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Comparative study on enforcement procedures of family rights

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Eira Kuisma, Licentiate in Laws, Assistant of Family and Inheritance Law,
University of Lapland, Faculty of Law

FINLAND*

QUESTIONNAIRE ON THE ENFORCEMENT OF FAMILY JUDGMENTS

PART 1. ENFORCEMENT IN DOMESTIC CASES

1A. Procedures and practices for enforcement in domestic cases

1. Description of the general law for enforcement of decisions on custody, including orders on the place of residence of the child and orders on contact and/or access rights

Substantive law

a. decisions on custody, including orders on the place of residence of the child

Firstly, some general remarks and some basic concepts are clarified concerning the system of child law especially parental responsibilities as a part of family law in Finland. The custody of a child is the general concept in Finland, which includes the authority to make decisions on care, upbringing and place of residence and other matters relating to the person of a child. The Finnish concept of guardianship is understood as looking after the rights and interests of financial matters on behalf of a minor (a person under 18 years or incompetent person). The custodians of a minor are also guardians unless the court appoints another person to this task.

The main source of law is called the Child Custody and Right of Access Act (law dated from year 1983/361 with amendments i.e. year 1994/186). According to the Child Custody and Right of Access Act when the parents of a child are married to one another at the time of the birth of the child, they shall both have joint custody of the child *ex lege*. If the parents are not married to one another at the time of the birth of the child, the mother shall have sole custody of her child. If one parent has sole custody of the child and the parents conclude marriage with one another, both of them shall have joint custody of the child thereafter provided that the paternity of the unmarried father has been approved by the Finnish Paternity Act either through approved acknowledgement or a court decision.

The custodians of a child shall be jointly responsible for the duties inherent to custody and make joint decisions relating to the child. The duties of a custodian include but are not limited to provide care and protection, upbringing and education, decide on the name and religion and determining the residence of a child. When someone has sole custody of a child it means in Finland that one is being able to make all decisions concerning the person of a child, including the residence of child, alone without consulting the other parent first. Having the sole custody of a child does not include the right to have place of residence abroad with the child, though.

It should be mentioned that there is a mixed-type of custody between the pure sole-joint types of custody alternatives in Finland as well. This mixed-type of custody is called joint custody of a child but in that case only one custodian may decide where the child shall have his or her residence and such custodian has the passport of a child also. The joint custodians decide in the mixed type of custody together other personal matters of a child e.g. religion, name and matters relating to child's care and education.

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In this respect one particular feature within Finnish system of family and child law is that an agreement on custody including the residence of child confirmed by the local social authority (social welfare board) shall be valid and enforceable similarly to a final court decision. According to Child Custody and Right of Access Act (law number 186/1994) section 8(1) the agreement on custody shall be made in writing and submitted for confirmation to the local social authority in the municipality where the child has the place of his or her residence. In section 8 (2) in Child Custody and Right of Access Act is stated that an agreement confirmed by the local social authority (social welfare board) shall be valid and enforceable similarly to a final court decision. Normally the social authority in most of the municipalities is called the social welfare board, which is not any special family court. The agreement on custody takes place when the parents of a child are not married with each other or when the parents divorce. The attribution of custodial rights is not necessarily affected by the divorce of the parents. The divorce court takes into account ex officio that the parents have concluded an agreement on the custody of a child. The court does not start any proceedings on the custody of a child, though.

In practise the municipal child welfare officer helps the parties to enter into an agreement on custody, access and contact rights of a child. Later the social welfare board only confirms the agreement. The local social authority shall take the best interests of a child into account but of course any of the custodians and/or parent may always start proceedings in a court in case the other party is unwilling to enter into an agreement with the other parent or in case one has difficulties to become adjusted to the terms of proposed agreement. The parents may agree (1) that they have joint custody of the child; (2) that the child is to reside with one of them, if they are not living together; (3) that one of them has sole custody of the child; (4) that the child has the right to maintain contact and meet with the parent with whom he no longer resides, in the manner agreed upon by the parents.

When considering whether to approve the agreement, the local social authority shall take the best interests and the wishes of the child into account, as provided for in sections 10 and 11 in the Child Custody and Right of Access Act. If neither of the parents has custody of the child, the agreement shall not be confirmed. It will always be a matter of court to decide who will be the custodian of a child whenever the custody is given to some other person jointly with parent(s) or instead of parents in cases e.g. both parents are died.

One must always have an explicit agreement confirmed by local social authority or a court decision concerning the residence of a child in order to have an enforceable decision at all in Finland. In case one only has the custody of the child, but if there is not stated in a court decision or in the agreement made by the parties and confirmed by the local social authority where the child shall live and/or who may decide the residence of a child, it is always expected that the child shall live in the same place as his or her custodian(s) do(es). In case the custodians cannot agree with each other on the residence of a child the court may give a separate order on the residence of the child.

It is also possible in Finland to enforce a court decision where someone is under an obligation to give a child back to his or her legal custodian. These decisions are at stake when the child lives with some third person (e.g. grandparent) without the consent of joint custodians. As far as court decisions where some third party is under an obligation to give a child back to his or her legal custodian are concerned such court decisions take place extremely seldom in Finland. Therefore enforcing court decision where someone is obligated to give a child back to his or her legal custodian are extremely rare in number, too

Also an interim order may be given concerning a child's custody, contact and/or access rights and on the residence of a child according to the Child Custody and Right of Access Act sections 17 §, 21 § or 40 §. Normally such interim orders take place when a law-suit on custody, access and residence of a child are pending in a court and there is an urgent need to settle down the dispute for

as long as the law-suit in question requires time. It should be noted that interim orders are immediately and directly enforceable. Such interim orders are valid as long as the court gives a final order on custody, access and/or residence of a child. In case of appeal the interim order is valid as long as the appellate court and/or Supreme Court will reach its final decision which becomes legally valid and binding. However, the court-room where the law-suit is pending may always give a new interim order on custody, access and/or residence of a child or a final enforceable decision on the residence of a child.

b. orders on contact and/or access rights

According to section 9 § in Child Custody and Right of Access Act the Child has the right to keep contact and/or have access to the other custodian/parent with whom the child does not have the same place of residence.

One specific feature within Finnish Child Law is that contact and/or access rights may in highly exceptional circumstances be used in public place controlled and organised by the social authorities. Controlled using of contact/ access rights might be in certain case according to the best interests of a child. This might be the case e.g. the parent who has not used contact/access rights for a long time and the controlled meeting would enable the parent and a child to re-create their relationship with each other. Further controlled meeting organised by the social authorities is used when the parent using contact/access rights and the parent with whom the child has a residence are in such deep conflict with each other (e.g. violence against the former spouse) that it is impossible in practise to let the parents to meet with each other.

Procedural law

The general law for enforcement of court decisions in Finland, which is applicable in all civil matters, is called the Enforcement Act (Law dated from 1895, reformed by laws No 1996/197 and 2003/679). The Code of Judicial Procedure (law dated 1734, reformed and amended several times thereafter) has some additional rules concerning the actual enforcement procedure at courts, too. The special law which derogates the general Enforcement Act is called the Act of the Enforcement of Decision on Child Custody and Right of Access (law number 619/1996), which is applied in domestic cases and when Brussels II a is applicable in Finland. There exists a special Act on the Application of Brussels II a Convention (law number 1153/2004), which has some complimentary rules on how to apply Brussels II a Convention in Finland.

Further Child Custody and Right of Access Decree (Decree number 556/1994) has some additional rules concerning enforcement. Ministry of Justice has given some instructions on fetching of a Child and interim orders (instruction number 3553/36/96 OM). Ministry of Justice has given instructions (number 4133/161/97 OM) on fee payable to enforcement mediators in child custody, contact and access cases. Stipulations in a statute called Child Custody and Right of Access Act (law number 361/1983) must be taken into account in cross-border cases and when a child has been abducted from one Hague Convention member state to another member state.

Following issues are regulated in the Enforcement Act and are applicable when enforcing decisions on custody, access and/or contact rights: The organisation of a local bailiff (chapter 1), which is allowed to give executive assistance in addition to that the police may give executive assistance; Provisions on how to enforce any supporting orders given in connection with the actual enforcement (chapter 7); Expenses of enforcement (chapter 8); How the enforcement authorities may correct their decisions under certain conditions, How the enforcement authorities shall refer the parties to court in unclear enforcement cases and Suspension of enforcement (chapter 9) and finally How to appeal on the procedures and acts of the bailiff (chapter 10).

There is some procedural regulation in the Code of a Judicial procedure e.g. in chapter 8 (law amended 30.8.2002/768), which has provisions on how to apply enforcement at courts. The Code of Judicial Procedure is generally applicable in disputed enforcement cases, too. In chapter 25 in the Code of Judicial Procedure there are provisions on how to appeal from lower court to an appellate court concerning the enforcement case as well as how to appeal when the actual family decision is at stake.

It should be emphasized even under the description of general law of enforcement that the cases are generally in almost all cases enforced by the authorities in Finland according to the Act of the Enforcement of a Decision on Child Custody and Right of Access. According to this special law the enforcement is generally applied in the district court. There exists, however, an exception to the above-mentioned rule that the enforcement procedure should always be applied in a district court. The application for enforcement of a decision on residence of a child may be applied directly at the local execution officer (bailiff), where the child has his or her residence or de facto living place, if the decision on the residence of a child has been given less than three months ago. This concerns only decisions on the residence of a child but decisions on contact/access rights are not directly enforceable by the bailiff. Also in unclear cases the bailiff shall always refer the parties to court even when the decision on residence of a child is not older than three months.

General rules of enforcement procedure

The enforcement is applied generally in the district court where the child has his or her residence or where the defendant has his residence or where either the child or the defendant de facto lives. In case the child's or defendant's domicile or de facto living place is not known, the enforcement is applied in a district court where the applicant lives or in case the applicant is not living in Finland, in the district court of Helsinki. When someone applies child custody decision to be enforced at the district court the court will hear the case as a petition matter which may never be heard in connection with the actual custody case.

The application on enforcement must include all matters that may be of relevance when enforcing the decision including any evidence. There must be included as an annex to the petition on the enforcement the actual custody decision as an original version or as a copy certified as corresponding to the original decision by the authority who has given the original decision. The applicant or his legal counsel shall inform the address of applicant and undersign the petition.

