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MiRI Minor's Right to Information in EU civil actions

National Report

LATVIA

Children's right to information in civil proceedings in Latvia

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1. Introduction

This report reflects results of the research carried out in Latvia in the framework of the project MiRI – *Minor's right to information in EU civil actions* (JUST-JCOO-AG-2018), on children's right to information in legal proceedings in Latvia, mostly concentrating on civil proceedings, and in some aspects in administrative cases.

Normative enactments and case law of is analysed in this research, examining multiple legal aspects of the right of child to information. The report contains excerpts from Latvian law and jurisprudence, thus providing close insight in actual legal situation.

At the beginning of the project MiRI a questionnaire was elaborated by the project partners, and later – distributed to judges and lawyers in Latvia. The main goal of the questionnaire was to discover existing practice in Latvia about children's rights to information, including children's rights to be heard. The answers to the questionnaire and results of such research are analysed in this report, thus supplementing to the research of normative enactments and case-law.

An underlying interest of this research was of clarify at what level children's right to information is granted in Latvia, and how this right is supported by national law and interpreted in case-law. All national case law cited in the present Report is available in the project's database[1].

2. The children's right to information in Latvian law

The children's right to information is existing, but quite non-applied right in Latvian law. In comparison to children's right to be heard, which is well developed, supported by case-law and widely known right, the children's right to information is standing in a shade, to put it poetically. Popularity of rights to be heard in comparison to silent rights to information can be seen from results of questionnaire, analysed further in this research.

The Law on the Protection of the Children's Rights[2] is the main legal source of children's rights. The purpose of this law is to set out the rights and freedoms of a child and the protection thereof, taking into account that a child as a physically and mentally immature person has the need for special protection and care.[3] This law also governs the criteria by which the behaviour of a child shall be controlled and the liability of a child shall be determined, governs the rights, obligations and liabilities of parents and other natural persons and legal persons and the State and local governments in regard to ensuring the rights of the child, and determines the system for the protection of the rights of the child and the legal principles regarding its operation.[4] Chapter II of Law on the Protection of the Children's Rights entitled "Fundamental Rights of the Child" directly legitimises 12 rights of the child, included, but not limited to, rights to life and development, rights to family, rights to individuality, rights to privacy and freedom and security, rights to wholesome living conditions, rights to education and creativity, etc.

The first sentence of the Article 13, part 1 of the Law on the Protection of the Children's Rights provides that "a child has the right to freely express his or her opinions, and for this purpose, to receive and impart any kind of information, the right to be heard, and the right to freedom of conscience and belief". A wording of this rule is broad, still explicit and suitable to ascertain that children in Latvia have all of these rights:

- the right to freely express his or her opinions,
- to receive any kind of information,

[1] Available at http://dispo.unige.it/node/1159.

[2] Latvian Law "*Bērnu tiesību aizsardzības likums*". Adopted on 19 June 1998. Available at: https://likumi.lv/ta/id/49096-bernu-tiesibu-aizsardzibas-likums

[3] The Law on the Protection of the Children's Rights. Article 2, part 1.

[4] The Law on the Protection of the Children's Rights. Article 2, part 2.

- to impart any kind of information,
- the right to be heard and
- the right to freedom of conscience and belief.

Analysing Latvian case law, the greatest accent is put on the right to be heard, which is not only the right of the children, but an obligation of institutions working in child-related cases to find out this opinion. However the other, directly related aspect of whether the child had received sufficient and adequate information so to be able to define his or her opinion, is less developed.

Only in one legal norm explicit rule is included about provision of information to the child, namely, in cases where out-of-family care is terminated, "when favourable conditions for the development of a child have been ensured by the family of the parents of the child have been ensured by the family of the parents of the child or the child has attained 18 years of age", "six months prior to leaving the institution the head thereof shall provide information in writing to a child on the guarantees specified in law, also the right to receive residential premises". No instructions are provided how such information shall be provided. The only requirement is concerning form of information, namely, it shall be in a written form.

In other cases the general rule – Article 13, part 1 of the Law on the Protection of the Children's Rights – is applicable, on the basis of which the child has full rights to receive any kind of information, without specification about type of information and cases in which such information can be requested.

3. The children's right to be heard Latvian law

The right to be heard, which is stated in Article 13, part 1 of the Law on the Protection of the Children's Rights, is one of the must rules in many family law disputes, especially in adoption, custody disputes, access rights disputes and in cross-border child abduction cases. Although interests of children are also analysed in large spectrum of other legal disputes, for instance, also in disputes about obligation to pay maintenance payments to the child, increase and decrease of amount of maintenance payments, however only in rare other cases opinion of the child is discovered, and maintenance cases in not within scope of them. Mostly opinion of the child is requested only in custody, access rights and custody cases, not others.

There is no age threshold below which opinion of the child is not asked or considered as decisive. Instead individual approach is applied to each particular case, considering age of the child together with extent of maturity of the child. Instruments of international law do not provide criteria for determining whether a child has reached an appropriate age and maturity level in order to be able to

formulate his or her opinion intelligently. It should therefore be established by national regulation or judicial practice[5].

