Lithuania and the Minister of Social Security and Labour of the Republic of Lithuania, unaccompanied underage asylum-seekers are provided with accommodation at the Refugee Reception Centre, if the temporary guardian (curator) of the unaccompanied underage asylum-seeker does not object. The temporary guardian (curator) of the unaccompanied underage asylum-seeker, or the Refugee Reception Centre if the asylum-seeker is placed into temporary custody (curatorship) there, represent the interests of the unaccompanied underage asylum-seeker pending decision on the asylum application. Where possible, siblings may not be separated, in the best interests of the underage children and their age and maturity in particular. There is also a requirement to refrain, as far as possible, from moving unaccompanied underage children from one place of accommodation to another.

The Procedure for Examining Asylum Applications, and Adopting and Enforcing Asylum Decisions approved by Order No 1V-361 of 15 November 2004 of the Minister of the Interior of the Republic of Lithuania establishes that the guardian (curator) and an authorised representative of the child must be present in interviews and other actions taken in relation to the examination of unaccompanied underage asylum-seekers' applications, except where the authorised representative cannot arrive for the interview due to circumstances beyond his/her control. Interviews are conducted by competent and experienced public servants of the Migration Department under the Ministry of the Interior of the Republic of Lithuania who are aware of the requirements of the United Nations Convention on the Rights of the Child. Pursuant to Article 123 of the Law on the Legal Status of Aliens, if public servants who examine asylum applications of underage persons have reasonable grounds to doubt the asylum-seeker's age, they have the right to demand that the asylum-seeker undergo an age determination test. This age determination test requires prior consent of the child's parents, other legal representatives or temporary guardians (curators).

Children who have been granted asylum in the Republic of Lithuania are eligible to integration support provided by the State of Lithuania in the procedure laid down in legal acts. This support includes: teaching of the official language, education, employment, provision of accommodation, social protection, health-care, provision of information to the public on aliens' integration.

All unaccompanied alien children are accommodated at the Refugee Reception Centre irrespective of whether they have actually applied for asylum in the Republic of Lithuania or not. Here, they can receive qualified pedagogical, psychological, and social services.

In 2005-2008, two forms of asylum were available in Lithuania for underage asylum-seekers: a refugee status or a subsidiary protection.

At the Refugee Reception Centre, essential social, health-care and legal services are provided and intensive Lithuanian language courses and courses about life in Lithuania are organised for aliens; together with a territorial labour exchange and territorial labour market training and counselling service, the Refugee Reception Centre organises an identification of a suitable job and assessment of personal qualities, training for a profession and re-qualification, and job-search courses.

In addition to other assistance and services, foreign nationals accommodated at the Refugee Reception Centre are entitled to free legal aid for concerning asylum in Lithuania, to have their documents processed and notarised in relation to the granting of asylum in Lithuania, and to use medical services. Underage asylum-seekers (including unaccompanied children) may study at general education schools and have the right to attend pre-school education establishments. At the Refugee Reception Centre, asylum-seekers may use the Centre's library, watch TV and listen to the radio, go in for sports, take part in cultural events, engage in community work, attend Lithuanian language courses.