When it is apparent that the enforcing decision on the residence of a child and contact/access orders shall be disputed the district court shall not hear the case according to rules set out in chapter 8 as a petition matter. Instead of that the court shall apply rules on litigation in civil cases as set out in the Code of Judicial procedure except that section 7 § and 10 § in chapter 8 are always applicable. The obligations of the parties include that they shall give their statement in writing and they shall be at present in the hearing according to chapter 8 section 7 § in the Code of Judicial Procedure. The decision on the enforcement shall be according to chapter 8 section 10 § in above-mentioned law. The decision shall be in writing and there is stated the name of the district court, the date when the decision is given, the parties, the facts of the case, conclusions, reasoning of the court and the sections of law applied in the case.

The exception to the above-mentioned general rule that the enforcement should be applied in a district court is that the application for *enforcement of a decision on residence of a child*, may be applied directly at the execution officer (bailiff), where the child has his residence or de facto lives, if the decision on the residence of child has been given less than three months ago. The Bailiff must, however, transfer the enforcement case to be resolved by the district court, if the bailiff is of the opinion that instead of fetching the child a conditional imposing of a fine might be a more practical

coercive measure. Further, whenever the circumstances of a child have changed in the case to the extent that it may have relevance in the enforcement, the bailiff must transfer the case to court. The bailiff must transfer the case to district court when the pre-conditions for mediation are at stake or there is some other important reason, too. (See Jaakkola: Lapsen huolto- ja tapaamisoikeuspäätösten täytäntöönpano vuosina 1996-2001. Lakimies n:o 6, 2002, pages 880- 881.). In scholarly views it is considered as being important that transferring the case to district court shall take place when the best interests of a child require and such transferring should take place in all unclear cases. (Helin; M. - Linna, T. - Rintala, M.: Huolto- ja tapaamispäätöksen täytäntöönpano page 287).

When the court has received the petition of enforcement, the court must after having heard the other party, transmit the case to an enforcement mediator. Enforcement mediation is, however, not obligatory when the actual decision concerning custody or the residence of a child was made earlier than three months ago.

In case the mediator has received the case, the mediator tries to reach an agreement between the parties. The court may after receiving the mediation report firstly decide that the mediation should be continued, if it is reasonable to assume that the parties may reach an agreement. Secondly, the court may give an enforcement order and decide the means of enforcement. Thirdly, the court may in certain cases reject the enforcement petition. The court must reject the application if the child has reached the age of twelve and the enforcement would be against the child's will. Further the court must reject the petition of enforcement even if the child is under twelve but the child is so mature that his or her opinion may be taken into consideration.(See more in Bainham, A (ed.), The International Survey of Family Law 1997, by Helin; M: Enforcement of Custody, Access and residence orders, inter-country adoption and registration of same sex couples pages 155-156).

Enforcement mediation is a formal part of enforcement procedure. The tasks of a mediator consist of improving the co-operation of the parties and helping them to obey the court order voluntarily, if possible. Mediation must not take place, if there is a risk that the best interests of a child are in danger when there is a rapid need for enforcement. (See more in Bainham, A (ed.), The International Survey of Family Law 1997, by Helin; M: Enforcement of Custody, Access and residence orders, inter-country adoption and registration of same sex couples pages 154-155.) The enforcement mediator writes a conciliation document on the basis of mediation. The enforcement mediators are entitled to a fee for their services which is payable by the Finnish state. The parties of a case are not held liable on mediator's fee.

When the enforcement is applied at the district court, the court may grant a cost-free trial, if the general grounds are at stake. Cost-free trial must be applied at court and it shall be granted on social grounds mainly because of the low income and high necessary cost of living. The cost-free trial may be granted wholly or partially. Such cost-free trial may include appointing an attorney to serve as counsel for a party but there must always be weighty reasons in each particular case e.g. the best interests of a child require that the counsel is appointed. The counsel is entitled to cost-free trial only in a district court. The cost-free trial includes execution cost (which is a regular fee payable on enforcement acts by the enforcement authorities) but not any other enforcement costs such as costs incurred by the fetching of a child. The opposing party of the applicant shall be liable on costs incurred on fetching the child and the applicant shall be secondarily liable on costs caused on the fetching of a child. In case the cost-free trial is granted the applicant is not secondarily liable for costs on fetching the child. In case the cost-free trial is granted for the applicant of the enforcement it does not release the opposing party from being liable on enforcement costs.

When the conditions on granting a cost-free trial are not at stake the enforcement costs are payable according to code of judicial procedure chapter 21 section 1, that is the party who loses the case

shall be liable for all reasonable costs incurred by the necessary measures of the opposing party, unless otherwise provided by some other Act.

2. Comments as to the practise of the law with respect to:

a. decisions on custody, including orders on the place of residence of the child

According to section 2 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access the opinion of a child shall be taken into consideration and the enforcement shall not be engaged against a child's will, if the child is of 12 years of age. The enforcement shall also not be engaged against the will of a child of under the age of twelve, if the child has reached such a degree of maturity that it is appropriate to take his opinion into account. The best interests of a child are a primary principle. The lapsing of time makes it even more important to secure best interests of a child.

It should be noted that the child's opinion must be taken into account during the whole enforcement procedure. In practise this means that the bailiff may have to take the child's will into consideration whether there is an order given by the district court to enforce the decision or the decision is directly enforceable by the bailiff. The mediator finds out the child's opinion but the child is entitled to change his or hers opinion even when the case is at the bailiff.

When child's own opinion is at stake the child's age shall not be taken into account formally as the most decisive factor. The will of child should be based upon informed consent -basis and on well argued opinion not caused by any undue influence of the parents. The court (or bailiff) must look after that there has not been any undue influence on the child's will by the parents. When the child aged 10-11 eleven is against the enforcement of the decision on custody but there is contrary evidence by the experts, the evidence is normally interpreted in a way that child has not reached the required degree of maturity. The court's decision that the child under 12 years is not mature enough shall primarily be considered to be decisive at the enforcement by the bailiff too. The bailiff may decide otherwise as the district court only exceptionally. If the child aged 12 uses his or her will self-destructively e.g. the child wants to live in circumstances that will evidently cause drug abuse, the will of a child may be ignored and measures on child welfare may be started. (See: Helin; M. - Linna, T. - Rintala, M.: Huolto- ja tapaamispäätöksen täytäntöönpano, pages 62-63).

b. orders on contact and/or access rights

In practise the right to keep contact and/or access right(s) of a child are normally court orders which include the right to meet the other custodian on a regular basis, and in addition to that the child has a right to stay for a longer period of time at the other custodian e.g. during holidays. Contact and/or access orders may be enforced according to the rules set out in the Act on the Enforcement of a Decision on Child Custody and Right of Access. Although the contact and/or access rights are formulated as being child's rights, the child may not, start proceedings as far as contact and/or access rights are concerned. Further, the custodian/or parent with whom the child does not live, has the right to enforce decisions concerning contact and/or access rights. The other party in the actual enforcement law-suit is therefore the custodian, who is obliged to allow the using of contact and/or access rights. If the parent is unwilling to meet and/or have access to a child, court decisions and/or agreements confirmed by social board shall never be enforced by the public authorities in Finland. This is true regardless of the age of the child.

It is forbidden to consolidate actions concerning the actual custody of a child, contact and/or access rights with the action concerning enforcement of such family law decisions at court. When enforcing orders on contact and/or access rights the court may though - exceptionally - specify or do

minor changes to the terms concerning contact and/or access rights even during the enforcement procedure. It is required that such specifying must be in accordance to the best interests of a child and that specification promotes the realization of contact and/or access rights. Examples of minor specifications are changes of working hours of a parent or changes to timetables of public transport that the enforcing court may take into account.

It is only exceptionally possible to fetch the child when orders on access and contact rights are enforced in Finland. However, the bailiff may not directly enforce such orders but a fetching order given by the district court is always required when orders on contact and access rights are enforced. Sometimes compromise can be found instead of the fetching of a child e.g. through organising the meetings between the parent and child in public place controlled by the authorities for some time period.

On case law should be mentioned the case by Supreme Court (KKO 2005:138). According to this case the social authorities had suggested that the contact/access rights are to be used controlled by the social authorities. In this case it was problematic to organise the public place where the child and the father could meet with each other, because the child lived in a small town where there were not such public place available. The Supreme Court held that when the using of contact/access rights were regarded as to the best interests of a child, such rights belonging to the father could not be denied on the grounds that there were not enough resources within the social authorities to organise the controlling measures and meeting place in the municipality where the child had his residence.

How the Child's will is taken into consideration when enforcing contact/access orders the same rules and principles apply as stated above under headline 2a.

3. Supporting orders

a. what supporting orders (i.e. 'compliance orders' or 'measures to further the effect of the family law judgment') are available under domestic law?

The court may give following supporting orders only when enforcing custody, contact and/or access orders i.e. supporting orders are given in addition to secure the enforcement. These are called by Finnish scholar Helin (see Helin; M: Enforcement of Custody, Access and residence orders, inter-country adoption and registration of same sex couples page 156) as precautionary measures purporting to secure enforcement. According to section 17 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access the court may 1) order that the applicant or the opposing party may not change the place where the child lives or not place the child to be nursed outside the home; 2) oblige the applicant to be available when the child is fetched; 3) order that the applicant shall inform before using contact and access rights, if such parent is prevented to contact or have access with the child; 4) oblige the applicant when the enforcement concerns orders on contact and/or access rights to deposit applicant's own and child's passport to the bailiff; 5) oblige the opposing party to inform where the child de facto lives; 6) oblige the applicant or opposing party to do otherwise something or prohibit them from doing something; 7) give other such obliging orders, which are needed in order to protect the enforcement or the best interests of a child.

All above-mentioned supporting orders 1)-7) shall be ordered to be complied under conditional imposition of a fine as stated in the Act on the Enforcement of a Decision on Child Custody and Right of Access and not according to Code of Judicial Procedure. For the applicant of enforcement the court may order that the applicant must comply with above-mentioned supporting orders 1)-7) at the risk that the enforcement will become extinct otherwise. As far as the dropping of enforcement

is concerned, it will only be ordered to the applicant of the enforcement. In such a case when the enforcement is dropped the applicant must apply the enforcement again at court.