3.1. Children's rights to be heard in adoption cases

Adoption is one of legal sectors, where opinion of the child shall be find out according to normative enactments. Latvian Civil Law, Family Law part (*Civillikums. Ģimenes tiesības*) as the general civil law source provides rules for adoption of minor children. Opinion of the child shall be discovered in two aspects. First, before adoption is finally approved by a decision of the court, a custody court (*bāriņtiesa*) – municipal institution, whose main duty is to defend the personal and property interests and rights of a child or persons under trusteeship[6] – finds out opinion of the child, and only then adopts its decision either recommending or not recommending for the court to approve adoption[7]. Cabinet of Ministers Regulations "Procedures for Adoption"[8], which are adopted on the basis of the Civil Law, describes in closer detail rules of adoption. "If the child to be adopted is under the age of 12 years, the Orphan's and Custody Court shall have a conversation with the child to be adopted at his or her location and ascertain his or her opinion, as well as draw up the minutes of the conversation"[9] After ascertaining the opinion of the child to be adopted, the child care institutions and the Custody Court provide information regarding the child to be adopted to the Ministry of Welfare for continuation of the process. And the other aspect, where opinion of the child shall be discovered in the adoption process is related to opinion of brothers and sisters of the child to be adopted. Namely, the "Custody Court shall, before taking a decision regarding the separation of brothers and sisters, half-brothers and half-sisters, ascertain the views of the child to be adopted and siblings, half-brothers and half-sisters. The opinion shall be clarified if the persons have a close mutual relationship or have lived on an undivided household"[10]. There is no unified procedure approved by normative enactments of Latvia on how opinion of the child should be discovered.

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[5] KUCINA I. Bērnu pārrobežu nolaupīšanas civiltiesiskie aspekti. Bērns starp vecākiem un valstīm. Riga: Tiesu namu aģentūra, 2020, p. 148.

[6] Law on Orphan's and Custody Courts. Adopted on 22 June 2006. Article 17, Clause 1. Available at: https://likumi.lv/ta/id/139369-barintiesu-likums

[7] Civil Law. Family Law. Adopted on 28 January 1937. Article 169, part five. Available at: https://likumi.lv/ta/id/90223-civillikums-pirma-dala-gimenes-tiesibas

[8] *Adopcijas kārtība*. Cabinet of Ministers Regulations No. 667. Adopted on 30 October 2018. Available at: https://likumi.lv/ta/id/302796-adopcijas-kartiba

[9] Rules of Adoption. Cabinet of Ministers Regulations No. 667. Article 8. Adopted on 30 October 2018. Available at: https://likumi.lv/ta/id/302796-adopcijas-kartiba

[10] Law on Orphan's and Custody Courts. Adopted on 22 June 2006. Article 34, part 2.2.. Available at: https://likumi.lv/ta/id/139369-barintiesu-likums

3.2. Children's rights to be heard in custody and access rights cases

Custody disputes and access rights cases are another legal sectors, where opinion of the child shall be find out. Latvian Civil Law, Family Law Part provides for substantial rules, regulating custody rights and access rights. As ruled in the Civil Law, Family Law part, "the parental dispute over custody rights shall be settled, taking into account the best interests of the child and clarifying the opinion of the child, provided that he or she is able to formulate it"[11]. Civil Procedural Law (*Civilprocesa likums*) is a national law instrument providing for procedural norms, including for court cases on custody and access rights[12]. There are two chapters in the Civil Procedural Law, which are dedicated to custody and access rights cases: Chapter 29 "Cases Regarding Annulment of Marriage and Divorce" and Chapter 29.1 "Cases Arising from the Custody Rights and Access Rights". Historically chapter 29 is older, and was included in the Civil Procedural Law at the moment of adoption of the law in 1998. The chapter 29.1 was introduced in the Civil Procedure Law by amendments made on 7 September 2006, and the aim of such amendments was "to facilitate proceedings in cases concerning the interests of the child by providing for certain rules of jurisdiction as well as the principles of judicial proceedings which, to some extent, deviate from the principle of party races in civil matters, similar to those in divorce cases, by introducing the principle of objective investigation and emphasising aspects of the protection of the child's interests"[13]. Following adoption of the Chapter 29.1 now two chapters of the Civil Procedure Law contain certain rules on custody and access rights cases, at times having clear borders between both chapters, but at times legally overlapping.

Both – according to Chapter 29 (on divorce cases), Article 238.1, and according to Chapter 29.1 (on custody and access rights cases), Article 244.10 of the Civil Procedure Law – the parties in litigation can request the court to adopt fast speed, immediate and temporary decision on child related matters, obliging the court to adopt such decision within one month after such claim is submitted to the court. It is logically that one month is not sufficient time for both parties, court and Custody court to prepare for full review of case, collection of evidence materials included. However in both chapters – Chapter 29 (on divorce cases), Article 238.1, part four, and Chapter 29.1 (on custody and access rights cases), Article 244.10, part four – the Custody court is instructed to collect as much as preparatory materials as possible, so the Custody court could orally report to the court and the court, accordingly, could

[11] Civil Law. Family Law Part. Article 178.1., part two.
[12] Adopted on 14 October 1998. Available at: https://likumi.lv/ta/id/50500-civilprocesa-likums
[13] Annotation to the draft law "Amendments of Civil Procedure Law" (*Likumprojekta "Grozijumi Civilprocesa likumā" anotācija*), later adopted on 7 September 2006. Available at: https://www.saeima.lv/L_Saeima8/lasa-dd=LP1556_0.htm

adopt a temporary decision on the basis of such initial collection of information and evidence. One of the obligations entrusted to the Custody court, is to find out "the point of view of the child if he or she can formulate such considering his or her age and degree of maturity". An obligation to find out opinion of the child is formulated in literary identical wording in both chapters.

