

**Translation from Finnish**

**Legally binding only in Finnish and Swedish**

**Ministry of Justice, Finland**

**Act on Child Custody and Right of Access**

(361/1983; amendments up to 352/2019 included)

By decision of Parliament, the following is enacted:

**Chapter 1**

**General provisions**

**Section 1 (190/2019)**

**Child custody**

The purpose of child custody is to ensure the wellbeing and balanced development of a child in accordance with the child's individual needs and wishes. Another purpose is to secure a close and affectionate relationship especially between the child and his or her parents. Other relationships that are important to the child shall also be fostered.

A child shall be ensured good care and upbringing as well as supervision and protection appropriate for his or her age and stage of development. A child should be brought up in a secure and stimulating environment, and he or she should receive an education that corresponds to his or her inclinations and wishes. A child shall be protected from all forms of physical and mental violence, maltreatment and exploitation.

A child shall be brought up with understanding, security and affection. A child must not be subdued, corporally punished or treated offensively in any other way. The growth of a child towards independence, responsibility and adulthood shall be supported and encouraged.

**Section 2 (190/2019)**

**Right of access**

The purpose of the right of access is to ensure that a child has the right to establish and maintain a positive and close relationship with the parent with whom he or she does not reside. The right of

access includes the right of the child to visit this parent's home from time to time or to meet with the parent somewhere else or to keep in touch with him or her in some other manner.

Both of the child's parents shall, for their part, contribute to the realisation of the right of access. In his or her parenting task, a parent shall avoid any behaviour that is likely to cause detriment to the relationship between the child and the other parent.

Provisions on the child's right to meet with some other person than his or her parent are laid down in section 9c.

### **Section 3 (352/2019)**

#### **Custodians of a child**

The parents of a child or other persons who have been awarded custody of a child are the custodians of the child.

Custody ends when the child attains the age of 18 years.

### **Section 4 (190/2019)**

#### **Duties of custodians**

The custodian of a child shall ensure the child's wellbeing and development as provided in section 1. For this purpose, the custodian has the right to decide on the care, upbringing, education, place of residence, hobbies, and other personal matters of the child.

Before making a decision concerning a child's personal matter, the custodian shall discuss the matter with the child, if this is possible considering the age and stage of development of the child and the nature of the matter. When making a decision, the custodian shall take the views and wishes of the child into consideration.

The custodian shall tell the child about decisions concerning him or her and other matters affecting the child's life in a manner appropriate for the child's age and stage of development.

The custodian represents the child in matters concerning his or her person, unless otherwise provided by law.

## **Section 5**

### **Joint exercise of custody**

The custodians of a child are jointly responsible for the duties inherent in custody and make the decisions concerning the child together, unless otherwise provided or ordered.

If one of the custodians cannot participate in the decision-making concerning the child due to travel, illness or another reason and a delay in the decision-making would be detrimental, the consent of this person is not necessary. However, the custodians may only make a joint decision on a matter that is of great significance for the future of the child, unless the best interests of the child manifestly require otherwise.

### **Section 5a (190/2019)**

#### **Duty to notify of an intention to move**

A parent of a child shall notify the other parent of his or her intention to move, if the move would have an impact on the realisation of child custody or right of access. If the custody of a child has been awarded to some other person than a parent of the child, this person shall, under the same conditions, notify the parents if he or she intends to move and the parents shall notify this person if they intend to move.

The notification shall be made well in advance and, if possible, at least three months before the intended move.

A notification need not be made, if this is necessary to avert an immediate and serious threat to the life, health or liberty of the child or the person who will move.

Provisions on the procedure to be followed when changing the place of residence of a child who has two or more custodians are laid down in section 5.

### **Section 5b (190/2017)**

#### **Disqualification of a custodian**

The custodian shall not represent a child in a matter where the opposing party is the custodian himself or herself, a person who the custodian represents, or the other custodian of the child. The

custodian shall not represent the child either if the interests of the custodian and the child could be in conflict for some other reason.

### **Section 5c (190/2019)**

#### **Designating a guardian to substitute for a custodian**

A guardian may be designated for a child to represent him or her in a matter concerning the person of the child instead of a custodian if:

- 1) the custodian is, due to disqualification, illness or some other reason, prevented from representing the child; and
- 2) designating a guardian is necessary to resolve the matter or otherwise to safeguard the best interests of the child.