According to the Act of the Enforcement of a Decision on Child Custody and Right of Access section 25 § and 48 a § the court may give orders, which are defined by Finnish scholar Helin (see Helin: The International Survey of Family Law 1997, by Helin; M: Enforcement of Custody, Access and residence orders, inter-country adoption and registration of same sex couples pages 157-158) as emergency measures. Such measures can be taken when there is a reasonable reason to assume that the child will be taken out of the jurisdiction or otherwise transferred from one place to another. The court may in an urgent case order the child to be provisionally placed by the municipal social welfare authorities, even without hearing the other party first. If enforcement measures are not pending in a court and there is no time to start the proceedings the bailiff may take the child into their possession.

It should be noted that as far as emergency measures as stated in section 25 § and 48 a § (extremely urgent cases) are concerned the police has a parallel jurisdiction to take the child into their possession. This might be the case when the district execution office is closed i.e. outside the office hours, which are normally from 8:00-16.15 in Finland.

The social welfare authorities shall take care of the temporary placement of a child and inform the court to take action and to decide, whether the placement shall continue or not. It is possible to place the child in an institution maintained by the state or on the other hand it is possible to place the child on the care of the custodian who started the emergency measures in the first place. In such a case there is no need to continue the enforcement proceedings.

b. can you make any remarks as to legal practice (i.e. what supporting orders are practicable, what is the usual content)

In scholarly opinions (see e.g. Helin; M. - Linna, T. - Rintala, M.: Huolto- ja tapaamispäätöksen täytäntöönpano pages 239-240) it is regarded important that any supporting orders may not limit the rights of the parties for more than it is needed to in order to secure the enforcement and the best interests of a child. Using of compulsion should be limited to an absolute minimum of an extent. One should always compare the benefits of a supporting order to the harm it may cause to a child and/or parties.

Further all supporting measures as stated in the Act of the Enforcement of a Decision on Child Custody and Right of Access section 25 § are mainly used when there is a risk that the child may be abducted from Finland abroad. It should be noted that all above-mentioned emergency measures according to section 25 § in the Act of the Enforcement of a Decision on Child Custody and Right of Access Act are *available only when enforcing orders on custody including the residence of a child*, but they are not available to orders on contact and access rights of child. The only exception to above-mentioned rule is that depositing the passport to bailiff may be ordered *only in conjunction with contact and/or access orders* but not at all when enforcing other custodian rights. The ratio behind depositing passport is to prevent international child abductions.

B. Specific issues relating to the enforcement of family law judgements in domestic cases

1. The organisation of the organs and institutions involved in enforcement of family law judgements

a. Regulations under substantive law (legislation that establishes the organ or institution and regulates its tasks and powers)

The organs involved in enforcing the family law judgements consist of district courts, enforcement mediators and district enforcement offices.

Enforcement is tried in a court under petition matter by one judge at the office of court, when the case is not disputed (chapter 8 in the Code of Judicial Procedure). When the case is disputed (rules on civil procedure according to Code of Judicial Procedure are applicable), it shall as a main rule be tried in a court session by one judge (a Finnish law degree required) and three jurors (laymen). It is considered possible to have the case tried before two judges and three jurors, too. This should take place in highly disputable enforcement cases. All above-mentioned things were mentioned by the Law Committee in Finnish Parliament when the Act on the Enforcement of a Decision on Child Custody and Right of Access was enforced. (See Jaakkola, R: Lapsen huolto- ja tapaamisoikeuspäätösten täytäntöönpano vuosina 1996-2001. Lakimies n:o 6, 2002, page 882.)

The tasks and powers of enforcement mediators are regulated in the Act on the Enforcement of a Decision on Child Custody and Right of Access in chapter 2, sections 6 § - 9§. Normally the court nominates one mediator but in difficult cases there are sometimes used two mediators. According to the Act on the Enforcement of a Decision on Child Custody and Right of Access, every municipality must maintain services for enforcement mediation and notify the names of mediators to the local court. Normally mediation services are provided by the social authorities or private entities, which offer e.g. child psychiatrist, child psychologist or social worker to act as an enforcement mediator in a public duty. The mediator has the right to receive information from the parties and the mediator has confidentiality obligations as far as any private or family secrets are concerned. In case some secret information must be collected the court must know all the relevant information concerning the child even though they were negative e.g. violence or alcoholism of a party. According to Act of the Enforcement of a Decision on Child Custody and Right of Access the mediators and the court must treat confidentially any such negative information..

The enforcement authorities are public national officials of the state in Finland. The local enforcement authority has a district execution office having a leading city bailiff (kaupunginvouti or kihlakunnanvouti) and assistance city bailiff(s). The organisation of the Bailiff involved in the enforcement is regulated in the Enforcement Act in Section 2 § where it is stated that the local district city bailiff shall work as an enforcement officer. At the district execution office and under city bailiffs there works some office personnel, too.

According to chapter 1, section 10 § in the Enforcement Act the general management of enforcement authorities is under the supervision and direction of the Ministry of Justice. The enforcement administration and the enforcement authorities belong under the administration of the Ministry of Justice. The county government has some supervisory, directory and administrative tasks concerning enforcement administration. Both the leading as well as assistance city bailiff must have a degree in Finnish law and a good knowledge of execution measures before they are nominated to their office by the Ministry of Justice. It is required that the bailiff must have a good command of Finnish and Swedish languages, which are the official languages in Finland. The city bailiffs have a national organisation called the Organisation of Finnish City Bailiffs (Suomen Kihlakunnavuodit ry), which promotes professional skills of the Bailiffs by organising lectures. The organisation has an active role when amending and reforming the law as well as the enforcement procedure.

It is required that the bailiff shall act impartially and according to the requirements of a due enforcement process as set out in the Enforcement Act. All the enforcement tasks must be carried out rapidly, effectively and in an appropriate way without causing to parties or any third person(s) more harm than the purpose of the enforcement requires. The bailiff shall take his best efforts to advice the parties to full-fill their obligations voluntarily and to enter into an amicable settlement,

when appropriate. Bailiff cannot act in cases where the bailiff has or might have any close family, business or other connection to the parties of a case. Bailiffs may not take advantage of their public office nor miss-use any information received in the office in an improper manner which is against to the best interests of the parties nor may the bailiff in any way endanger the due enforcement process and impartiality of the execution office. The bailiffs may not carry out any business activities privately either.

To sum up how the obligations are divided between district court and the execution office when enforcing family law decision there follows a list on activities which belong to the exclusive jurisdiction of bailiff : 1) The bailiff has a jurisdiction to fetch the child after district court has ordered the child to be fetched; 2) In case the actual family law decision on the residence of a child is not older than three months the bailiff may fetch the child without order from district court (in clear cases); 3) The bailiff may take the child into their possession when there is a danger that the child will be abducted abroad from Finland; 4) The bailiff may jointly with the parties apply that the conditional imposing of a fine shall be ordered at a district court; 5) The bailiff shall enforce any other order given by a court unless the enforcement is an obligation of the parties.

b. Procedural law rules relevant for the functioning of these organisations (procedural rules on the role of these organisations in the enforcement of family law decisions):

The basic principles in the Act of the Enforcement of Decision on Child Custody and Right of Access when enforcing custody decisions are to safeguard the best interests of the child, the autonomy of a child and guarantee the due process of law in the district court as well as any procedural acts performed by the bailiff.

As far as fetching of a child is concerned the district court shall after the court has given its enforcement order send the order to a local district bailiff upon request of a party. The competent district bailiff is the one where the child has his residence or de facto living place. It is required that the child is living in the same residence where the opposite party of the fetching order is living. In case the child lives with some third party the custodian may apply the district court to give a direct enforcement order according to section 1 (3) § in the Act on the Enforcement of a Decision on Child Custody and Right of Access. The decision to fetch the child is enforceable at the same day it has been given unless the court has banned the enforcement. The decision may therefore be still due to appeal.

When the residence of a child is at stake the bailiff shall fetch the child, if the decision is not followed voluntarily. When the fetching takes place there will always be mediation in order to enforce the decision voluntarily. The Bailiff may fetch the child only once on the basis of enforcement order given by the district court. This means that in practise one has to always apply for new enforcement order when enforcing the decision on the residence of a child and/or contact /access rights. It is possible to continue enforcement mediation even after the bailiff has received the case.

Sometimes the most appropriate mean is to post-pone the fetching of a child, if the parent gives such arguments that are not been heard in the court before. According to Act of the Enforcement of a Decision on Child Custody and Right of Access section 3 (2) if the child is ill, mentally upset or the fetching is impossible because there are other similar grounds, the fetching of a child shall be postponed. When the actual fetching is disputed e.g. there are outsiders present and there are no reasonable means to get them away it is possible to post-pone the fetching, too. However, if the best interests of child require there might be reasons for fetching the child immediately. If the conditions to postpone the fetching are at stake this means that the fetching order of a district court shall remain valid and therefore one does not have apply a new enforcement order. The endurance of the

postponement depends on the circumstances of each particular case but normally the post-ponement takes a couple of days and not take longer than two weeks.

c. Practical aspects relevant for the legal positions of these organisations

According to scholarly views the problem is that the courts tend to be too small in Finland. There exist even courts that have only two professional judges and two legal trainers. Therefore when the actual family law decision has been ruled by a judge this very same person cannot act as a judge in the enforcement case because it is possible the same judge lacks impartiality. (See Jaakkola, R: Lapsen huolto- ja tapaamisoikeuspäätösten täytäntöönpano vuosina 1996-2001. Lakimies n:o 6, 2002, pages 882.)

The fetching of a child should be avoided as long as it is reasonably possible. When it becomes apparent that the fetching no longer cannot be avoided the mediation process will help the child to become adjusted to the idea of fetching. When the best interests of a child so require the court may initially have ordered, that the mediation shall not be continued nor shall social workers be heard. This is often the case when decisions on the residence of a child are enforced.

It is stressed out that the mediators should discuss with the child in advance before the fetching takes places. According to orders given by the Ministry of Justice the child should not be fetched from day care or school because it might be frightening for the child and violate the child's privacy rights. If the parent in question refuses to open the door one should always call first to a parent. It is not appropriate to fetch the child using any such mean that resembles kidnapping of a child e.g. taking the child into custody on the way to school. If the executive assistance of police is needed the policemen should not use uniforms nor police car.

