

# Interview with the Minister of Justice Oleg Slizhevsky about national and international mechanisms for protecting the interests of children

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Recently, the Ministry of Justice announced an annual competition for the best children's drawing on the theme "The Right to Childhood." In 2019, the competition is also timed to coincide with the 100th anniversary of the formation of the justice authorities of Belarus. We see an increase in interest in the competition over the years of its holding, which is expressed both in the number of participants and in the number of partners in its organization and conduct. In turn, on our ilex portal we also placed an advertisement about the competition.



**Oleg Leonidovich, on the eve of International Children's Day, we would like to discuss with you the activities of the Ministry of Justice in the field of protection child rights.**

Indeed, the children's drawing competition has become for us a traditional event in the field of legal education of citizens.

We consider it important that the smallest citizens of our country know their rights, speak about them in their own language - the language of drawing. This year, the UN Children's Fund is co-organizing the competition. Of course, the ministry's activities in the field of protecting children's rights are not limited to holding a competition and I am ready to answer any questions you might have

Questions for you.

**A year ago, in June 2018, Belarus acceded to the Convention on the International Procedure for the Collection of Child Support and Other Forms of Family Maintenance. What are the first results of this Convention? What additional rights have Belarusian citizens acquired?**

It is symbolic that the Convention, aimed at protecting the rights of minors, came into force for our state on June 1, International Children's Day.

The Convention on the Recovery of Alimony was developed within the framework of the Hague Conference on Private International Law for more than 10 years and was adopted in 2007. It was the intention of the developers to create a universal mechanism, as flexible as possible, so that the provisions of the Convention would allow the legal systems of different countries to be linked with each other, which became the reason for the length of its preparation.

As a result of the work done, the Convention represents a modern and effective legal instrument, thanks to which persons entitled to receive alimony can exercise this right without being limited to the territory of one state.

For this purpose, a comprehensive system of cooperation has been created between the competent authorities of the Contracting States; citizens are given the opportunity to submit requests for decisions on the collection of alimony in the territory of foreign states, on the recognition and execution in the territory of foreign states of existing decisions on the collection of alimony.

A few words about how the work was carried out to join Belarus to the Convention. In 2012, experts from the Ministry of Justice proactively began reviewing the Convention. The issue of joining a multilateral international treaty requires a lot of work, because it is necessary to enlist the support of all interested government bodies. At that stage of consideration of the issue raised, the judicial branch of government formed a position on the need for further study of the mechanisms of the Convention and the complexity of its implementation within the framework of the current legislation.

The Ministry of Justice returned to the issue of signing the Convention in 2015. It was decided to involve international experts. In 2016, a seminar was held in Minsk together with the European Union, during which the mechanisms of the Convention were examined in detail, including those that caused the greatest debate within the professional community of lawyers, judges and civil servants. The seminar was attended by authoritative international experts, among whom were the developers of the Convention, current judges and lawyers working in the field of alimony collection.

As a result of the seminar, a single agreed position was formed on the possibility of implementing the Convention if it is signed. Taking into account the procedure for concluding international treaties, the decision to sign the Convention was made by the Head of State.

Based on the powers granted to the Ministry of Justice, on March 15, 2017, on behalf of our state, the Convention was signed. As already mentioned, the Convention is mandatory for Belarus from June 1, 2018.

Today the Convention is in force for 38 parties, including Brazil, Turkey, the United States, and member states of the European Union (except Denmark). States continue to accede to the Convention.

A significant role in the implementation of the Convention is assigned to central authorities; in Belarus, such functions are performed by the Ministry of Justice. For citizens, the exercise of their rights through central authorities is very convenient, since all documents are submitted directly to the central authority of Belarus.

Let's imagine a situation where a person obligated to pay alimony lives in the territory of a foreign state party to the Convention. The applicant will submit the documents required by the Convention to the Ministry of Justice, which will transmit them to the central authority of the foreign state for submission to the relevant competent judicial (in some cases, administrative) authority for consideration.

In this case, the physical presence of the child or the applicant when carrying out any procedural actions in the requested state is not required. The applicant does not need to involve a lawyer when applying to a court of a foreign state. Moreover, the Convention provides that central authorities are not entitled to charge the applicant fees for services provided by them in accordance with the Convention.

However, one should not assume that the applicant will not be required to take any action - the applicant fills out the forms provided for by the Convention and submits the necessary documents, ensures their official certification and translation into the language of the requested state. Document forms in Russian and English are posted on [website](#) of the Ministry of Justice (*“Activities” – “International cooperation” – “International legal assistance” – “Convention on the international procedure for the collection of child support and other forms of family maintenance of November 23, 2007”*).

