

NB: Unofficial translation

Child Custody and Right of Access Decree

(28 June 1994/556)

Chapter 1

Procedural provisions

General provisions

Section 1

If a court deems it necessary to obtain a report from the social welfare board, when considering a case relating to child custody or right of access, it shall suspend the proceedings and make, from office, a request to the social welfare board of the municipality where the child has a place of residence. If the child does not have a place of residence in Finland, the request shall be made to the social welfare board of the municipality where the child lives. If the child does not live in Finland, the request may be made to the social welfare board of a municipality where the child has had a place of residence in the year preceding the bringing of the case before the court. The necessary information relating to the application and the proceedings shall be annexed to the request.

When requesting a report, the court shall, where necessary, mention the circumstances that require specific attention in the report.

If the court considers that the report of the social welfare board is incomplete or if the proceedings reveal new circumstances which call for additional information, the court may request a supplementary report or a new report.

Section 2

The court shall on its own initiative suspend the proceedings relating to child custody or right of access and reserve, from office, the social welfare board an opportunity to be heard, if the court considers this necessary in the best interest of the child or for another reason.

Section 3

When the court decides to hear the child in person, in accordance with section 15, paragraph 2 or section 39, paragraph 2 of the Child Custody and Right of Access Act, the decision shall indicate the

circumstances establishing a significant reason that makes the hearing necessary in view of the resolution of the case.

When the court issues an interim order in a case relating to child custody or right of access, the decision shall indicate that the order is to remain in force during the proceedings and until the court makes a decision in the case.

Section 4

In a case relating to right of access of a child, an applicant who is not habitually resident in Finland shall be granted cost-free proceedings without liability to compensate the State, as provided for in section 41, paragraph 1 of the Child Custody and Right of Access Act, if the application is to be deemed necessary due to the fact that the Helsinki Court of Appeal or the Supreme Court has made a decision relating to the return of the child by virtue of the Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 October 1980 (*the Hague Convention*), or to the recognition or enforcement of a decision on child custody or right of access made in a foreign State.

Special provisions for the Helsinki Court of Appeal

Section 5

When the application referred to in section 36 of the Child Custody and Right of Access Act is made by the Ministry of Justice, acting as the Central Authority referred to in section 35 of the said Act, or by an agent authorised by the Ministry, cost-free proceedings shall be granted to the person on whose behalf the Ministry of Justice is acting.

Section 6

When the Helsinki Court of Appeal requests, in accordance with section 39 of the Child Custody and Right of Access Act, that the social welfare board ascertain the opinion of the child, the request shall be made to the social welfare board of the municipality where the available information indicates the child to live. The request shall otherwise be subject to the provisions in section 1.

Section 7

When considering a case relating to the return of a child, as referred to in section 30 of the Child Custody and Right of Access Act, the Helsinki Court of Appeal may exhort the applicant to obtain a

decision or other evidence from the authorities of the State where the child had his habitual residence immediately prior to the wrongful removal or failure to return, to the effect that the said removal or failure to return is wrongful in accordance with the Hague Convention, if such a decision or evidence is available from that State.

Chapter 2

Provisions for the social welfare board

Section 8

The social welfare board from which a court has requested a report in accordance with section 1 shall prepare the report in cooperation with the social welfare boards of the municipalities where the parents, the custodian and the proposed custodian of the child have their places of residences and, where necessary, also with the social welfare board of the municipality where such persons or the child live.

The social welfare board may prepare a report only upon the request of a court. The report shall be sent directly from the requested social welfare board to the court.

Section 9

When a request referred to in section 6 is made to the social welfare board, it shall urgently ascertain the opinion of the child. The provisions in section 8, paragraph 2 shall be applied.

Section 10

When the social welfare board, upon the request of a court, prepares a report or uses its right to be heard in a case relating to child custody or right of access, it shall consult with the guardianship board, if this is to be deemed necessary, and request a statement from the guardianship board on the guardianship of the child, where necessary.

Section 11

When the social welfare board is notified of the death of a custodian, resulting in the loss of child custody, it shall consult with persons close to the child and make an application to the court on the appointment of a custodian and a guardian, where necessary.

When a child is, due to a reason other than that referred in section 1, permanently in the care of

someone else than his custodian or custodians, the social welfare board shall take measures to arrange the custody of the child by agreement of the parents or by a court decision, if this is warranted in the best interest of the child. When considering the matter the social welfare board shall pay special attention to the

own wishes and opinion of the child and to the relationship between the child and the parents or other custodians.

The Child Welfare Act (1983/683) contains provisions on the taking of a child into protective care by the social welfare board in situations where he is in immediate danger or otherwise in urgent need of protective care.

Section 12

The social welfare board's right of action in cases relating to child custody or right of access or to the return of a child shall be used as provided in section 12 of the Social Welfare Act (1992/736).

Section 13

When the social welfare board has confirmed an agreement on joint child custody by the parents or sole custody by one parent, it shall without delay notify the same for the census database, as provided in section 11 of the Census Decree, and to the guardianship board.

When the social welfare board has confirmed an agreement on child custody or right of access and it has knowledge of pending court proceedings relating to the same matter, it shall send a copy of the agreement to the court.