2. Time limits relevant for enforcement proceedings

a. Time limits for appeal, both against family law decisions and against decisions supporting their enforcement

As far as the actual custody, contact/access decision is concerned the parties may appeal from district court to the Court of Appeal according to rules set out in the Code of Judicial Procedure in chapter 25. In section 5 in the above-mentioned code there is stated that one who wishes to appeal a decision of the district court shall declare the intent to appeal, at the latest, on the seventh day after the day when the decision of the decision of the District Court was handed down or made available to the parties. The deadline date for the lodging of the appeal shall be thirty days from the day when the decision of the District Court was handed down or made available to the parties.

From Court of Appeal one may apply to Supreme Court according to Chapter 30 in the Judicial Code. The deadline date for leaving a leave to appeal and lodging the appeal shall be 60 days from the date on which the decision of the Court of Appeal was made available to the parties. The leave to appeal may only be granted, if it is important to bring the case before the Supreme court for a decision with regard to the application of the law in other similar cases, or because of the uniformity of legal practise; if there is a special reason for this because of procedural or other error that there were grounds to reverse or annul the decision; or if there is another important reason.

What has been stated above on time limits of applying of the actual family law decision is applicable when one is applying on the decision of enforcement order of the district court, too. However, there exist some injunctions to appeal in the Act on the Enforcement of a Decision on Child Custody and Right of Access in section 30 §. According to the above-mentioned section one cannot appeal when 1) The case has been transferred to competent court of jurisdiction; 2) When the application for enforcement has been disapproved according to such change in the

circumstances or other reasons that are obviously against the best interests of a child; 3) The court has given an interim order(s) according to section 25 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access; 4) Conditions for access/contact rights have been changed for as long as the procedure endures or otherwise the conditions for access/contact rights have temporarily changed.

It is allowed to appeal on a court order which concerns on precautionary measure as stated in section 17 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access. Further, one is not allowed to appeal on emergency measures as stated in 25 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access.

When one applies on the (actual decision) or on the act of the bailiff the chapter 10 in the Enforcement Act shall be applicable. The one whose rights the decision or act concerns may appeal. The appeal shall be in writing and addressed to the district court under which jurisdiction the enforcement act has been performed. If one has appealed on the acts or decisions of the bailiff, this does not automatically seize the enforcement. The district court shall hear the appeal by one judge. The appeal must be heard in an urgent manner in all instances. From the district court there is a possibility to appeal to Court of Appeal and from the Court of Appeal to Supreme Court. The time limits and rules how to appeal are as set out by the rules in chapter 25 and 30 in the Code Of Judicial Procedure as stated above.

b. Any other time limits that have an effect on enforceability

One may appeal for nullification in case of injunctions to appeal are at stake as stated in section 30 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access. There is no time limit for such an appeal for nullification.

As far as the as a coercive measure is concerned it may be rectified according to section 20 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access. If the circumstances have changed or according to new evidence or the earlier decision is based on plainly erroneous application of law, the authority which has issued the conditional imposition of a fine, may nullify the earlier decision which concerns the issuance of conditional imposition of a fine and hear the case wholly or partly again. If an appeal to an earlier decision is pending in a Court of Appeal, the lower court must inform the parties and in case of a new decision it must be delivered to the Court of Appeal.

It is allowed to appeal against court orders which concerns on the issuance of conditional imposition of a fine as stated in sections 16 § (the enforcement order of access/ contact rights) and section 18 § (on applying on the conditional imposing of a fine) are concerned. In addition to this the Act of the Conditional Fine is applicable, where appropriate. One may appeal only once as far as the conditional imposing of a fine is concerned.

In case the Conditional imposition of a fine has been ordered in conjunction with an interim supporting order (according to section 17 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access), it is however, not allowed to appeal against such decision.

In case the mediator has received the case, the mediator tries to reach an agreement between the parties within the time limit ordered by the court. Normally such mediation period is four weeks but important reasons in a particular case may sometimes justify using a longer period for the mediation e.g. six weeks has frequently been used as a time limit for mediation.

c. The effect of appeal on enforceability

The general rule is that even though one may appeal on the actual custody decision and on the decision of enforcement, it will not pre-empt the enforcement, but the decision to enforce residence, contact/access order is enforceable immediately. The courts do not tend to give any orders on the residence of a child that were enforceable only after decisions are legally valid. Orders on contact and/or access are enforceable at once, even though such court orders may not be legally valid and still due to appeal, unless the enforcement is forbidden or suspended due to appeal in the actual contact and/or access order or due to appeal in the enforcement procedure.

When an interim order has been given on the residence of a child such orders are valid immediately until the actual family law decision order becomes legally valid or the appellate court gives its new interim order. Possibility to appeal from district court to Court of Appeal may not lengthen the actual enforcement procedure as far as appealing on conditional imposing of a fine is concerned.

Also the appealing does not automatically seize the enforcement or obligation to obey the order the court may have given. It is possible that the court limits the enforcement of any orders given in actual enforcement procedure e.g. that such orders must be obeyed only after the decision has gained legal force. The court of appeal may give an injunction to enforcement or it may suspend the enforcement, too.

d. The effect of the passing of time on the enforceability of a family law judgement

The lapsing of time makes it even more important to secure best interests of a child because the way children experience time differs from adults. Therefore the authorities must find out that nothing surprising in the circumstances of the child has been occurred because the circumstances of a child and/or parents may have changed drastically. Therefore the authorities may have to find out the circumstances to a wider sense during the enforcement process. However, the enforcement process must be carried out in an urgent manner, because the lapsing of time will always strengthen present living conditions and circumstances of the child. (See more in Helin; M. - Linna, T. - Rintala, M.: Huolto- ja tapaamispäätöksen täytäntöönpano, Kauppakaari Oy Lakimiesliiton Kustannus, Helsinki, 1997 pages, 59-60).

As Helin has pointed out (See more Helin; M: Enforcement of Custody, Access and residence orders, inter-country adoption and registration of same sex couples pages 153-165) there has been some failure to enforce in an urgent way an access order by the Finnish authorities and this has been regarded as a violation of Article 8 of the ECHR (See *Hokkanen v. Finland case*).

e. The effect of change of circumstances on the enforceability

The court must reject the petition for enforcement, if the enforcement would be because of the change of circumstances or for other reasons, clearly against the best interests of a child. This might be the case e.g. the child has been adjusted to the change of living conditions that enforcing the actual custody decision were against the best interests of a child.

The opinion of the child is decisive in all the phases of enforcement procedure in the sense that the court may decline the enforcement according to the best interests of the child; terms on contact and/or access may change or such opinion may effect which coercive measure will be chosen. Further- irrespective of the age of a child - the way a child behaves may be one factor when the court considers whether to deny the enforcement in a case when a child has adjusted to the changed circumstances due to lapse of time.

3. Coercive measures to ensure enforcement

a. Measures available by law

Conditional imposition of a fine (sections 16 §, 18-19 § and 28 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access) and fetching of a child (sections 15§, 16§, 21§ and 24 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access) are the only possible coercive measures available when enforcing family law decisions. According to law the court should order either conditional imposition of a fine or fetching the child. Therefore it is not possible to order both coercive measures simultaneously. One should always apply coercive measures at court, which shall decide whether there are ground(s) for enforcement, request for executive assistance is grounded or interim supporting measures are needed according to section 25 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access.

If one refuses to pay the imposed fine, the court shall convert the un-paid fines into imprisonment. This has generally by the Finnish scholars been regarded as possible only when there are highly exceptional circumstances. Normally the fines shall be collected by the bailiff.

b. Measures usually taken in practise

In scholarly views in Finland (Linna Huolto- ja tapaamispäätöksen täytäntöönpano page 192) it has been pointed out, when enforcing family judgments one should always have other primary methods than using coercive measures. Such primary measure is the enforcement mediation as discussed earlier in this report.

Firstly, one cannot find in Finnish law any order of preference when one should choose between conditional imposition of a fine or fetching the child as far as decisions on custody, including orders on the place of residence of the child are concerned, though. One should avoid excessive use of any coercive measures. According to scholarly view by Linna it is not principally allowed to give an order to fetch the child if conditional imposition of a fine can be presumed to be an adequate coercive measure in a custody case because fetching the child is always considered being extremely difficult and traumatic for the child. However, there might be sometimes circumstances that the best interests of a child are in danger- e.g. when uncertain, inadequate and unclear circumstances of a child exist. The court could then exceptionally give an order to fetch the child in an urgent manner first instead of using conditional imposition of a fine. This might be the case when there is a danger that the child will be taken abroad without consent of a joint custodian or the other parent.

Secondly, as far as contact and/or access orders are concerned conditional imposition of a fine is regulated (in section 16 § in the Act on the Enforcement of a Decision on Child Custody and Right of Access) as being clearly primary measure compared to the fetching of a child. Only cogent reasons within the best interests of a child as well as when it is presumable that the contact order will not materialize otherwise, it is justifiable to use the fetching of a child when enforcing contact and/or access orders. It should be noted, that even though court gives an order to fetch a child such order is never in force permanently but instead of that court must always give a separate “new” order to fetch the child on case by case basis. This is true as far as enforcing contact and/or access rights are concerned.

c. Taking of coercive measures when the child opposes enforcement

If the fetching of child is used as a coercive measure, it should take place as un-dramatically as possible. The mediator who was negotiating with the parties or a social worker must be present when the child is removed. Also another person whom the child trusts may be present to help the child to feel safe during the removal. If it is evident that the child will be upset, the removal may be postponed. Even when there is a court order on removal of a child the case may be taken back to mediator(s). (See more in Bainham, A (ed.), *The International Survey of Family Law 1997*, by

Helin; M: Enforcement of Custody, Access and residence orders, inter-country adoption and registration of same sex couples pages 156).

When the fetching takes place there will always be mediation in order to enforce the decision voluntarily. The social worker and/or doctor and/or another child work expert are at present, when the child is fetched and the bailiff may never fetch the child alone. The police may also be present and give executive assistance to local bailiff. Also another close person whom the child trusts may be present to help the child to feel safe during the removal. The applicant of the enforcement may be obliged by the court to be present, too.

When the child is twelve years old or even if the child is under twelve but the child is so mature that his or her opinion may be taken into consideration and the child opposes the fetching, one shall have to withdraw from the fetching of a child. (Jaakkola, R: Lapsen huolto- ja tapaamisoikeuspäätösten täytäntöönpano vuosina 1996-2001. Lakimies n:o 6, 2002, pages 898).