Both chapters contain a rule, which is extremely rarely applied in practice. Namely, the court deciding on temporary decision has rights to invite to the court a child and find out opinion of the child directly and personally. In most cases opinion of the child is clarified with a help of specialized municipal institution – the Custody Court. However also the court has rights to invite to the court a child and find out his or her opinion directly. Mostly the court apply this right only in highly disputable cases and where a child despite his or her under-age is very mature. Therefore in both chapters – Chapter 29 (on divorce cases), Article 238.1, part five, and Chapter 29.1 (on custody and access rights cases), Article 244.10, part five – the Civil Procedure Law provides that "if a court considers that it is necessary to clarify the information provided by the Orphan's and Custody Court, it shall clarify the opinion of the child if he or she is able to formulate it considering his or her age and degree of maturity". The right of the court to find out opinion of the child by personal invitation to the court is formulated in literary identical wording in both chapters. This prerogative of the court is only applicable where the court considers that it is necessary to clarify the information provided by the Orphan's and Custody Court. In most cases the court considers information provided by the Orphan's and Custody Court as sufficient, thus skipping need to invite to the court the child. There is no procedural order provided in law on how courts are questioning children if they are invited to share opinion on the basis of Article 238.1, part five, and Article 244.10, part five of the Civil Procedural Law. In most cases the court (judges) together with a court secretary remain in private with a child, permitting the Custody court representative to assist the child. Other persons, parents included, are requested to leave the courtroom. Nevertheless there are no rules for this procedure, and quality of conversation depend on skills and education of judges involved in the particular civil law procedure. Also in cases, where permanent judgment (not temporary decision) shall be adopted, the Civil Procedure Law provides right of the court to invite to the court a child and find out his or her opinion directly and personally. Article 239, part two (in Chapter 29 on divorce cases) and Article 244.9, part two (in Chapter 29.1 on custody and access rights cases) of the Civil Procedure Law in literally identical wording says that "in issues regarding granting of custody rights, childcare and procedures for exercising access rights a court shall require an opinion from the Orphan's and Custody Court and summon a representative thereof to participate in the court hearing, as well clarify the opinion of the child if he or she is able to formulate it considering his or her age and degree of maturity". Comparing

this rule to Article 238.1, part five one can see that in temporary cases the child may be invited only "if a court considers that it is necessary to clarify the information provided by the Orphan's and Custody Court". But in cases which are not proceeded for temporary decision, the court has rights to invite a child even in information provided by Orphan's and Custody Court does not need clarification. Again, this rule is rarely applied, as mostly the Orphan's and Custody Court professionally finds out opinion of the child and reports it to the court.

Similarly as it will be further described in subchapter 2.5 of this report, also in civil cases the court shall ascertain, whether opinion of the child is expressed freely and without any impact of other persons, for instance – one parent, with whom the child has spent proportionally longer time. The child's point of view is fundamental, but it is necessary to assess the overall situation and to take into account information on possible influence of the child's opinion and on child bullying, which has often occurred over several years. Consequently, the re-establishment of relations in such cases should take place gradually, cautiously and continuously[14].

Although opinion of the child is considered during court proceedings on access and custody cases, right after the court adopts its judgment opinion of the child is not recognized as a condition which can possibly change enforcement of the judgment[15]. The child has only rights, but not obligation to realize access rights with a parent. Therefore if court bailiff is invited to help enforcing judgment of the court on access right, the court bailiff will not act by coercive means to enforce a child to realize access rights with a parent. Enforcement of access rights with a child is not possible by coercive means, as that would be against the best interests of the child[16]. Therefore opinion and reaction of the child is taken into account at enforcement of judgments in access rights cases, and if the child actively express unwillingness to meet a parent, opinion of the child is decisive.

3.3. Children's rights to be heard in determination of parentage cases

An opinion of the child in some cases is asked in parentage – maternity and paternity – disputes. The substantial law ground in incorporated in the Civil Law, Family Law part.

Article 155, part seven of the Civil Law provides that "recognition of paternity requires the consent of the child if he or she has attained twelve years of age". For children younger than twelve years of

[14] Annual report of Latvian Ombud. *Latvijas Republikas Tiesībsarga 2017. gada ziņojums*. Available at: https://www.tiesibsargs.lv/uploads/content/lapas/tiesibsarga_2017_gada_zinojums_1520515340.pdf

[15] BERLANDE G. Nolēmumu izpildīšana lietās, kas izriet no saskarsmes tiesībām. In: *Jurista Vārds*, 16 June 2020, No 24/25 (1134/1135), p. 47.

[16] Decision of the Riga city Vidzeme district court as of 13 December 2019 in civil case C30663418. Not published.

age written consent is not required, and there is no obligation included in the law to inform children about changes into paternity.

Article 156, part six of the Civil Law says that "contesting of acknowledgment of paternity shall correspond the right of a child to identity and stable family environment". Therefore in cases where paternity is contested, the court shall discover whether any possible legal changes in paternity of the child "correspond the right of a child to identity and stable family environment". A list of legal tools how to ascertain what is identity of the child, how stable or unstable ishis or her family environment, and what in particular case is a family *de facto* of the child, is in provided in the law. Therefore the court can entrust these duties to the Custody court – a specialized municipal institution – who after review of femily situation reports to the court, so the court could proceed for adoption of a final judgment in the particular parentage case.