Chapter 3

Provisions of Private International Law and Return of the Child

Section 14

The Ministry of Justice shall be the Central Authority referred to in the Hague Convention and the Council of Europe Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, done at Luxembourg on 20 May 1980 (*the European Convention*); in this function it shall:

- 1) act as the receiving and transmitting central authority;
- 2) cooperate with the central authorities of the other Contracting States of the Hague Convention and the European Convention;
- 3) promote the cooperation of the competent Finnish authorities;
- 4) assist in the organisation and protection of the right of access, as provided in article 11 of the European Convention and article 21 of the Hague Convention; and
- 5) perform the other duties assigned to the Central Authority in the European Convention and the Hague Convention.

Section 15

A person who in Finland or another Contracting State of the European Convention has obtained a decision on child custody or right of access, or a decision referred to in section 26 of the Child Custody and Right of Access Act, may request the Ministry of Justice to take steps for the recognition or enforcement of the decision in another Contracting State.

A person, an institution or another body whose rights relating to child custody have been violated by wrongful removal of the child or failure to return the child, as referred to in sections 30 and 32 of the Child Custody and Right of Access Act, may request the Ministry of Justice to take steps in order to obtain a return order by virtue of the Hague Convention.

A request referred to in paragraphs 1 and 2 may be made also by the central authority of a Contracting State of the European Convention or the Hague Convention, respectively.

Section 16

A request addressed to the Ministry of Justice, as referred to in section 15, shall be made in writing.

Section 17

The following information shall be annexed to a request for the recognition or enforcement of a decision on child custody or right of access:

- 1) the original decision or a certified copy;
- 2) if the decision has been given in default, the original or a certified copy of the document indicating the manner, place and time of the subpoena or summons and the name of the person to whom the document was given;

3) a power of attorney, authorizing the central authority or an agent thereof to act on behalf of the requesting party;

4) where necessary, a document indicating the enforceability of the decision in the State where it was given;

5) where possible, an indication of the whereabouts of the child; and

6) a certified translation into Finnish, Swedish or English of a document not written in one of those languages, unless the Ministry of Justice grants an exception for this.

Section 18

A request for the return of a child shall contain:

1) the personal data and other identifying characters of the requesting party, the child and the person who is alleged to have removed the child or failed to return him;

2) the grounds on which the demand of the return of the child are based;

3) where obtainable, the information relating to the birth date of the child and

4) all available information on the whereabouts of the child and the person with whom the child is assumed to live.

Where necessary, a request for the return of a child shall contain:

1) the relevant decision or agreement or a certified copy of the same;

2) a certificate or an account of the central authority or another competent authority or expert of the State where the child is habitually resident, concerning the relevant provisions of the law of that State and

3) the other relevant documents and accounts.

If the request or an annexed document is not in Finnish or Swedish, a certified translation to one of these languages or, in case of difficulty, to English shall be annexed to it, unless the Ministry of Justice grants an exception for this.

Section 19

The documents referred to in section 17, paragraph 1 and 2 shall be appended to an application addressed to the Helsinki Court of Appeal for the assertion of a decision made in a foreign State.

In addition, an application for the assertion of the enforceability in Finland of a foreign decision shall have as an annex an account of the enforceability of that decision in the deciding State.

If the application relates to the recognition of an agreement or order arrived at without official

cooperation, it shall have as an annex an account on the legal validity of the measure in the State where the child was habitually resident at the time of the agreement or order. If the application relates to enforcement, it shall further have as an annex an account of the enforceability of the agreement or order in that State.

Section 20

An application for the return of a child, addressed to the Helsinki Court of Appeal, shall, where necessary, have as annexes the documents referred to in section 18, paragraph 2.

Section 21

When the information relating to child custody is notified to the census database on the basis of a foreign decision, whose assertion has not been applied from the Helsinki Court of Appeal, the notification shall have as an annex the account referred to in section 19, paragraph 1 and the other necessary accounts required by the local census bureau or church authority. If the notification is based on an agreement or order referred to in section 23, paragraph 3 of the Child Custody and Right of Access Act, it shall have as an annex an account of the legal validity of the agreement or order in the State where the child was habitually resident at the time of the agreement or order.

Section 22

The Ministry of Justice may deny the assistance referred to in the European Convention, the Hague Convention and this chapter, if:

- 1) it is clear that there is no justification for the assistance under either Convention; or
- 2) the application relates to the resolution of a matter of right of access in Finland and it is clear that Finnish courts have no jurisdiction or that the application cannot be granted under Finnish law.

The denial and the grounds thereof shall at once be notified to the applicant or, if the application has been transmitted by the central authority of a foreign State, to this central authority.

Chapter 4

Miscellaneous provisions

Section 23

The Ministry of Justice shall confirm the form used for the agreement referred to in section 7 of

the Child Custody and Right of Access Act.

The Social Welfare Boards shall receive the forms for free from Painatuskeskus Oy.

Section 24

Where necessary, the Ministry of Justice shall issue more detailed instructions on the implementation and application of this Decree.

Section 25

This Decree shall enter into force on 1 August 1994.

This Decree shall repeal the Decree on Child Custody and Right of Access of 18 November 1983/848.