4. The impact of other legal or practical conditions relevant during the enforcement e.g. the hearing of the child

The hearing of a child in court shall occur according to section 39 in the Child Custody and Right of Access Act as follows: (1) Before the court of appeal makes a resolution on an application for the enforcement of a decision on child custody or right of access given in a foreign state or for the return of a child, it shall ascertain the opinion of the child, if he is, on the basis of his age or other circumstances in the knowledge of the court, to be presumed to have attained such a degree of maturity that it is appropriate to take his opinion into account. (2) The provisions in sections 15 and 16 shall be applied in the ascertainment of the opinion of the child, where appropriate. (3) When requesting the report of the local social authority (social welfare board), the court of appeal shall make an exhortation for urgency.

According to section 15 in the Child Custody and Right of Access Act hearing of parent and custodian and of the child shall take place as follows: When considering a case relating to child custody or right of access, the court shall reserve the parents and the custodian of the child the opportunity to be heard, if a summons can be served on them. The child may be heard in person before the court, if there is a substantial reason that makes this necessary in view of the decision in the case. He may only be heard if he consents to the same and if it is evident that the hearing cannot cause harm to the child. Further there is stated in section 16 about the report by the social welfare board. In a case relating to child custody or right of access the court shall obtain a report from the social welfare board of the municipality where the child, the parents, the custodian or the proposed custodian has a place of residence. If such person does not have a place of residence in Finland, the report shall be obtained from the social welfare board of the municipality where the person lives. However, a report shall not be obtained (1) if it is evident that none is required for a decision in the case. (186/1994) (2) If it becomes evident during the compilation of the report that the case may be resolved by a parental agreement, as provided for in section 7, the social welfare board shall provide the parents with the necessary assistance for the conclusion of the agreement. (3) The report may contain also information that according to section 57(1) of the Social Welfare Act (710/1982) is to be kept secret, if this is necessary in view of the best interests of the child. (186/1994)

In practise the hearing of a child is not the main rule when enforcing decisions on the residence of a child and contact and/or access orders. According to survey done by Jaakkola the child had been heard in 33 % of the cases when deciding on the actual custody order, during mediation period or during the enforcement procedure. Normally the courts tend to be content with the second-hand information given by the enforcement mediators. In the very few cases when the court had heard the child the age of a child tended to be older than age when the mediators did hear the child. The ages

differentiated from 8- 14 years. (see more in Jaakkola, R: Lapsen huolto- ja tapaamisoikeuspäätösten täytäntöönpano vuosina 1996-2001 page 896, The survey on the enforcement of child custody and contact/access orders during the years 1996-2001):

Annexes

Acts

As far as any Acts are available in English You should note that such translations are *not up to date* and only Finnish and Swedish versions are official languages: One should always check possible amendments from Finnish and Swedish versions in order to get accurate answers to any questions concerning enforcement of family decisions in Finland.

The Act of the Enforcement of Decision on Child Custody and Right of Access is not available as an English version. Therefore copy on this Act is provided as a Finnish version only as attached to this document.

The Child Custody and Right of Access Act is provided in English and Finnish version as attached to this document.

The Child Custody and Right of Access Decree (decree number 556/1994) is provided in English and Finnish version as attached to this document.

The Code of Judicial Procedure is provided in English and Finnish version as attached to this document

The Enforcement Act (Ulosottolaki) is not available in English, only Finnish version is provided as attached to this document.

The Convention between Finland, Norway, Sweden and Denmark on private international law issues on matrimony, adoption and custody (Nordic Convention II) is not available in English, only Finnish version is provided as attached to this document.

Case law

Literature

Bainham, A (ed.), The International Survey of Family Law 1997, by Helin; M: Enforcement of Custody, Access and residence orders, inter-country adoption and registration of same sex couples pages 153-165, Printed in The Netherlands.

Helin; M. - Linna, T. - Rintala, M.: Huolto- ja tapaamispäätöksen täytäntöönpano, Kauppakaari Oy Lakimiesliiton Kustannus, Helsinki, 1997.

Jaakkola, R: Lapsen huolto- ja tapaamisoikeuspäätösten täytäntöönpano vuosina 1996-2001. Lakimies n:o 6, 2002, pages 879 - 901.

PART II

I. LEGAL BASES FOR THE ENFORCEMENT OF HAGUE RETURN ORDERS

LEGAL BASIS FOR THE ENFORCEMENT OF RETURN ORDERS

See the questions hereunder, taken from the questionnaire of the Hague Conference, under II. In case your member state has already responded to the Hague Conference's questionnaire, you would mainly have to update and if you think necessary, add lacking information. In case your member state has not responded to the Hague Conference's questionnaire, we suggest that you would try to cover the issues mentioned in that questionnaire in a general manner.

1. Please give details of any specific legislative provisions which exist in your State concerning the enforcement of return orders. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content. See the answers of the Ministry of Justice.
2. Please give details of any general legislative provisions which exist in your State concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions). Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and the content of the relevant provisions. See the answers of the Ministry of Justice.
3. Please give details of any judicial decisions, practice directives or guides concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions). See the answers of the Ministry of Justice.
4. Do you have any other comments relating to the law governing enforcement of return orders, including any comments on the effectiveness of these rules?

2. Procedure and practice with regard to return orders

Please consider whether the replies to the Hague questionnaire refer in any way to the use of mediation as a tool to settle an abduction case and whether this plays a role in actual practice.

Mediation is not used as discussed earlier in part I of this questionnaire as a formal part of an enforcement procedure. and as a means to settle an abduction: The idea behind this is that using mediation might lengthen the process to get the child back from the abductor to the legal custodian. This is true as far as custody decisions on the residence of a child are concerned. However,

1. Please give details of any specific legislative provisions which exist in your State concerning the enforcement of return orders under the 1980 Hague Convention. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content.

- The return orders made under the 1980 Hague Convention are enforced under the Finnish Child Custody and Right of Access Act (Law No 1983/361, Chapter 7). In addition, the provisions of the Act on the Enforcement of Decisions on the Child Custody and Right of Access (Law No 619/1996) are applied as stated below.

- An extract of the Child Custody and Right of Access Act:

“Section 46 — Enforcement of a decision on the return of a child (186/1994) (1) An order to return a child, issued under section 30, shall be enforced without hearing the opposing party, by ordering the child to be fetched. In other respects, the provisions of the Act on the Enforcement of Decisions on Child Custody and Right of Access apply to the enforcement of the order, in so far as not otherwise provided below in paragraph (2) or (3). (620/1996)

(2) If the order to return a child is based on an application that had been filed before one year had passed from the abduction of the child or the failure to return the child, the enforcement of the order to return the child may be declined only if the child objects to being returned and has attained such an age and level of maturity that it is appropriate to take his or her opinion into account. (620/1996)

(3) The order to return a child shall be enforced regardless of any decision on child custody or his being taken into the care of the local social authority (social welfare board). However, no return shall be undertaken after the child has attained the age of sixteen years.”

2. Please give details of any general legislative provisions which exist in your State concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions). Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and the content of the relevant provisions.

- In addition to the provisions mentioned under question I.1 the provisions of the Enforcement Act (Law of 1895, reformed by the laws No 1996/197 and 2003/679) are applied as appropriate. For example provisions on the appeal against measures taken by the enforcement officer and measures to locate a child can be relevant in the enforcement of a return order.

3. Please give details of any judicial decisions, practice directives or guides concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions).

- The Ministry of Justice has given guidelines (Dno 3553/36/96) to the enforcement officers concerning enforcement of decisions on child custody and rights of access. They apply to the enforcement of the return orders *mutatis mutandis*.

- Cases on the enforcement of a return order:

- Supreme Court of Finland (KKO 3492/1998) of 9 November 1998

- Supreme Court of Finland (KKO 2004:129) of 21 December 2004

4. Do you have any other comments relating to the law governing enforcement of Hague return orders, including any comments on the effectiveness of these rules?

- No.

II. ENFORCEABILITY AND LEGAL REMEDIES

1. a) Is a Hague return order subject to appeal or other forms of challenge? Please give details (number and character of legal remedies, possible time-limit for them, possible time-limit for appellate court or court of appeals to decide etc.).

- Helsinki Court of Appeal has the exclusive jurisdiction to make decisions on international child abduction at first instance. An appeal to the Supreme Court may be lodged within fourteen days of the decision ordering the return. However, a return order is enforceable at once, even if not yet final.

b) Please specify whether any such challenge may only be made once, and which court or body has jurisdiction to hear the appeal.

- See II.1.a above. The Supreme Court is the final instance.

2. a) Please give details of any authorisation or other decision required for the actual enforcement of the Hague return order (e.g. registration for enforcement, declaration of enforceability, order of a specific enforcement measure or other).

- When Helsinki Appeal Court has ordered the return of a child it shall, on its own initiative, deliver the decision to the competent district court and request it to undertake urgent measures for the enforcement of the decision. The district court shall then order the child to be fetched.

b) Which is the competent organ for these decisions?

- See above.

3. Does the Hague return order have to be final and no longer subject to ordinary appeal before any authorisation for enforcement or other measure specified under II.2 may be ordered?

- No, a return order is enforceable at once.

4. a) Are any of the decisions specified under II.2.a) (authorisation to enforce or other decision) subject to appeal independent of any appeal against the merits of the return order? Please give details (number and character of legal remedies, possible time-limit to lodge them, possible time-limit for appellate court or court of appeals to decide etc.).

- An order of the district court to enforce the decision can be appealed to the competent appeal court. It does not, however, suspend the enforcement of the decision unless otherwise ordered by the appeal court.

b) Please specify whether any such challenge may only be made once, whether it suspends the enforceability / enforcement of the order and which is the court or body to decide the appeal.

- See above.

5. If in your State both types of legal remedy as specified under II.1 and II.4 (i.e. against the order on the merits and against any decision taken at or required for the enforcement stage) exist, can they be lodged simultaneously? Is it the same court that deals with them if they are lodged (a) simultaneously, and (b) at different times?

- They can be lodged simultaneously and they are always dealt with separately. An appeal against the order on the merits is lodged with the Supreme Court. An appeal against a district court order for enforcement is lodged with the competent appeal court. A further appeal to the Supreme Court is subject to a leave of appeal.

6. Do you have any other comments relating to legal remedies and the enforcement of Hague return orders?

- No.