Procedurally this norm is described in greater detail, saying in Article 249.3, part three of the Civil Procedure Law that "a representative of the Orphan's and Custody Court shall, upon a request of the court, provide information on the opinion of the child if he or she is able to formulate it considering his or her age and degree of maturity, and other evidence which have significance in the case". The part four further continues that "the parties shall be notified of the court hearing, and a representative of the Orphan's and Custody Court shall be invited to the court hearing. If a court considers that it is necessary to clarify the information provided by the Orphan's and Custody Court, it shall clarify the opinion of the child if he or she is able to formulate it considering his or her age and degree of maturity".

The wording for finding out opinion of the child is identical in all above civil procedural rules, not giving any age limit, instead providing that opinion of the child shall be find out, "if he or she is able to formulate it considering his or her age and degree of maturity".

3.4. Children's rights to be heard in cases regarding wrongful removal of children across borders to Latvia or detention in Latvia

As a signatory of the Hague Convention on Child Abduction[17] and as the Member State of the European Union applying Regulation (EC) No 2201/2003[18] Latvia has national procedural rules on review of cases regarding wrongful removal of children accross borders to Latvia or detention in

[17] Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

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

Latvia. Chapter 77.2 on this topic was included in the Civil Procedure Law by amendments adopted on 7 September 2006. With these amendments and with introduction of Chapter 77.2 in the Civil Procedure Law the provisions of the Civil Procedure Law are aligned with those of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, the Hague Convention of 5 October 1961 on the Authorities' Mandate and Legislation applicable to the Protection of Children, and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation on Parental Responsibility and Child Protection Measures, as well as the requirements of the Regulation (EC) 2201/2003[19].

In a course of review of application about wrongful removal of children across borders, the court shall "clarify the opinion of the child if he or she is able to formulate it considering his or her age and degree of maturity"[20]. In the same way as in previously described disputes, also in child abduction cases the duty to find out opinion of the child is entrusted to the specialized institution in child-care matters – the Custody Court. If, since the decision to return a child back to the country of his or her place of residence more than one year has passed, upon request of the parent of the child or other person who has illegally transferred or held the child, an Orphan's and Custody Court shall appoint a psychologist to provide an opinion, in order to determine the viewpoint of the child regarding his or her taking back to the country of his or her place of residence[21]. Notably, that this is the only norm, where the law specifies that viewpoint of the child shall be find out thru assistance of psychologist. In all other cases, not related to child abduction, opinion of the child can be find by other methods and involved persons.

Mostly in child abduction cases minor children below age of seven are involved, objective opinion of whom it is complicated to discover. Even if a child has reached such age, where he or she is capable to formulate sentences and answers, opinion of the child is frequently affected by the parent, with whom the child has lately had greater contact. Therefore there are doubts about possibility to acquire objective opinion of a minor child[22] below age of seven. Only children of school age (in Latvia –

[19] Annotation to the draft law "Amendments of Civil Procedure Law" (*Likumprojekta "Grozijumi Civilprocesa likumā" anotācija*), later adopted on 7 September 2006. Available at: https://www.saeima.lv/L_Saeima8/lasa-dd=LP1556_0.htm

[20] Civil Procedure Law. Article 644.19, part one.

[21] Law on Orphan's and Custody Courts. Adopted on 22 June 2006. Article 44.2, part five. Available at: https://likumi.lv/ta/id/139369-barintiesu-likums

[22] VAINOVSKIS M., MEDNE L., BITĀNE B. Pārrobežu lietas par bērnu prettiesisku pārvietošanu vai aizturēšanu: aktuālie prakses jautājumi. In: *Jurista Vārds*, 16 June 2020, No. 24/25 (1134/1135), p. 30.

from seven years) are capable to share objective opinion, but opinion of minor children shall be taken very critically, considering all aspects, which can leave impact on a child[23].

3.5. Children's rights to be heard in administrative cases on termination and renewal of custody rights

In cases concerning the suspension and renewal of custody rights, which are examined by administrative courts, the decision shall also affect the minor (child), the custody of which shall be decided[24]. The minor should therefore be invited to the case as a third party. In addition, the minor should be invited directly to that status. Inviting a child's guardian (or, as the case may be, any other child's representative – author's remarks) as a third party does not mean that the child himself or herself has been invited to the case[25]. A minor person, as any other participant in the proceedings, has the fundamental right of Article 92 of the Constitution of the Republic of Latvia to a fair hearing of a case, as well as from the point of view of the administrative process, the minor has the right to express himself or herself on a decision affecting his or her rights and legal interests. The State also protects the rights of the child, including private and family life, in accordance with Articles 96 and 110 of the Constitution, and particularly helps children affected by violence[26].

The child can be heard directly in court. In cases involving a child, as in any administrative case, the principle of objective investigation and effective management of the process should be ensured. However, the specific nature of these proceedings is that any direct hearing at the hearing or any other evidence (e.g. initial or repeated visits by psychologists, forensic examinations, etc.) with the involvement of the child should be carefully assessed as to whether it is contrary to the best interests of the child. As a result, the court needs to fully clarify the circumstances of the case without harming the best interests of the child[27].

