

Act relating to the recognition and enforcement of foreign decisions concerning custody of children etc. and on the return of children

Chapter I. Scope

§ 1. (1) The provisions of sections 2 to 10, 13, 14, 16 to 18 and 20 to 22 apply in relation to the States that have joined the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980. These provisions do not apply in relation to Denmark, Finland, Iceland and Sweden insofar as separate provisions apply.

(2) The provisions of sections 2 to 5, 11 to 13, 15 to 19, 21 and 22 apply in relation to the States that have joined the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980.

§ 2. Subject to reciprocity, the King may provide that the provisions of this Act relating to the recognition and enforcement of decisions concerning the custody or return of a child shall also apply in relation to States that have not joined the European Convention or the Hague Convention.

§ 3. For the purposes of this Act, “decision” means a judgment, order, ruling or administrative decision given by a court or other public body. The definition also covers an agreement approved by a competent public body.

§ 4. This Act applies to children who have not yet attained the age of 16.

§ 5. (1) The central authority shall:

- (a) receive and transmit applications made under the conventions
- (b) cooperate with the central authorities in the convention States
- (c) perform any other tasks imposed on it by the conventions

(2) The King decides who is to constitute the central authority under this Act.

Chapter II. Recognition and enforcement of decisions concerning custody of children etc. under the European Convention

§ 6. (1) A decision concerning the custody of a child or the right of access that is given in a State that has joined the European Convention shall apply in Norway. If the decision is enforceable in the State in which it was given (the State of origin), it may also be enforced in Norway.

(2) If, at the time of the removal of a child across an international border, there is no decision as mentioned in paragraph 1 capable of enforcement in the State of origin, any subsequent decision given in a convention State that declares the removal to be unlawful shall have the same effect as such decision as is mentioned in paragraph 1.

§ 7. Such decision as mentioned in section 6 shall not be recognised and enforced if:

- (a) this would be manifestly incompatible with the fundamental principles of Norwegian law relating to family and children

- (b) the decision, by reason of a change in circumstances, is manifestly no longer in the best interest of the child. A change in circumstances includes the passage of time since the decision was given, but does not include a mere change in the residence of the child since the wrongful removal
- (c) the child, at the time that proceedings were instituted before a court or the matter was taken up by an administrative body in the State of origin, was a national of or was habitually resident in Norway and no such connection existed with the State of origin
- (d) the child, at the time that proceedings were instituted before a court or the matter was taken up by an administrative body in the State of origin, was a national both of Norway and of the State of origin and was habitually resident in Norway
- (e) the child, in accordance with the law of the State of which it is a national or in which it is habitually resident, has the right to decide on its own place of residence, or
- (f) the decision is incompatible with a decision given in Norway in proceedings begun before the submission of the application for recognition or enforcement, and a refusal is in the best interest of the child. A decision given in a third State, and which is enforceable in Norway, shall have the same status as a decision given in Norway.

§ 8. A decision in proceedings based on section 6 that was given in the absence of the defendant or the defendant's legal representative shall only be recognised or enforced in cases where the following conditions are met:

- (a) The defendant has been served with a summons or equivalent document with sufficient time to enable him to arrange his defence. This requirement does not, however, apply in cases where service was delayed or not executed because the defendant had concealed his whereabouts from the person who instituted the proceedings.
- (b) The authority giving the decision has founded its competence on the habitual residence of the defendant, on the last common habitual residence of the child's parents, provided that one parent is still habitually resident there, or on the habitual residence of the child.

§ 9. (1) Proceedings concerning the enforcement of a decision falling within section 6 may be adjourned if:

- (a) an ordinary form of review of the decision has been commenced in the State of origin
- (b) proceedings relating to the custody of the child or the right of access, commenced before the proceedings in the State of origin were instituted, are pending in Norway
- (c) the issue of recognition or enforcement of another decision concerning the custody of the child or the right of access is the subject of any other proceedings.

(2) The decision to adjourn proceedings shall be given by way of order. The proceedings may be recommenced by way of order when the reason for the adjournment no longer justifies the adjournment.

§ 10. When a decision is given to recognise and enforce the right of access, see section 6, conditions may be imposed for the implementation of the right of access.

Chapter III. Return of abducted children under the Hague Convention

§ 11. (1) A child that is wrongfully removed to or retained in Norway shall be returned immediately if the child was habitually resident in a State that has joined the Hague Convention immediately prior to the removal or retention.

(2) A removal or retention is wrongful if:

- (a) the removal or retention is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention, and
- (b) the rights of custody were actually exercised at the time of removal or retention, or would have been so exercised but for the removal or retention.