In other respects, the provisions concerning a substitute for a guardian laid down in the Guardianship Services Act (442/1999) apply to a guardian designated to substitute for a custodian.

## **Chapter 2**

### **Custodians and right of access**

#### **Section 6 (190/2019)**

##### **Custodians by virtue of the birth of a child**

If the parents of a child are married to each other at the time of the child's birth, they both are custodians of the child. If the parents are not married to each other at the time of the child's birth, the mother who gave birth to the child is the custodian of the child.

If one of the parents has sole custody of a child and the parents marry each other, the other parent also becomes a custodian of the child.

#### **Section 6a (190/2019)**

##### **Impact of certain parenthood-related decisions on child custody**

If parenthood has been acknowledged before the birth of the child in the manner referred to in section 16 of the Paternity Act (11/2015) or section 14 of the Maternity Act (253/2018), the person

who has acknowledged parenthood becomes a custodian of the child once parenthood has been established.

If the mother who gave birth to the child is the sole custodian of a child and marries a person who is subsequently established as a parent of the child, this parent also becomes a custodian of the child once parenthood has been established.

If a parent's custody of a child is based on section 6 or subsection 1 or 2 of this section, he or she shall no longer have custody of the child if his or her parenthood is annulled.

## **Section 7 (190/2019)**

### **Child custody agreement**

The parents may agree that:

- 1) child custody is awarded to both parents jointly or to one parent alone;
- 2) the parent who does not have custody of the child has the same right as the custodian to receive confidential information concerning the child from authorities and private service providers either in all matters or in certain matters specified in the agreement;
- 3) the child resides with one of the parents, if the parents do not live together;
- 4) the child resides alternately with each parent (*alternating residence*).

The parents may agree with a third person that:

- 1) child custody is awarded to this person in addition to the parents or one of the parents; or that
- 2) this person has the same right as the custodians to receive confidential information concerning the child from authorities and private service providers either in all matters or in certain matters specified in the agreement.

The parents may agree with a custodian referred to in subsection 2, paragraph 1 that:

- 1) the child resides with this custodian; or that
- 2) the child resides alternately with his or her parents or one of his or her parents and the custodian in question.

If a child has only one parent, this parent may also conclude an agreement referred to in subsection 2 with a third person and an agreement referred to in subsection 3 with another custodian.

If a child has two or more custodians, they may agree on the mutual division of responsibilities between them.

### **Section 7a (190/2019)**

#### **Agreement on right of access**

The parents may agree that a child has the right to maintain contact and meet with the parent with whom he or she does not reside.

If a child has only one parent, this parent may conclude an agreement referred to in subsection 1 with a person who has custody of the child in addition to the parent.

Provisions on agreements concerning supported or supervised meetings or supervised exchanges are laid down in section 9b.

### **Section 7b (190/2019)**

#### **Agreement on the conditions for alternating residence and right of access**

An agreement concerning alternating residence or right of access shall include more detailed conditions for the alternating residence, meeting and visiting.

An agreement concerning alternating residence shall state which one of the homes will be indicated as the child's official place of residence.

Where necessary, the agreement may also state how the responsibility for transportation or travel costs related to alternating residence or right of access is divided between the parties.

### **Section 8 (190/2019)**

#### **Confirmation of agreements**

An agreement on child custody and right of access shall be made in writing, and it shall be submitted for confirmation to the social welfare board or another body responsible for social services, hereinafter *the social welfare board*, in the municipality where the child is habitually resident. The National Institute for Health and Welfare approves the template for the agreement form.

If the child is not habitually resident in Finland, the agreement shall be submitted to the social welfare board in the municipality where the child last was habitually resident in Finland or, if the child has never been habitually resident in Finland, to the social welfare board in the municipality where the parents of the child or one of the parents is habitually resident. If the competent social welfare board cannot be determined in accordance with the provisions above, the agreement shall be submitted to the social welfare board of the City of Helsinki.