[23] VAINOVSKIS M., MEDNE L., BITĀNE B. Pārrobežu lietas par bērnu prettiesisku pārvietošanu vai aizturēšanu: aktuālie prakses jautājumi. In: *Jurista Vārds*, 16 June 2020, No. 24/25 (1134/1135), p. 30.
[24] ZEMĪTE K. Nepilngadīgās personas (bērna) viedokļa noskaidrošana. In: *Jurista Vārds*, 15 December 2020, No. 50 (1160).
[25] Supreme Court of Latvia, Senate judgment of 10 January 2008, case No SKA-66/2008 (A42552906), point 12. Available at: www.at.gov.lv
[26] ZEMĪTE K. Nepilngadīgās personas (bērna) viedokļa noskaidrošana. In: *Jurista Vārds*, 15 December 2020, No. 50 (1160).
[27] ZEMĪTE K. Nepilngadīgās personas (bērna) viedokļa noskaidrošana. In: *Jurista Vārds*, 15 December 2020, No. 50 (1160).

4. Relevant Latvian case law

Latvian case law have further elaborated on children's rights to information and rights to be heard. This chapter provides collection of excerpts from Latvian civil and administrative case-law on these rights.

Supreme Court of Latvia, Senate on 10 January 2008 in its judgment in administrative case No SKA-66/2008 (A42552906) decided that Section 21, Paragraph three of the Law on Administrative Procedure provides for the participation of a minor person from 15 years in the proceedings, which means the possibility for such person to express his or her opinion also directly at the hearing. The Senate has acknowledged that a minor has reached 15 years must also be invited to take part in the proceedings, as a minor from that age is considered intellectually mature enough to be able to participate in the case. The hearing of such an age-old is therefore essential[28].

Supreme Court of Latvia, Senate on 23 September 2008 in its judgment in administrative case No SKA-457/2008 (A425278074) decided that:

- the opinion of a mature teenager must prevail. If the court decides against the child's opinion, the court should give special reasons for this[29].
- the longer the time has passed since the termination of custody rights for parents, the more important the decision on the right of custody to be restored should also be given to the views of the minor. In this context, it should be assessed how much attachment to the minor has already been established with other care givers and whether the renewal of custody rights will not cause psychological problems for the child and thus will not ensure that the child's interests are respected[30].

Supreme Court of Latvia, Senate on 16 October 2008 in its judgment in administrative case No SKA-513/2008 (A42548607) decided that:

- it is important to consider whether the minor himself wishes to attend the hearing. As can be seen from the circumstances of a particular case, a 14 year old teenager himself wanted to attend the hearing[31].

[28] Point 10. Available at www.at.gov.lv
[29] Point 12. Available at: www.at.gov.lv
[30] Ibid, point 11.
[31] Point 14. Judgment available at: www.at.gov.lv

- the opinion of the child may also be received in writing to the court (for example, the child submits a letter to the court with his or her own vision of the situation)[32].
- the Administrative Procedure Law does not prohibit persons under 15 years of age from attending a hearing[33]. The opposite interpretation would be contrary to both the Law on the Protection of the Rights of the Child and international law in the field of the Rights of the Child, which provides for the right of the child to be heard if the child is able to formulate an opinion and is judged on the basis of the age and maturity of the minor. It is also recognised in the regular practice of the administrative courts that, when deciding to restore custody rights, a child's opinion according to the age and maturity of the child should be taken into account.
- children under seven years of age or preschool are usually considered to be based on the behaviour and opinions of persons (usually one or both parents) with whom the child lives together at the time, and therefore the child's opinion may not be decisive in judging the case[34].

Supreme Court of Latvia, Senate on 12 March 2009 in its judgment in administrative case No SKA-182/2009 (A42439708) decided that "the opinion of the child, in order not to achieve the repetition of negative feelings experienced as much as possible, should be clarified comprehensively and qualitatively at the time of the hearing of the case in the Orphan's Court and only due to the essential necessity that the child should be reheard in court. Therefore, the basic approach in such cases should be that the minor should be involved in the process and asked as little as possible and by circle of persons as narrow as possible. If a direct hearing does not correspond to the best interests of the child, the opinion of the child shall be discovered indirectly[35].

Supreme Court of Latvia, Senate on 10 October 2011 in its decision in administrative case No SKA-290/2011 (A42941109) recognized that:

- information entrusted by a child to other persons and relating to his or her private life may be passed on to one or both parents if it is necessary for the performance of their duties as legal agents and for the protection of the interests of the child, but when deciding on the disclosure of such information, the views of the child must be assessed, taking into account his or her degree of maturity and his or her right to privacy. For example, the opinion of the psychologist, the

[32] Ibid, point 13.
[33] Ibid, point. 10.
[34] Ibid, point 14.
[35] Judgment available at: www.at.gov.lv

opinion of the psychotherapist, which includes the opinion of the minor, should not be reported to the parent if there is a risk that the parent may take negative action against the child after consulting the opinion[36].

- the teenager is able to evaluate and count on the fact that the information he provides to the psychologist, which may be reflected in the psychologist's opinion without his consent, will not be disclosed to other persons or disclosed to a limited extent. This also respects the private life of the teenager[37].

Supreme Court of Latvia, Senate on 7 May 2012 in its decision in administrative case No SKA-426/2012 (A42941109) recognized that in order to ensure the protection of the privacy of the child and the other rights of the child, the court may, in accordance with the fourth paragraph of Article 145 of the Administrative Procedure Law to impose a restriction on other participants in the proceedings to familiarise themselves with that view, including the parents of the child who have been suspended for custody rights[38].

