

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

FINLAND

PREPARED BY:

**JUSSI IKONEN
ROSCHIER, ATTORNEYS LTD.
KESKUSKATU 7 A
00100 Helsinki
Finland**

(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

The main source of the rules of jurisdiction in commercial and civil matters in Finland is Chapter 10 of the Code of Judicial Procedure (4/1734, as amended).¹

2. Specific Rules (or Not) for Transnational Disputes

Finnish law does not contain separate sets of rules regarding jurisdiction in transnational and domestic matters, and, consequently, domestic rules on jurisdiction are used to determine the jurisdiction of a Finnish court in transnational matters. The only specific rule of jurisdiction in transnational disputes is included in Chapter 10 Section 1 Subsection 1 of the Code of Judicial Procedure. Said subsection provides that a citizen of a foreign state who is not domiciled in Finland may, in the absence of separate provisions regarding the citizens of said state, be summoned to the court of the locality in Finland where he/she is found or where he/she has property.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

There is no specific set of national rules in Finland designed to govern the jurisdiction of courts pursuant to article 4(1) of the Brussels I Regulation. Accordingly, the traditional rules, including Chapter 10 Section 1 Subsection 1 of the Code of Judicial Procedure, are applicable to situations referenced in said article of the Brussels I Regulation.

4. Influence of EU Law

Sentences 2, 3 and 4 of Chapter 10 Section 1, Subsection 1 of the Code of Judicial Procedure are often mentioned as exorbitant grounds for jurisdiction, and they are also listed in Annex 1 to the Brussels I Regulation as prohibited rules under Article 3(2) of the Brussels I Regulation. This may have some influence on the interpretation of these national jurisdictional rules. The legal literature has even questioned whether it is appropriate to apply said rules to non-EU residents either.² However, no case law confirms this and the above provisions are as such still in force.

5. Impact of Other Sources of Law

Human rights principles as expressed in the European Convention on Human Rights and the decisions of the European Court of Human Rights have a strong influence on the rulings of Finnish courts. In 1990 the Committee for Constitutional Law of the Finnish Parliament had already stressed the importance of interpreting the law in accordance with human rights principles.

¹ See the full text of Chapter 10 of the Code of Judicial Procedure in Finnish as **Annex 1**. An unofficial English translation of the same is attached as **Annex 2**.

² See e.g. Risto Koulu: *Kansainvälinen prosessioikeus pääpiirteittäin*, 2003 (hereinafter "Koulu"), p. 47.

It is possible that the general impact of human rights principles in Finnish law could also, in casu, have an influence on jurisdictional aspects. However, there is no case law explicitly addressing the issue.

6. Other Specific Features

As stated above, Finnish jurisdictional rules contain a provision whereby a Finnish citizen who lives abroad and is no longer domiciled in Finland may be summoned to the court of the locality where he/she last had a domicile in Finland.

7. Reform

There has been discussion for some time in Finland of a complete revision of the jurisdictional rules. However, at the moment, it appears that an actual revision will begin at the earliest in early 2007. So far, no information on the extent or content of any contemplated changes has been made public.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

Finland is not a party to bilateral or multilateral conventions with third countries regarding jurisdictional rules as such in matters regulated by the Brussels I Regulation. The former multilateral conventions regarding jurisdictional rules, e.g., between Finland and other Nordic countries have been replaced by the Brussels Convention, the Brussels I Regulation and the Lugano Convention.

Finland is a party to certain multilateral conventions which include provisions on jurisdiction. In matters regulated by the Brussels I Regulation, Finland has ratified e.g. the Convention on the Contract for the International Carriage of Goods by Road ("CMR") and two conventions in the field of liability for nuclear damage.³

9. Practical Impact of International conventions with third states

Finland has implemented the above multilateral conventions as part of its legislation. In consequence, the jurisdictional provisions included in those conventions may impact transnational disputes in situations where the conventions apply.

³ Vienna Convention on Civil Liability for Nuclear Damage ("Vienna Convention") and Convention on Third Party Liability in the Field of Nuclear Energy ("Paris Convention").