III. ENFORCEMENT PROCEDURE

A. The order to be enforced and the aims of enforcement

1. If an application for return of a child under the 1980 Hague Convention is successful, what is normally ordered:

- a) the surrender of the child to the applicant (if necessary, “for the purposes of returning the child to his / her State of habitual residence”)
- b) the return of the child to State X
- c) other?

- b)

2. If such order has to be enforced, please specify which of the following is / are normally the aim of enforcing a return order:

- a) to remove the child from the abductor or any other person
- b) to hand the child over to the applicant or a person designated by him or her in the State where enforcement takes place
- c) to ensure the child's return to his or her State of habitual residence
- d) other.

- b) and c)

3. Whose responsibility is it to organise the repatriation of the child?

- Normally it is the applicant but the parents may agree on other arrangements. Sometimes the abducting parent returns with the child to the State of habitual residence.

B. Actors involved in enforcement

1. Once a return order is made, is a specific request for enforcement necessary?

- When Helsinki Appeal Court, which is the first instance in these matters, orders the return of a child it shall on its own initiative deliver the decision to the competent district court and request it to undertake urgent measures for the enforcement of the decision. Normally, the district court gives the enforcement order on the same day. After that the applicant (in person or through his or her lawyer) shall make an application to the bailiff to fetch the child.

2. Please specify who initiates enforcement of the court's return order:

- a) the applicant (in person or through his or her lawyer)
- b) the Central Authority
- c) the court
- d) the enforcement organ itself
- e) other.

- See above.

3. a) Please give details of the persons, organs and institutions (e.g. enforcement organs, court, parties, psychologists, social workers, Central Authorities, other) involved in the enforcement of return orders under the 1980 Hague Convention

i) according to the law

- According to the law the enforcement of a return order is the responsibility of the local enforcement officer (bailiff). As a mandatory rule, the enforcement officer invites a social worker to be present. The social worker's main role is to prepare the child for the return.

- The social worker has to call a child's relative or another person close to the child to be present, if available. Where necessary, the social worker invites also a doctor or another specialist. The applicant shall be present if required by the enforcement officer. If needed, the enforcement officer may ask a witness and a police to be present as well.

ii) in practice.

- If a return order is not complied with voluntarily, the enforcement normally involves at least the enforcement officer, a social worker, the applicant and his/her lawyer.

b) In particular, are any social or psychological services available in order to prepare the child and / or the defendant for the return in order to de-escalate or even avoid enforcement by coercive measures?

- See above.

c) Please specify also whether presence of the applicant (or a person designated by him or her) is required and, if this is the case, at which stage of the enforcement proceedings and for what purpose.

- Normally the enforcement officer requires the applicant or a person close to the child to be present when the child is fetched. The enforcement officer will ensure the hand over of the child to that person.

4. a) Is there any supervision / control of the enforcement procedure by a court, the Central Authority or any other State authority? If a court is supervising / controlling the enforcement procedure, which court is it? The court that made the order or other (e.g. a specific enforcement court)?

- The enforcement officer acts independently. His/Her decisions may be appealed to the local district court but an appeal does not interrupt the procedure unless otherwise ordered by a court. It is also possible to make a complaint to the Ministry of Justice or to the Chancellor of Justice or the Parliamentary Ombudsman who are the supreme guardians of the law.

b) What if the court of first instance refused return, and the appellate court or court of appeals ordered return? Would the court of first instance, the appellate court or court of appeals which ordered return, or any other court be the court supervising / controlling enforcement in such a case?

- In Finland it is Helsinki Court of Appeal who decides on the Hague cases at the first instance. Even if the Appeal Court refuses the return and the Supreme Court orders the return the control of the enforcement procedure goes as described under question 4. a above.

C. The enforcement procedure proper

1. Is there a timeline for enforcement?

- According to the Child Custody and Right of Access Act the enforcement measures shall be taken urgently.

2. Is it normal to allow a period of time for voluntary compliance with a return order or to allow appropriate practical arrangements for the return of the child to be made?

- Yes.

3. Are any measures available in order to prevent the abductor from taking the child into hiding after the return order is made and before it can be enforced? In the affirmative, please give details.

- The local district court may order appropriate precautionary measures (e.g. order the respondent to bring the child to a certain place under penalty of a fine). It is also possible to order that a child has to be placed under the care of the social welfare authorities.

4. What happens if the child is taken into hiding after the order was made and before it can be enforced? Which actors would be involved (e.g. Central Authority, police, public prosecutor, other) and which measures can they take to locate the child? What is the effect of the hiding on a possible timeline for enforcement?

- A request for executive assistance in locating the child can be made by the central authority or the enforcement officer to the police. If needed, intensified searches are conducted in cooperation between the enforcement officer and the police. They can also use appropriate coercive measures in order to find a child to the extent that the measures are grounded taking into account the conditions as a whole.

5. When enforcement is initiated, what are the required steps (e.g. measures by the applicant, the court or any other supervisory authority, and the enforcement organs)?

- Once an enforcement order is made it is urgently transmitted to the enforcement officer. He/She will contact the parties, the social worker and possibly other actors mentioned above (under question B3.a) in order to prepare and organise the fetching of the child. In difficult cases the district court may order precautionary measures on the request of the applicant.

6. Which coercive measures are available and under what conditions (e.g. pecuniary fines, physical force [against whom? the child? the defendant? others?], detention)? Which of these are normally used in practice?

- Conditional imposition of a fine against the defendant is available. It is used in difficult cases. All measures relating to a child have to be carried out with discretion. Appropriate coercive measures can be used against persons who try to prevent the enforcement or to hinder it but not against a child.

7. a) Do they have to be ordered specifically (i.e. either “fine”, “physical force”, “detention”)? If so, when and by whom?

- Conditional fines and placement of a child can be ordered by the court only.

Decisions on the appropriate physical force are made by the enforcement officer independently.

b) If problems occur during enforcement, may the enforcement organs unilaterally “up-grade” the intensity of coercive measures, or do they have to obtain authorisation from any particular higher authority (e.g. an enforcement court or other)? Please specify.

- See above.

8. Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained after hours and ex parte?

- In urgent cases a district court may, for instance, order that the social welfare authorities temporarily place the child in appropriate care. It can be obtained ex parte and can not be appealed.

D. Costs

1. Are costs incurred for the enforcement? If so, are they part of the costs of the court proceedings as a whole? How are they calculated? For which services are they charged?

- In Finland the applicant is granted free legal aid automatically in proceedings concerning return of a child under the Hague Convention. The legal aid covers the enforcement procedure. The legal costs, which in difficult cases may rise to a considerable amount, are met by the Finnish government.

2. Who has to pay the costs for enforcement? To whom? Is a reduction or exemption possible, e.g. under a Legal Aid Scheme? Under which conditions? In particular, is advance payment required in order for the enforcement organs to act? If legal aid was granted for the proceedings leading to the return order, would it cover the enforcement stage or would the application for legal aid have to be renewed?

- See answer above under C.1.

3. Are the costs of the actual repatriation of the child (e.g. airfare for child and possible accompanying person) considered as part of the enforcement costs? Who has to pay for the repatriation? Is advance payment a condition for enforcement?

- In practice, the applicant has to bear the repatriation costs. In the proceedings concerning the return of a child the applicant may demand that the defendant pay the travel and other expenses for the return of the child.

4. Please specify how foreign applicants are provided with information about enforcement costs to be borne by them.

- They are informed by the central authority or by their attorney.

5. Please provide details regarding the enforcement organs' specific duties as they relate to the enforcement of Hague return orders concerning children.

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6. Do you have any other comments relating to the enforcement procedure?

No.

V. STATISTICAL INFORMATION

1. How many Hague return orders that you are aware of were made per year in your country in 2001, 2002 and 2003? How many of them had to be enforced in each of these years because the abductor did not comply voluntarily with the order? Please give the figures for each year separately.

2001: one (1) return order

2002: two (2) return orders

2003: one (1) return order

2004: three (3) return orders

2005

2006: one (1) return order

2004: In two return orders given year 2004 there was no need for a specific enforcement procedure. On one case from year there was a need for the enforcement.

- In each case the return order was complied with voluntarily.

2. How many Hague return proceedings were pending in your country that you are aware of for 2001, 2002 and 2003? Please give figures per year. In how many of these cases was a legal challenge made in order to avoid enforcement (by challenging either the order on the merits, the declaration of enforceability, a particular enforcement measure or other)? If possible, please specify the type of challenge (on the merits or against an enforcement measure).

2001: one case

2002: two cases

2003: two cases (one return order, one refused)

- There were no challenges regarding the enforcement.

3. How many of the legal challenges at the enforcement level (i.e. not on the merits) were ultimately successful (i.e. the order was not enforced)?

- There were no challenges at the enforcement level.

4. What is the average length of enforcement proceedings from the moment the order is made until the moment the child is (a) removed from the abductor and (b) repatriated?

- Normally a return order is enforced voluntarily and in a few days or weeks after a return order was made.

-In the above-mentioned enforcement case from the year 2004 it took approximately 4 and a half months from the moment the enforcement order was made until the moment the children were removed from the abductor. The enforcement required such a long time mainly because of that the children were taken into hiding by the abductor.

V. CO-OPERATION

1. Please give details of any co-operative agreements existing between different agencies within your State, either formally or informally, with regard to the enforcement of Hague return orders. How did this co-operation develop?

- If the enforcement appears to be difficult in an individual case all the competent authorities for that case (the local enforcement officer, the social workers, a doctor etc.) work as a team. The central authority is informed of the situation and keeps in close contact with the requesting authority.

- At a general level, a multi-professional group for child abduction cases was created in 1998. It consists of nominated contact persons from different agencies (e.g. from the Ministry for Foreign Affairs, the Ministry of Justice, the Social Welfare Authority, the Police, the Border Guard, the mental health care, enforcement officers etc.). It is convoked approximately twice a year to discuss these matters. Since child abduction cases are relatively rare at the local level it has proved to be very useful to have a list of contact persons from different bodies that may be contacted where necessary.

2. Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies, or at the judicial level, with regard to the enforcement of Hague return orders. How did this cooperation develop?

- - -

3. Please provide details (including contact details, websites etc.) of all agencies in your State which have a role to play in the enforcement of Hague return orders.

- The enforcement of the return orders is the responsibility of the local agencies.

- A list of main actors in child abduction cases in general is found in the brochure "International Child Abduction" which can be found at www.om.fi/esitteet/9604.htm.

- A list of local enforcement officers can be found at <http://www.oikeus.fi/9363.htm>.