Supreme Court of Latvia, Senate on 12 November 2012 in its decision in administrative case No SKA-870/2012 (A420344312) recognized that hearing a child's point of view does not mean that the case will be judged in accordance with this point of view[39].

Supreme Court of Latvia, Senate on 3 February 2014 in its decision in administrative case No SKA-238/2012 (A420532812) decided that age of seven can be recognised as sufficient age to take into account the information provided by the child on very specific circumstances. In such a case, the court further took into account the child's emotional attitude – a categorical reluctance to be with the individual concerned, excitement, nervousness in thinking about such a possibility[40].

Supreme Court of Latvia, Senate on 29 June 2015 in its decision in administrative case No SKA-915/2015 (A420286314) decided that in assessing the written opinion of the child, the importance

[36] Point 11 and 13. Available at www.at.gov.lv
[37] Ibid.
[38] Point 11. Available at: www.at.gov.lv
[39] Point 11. Available at: www.at.gov.lv
[40] Point 8. Not published.

should also be given to whether the written or written by the child's own words correspond to the content of the child's particular grandfather speech[41].

Supreme Court of Latvia, Senate on 16 August 2017 in its decision in administrative case No SKA-1032/2017 (A420187616) decided that a child aged 16 is capable of distinguishing his will from the will of adults. If a young person has independently communicated regarding the circumstances of the case, both with representatives of the Orphan's Court and in his or her capacity as a party to the proceedings, this means that he has been able to express his or her own opinion in the case and such opinion must be taken into account[42].

Supreme Court of Latvia, Senate on 16 April 2018 in its decision in administrative case No SKA-238/2012 (A420532812) decided that the more mature the minor, the more important the point of view in the case[43].

Supreme Court of Latvia, Senate on 21 December 2018 in its decision in administrative case No SKA-1598/2018 (A420294117) decided that the longer time in which the ruling of the court is not enforced and no decisions are taken in this respect, and the child does not meet or meet the other parent very rarely at this time, the more biased the child's opinion may become because of the influence of the parent the child lives with[44].

Supreme Court of Latvia, Senate on 10 December 2019 in its decision in administrative case No SKA-1638/2019 (A420300517) decided that it may be objectively necessary for the Court to re-establish the opinion of the child due to the assessment of the circumstances of the case. However, the Court should also assess the nature of the hearing, depending on the age, development of the child in question, including the nature of behaviour and thinking.

Supreme Court of Latvia, Senate on 17 February 2020 in its decision in administrative case No SKA-700/2020 (A420207818) found that:

[41] Point 7. Not published.
[42] Point 6. Not published.
[43] Point 14. Available at: www.at.gov.lv
[44] Point 17. Available at: www.at.gov.lv

- a mature teenager has already grown sufficiently to be able to make own-initiative decisions and to formulate an opinion on the situation in question[45].
- the opinion of a teenager as any opinion of a child should be judged from the individual personality characteristics and perceptions of each child[46].

Supreme Court of Latvia, Senate on 17 September 2020 in its decision in administrative case No SKA-1345/2020 (A420190719) found that a 10 year old child who had delivered his own opinion, is at such an age that he is able to give an adequate opinion and assess the situation. The child had also provided a consistent opinion to the representatives of the institutions involved in the case (Orphan's Court, bailiff, police representative). Thus, the court did not question the credibility of the child's opinion[47].

Supreme Court of Latvia, Senate on 5 October 2020 in its judgment in administrative case No SKA-1471/2020 (A420212519) decided that the court must examine not only the rule of law of the decision of the Orphan's Court under appeal, but also the current circumstances (make sure that the judgment of the court will be in the best interests of the child). The relationship between individuals and children in cases relating to children's and parental rights is usually dynamic and can change. The Senate has stated that the court's role in these cases means "holding your hand on the pulse" and clarifying all the objectively necessary information, including the juvenile's opinion, to decide whether the ruling is consistent with respect for the child's best interests.

5. Analysis of the current practices in Latvia

Answers to the questionnaire from lawyers and judges in Latvia have given additional useful information to the research.

SECTION 1 – BACKGROUND INFORMATION

This section of the questionnaire was devoted to the acquisition of certain background information of the respondents. In total, 25 respondents participated and answered to the questionnaire.

[45] Point 18. Available at: www.at.gov.lv
[46] Ibid.
[47] Point 11. Available at: www.at.gov.lv

18 respondents (72%) were from the capital of Latvia – Riga and 7 respondents (28%) from other cities. 1 judge, 20 advocates and 4 members from municipal custody courts sent their answers.

Years of professional experience

Less than 1 year: 0

1-5 years: 5

5-10 years: 7

More than 10 years: 13

SECTION 2 - GENERAL

This section contained general question on children's right to information. The scope was to have a general idea on the perception of judges and lawyers on the existence of a general right of the child to receive adequate information in civil proceedings – especially when EU instruments in the field of civil cooperation in civil matters were concerned.

1. *In your country, is there a general obligation to provide written/oral information to children, when the dispute involves a child or is capable to affect the child's life and future? Does it depend on the age of the child? What is the main content of this information?*

Most of respondents answered that there is no such a general obligation, and that mostly children indirectly receives information either from the municipal institution – the custody court, or from their parents. One respondent replied that it could be harmful for the child to hear about litigation between parents, and therefore only children of older age could be carefully informed. Respondents also wrote that regarding adoption the law is silent about exactly what information should be given to the child.