(C) Applicable National Rules Pursuant to Article 4 of Brussels I Regulation

10. Structure

In Finland, pursuant to Article 4(1) of the Brussels I Regulation, the general rule on jurisdiction in cross-border disputes against defendants domiciled in non-EU states is that where the defendant is not domiciled in Finland, the local court in Finland where the defendant is found or where the defendant has property has jurisdiction (Chapter 10 Section 1, Subsection 1 of the Code of Judicial Procedure). This general rule of jurisdiction is applicable to all civil and commercial disputes, irrespective of their legal nature, where a person who is not domiciled in Finland is the defendant. In addition, general international procedural principles and analogous interpretation of the national rules of jurisdiction may have relevance in practice as a basis for jurisdiction in cross-border disputes.⁴

11. General jurisdiction

The relevant connecting factors that constitute jurisdiction for the Finnish court over a defendant domiciled in a non-EU state are that (i) the defendant is found in Finland or that (ii) the defendant has property in Finland. The locality where the defendant is found or where the defendant has property determines which Finnish court is competent to try the case. In addition, a Finnish citizen who lives abroad and is no longer domiciled in Finland may be summoned to the court of the locality where he/she last was domiciled in Finland. Here, the locality where the person was last domiciled constitutes the relevant connecting factor. It should be noted that none of the above connecting factors require an actual connection to the dispute itself, but can be unrelated and still constitute grounds for jurisdiction.

In order for connecting factor (ii) above, i.e. the defendant having property in Finland, to be applicable, the property must have some value, it must be attachable by the executing authority and its value and condition must be stable. However, the type of property does not, as such, matter, i.e., e.g. real property, movables, intellectual property or a credit may constitute grounds for jurisdiction.

12. Specific Rules of Jurisdiction

a) Contract

The general rules of jurisdiction (see point 11 above) apply to contractual disputes. Accordingly, e.g. the fact that a contract has been concluded or performed in Finland with a non-EU defendant does not constitute Finnish court jurisdiction over such a defendant unless the defendant also has property, or is found, in Finland.

⁴ Antti Jokela, *Oikeudenkäynnin perusteet, Oikeudenkäynti I*, 2005 (hereinafter "Jokela"), p. 312.

b) Tort

With regard to tort matters, which are non-contractual claims for damages, there are no specific rules. Thus the general rules of jurisdiction (see point 11 above) apply. Accordingly, the mere fact that a tort was committed by a non-EU defendant within the territory of Finland does not constitute grounds for Finnish court jurisdiction over such a defendant unless the defendant also has property, or is found, in Finland. For information on torts related to criminal offences, see 12 c) below.

c) Criminal Proceedings

According to Chapter 3 Section 1 of the Criminal Procedure Act (689/1997, as amended), a civil claim arising from an offence for which a criminal charge has been brought may be heard in connection with the charge. Accordingly, the court that is competent to hear the criminal charge against a defendant domiciled in a non-EU state (e.g. because the offence was committed in Finland) is always competent to hear civil claims brought by the injured party that are related to the offence. If the charge and the civil claim arising from the offence for which the charge has been brought are pending separately in the same court, the court may consolidate the civil claim and the criminal charge.

d) Secondary Establishment

Where a defendant domiciled in non-EU state⁵ has property in Finland, jurisdiction is given to the court where the property is located. Such property includes businesses or commercial offices. There is no requirement that the claims in question have to relate to the activities of said business in order to constitute jurisdiction for the court where the property is located.

e) Trust

The concept of trust as recognized in common law countries is unknown to the Finnish legal system. Accordingly, no specific jurisdictional rules exist with regard to trusts. Consequently, any disputes involving trusts would be subject to the general rules of jurisdiction (see point 11 above).

f) Arrest and/or location of Property

There are specific national jurisdictional rules regarding arrest of property currently in force only in disputes concerning vessels. According to the Brussels Convention on Arrest of Sea-Going Ships of 1952 that entered into force in Finland in 1996, disputes relating to vessels are subject to the jurisdiction of the place of arrest of said vessel.

⁵ Excluding Lugano Convention states.

13. Protective Rules of Jurisdiction

a) Consumer Contracts

(i) Claim from EU Consumer against Non-EU defendant

According to Chapter 12 Section 1d, Subsection 2 of the Consumer Protection Act (38/1978, as amended), in disputes between a consumer and a professional, the consumer may bring an action against the professional in the court of the locality of his/her residence. Thus if a consumer is domiciled in Finland, he/she may bring a claim before a Finnish court against a professional domiciled in a non-EU state, irrespective of the consumer's nationality.