§ 12. The return of a child pursuant to section 11 may be refused if:

- (a) at the time when the application for return was submitted, at least one year has elapsed since the removal or retention and the child is settled in its new environment
- (b) there is a grave risk that returning the child would expose it to physical or psychological harm or otherwise place it in an intolerable situation
- (c) the child itself objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views
- (d) return is not compatible with fundamental principles in Norway relating to the protection of human rights.

Chapter IV. Procedural provisions

§ 13. (1) An application for the enforcement of a decision falling within section 6 or for the return of a child pursuant to section 11 shall be submitted to the district court, which shall give its decision by way of order.

(2) The application shall be written in Norwegian or English or be accompanied by a translation into Norwegian. Enclosures and written evidence shall be accompanied by translations into Norwegian or English. Section 136, first paragraph, second sentence, of the Act relating to the courts of justice shall apply correspondingly.

§ 14. An application for the enforcement of a decision falling within section 6 shall be accompanied by a copy of the decision and, if it appears that the decision has been given in the absence of the defendant, a document which establishes that the defendant was served with or in some other proper manner informed of the summons or an equivalent document. The application shall also be accompanied by a document which establishes that the decision is enforceable in the State of origin, a statement indicating the likely whereabouts of the child in Norway, and proposals as to how the custody of the child should be restored.

§ 15. (1) The application for the return of a child pursuant to section 11 shall contain information concerning the identity of the applicants, the child and the person alleged to have removed or retained the child, as well as the date of birth of the child. It shall set out the grounds on which the claim for return is based, and information relating to the likely whereabouts of the child in Norway.

(2) If so requested by the court, the application for the return of a child pursuant to section 11 shall be accompanied by a decision or determination by a competent authority in the State in which the child was habitually resident immediately prior to the removal or retention that establishes that the removal or retention is wrongful. This only applies in cases where such a decision or determination may be obtained in that State.

§ 16. (1) Applications for such enforcement as mentioned in section 6 and proceedings concerning the return of a child pursuant to section 11 shall be dealt with expeditiously.

(2) If the court has not reached a decision on an application for return pursuant to section 11 within six weeks of the application being submitted, it shall explain the reasons for the delay if so requested by the applicant.

§ 17. Before reaching a decision on a claim for enforcement of a decision falling within section 6 or an application for the return of a child pursuant to section 11, the court shall ascertain the child's views unless this is impossible having regard in particular to the child's age and degree of maturity.

§ 18. (1) The provisions of sections 60 and 65 of the Children Act of 8 April 1981 no. 7 apply to proceedings concerning enforcement pursuant to section 6 and return pursuant to section 11. Section 65, first paragraph, of the Children Act also applies to enforcement of the right of access. The provisions of the Act relating to the enforcement of claims apply insofar as they are appropriate for proceedings concerning enforcement pursuant to section 6 and return pursuant to section 11.

(2) If it is inadvisable that the child stays with one of the parents while the proceedings concerning enforcement pursuant to section 6 or return pursuant to section 11 are pending, the court may decide that the child welfare authorities are to take over the care of the child until a final decision is given in the proceedings. If the court decides that the child is to stay with one of the parents during the proceedings, see section 60 of the Children Act, conditions may be imposed for the exercise of the right of access.

Chapter V. Miscellaneous provisions

§ 19. (1) If it becomes known during proceedings concerning the custody of a child or the right of access under the Children Act of 8 April 1981 no. 7 that an application has been made for the return of the child in accordance with section 11 of the present Act, the court shall not give a decision in these proceedings before a final decision is given on the application for return.

(2) If, in the course of such proceedings as mentioned in paragraph 1, the court receives notice from the central authority of a wrongful removal or retention of a child in Norway, but no

application is submitted for the return of the child pursuant to section 11, the court shall not give a decision in the proceedings until a reasonable time has passed without an application being lodged.

§ 20. (1) If a child that is habitually resident in Norway is wrongfully removed or retained in another country, the district court at the place where the child was most recently resident may, upon application by the person who has custody of the child, decide by order that the action is wrongful. The same applies if the child is removed or retained by a party who has custody in cases where custody is shared and the other party so requests. There is not deemed to be a wrongful removal or retention pursuant to the previous sentence if the stay abroad occurs with the consent of the other party or is a short stay and it seems obvious that the child will return as planned, see section 40 first paragraph of the Children Act.

(2) If the defendant's whereabouts are unknown and cannot be ascertained, the proceedings may be decided pursuant to this section even if the defendant has not been served with the summons or other documents in the proceedings.

§ 21. The King may make regulations to supplement or implement this Act. The King may also by way of regulation provide for exceptions from the provisions of this Act if this is necessary to meet Norway's obligations under an agreement with a foreign State.

§ 22. This Act enters into force on the date decided by the King. The provisions relating to the recognition and enforcement of decisions concerning custody of children and the right of access and the provisions relating to the return of children may be brought into force on different dates.