In general, it should be recognized that the Convention provides for a mechanism for the international collection of alimony, however, it does not guarantee successful collection in each specific case. Despite the universal mechanisms of the Convention, the specificity of legal relations, differences in national legislation, and the uniqueness of individual alimony cases can significantly complicate the achievement of the goal pursued by the applicant. You need to be prepared for the fact that this rather difficult process can take a long time. However, if previously there was no legal mechanism for collecting alimony from persons living, for example, in the United States or member states of the European Union, now such a mechanism is available to our citizens. As, indeed, for foreigners in relation to persons living in Belarus.

However, statistics show that the majority of appeals passing through the Ministry of Justice concern the collection of alimony from abroad for children living in Belarus. Thus, since the entry into force of the Convention for the Republic of Belarus, the Ministry of Justice has organized the consideration of 24 requests for the collection of alimony abroad and 3 requests for the collection of alimony in the Republic of Belarus.

In a certain number of cases, after receiving notification from the Central authorities of foreign states about the receipt of a request for the collection of alimony, debtors began to voluntarily pay alimony without waiting for the intervention of government authorities; in other cases, requests were transferred to the competent judicial or administrative authorities of foreign states for consideration.

**In recent years, the scope of mediation has expanded. There is information about school mediation. Is it possible, within the framework of current legislation, to talk about full-fledged mediation in schools? What are the obstacles to the development of mediation practices in school?**

Currently, in the Republic of Belarus there is growing interest in the development of school mediation, training students, teachers, parents in the skills and abilities of resolving school conflicts, and new forms of behavior in conflict situations.

For the first time in our country, a school mediation project was carried out by the Center “Mediation and Law” in the 2015-2016 academic year on the basis of state educational institutions “Secondary School No. 30 in Minsk” and “Secondary School No. 38 in Grodno”. Subsequently, in agreement with interested government bodies and organizations, the project entitled “Learning to understand each other” was developed with the participation of 14 educational institutions in the city of Minsk and 19 educational institutions in the city of Grodno and the region.

School mediation services in Belarus are a model of restorative mediation in school, which is defined as the assistance of a third independent party to two (or more) participants in finding an agreement in a controversial or conflict situation.

I would like to note that the main goals of creating a school mediation service are the development of the practice of peacemaking and mediation, the promotion of the values of constructive behavior in conflict and controversial situations, the formation of a culture of non-violence and the ability for mutual understanding among members of the school community.

School mediation services created in educational institutions consist of employees of the educational organization, students and their parents who have undergone the necessary training and education in the basics of the school mediation method and the mediation approach.

The participation of students in resolving conflicts at school is aimed, among other things, at the socialization of the child. A number of problems that arise in the school environment can be referred to the students themselves for resolution under the guidance of a neutral party (mediator), whose role is their peer.

In order for school mediation to be organic to the educational process, it is important to fit it into the structure of the school. The activities of the school service must receive official status within the educational institution in which it is created. It is important that the mediation component takes place with the participation of specialists in this field.

By decision of the Deputy Prime Minister of the Republic of Belarus, Chairman of the National Commission for the Rights of the Child I.V. Petrishenko, the Ministry of Justice sent theses to the Ministry of Education that can be taken into account when developing the Concept for the development until 2025 of a network of mediation (reconciliation) services in the Republic of Belarus in order to implementation of restorative justice for children, including those who have committed crimes.

It should be noted that the institute of school mediation is now actively developing in different countries, so it is important to use the existing experience of colleagues. The topic of school mediation has become one of the areas of cooperation with the United Nations Children's Fund (UNICEF).

**What are the prospects for using the mediation procedure in enforcement proceedings? Basically, this issue concerns the execution of enforcement documents for the collection of alimony, participation in the upbringing of children and other requirements of both a property and non-property nature arising from marital relations.**

Special attention is currently being paid to the development of the institution of mediation in enforcement proceedings, since this institution can become one of the mechanisms for increasing the efficiency of execution (especially for enforcement documents with the participation of citizens), reducing the burden on bailiffs, as well as the costs of executing enforcement documents.

An understanding has been formed that mediation in enforcement proceedings is a necessary tool, since it involves the peaceful resolution of a dispute by reaching agreement and a mutually beneficial solution.

In turn, enforcement proceedings are a procedure for the forced execution of the requirements of a writ of execution with the application of various coercive measures to the debtor in connection with non-fulfillment of the requirements of the writ of execution outside the framework of enforcement proceedings. Also, enforcement proceedings are

characterized by opposition of the parties to enforcement proceedings to each other, especially regarding enforcement documents, the requirements of which are not related to the collection of funds or the transfer of property.

As we see it, it is necessary to use mediation in enforcement proceedings, first of all, when executing enforcement documents on requirements related to the participation of minor children (collection of alimony, participation in the upbringing of a minor child, transfer of a minor child from one parent to another).

The presence of a writ of execution on the disputes under consideration in itself presupposes the debtor's refusal to voluntarily fulfill the legal demands of the claimant. This leads to various conflicts between the parties (for example, the refusal of one parent to provide the other parent with the opportunity to meet with a minor child at the time established by the executive document). For these categories of enforcement documents, it is especially important to establish conflict-free execution of the requirements of enforcement documents in order to avoid causing various types of psychological trauma to the child.