(ii) Claim from EU professional against Non-EU Consumer

The Finnish Consumer Protection Act does not contain jurisdictional rules that would grant special rights to professionals in consumer related disputes. Thus generally applicable rules of jurisdiction would be invoked when a professional seeks to bring a claim against a consumer in a Finnish court (see point 11 above).

b) Individual Employment Contracts

(i) Claim against a Non-EU employer

According to Chapter 10, Section 1, Subsection 3 of the Code of Judicial Procedure, which, however, as such is not specific to transnational disputes, an employee may bring a claim against his/her employer who is domiciled in a non-EU state before the Finnish court of the locality where the relevant employment contract was signed or where the work was performed. Special jurisdiction relating to employment matters has only been conferred on the Labour Court in disputes relating to interpretations of collective agreements on terms of employment.

In 1986-II-50, the Finnish Supreme Court ruled that a Finnish court had jurisdiction in a dispute regarding termination of employment between a Finnish employee and a Swiss employer, even if it was explicitly agreed in the employment contract that a court located in Basel, Switzerland had exclusive jurisdiction over disputes arising from the employment contract. The Supreme Court reasoned that in circumstances where the Finnish employee had worked in Finland and was domiciled there, protection of the employee as well as financial circumstances required that he be able to bring an action against his employer in Finland.

(ii) Claim against a Non-EU employee

Point 13 b) (i) above describes rules that also apply to situations where an employer seeks to bring a claim against an employee domiciled in a non-EU state. Thus, where not prevented by conflicting provisions of law and/or the employment contract, the court located in the place of performance of the employee's duties or the signing of the employment agreement holds jurisdiction.

c) Insurance Contracts

There are no specific jurisdictional rules in Finland applicable to transnational disputes between insurers and the insured or beneficiaries. Accordingly, the general rules of jurisdiction (see point 11 above) apply to transnational insurance disputes. In support of national rules of jurisdiction e.g. in the Insurance Contract Act, one could also argue that an insured should always have the right to bring a claim against an insurer domiciled in a non-EU state in the court of the locality where the insured is domiciled. However, no case law supporting such assumption exists.

d) Distribution Contracts

The general rules of jurisdiction (see point 11 above) apply to disputes regarding distribution contracts. Accordingly, e.g. the fact that a contract has been concluded or performed in Finland with a non-EU defendant does not constitute Finnish court jurisdiction over such a defendant unless the defendant also has property, or is found, in Finland.

e) Any Other Specific Matters

There are no other specific matters in Finland which are subject to protective rules of jurisdiction.

14. Rules for the Consolidation of Claims

a) – d) Certain jurisdictional rules in Finland apply to national disputes which cover e.g. situations involving two or more defendants and counterclaims against the claimant. Chapter 10, Section 7a Subsection 1 of the Code of Judicial Procedure requires that actions brought against two or more defendants may all be heard by the court where one of the defendants is liable to respond, if the actions are brought simultaneously and if they are based on essentially the same grounds. Further, subsection 2 of Section 7a requires any counterclaim or recovery claim to be heard by the court where the original action is pending.

However, the above-mentioned national rules do not as such apply to disputes where one of the parties is from a non-EU state. In that regard, as a rule, the general rules of jurisdiction (see point 11 above) apply. It could be argued, however, that the above rules or principles reflected in said rules may apply in cases of multiple defendants where one of the defendants is from a non-EU state. However, no case law supporting this assumption exists.

e) Any Problems Pertaining to Lack of Harmonisation

It can be concluded that in a situation where there are several defendants, one of whom is from a non-EU state and has no property in Finland, the claimant may, in order to secure his/her legal position, in practice have to initiate separate proceedings (parallel with the Finnish proceedings) against that defendant in a court that has jurisdiction in the matter.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) The rules listed in annex I

Annex 1 to the Brussels I regulation includes the second, third and fourth sentences of Chapter 10, Section 1 Subsection 1 of the Code of Judicial Procedure. According to said rules, a person who is not domiciled in Finland may be summoned to the court of the locality where he/she is found or where he/she has property in Finland. If a Finnish citizen is living abroad, he may be summoned to the court of the locality where he/she last had a domicile in Finland.

b) Practical use of the rules listed in Annex I

The rules mentioned above in point 15 a) are the general rules applicable to all situations where a defendant domiciled in a non-EU state is summoned to the Finnish court.