4. Do you have any other comments relating to co-operation, including any comments on the effectiveness of co-operative agreements?

- No.

VI. TRAINING AND EDUCATION FOR PROFESSIONALS

1. Please give details of any training or education that is available in your State for professionals (including, judges, Central Authority personnel, lawyers, mediators, enforcement organs [e.g. bailiffs], police officers, and social workers) as a means of preparing them to enforce Hague return orders or decisions in family law matters in general.

- Training in these issues can be organised by various actors: the Ministry of Justice, the Ministry for Foreign Affairs, the Police, social welfare authorities, NGOs, private training companies etc. There is no regular training but persons of the multiprofessional group mentioned under question V.1. have an important role in securing the professional skills in these issues in their respective sectors.

2. Who provides this training and education?

- See above.

3. What form does this training take and how regularly does it occur? Does joint training of different professional groups which have to co-operate in the enforcement of Hague return orders (e.g. judges, bailiffs, police officers, social workers) also occur?

- Training is quite often conducted in the form of a seminar including lectures from different perspectives. In many cases different professional groups attend the training.

4. Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of facilitating the enforcement of Hague return orders?

- No.

VII. OTHER INFORMATION

1. Please give details of any web pages, and provide copies of any brochures, or information packs or similar materials which contain information or advice on the enforcement of Hague return orders in your State and which are available to parents, including applicants from abroad.

- A brochure on International Child Abduction mentioned under question V.3 is available through the Internet. It is available in Finnish, Swedish, English, Russian and French. It contains, however, more information on international child abduction in general and is not focused on enforcement issues.

2. Who provides this information? When was it compiled? When was it last updated? How is the information made available and in which language(s)?

- The brochure was prepared in co-operation between the Ministry for Foreign Affairs, the Ministry of Justice, the Ministry of Social Affairs and Health and the Association for Abducted Children in December 2000. It was last updated in February 2005. Otherwise see above.

3. Do you have any other comments relating to information for parents, including any comments on whether such information is effective in assisting the left-behind parent in having his or her return order enforced?

- No.

4. Please provide any other information which may be relevant to the issue of the enforcement of Hague return orders.

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5. Please provide details of any other bodies or authorities in your State who may have information useful to the research covered by this questionnaire.

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6. Have you any general comments to make regarding the enforcement of Hague return orders?

- No.

2B. Law and practice with regard to enforcement of family law judgments other than return orders
In this part, 'other family law decisions' are family law decisions (as defined above), with the exclusion of orders on the return of the child, which should be discussed in Part 2A. Notably these judgments may relate to the custody, the place of residence of the child, to orders supporting these judgments and judgments relating to contact or access. We assume that contact and access orders will in most cases be enforced on the basis of the Hague Abduction Convention or on the basis of the particular provision of Brussels 2A (Article 41), but it cannot be excluded that they are enforced on the basis of 'ordinary' rules.

1. Instruments and national legislation relevant for the enforcement of family judgments in cross-border cases

Apart from the Brussels 2A regulation (see question 2 hereunder) and the Hague Abduction Convention (discussed in Part 2A) your member state may be party to other international convention relevant of the enforcement of family law judgements (e.g. the Hague 1961 and 1996 Conventions on protection of children or regional conventions). Please list these conventions. Please indicate any legislation implementing or supporting the application of these conventions. In case no international instrument is applicable, please indicate whether there is legislation or case law relevant for the enforcement of foreign family law judgments?

Finland has ratified the Convention of the European Council on the Recognition and Enforcement of decisions concerning the Custody of Children and on Restoration of Custody of Children in year 1994. The Luxemburg Convention rules are converted into Finnish legislation i.e. the Child Custody and Right of Access Act has respective orders in chapter 4 (Rules of private international law); Chapter 5 (Return of a child by virtue of the Hague Convention) and Chapter 6 (Assertion of a decision given in a foreign State and procedure relating to the return of a child). Chapter 6 is applicable when the court order has been in given in country outside EU.

In case a parental rights decision is given either in Norway, Sweden or Denmark (Nordic countries), it shall be recognised and enforced in Finland in accordance with the Convention between Finland, Iceland, Norway, Sweden and Denmark on recognising and enforcing judgments which concern civil law claims (later called as Nordic Convention II). The Convention has come into force in Finland in year 1977 (law number 56/1977). The convention is therefore applicable when enforcing in Finland the family judgments and/or decisions rendered by Norwegian, Swedish and Danish courts and/or administrative authorities. Iceland has not ratified Nordic Convention II. Therefore Nordic Convention II is not in force in Iceland. As long as Norway does not belong to the European Union and Denmark does not ratify the Brussels II a Convention the Nordic Convention II plays an important role in Finland.

It should be noted that the Nordic Convention II is applicable between Sweden and Finland even though they both belong to EU. But in case there were any additional rules concerning child abductions in Hague Abduction Convention or in the Brussels II a Convention they shall both prevail over the Nordic II Convention. Generally it has been understood that the rules on Brussels II a concerning contact/access rights prevail the Nordic Convention rules in the relation between Finland and Sweden, too.

The Nordic Convention II has been converted into Finnish law by giving a special Act on ratifying and implanting Convention between Nordic Countries on recognising and enforcing judgments which concern civil law claims (law number 55/1977). The Nordic II Convention does not cover decisions on child protection.

Further, the Nordic Convention II is not in force in Iceland, which does not belong to European Union either. Therefore the former Nordic Convention between Finland, Iceland, Norway, Sweden, and Denmark on private international law issues on matrimony, adoption and custody (=Nordic Convention I) is still applicable when enforcing custody decisions between Iceland and Finland.

Other conventions that might be of relevance:

- Hague Convention 1970 on the Recognition of Divorces and Legal Separations (has entered in force in Finland year 1977)

- Convention between Finland, Iceland, Norway, Sweden and Denmark on recognising and enforcing judgments which concern civil law claims (=Nordic Convention II).
- Nordic Convention between Finland, Iceland, Norway, Sweden, and Denmark on private international law issues on matrimony, adoption and custody 6.2.1931 (=Nordic Convention I)
- Nordic Convention on the Maintenance of Children and Recovery of Maintenance (entered into force in Finland 1963)
- New York Convention 1956 on the Recovery Abroad of Maintenance (entered into Force In Finland 1962)
- Hague Convention 1958 on the Recognition and Enforcement of Decisions relating to Maintenance obligations (entered into force in Finland 1967)
- Hague Convention 1973 on the Recognition and Enforcement of Decisions relating to Maintenance obligations (entered into force in Finland 1983)
- Haag Convention 1993 on the Protection of Children and Co-operation in respect of Inter-country Adoption (entered into force in Finland 30.5.1997/497)

2. National law relevant for cross-border enforcement of family law judgments under Brussels 2A

In Part 1A you will already have set out the national system for enforcement of family law judgments in internal cases. Are there any specific legal provisions (or case law) relevant for enforcement in cross-border cases, and specifically under Brussels 2A? If necessary, please distinguish between situations where a decision emanating from your member state is to be enforced abroad and where a decision emanating from another member state is to be enforced in your member state.

There exists a special Act on the Application of Brussels II a convention (law number 1153/2004) which has some complimentary rules on how to apply Brussels II a Convention in Finland.

The district court has the jurisdiction in matters concerning the enforcement of family decisions from another EU member state. The Court shall upon request of a party send the decision to the competent district court to be enforced. In case the decision concerns decision on the custody of a child including the residence of a child which is not older than three months the decision shall be sent to competent bailiff. The court shall request the district court or bailiff to enforce the case urgently. The enforcement takes place as discussed in part 1 according to national system.

3. National practice with regard to the enforcement of family law decision of your own courts in another member state

In case the courts in your member state take a decision that is to be enforced in another member state, will the courts take the 'cross-border' factor into account. E.g. will the court consider:

- Whether orders that support enforcement are practicable (or not) in the member state where enforcement is to take place (e.g. involvement of police authorities, which may not be practicable in all member states in case of enforcement of, e.g., visiting rights)
- any other practical factors regarding the enforcement that ensue from the fact that the enforcement takes place in a cross-border situation, such as the involvement of foreign child protection agencies, the taking into account of different society customs and practices in the other member state, or the

practical difficulties encountered by the child and interested persons (mostly parents) when family rights such as custody or visiting rights are to be respected in a cross-border situation.

Whether courts take the cross-border factor into account is a question of which it is impossible to find any case law because the Brussels II a has not been in force for such a long time.

4. National practice with regard to the enforcement of family law decisions of another member state in your own member state.

When a family law judgment from another member state is to be enforced in another member state, will the courts be inclined to amend the modalities of such a decision, e.g. with regard to the measures supporting enforcement (involvement of the police) or the practicality of the arrangements laid down by the foreign court.

According to section 5 § in the Act on the Application of Brussels II a Convention there is stated that the Finnish state, social and police authorities shall give to central authority (Ministry of Justice) executive assistance as far emergency measures to secure the enforcement of a decision given in another member state are concerned. Such measures include finding out the location and the circumstances of a child.

5. Setting aside or amending of foreign judgments

Is it possible to indicate what conditions must be fulfilled before a decision of another member state, which is to be recognised and enforced in your member state, may be set aside by a 'new' decision of your own courts? E.g. a divorce court in another member state has taken measures with respect to parental responsibility and visiting rights. The child then comes to live in your member state. After a certain period an interested party challenges the arrangements made by the divorce court, whereas another interested party pleads for enforcement of these arrangements.

No case law can be found on such issues.

Professor Kangas from the University of Helsinki did discuss on one enforcement case at his lecture. There the un-married couple had lived in France. Later the mother (Finnish citizen) came back to Finland with the child. The father wanted to enforce a French decision on contact/access rights where the father was entitled to travel expenses paid by the mother when using contact rights twice a month. The travel expenses might have been as high as 300-500 euros per month, if the father had travelled to Finland. The case was settled by the parties and it is unclear how the court may have interpreted the French decision but there might have been circumstances to set aside the French decision.

Further, when it is evident that the paternity of a child is clearly against Finnish principles that the paternity must be based on biological truth there might be reasons for setting aside a foreign decision, too.

2C. Specific issues relating to the cross-border enforcement of family law judgments

1. The role of organs and institutions

What national organs and institutions are involved in the cross-border enforcement of family law judgements (both when enforcement takes place in your member state or 'abroad' (in another member state or in a third state). We assume that to an extent such organs have already been discussed above under B.1 a-c, above, but it may be necessary to include particular details.