2. *Are children informed <u>before</u> the start of the proceeding?*

Always – 1

Often – 3

Sometimes – 12

Rarely – 5

Never – 4

These answers do not affect legal regulation, which is described in the 2 chapter of this national report.

3. *How long before children are informed before the start of the proceeding?*

Respondents have correctly replied that there is no precise time limit, in which the child should be informed.

4. *Are children informed during the proceeding?*

Most of respondents (68%) have correctly replied that only sometimes children are informed during litigation.

5. *Are children provided information after the proceeding?*

Most of respondents (68%) have correctly replied that only rarely and sometimes never children are informed after litigation.

6. *In general, in your legal system, is there a professional that has the duty to help the child in expressing his/her opinion?*

Respondents have correctly replied in 60% of answers that only in some cases there is a special professional who helps the child to express his or her opinion.

If yes, is this professional neutral from the parties of the dispute and from the court institution?

In administrative process that is a special guardian appointed by the Custody Court. In civil cases this a municipal institution – Custody court, which at times is assisted by psychologist.

7. *In general, and even when there is no obligation for the judge to hear the child under domestic law, does your legal system provide for an obligation to inform the child about the proceeding?*

20 respondents out of 25 answered that there is no general obligation to inform a child about civil proceedings. Some respondents have included a reference to Article 13 of the Law on Protection of Children's Rights, where such general right to receive information is included, but not in relation of civil proceedings.

8. *Are parents prepared or advised by courts or other public service on how to explain to children the situation and how to communicate them the outcome of the proceeding?*

21 respondents out of 25 have answered negatively, because indeed parents are not prepared by the judge or other public institution on how to assist their children and to explain them the situation or the outcome of the proceedings.

9. *In civil proceedings, are children provided with child-friendly material on their right to information and to be heard?*
If yes, which of these materials?
If yes, are there different materials on the basis of different age categories?
There are no child-friendly materials on rights to receive information, and 18 respondents have confirmed this fact. Although some respondents have answered that there are materials available, most probably this is *ad hoc* exceptional situation in separate institutions.

10. *If the child does not understand the local language, are there translation services or materials available in order to guarantee that the child receives proper information?*
Respondents have answered that translation services are available for communication with a child.

11. *Is information adequately provided also to children with special needs? How?*
13 respondents have answered that there is no such availability, which is almost true. Only in some cases psychologists can moderate information to a child with special needs.

SECTION 3: PROCEEDINGS ON PARENTAL RESPONSIBILITY

This section is dedicated to proceedings on matters of parental responsibility, that therefore fall into the scope of application of Regulation (EC) No. 2201/2003 (as well as the Regulation (EC) 2019/111 that will enter into force in 2022). This section is of direct interest for the application of EU instruments in the field of judicial cooperation in civil matters.

12. *In parental responsibility proceedings, is the child heard before issuing a decision on the merits (either directly, or through a representative or an appropriate body)?*
88% of respondents have answered that a child is heard before issuing a decision.

13. *Who hears the child? If the child is heard by the judge, is the judge assisted by a psychologist or an expert?*

Respondents have given indications to the law, writing that either the Custody Court with or without help of psychologist, or the court hears the child. Analysis of legal enactments is given in above chapters of this report.

Does one of the parents (or both parents) attend the hearing?

72.7% of respondents have answered negatively.

14. *Is the hearing usually preceded by a phase in which the child is provided information? How is the information provided?*

When is the information provided?

45.5% of respondents have answered that proceedings never start with informative introduction, and 13.6% of respondents have answered that sometimes information is given. Such answers are because there are no instructions provided on this phase. If the child is heard in the court, general information can be given by a judge.

What is the content of the information?

Mostly respondents have answered that very general information about the case is given to a child, and the reason is explained why child is invited and questioned.

Are children informed at the beginning of the audience that their opinion is important but they won't be responsible of the final outcome of the proceedings?

There is no such requirement in a law to inform a child about this aspect. Therefore answers of respondents are very diverse, covering in equal way all offered choices.

15. *Is the hearing usually followed by a phase in which the child is provided feedbacks and information about the following steps?*

54.5% of the respondents have answered negatively. Giving of any information fully depend on a particular judge or Custody Court official, as there are no instructions in legal enactments.

16. *Do you usually provide information to children together with a person they trust?*

Who is this person?

46.2% respondents have answered "sometimes" and 30.8% - "rarely", as this fully depend on a particular person working with a child.

17. *After the judge has issued a decision on the merits, who informs the child about the outcome of the proceeding (i.e. the decision and its consequences)?*
How is this information provided?

In 64% of cases the answer is that the child is not informed at all about the decision. In fact, this answer correspond legal reality, and mostly parents of the child give this information.

SECTION 4: INTERNATIONAL CHILD ABDUCTION

This section makes reference to international child abduction proceedings and to return proceedings. The section comprehends proceedings for the return of the child under the 1980 Hague Convention, and also return applications following a decision of non-return, according to art. 11 of the Regulation (EC) No 2201/2003.

18. In international child abduction cases, is the child heard before the decision of (non)return in international child abduction cases under the 1980 Hague Convention on the Civil aspects of International Child Abduction (and, when applicable, the EC Regulation No 2201/2003 – from August 2022, Regulation EU 2019/1111)?