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

There are no reported cases where a Finnish court would have applied Article 4(2) of the Brussels I regulation. However, there should be no restriction in Finland to apply said article as it is currently in force.

16. Forum *necessitatis*

It is somewhat unclear whether jurisdiction may be granted in Finland on the basis of *forum necessitatis* or *forum conveniens* –doctrines. In the absence of Supreme Court rulings concerning said doctrines in civil and commercial disputes, it has been stated in Finnish legal literature that jurisdiction could be granted on the basis that there is no other forum available abroad. This has been referred to as emergency jurisdiction. The Supreme Court found in its decision 2001:109 (in a non-commercial matter) that the mere fact that the matter was connected to Finland was sufficient to grant jurisdiction to the Finnish court. For a more clear-cut rule to emerge, additional rulings of the Supreme Court would be required.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

Generally, foreign judgments are not recognized and enforceable in Finland. Accordingly, no specific rules exist with regard to denying recognition or enforcement of non-EU state court judgments on the basis that a Finnish court has exclusive jurisdiction in the matter.

(E) Declining Jurisdiction

18. Forum Non Conveniens

According to Finnish law, in general, jurisdiction may not be declined based on the *forum non conveniens* doctrine. Accepting the *forum non conveniens* doctrine would constitute an interpretation of law *contra legem*, which has been refused.

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

a) Non-EU Jurisdiction Agreements

In Finnish legal practice, choice of court clauses, even those that designate a court of a non-EU state, are widely recognized. Party autonomy is respected where it does not conflict with rules on exclusive jurisdiction. Choice of court clauses are recognized irrespective of whether they designate a specific court, several possible courts, the courts of a specified country or only rule out the jurisdiction of specified courts or countries, i.e. derogation clauses.

b) Parallel Proceedings in a non-EU court

As stated above in point 17, foreign judgments are not generally recognized and enforceable in Finland. Accordingly, also *lis pendens* or *prior tempore* rules are not generally applicable in Finland with regard to parallel proceedings pending in the court of a non-EU state.⁶

c) "Exclusive" Jurisdiction in a non-EU State

The fact that the dispute is closely connected to a non-EU state does not as such constitute a basis for the Finnish courts to decline jurisdiction in favour of a non-EU state court.

20. Declining Jurisdiction when the Defendant is Domiciled in the EU

a) Non-EU Jurisdiction Agreements

In Finnish legal practice, choice of court clauses, even those that designate a court of a non-EU state, are widely recognized. Party autonomy is respected where it does not conflict with rules on exclusive jurisdiction. Choice of court clauses are recognized irrespective of whether they designate a specific court, several possible courts, the courts of a specified country or only rule out the jurisdiction of specified courts or countries, i.e. derogation clauses.

⁶ Juha Lappalainen, *Siviiliprosessioikeus I*, 1995, p. 385.

(b) Parallel Proceedings in a non-EU court

As stated above in point 17, foreign judgments are not generally recognized and enforceable in Finland. Accordingly, also *lis pendens* or *prior tempore* rules are not generally applicable in Finland with regard to parallel proceedings pending in the court of a non-EU state.

c) "Exclusive" Jurisdiction in a non-EU State

The fact that the dispute is closely connected to a non-EU state does not as such constitute a basis for the Finnish courts to decline jurisdiction in favour of a non-EU state court.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

We are not aware of any case where Finnish courts would have exercised jurisdiction on the basis of national rules in circumstances where the claimant had shown it would not receive a fair hearing or adequate protection in the courts of a non-EU state.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

(a) To our knowledge there are no reported or known cases where a Finnish court found not to have jurisdiction or declined jurisdiction to hear a claim brought by a consumer against a professional domiciled in a non-EU state.

(b) To our knowledge there are no reported or known cases where a Finnish court found not to have jurisdiction or declined jurisdiction to hear a claim brought by an employee against an employer domiciled in a non-EU state.