Due to the fact that the introduction of the institution of mediation in enforcement proceedings seems expedient and justified, the Ministry of Justice is carrying out work aimed at normatively establishing the possibility of using mediation within the framework of enforcement proceedings.

Thus, the Ministry of Justice prepared and, in accordance with the established procedure, submitted to the Government a draft Law of the Republic of Belarus, which provides, among other things, for adjustments to the Law of the Republic of Belarus "On Enforcement Proceedings".

The draft Law establishes the following basic provisions in relation to the possibility of using mediation within the framework of enforcement proceedings:

- the right of the bailiff to explain to the parties to enforcement proceedings the possibility of using the mediation procedure in enforcement proceedings;
- enforcement proceedings are subject to suspension from the moment an agreement on the use of mediation is concluded between the claimant and the debtor;
- enforcement proceedings are subject to termination upon conclusion of a mediation agreement between the claimant and the debtor;
- reduction in the amount of forced collection when concluding a mediation agreement between the claimant and the debtor.

We hope that citizens of our country and legal entities will, over time, more actively use mediation as a peaceful settlement of a dispute, thereby ensuring the restoration of the violated rights of the claimant, without leading to restrictions on the rights of the debtor and

additional financial and time costs.

**The Convention on the Civil Aspects of International Child Abduction has been in force for Belarus for more than 20 years. A draft law is planned for 2019 to implement the provisions of this Convention. What has the practice of applying this Convention shown? What should families living abroad and international families (in which one of the spouses is a foreign citizen) know about this Convention?**

The Convention on the Civil Aspects of International Child Abduction was concluded in 1980. The decision to develop it within the framework of the Hague Conference on Private International Law was made due to the increasing number of cases of abduction by parents of their common children from each other at that time. Over time, the number of such cases is undoubtedly increasing, in particular due to increased population mobility and an increase in the number of international marriages.

There are currently 100 States parties to the Convention, demonstrating its truly universal nature and wide scope. The Republic of Belarus acceded to the Convention on January 12, 1998 and on April 1 of the same year the Convention came into force for our state.

The main purpose of the Convention is to protect children from the negative consequences of their wrongful removal or retention by one of their parents in a State other than the State of their habitual residence, as well as to establish mechanisms that would ensure their immediate return to the State of their habitual residence.

It is important to note that although in Belarus one of the parents can travel to another state with the child and without the permission of the other parent, in many states party to the Convention this is a crime. In addition, such an act would violate the child's right not to be separated from his parents, as well as the child's right to communicate with both parents, which is enshrined in the Convention on the Rights of the Child.

It is necessary for parents to develop an understanding that such a movement of the child causes harm, first of all, to the child, who finds himself forcibly torn out of his usual home environment, separated from his second parent and other relatives, the child has to adapt to an often completely new language and cultural environment. It is also important to remember that a child needs both parents and if the parents managed to avoid conflict or resolve it through peaceful means, then this is the option that is most consistent with the best interests of the child.

The basic idea of the Convention is that any child removed from (or retained outside) his or her State of habitual residence must be returned home promptly unless there are grounds for refusal of return provided for by the Convention. In this case, the citizenship of the child does not matter; the determining factor is the child's place of permanent residence. After returning to the state of permanent residence, the question of where and with whom the child should live will be decided by the court of the state of the child's permanent residence. It is believed

that it is the court of the state in which the child permanently resided that, taking into account all the circumstances, can more correctly assess how the conflict between the parents in relation to this child should be resolved and what is most consistent with his interests.

The Convention, in order to combat the abduction of children by parents, has created a system of cooperation between the Central authorities of the participating states. In Belarus, the functions of the Central Authority for the purposes of the Convention are performed by the Ministry of Justice.

For the period from 1998 to 2012, the Ministry of Justice registered only a few requests on issues related to the scope of the Convention. In 2012, 4 applications were received for the return of children displaced to the Republic of Belarus from foreign countries, or from the Republic of Belarus abroad; in 2018, there were already 16 applications.

As the number of appeals increases, practical experience in applying the Convention is gained, and the experience of foreign countries is studied, the Ministry of Justice has formed a position on the need to make a number of changes and additions to national legislation.

In particular, the bill prepared by the Ministry this year provides for changes to the Civil Procedure Code, the Code on Marriage and Family, the Tax Code and some laws. The bill is now at the stage of preparation for the first reading in the House of Representatives of the National Assembly of the Republic of Belarus. The adoption of the bill will become a means of increasing the effectiveness of the application of the Convention in the Republic of Belarus.

We are trying to take a comprehensive approach to the issue of increasing the effectiveness of the Convention. For example, on May 17 of this year, the Ministry of Justice, together with the Representative Office of the United Nations Children's Fund (UNICEF), held a conference on the topic

“Practice in applying the Convention on the Civil Aspects of International Child Abduction” for judges, lawyers and representatives of interested government bodies.