In 64% of answers respondents have replied that the child is heard in some cases. In explanations to answers the respondents have clarified that the child is heard when the child can formulate his or her opinion and in cases provided in the Civil Procedure Law.

19. *Who hears the child?*
If the child is heard by the judge, is the judge assisted by a psychologist or an expert?
Does one of the parents (or both parents) attend the hearing?

Respondents have replied that the Custody court is an institution who hears the child. At times the custody court is assisted by the psychologist. Parents can be present at the moment when the child is heard, but this is not regulated in the law.

20. *Is the hearing usually preceded by a phase in which the child is provided information?*
Who provides the information to the child? How is the information provided? When is the information provided?

In 40.9% cases the answer is affirmative, and 22.7% cases the answer is "sometimes", leaving 31.8% answers of "rarely". In fact this fully depend on a judge, because law does not provide for instructions how child should be informed.

What is the content of the information?

In 44.7% answers respondents said that information is about reason of questioning. Other answers equally divides among other choices.

Are the children informed at the beginning of the audience that their opinion is important, but they won't be responsible of the final outcome of the proceedings?

In 54.5% cases answer is "sometimes", because this fully depends on a judge.

21. *If a decision of return is issued, is the child informed about the decision? If the answer is YES, how is the child informed? By whom? ('Decision of return': decision adopted under article 11 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, ordering the immediate return of the child in the State of habitual residence)*

In 77.3% cases the answer is "yes". Information is given orally by one of parents, and procedure is not regulated in the law..

22. *If a decision of return is issued, is the child prepared and informed about the enforcement of a return order? If the answer is YES, how is the child informed? By whom?*

In 84% cases the answer is yes. A parent or custody court informs the child, but this is not regulated by the law.

SECTION 5: MAINTENANCE PROCEEDINGS

23. *When proceedings on maintenance or child support are celebrated outside a divorce/separation/marriage annulment proceeding, is the judge under an obligation to hear the child?*

In 92% of cases the answer is "no". Although maintenance proceedings relates to interests of the child, the law does not demand opinion of the child.

24. *Is the hearing usually preceded by a phase in which the child is provided information?Who provides the information to the child? How is the information provided? When is the information provided? What is the content of the information?*

There is no need to find out opinion of the child in maintenance proceedings. Therefore no information is required.

SECTION 6: SPECIAL REPRESENTATIVE OR SPECIAL CURATOR OF THE CHILD

25. *In your country, has the child the right to be separately represented in civil proceedings?*

If the answer is YES, please list the proceedings, as well as the relevant legal provisions, in which the child has the right of separate representation:

Most respondents (48%) have answered that "in some cases", because indeed only in certain legal issues, mostly administrative cases, a special representative is appointed for the child.

In these cases, does this representation include the specific duty to provide the child with adequate information about the object, the scope and the possible outcomes of the proceeding?

Such obligation is not explicitly stated in the law, as confirmed by respondents.

If the child is heard during the proceeding, has the representative the duty to prepare the child for the hearing?

Respondents have answered in 93.3% cases "no".

26. *In your country, is there the possibility to appoint a special curator or a guardian ad litem of the child in civil proceedings involving him/her?*

If the answer is YES, please list the proceedings, as well as the relevant legal provisions, in which the appointment of the special curator or the guardian ad litem is foreseen:

In those cases, what are the main duties and responsibilities of the special curator or of the guardian ad litem?

Answers equally divides among yes, no and "I don't know". According with law only is some cases guardians shall be appointed.

SECTION 7: FINAL CONSIDERATIONS

27. *Have you ever had a specific training for professionals on children's rights and/or how to protect and fulfil the best interests of the child in civil proceedings?*

In 92% of cases respondents have replied positively.

28. *Have you ever had a training on child-friendly language for informing children?*

From all answers 68% are negative and 32% - positive.

29. *Have you ever had a training on how to explain to parents how to inform their children about proceedings?*

88% from all answers are negative and 12% - positive.

30. *Have you ever had a training on child friendly behaviour to relate to children involved in proceedings?*

76% of answers are negative and 24% positive.

31. *What do you think can be done in order for children to receive complete and adequate information about the proceeding that concerns them in your country?*

In this question, all answers are relevant and are reported below:

- It is disputable question shall the child be informed about everything, taking into account harmful and psychologically traumatic consequences of such information. It is politically sensitive issue.
- A child shall be protected against painful and extra information related with conflicts between his or her parents.
- Reform of system, especially of Custody courts, is required.
- Children shall receive information via psychologists.
- A new body – children ombudsman – shall be established, realising rights to information.
- Competent experts shall decide on this matter.
- It must be stated precisely in the law, who and how must inform a child.
- It must be carefully decided how to present information to a child, so not to harm him or her.
- Guidelines shall be prepared to courts and custody courts on how to talk to child and how to provide information to a child.
- Specialized literature is necessary for professionals working with children.

32. *Is there any other aspect that has been omitted in this survey and that you think is relevant for the purpose of this research?*

Four suggestions have been received:

- It must be analysed, whether the child shall really be informed about every litigation related to the child.
- Practice of each custody court is very different.
- Information can cause psychological trauma to the child, which is not acceptable.
- Particular children shall be examined, who have gone through such proceedings, discovering whether information was beneficial for them or no.