(c) To our knowledge there are no reported or known cases where a Finnish court found not to have jurisdiction or declined jurisdiction to hear a claim brought by a plaintiff domiciled in the EU in Community regulated matters.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

There is no reported or known case involving a Finnish national being denied protection due to the fact that the person(s) involved were no longer domiciled in the EU at the time the proceeding was instituted. With respect to such situations, Finnish law provides that Finnish citizens no longer domiciled in Finland may always be summoned to the court of the locality of their last domicile in Finland. Although this provision falls within the category of exorbitant jurisdictional rules and has thus received criticism, said provision is still in force.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

To our knowledge there are no cases or circumstances where the application of domestic jurisdictional rules have jeopardized the application of mandatory Community legislation or the proper functioning of the internal market or the adequate judicial protection of EU nationals and domiciliaries.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

General rules of jurisdiction are applied in connection with parental disputes as well. In decision 2001:109 the Supreme Court held that a dispute regarding child support could be heard in Finland, although the defendant was domiciled in Russia. The Supreme Court argued that when a child lives permanently in Finland, a sufficient connection to Finland exists, thus allowing the case to be adjudicated in Finland.

SUPPLEMENTAL REPORT FOR:

FINLAND

PREPARED BY:

JUSSI IKONEN, PETRI TAIVALKOSKI & WILHELM GUTHWERT
ROSCHIER, ATTORNEYS LTD.
KESKUSKATU 7 A
00100 Helsinki
Finland

26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

The international multilateral conventions concluded between Finland and non-EU countries including rules of jurisdiction in matters of parental responsibility include the following:

Convention between Finland, Sweden, Norway, Denmark and Iceland including Provisions of Private International Law relating to Marriage, Adoption and Guardianship (6 February 1931)

Convention on the Recovery of Maintenance Abroad (20 June 1956)

Convention concerning the Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children (15 April 1958)

Convention between Finland, Sweden, Norway, Denmark and Iceland on Enforced Recovery of Maintenance (23 March 1962)

Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations (2 October 1973)

Convention on the Civil Aspects of International Child Abduction (25 October 1980)

Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (29 May 1993)

Bilateral conventions concluded between Finland and non-EU countries including rules of jurisdiction in matters of parental responsibility include the following:

Announcement on Reciprocity in connection with Recovery of Maintenance between Finland and the USA (18 July 1996)

Arrangement of Reciprocity in connection with Recovery of Maintenance between Finland and the State of Ontario (Canada) (2 July 1990)

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

There are no explicit provisions in Finnish law wherefrom exclusive jurisdiction in matters of parental responsibility would follow. However, it should be noted as a general starting point that foreign judgments are not recognized and enforceable in Finland without specific support therefore in legislation. Such specific support for judgments relating to matters of parental responsibility exists primarily in the form of international Conventions.

The above mentioned notwithstanding, judgments relating to allocation of guardianship are, in general, recognized in Finland. According to Section 25 of the Act on Care and Visiting Rights of Children (361/1983, as amended), enforcement of such judgment requires confirmation of the Court of Appeals of Helsinki. Confirmation includes the right of the Court of Appeals to amend and specify the terms contained in the judgment as the Court holds to be in the interest of the child.

Grounds for refusal to grant recognition and enforcement may be found in Section 27. The grounds upon which recognition and enforcement may be denied are: (i) ordre public –grounds; (ii) if it would be manifestly contrary to the interest of the child to recognize or enforce the judgment due to changed circumstances; (iii) if at the time the proceedings giving rise to the judgment were commenced, the child was a Finnish citizen or his place of residence was in Finland and no such connection existed to the country rendering the judgment, or the child was a citizen of Finland as well as the country rendering the judgment and his place of residence was in Finland; (iv) if the judgment conflicts with a decision rendered in Finland or executable in Finland of which the procedure was commenced before recognition or enforcement was sought and the refusal of the application is in the interest of the child. Additionally, if the official rendering the decision did not have jurisdiction in the matter and the place of residence of the child is in Finland or recognition and enforcement of the decision is refused due to such lack of jurisdiction in the country where the place of residence of the child is, recognition and enforcement may be refused in Finland.

It follows from the Conventions in the field of parental responsibility concluded between the Nordic countries that a judgment relating to matters of parental responsibility is recognized and enforced similarly as if the judgment was rendered in a Finnish court with respect to judgments rendered in Norway or Iceland.

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