A decision from another EU country shall be enforced according to national rules as discussed in part 1 and according to rules found in a special Act on the Application of Brussels II a convention.

There are in the Child Custody and Right of Access Act autonomous national rules when the family decision is outside EU and Nordic Countries. According to section 45 § in Child Custody and Right of Access Act there is stated that a decision on child custody and right of access given in a foreign state and asserted to be enforceable in Finland shall be enforced as provided for in the Act on the Enforcement of a Decision on Child Custody and Right of Access. However, enforcement shall not be undertaken after the child has attained the age of sixteen. The age limit of sixteen is applicable also on decisions in which the removal of a child has been declared unlawful on the basis of Hague Abduction Convention. After the Helsinki Court of Appeal has declared the decision on custody and right of access enforceable (exequatur) the application on the enforcement shall be addressed to a district court. Even though a decision on custody and residence of a child is not older than three months the decision is not directly enforceable by the bailiff this being the main difference compared to national enforcement.

According to rules set out in the Nordic Convention II decisions on custody and contact/access orders given in another Nordic country shall be enforced. The decision shall be enforceable even though one may still appeal. There are some circumstances when the court may deny the enforcement because the decision given in another Nordic country is in contradiction to a Finnish decision. Other grounds to deny enforcement are when the decision is based on the fact that the party stays only temporarily in another Nordic country, the other party has failed to appear in the court, the case is pending in Finland or in another Nordic country or because of ordre public grounds are at stake. The law has been interpreted previously before the Brussels II a was in force in Finland that one should always apply for enforcement at a district court (not directly at the local bailiff) even though the decision on custody or residence of a child were not older than three months. (See Helin page 310 in Helin; M. - Linna, T. – Rintala, M.: Huolto- ja tapaamispäätöksen täytäntöönpano, Kauppakaari Oy Lakimiesliiton Kustannus, Helsinki, 1997.)

2. Time limits relevant for enforcement proceedings and the effect of time

To an extent these issues will have been discussed under B. 2 a-c above and there may not be any specific different rule or practice. We are inclined to assume that in cross-border cases certain time limits (e.g. for appeal) are similar to those in internal cases, as discussed in under B. above, or are subject to foreign law (if the decision emanates from another state. However, in cross-border cases, possibly certain time limits may influence enforcement, whether it is the enforcement of a 'foreign' decision or the enforcement abroad of a decision from your Member State. Finally the passing of time may have a different effect on enforceability in cross-border cases.

The time limits for appeal are as discussed earlier in part 1.

When the decision on exequatur is at stake the time to appeal to Supreme Court is fourteen days.

3. Coercive measures to ensure enforcement

Again reference may probably be made to paragraph B. 3. a- c above. Please include any issue relevant to a cross-border case.

According to section 5 § in the Act on the Application of Brussels II a Convention Finnish state, social and police authorities shall give to central authority (Ministry of Justice) executive assistance as far emergency measures to secure the enforcement of a decision given in another member state are concerned. Such measures include finding out the location and the circumstances of a child.

4. Other legal or practical conditions that may form obstacles to enforcement

Again reference may probably be made to paragraph B. 4 above. Please include any issue relevant to a cross-border case.

5. Issues of specific concern in cross-border cases

The issues of specific concern may vary from Member State to Member State and may very well be specific for your jurisdiction. Possible issues that may (or may not be discussed are, e.g.:

- Are rights granted under certain family law judgments (decisions on parental responsibility or on access/contact rights) limited in a geographical sense (e.g. the territory of one member state) or are they absolute (e.g. the right may be exercised world-wide)

Parental responsibilities, access and contact rights may be exercised world-wide.

- Is it necessary to obtain permission of a court to move to another member state without the consent of another holder of parental responsibility? Under what do the courts give permission to relocate?

- Are there specific issues that arise when enforcing foreign family judgements

- Are there specific conditions with respect to foreign family judgements that may form obstacles to enforcement

- The influence of any bilateral or regional convention that is relevant for enforcement

The rights granted under parental responsibilities and contact/access rights are not limited in geographical sense and are therefore in force world-wide.

According to Finnish law there is set no obligation to obtain a permission from a court to move abroad.

There has been discussed whether conditions of the Nordic Convention II are more favourable to parties than provisions of Brussels II a.

6. Mediation/Alternative dispute resolution

Please discuss to what extent mediation (or alternative dispute resolution) plays a role in the enforcement of other family law decisions. What would or could be the legal base of such a solution and to what extent does it play a role in the practice of the courts. If mediation plays a role, is its use limited to 'internal' cases or is there also a use in cross-border cases

Mediation is a formal part of the national enforcement procedure as discussed in part 1. However, when enforcing orders given on the basis of Hague Convention to return the child nor in cross-border cases that emanate outside EU the mediation does not take place. Otherwise the enforcement might take too long time.

EMPIRICAL STUDY

A. Statistical information

There is no statistics on the average length of the enforcement proceedings. Please see also some statistical data concerning child custody and maintenance where can the number on custody cases

per year in years 2003 and 2004 can be found.

www.stakes.fi/ENTilastot/statisticsbythemes/childhoodandfamily/childmaintenanceandcustody.htm

Dr Marjukka Litmala has been in charge of above-mentioned statistics. Contact Information: Research Manager, Dr, Docent Marjukka Litmala, National Research Institute of Legal Policy, P.O.B 444, Pitkäsillanranta 3 A, 00531 Helsinki e-mail: marjukka.litmala@om.fi

B. Telephone interviews

Ministry of Justice:

Legal Adviser Outi Kemppainen, International Affairs, PO BOX 25, FIN-00023 Government, Finland

tel. +358 9 1606 7576, fax. +358 9 1606 7524 e-mail: outi.kemppainen@om.fi

Following Bailiffs:

1. Juhani Toukola, the chief city bailiff in Vantaa, Enforcement department, Kielotie 13, P.O.Box 150, 01301 Vantaa. Tel +358 (0)10 362 1300

e-mail: juhani.toukola@om.fi

2. Maija-Liisa Parmi, the chief city bailiff in Espoo, Enforcement department, Vitikka 1 P.O.Box 20, 02631 Espoo, Tel +358 (0)10 502 4270

e-mail: majja-liisa.parmi@om.fi

Following Judges

anna-kaisa.aaltonen@om.fi, aulikki.stenback@om.fi, susanne.moller@om.fi,
eeva.tikka@om.fi, marjo.naapi@om.fi,

Following attorneys-at-law:

Attorney-at-law Salme Sandström, Attorney-at-law office Sandström & Koulu, e-mail:

salme.sandstrom@sandstrom.koulu.fi

salme.sandstrom@sandstrom.koulu.fi, aila.koulu@sandstromkoulu.fi,

kristiina.rintala@reims.fi, hilkka.salmenkyla@aatsto-salmenkyla.inet.fi,

5 riitta.rajala@om.fi, juhani.toukola@om.fi, suvi.lahtinen@om.fi, elina.sarelius@om.fi,

The additional questions made by Pilar Bernabeau on 24.1.2007

1) With respect to the coercive measures possible, please indicate whether the measure will be directed against the child or against the 'other' parent. E.g. suppose that the child does not want to conform to a visiting order and makes himself unavailable to the parent who wishes to exercise

visiting rights, would there be possibility that the other parent becomes liable to a fine (or be subject to other measures) or would action be taken against the child

According to Finnish law the fines shall be directed against the parent in question. It has been understood that the parent has the obligation to secure the full-filling of the contact/access rights and therefore such parent has the means to organize the meetings.

2) "Can you describe in just a few sentences what usually happens in practice after a judgment in family matters has been rendered?"

For example: When a judgment in family matters is rendered, enforcement of the judgment will initially take place on voluntary basis. If this does not work, enforcement takes place by a bailiff, if necessary with the help of the police.

When a decision on custody, residence of a child and a contact/access order has been given the decision shall normally be followed on a voluntary basis in Finland. It is difficult to get any exact figures on the proportion of cases which have to be enforced by the authorities in Finland.

According to scholarly view by Helin (see Huolto- ja tapaamispäätöksen täytäntöönpano, Kauppakaari Oy Lakimiesliiton Kustannus, Helsinki, 1997 pages 12-13) the amount of cases which are enforced on non-voluntary-basis by the enforcement authorities is clearly under one percent of all the child custody and access/contact cases given per year. Also Jaakkola estimates in his survey on enforcement of child custody, contact and access orders during years 1996-2001 that approximately only 1 % of all the cases on child custody, contact and access orders shall be enforced by the authorities in Finland. (See Jaakkola, R: Lapsen huolto- ja tapaamisoikeuspäätösten täytäntöönpano vuosina 1996-2001. Lakimies n:o 6, 2002, pages 884-885). If the decision on child custody is not followed voluntarily it shall be enforced by the district court and enforcement authorities (bailiff) as described in detail earlier in the part I.

Annexes

Acts

As far as any Acts are available in Finnish You should note that such translations are not up to date and only Finnish and Swedish versions are official languages in our country. One should always check possible amendments from Finnish and Swedish versions in order to get accurate answers to any questions concerning enforcement of family decisions in Finland.

The Act on the Application of Brussels II a convention (law number 1153/2004)

The Act of the Enforcement of Decision on Child Custody and Right of Access is not available as an English version. Therefore copy on this Act is provided as a Finnish version only as attached to this document.

The Child Custody and Right of Access Act is provided in English and Finnish version as attached to this document.

The Child Custody and Right of Access Decree (decree number 556/1994) is provided in English and Finnish version as attached to this document.

The Code of Judicial Procedure is provided in English and Finnish version as attached to this document

The Convention between Finland, Norway, Sweden and Denmark on private international law issues on matrimony, adoption and custody (Nordic Convention I) is not available in English, only Finnish version is provided as attached to this document.

The Convention between Finland, Iceland, Norway, Sweden and Denmark on recognising and enforcing judgments which concern civil law claims (Nordic Convention II)

The Enforcement Act is not available in English, only Finnish version is provided as attached to this document.

Case law

Supreme Court KKO 2005:138

Supreme Court KKO 2006:32

Literature

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Jaakkola, R: Lapsen huolto- ja tapaamisoikeuspäätösten täytäntöönpano vuosina 1996-2001. Lakimies n:o 6, 2002, pages 879 - 901.