When considering whether an agreement may be confirmed, the social welfare board shall take the best interests, wishes and views of the child into consideration in accordance with the provisions of sections 10 and 11. A child supervisor or another person assigned to prepare the confirmation of agreements shall have a personal discussion with the child, if the child consents to this and this is necessary in order to find out the child's wishes and views. An agreement shall not be confirmed if neither of the parents has custody of the child.

For an agreement to be confirmed, the consent of the following persons is required:

- 1) a person who has custody of the child in addition to the parents or a parent;
- 2) a person for whom a right to receive confidential information concerning the child has been confirmed, if the agreement interferes with this right;
- 3) a person who is particularly close to the child, as referred to in section 9c, if the agreement may affect the realisation of the confirmed right of access.

An agreement confirmed by the social welfare board is valid and enforceable similarly to a final court decision.

### **Section 8a (190/2019)**

Section 8a was repealed by Act 190/2019 that enters into force on 1 December 2019.

### **Section 9 (190/2019)**

#### **Court decision on child custody and right of access**

A court may order that:

- 1) child custody be awarded to both parents jointly or to one parent alone;
- 2) child custody be awarded to one or more persons who have consented to this in addition to or instead of a parent or the parents;

3) the parent who does not have custody of the child or another person who has consented to this have the same right as the custodian to receive confidential information concerning the child from authorities and private service providers either in all matters or in certain matters specified in the decision.

In addition, a court may order that:

- 1) the child shall reside with one of his or her parents, if the parents do not reside together;
- 2) the child shall reside with a custodian referred to in subsection 1, paragraph 2;
- 3) the child shall reside alternately with each parent;
- 4) the child shall alternately reside with his or her parents or one parent and a custodian referred to in subsection 1, paragraph 2;
- 5) the child shall have the right to maintain contact and meet with the parent with whom he or she does not reside.

If the parents or one of them has custody of their child, a court may award the custody of the child to one or several other persons instead of the parents in accordance with subsection 1, paragraph 2 only if there are very serious grounds related to the best interests of the child for this.

Where necessary, a court may issue orders on the duties, rights and obligations of the custodians and, if a child has two or more custodians, a court may decide on the division of responsibilities between them.

## **Section 9a (190/2019)**

### **Further provisions on alternating residence and right of access**

When deciding on alternating residence or right of access, a court shall issue more detailed orders on the conditions for the alternating residence or meeting and visiting.

Before making a decision on alternating residence, the court shall, on its own initiative, consider how the decision would affect the child's place of residence as defined in the Municipality of Residence Act (201/1994). The court shall order which one of the child's homes will be indicated as the child's official place of residence.

Where necessary, the court may also order how the responsibility for transportation or travel costs related to alternating residence or right of access is divided between the parties concerned. When

considering the division of responsibilities, the parties' ability to be responsible for transportation or costs as well as any other circumstances shall be taken into consideration.

### **Section 9b (190/2019)**

#### **Supported and supervised meetings and supervised exchanges**

The parents may agree that meetings between a child and a parent take place as supported or supervised meetings or that the meetings are started and ended under supervision (*supervised exchanges*). The social welfare board may confirm such an agreement in the manner provided in section 8, if support or supervision is necessary for a justified reason related to the best interests of the child. An agreement concerning supervised meetings can be confirmed only if supported meetings or supervised exchanges are not enough to safeguard the best interests of the child.

Under the same conditions as the social welfare board may confirm an agreement, a court may decide that meetings shall take place as supported or supervised meetings or with supervised exchanges.

If there are reasonable grounds to suspect that a child will be wrongfully removed from the country, a court may order that a supervised meeting may only take place if the parent whom the child has the right to meet hands over his or her own valid passport and the child's valid passport that is in his or her possession and any other travel documents to the supervisor for the duration of the meeting.

Provisions on the arrangement of supported and supervised meetings and supervised exchanges are laid down in the Social Welfare Act (1301/2014).

### **Section 9c (190/2019)**

#### **Right of a child to meet with some other person than his or her parent**

It can be confirmed that a child has the right to meet with a person who is particularly close to him or her and with whom the child has an established relationship comparable to the child-parent relationship may be confirmed. The right of access is confirmed by court decision.

In other respects, the provisions on the right of access between a child and a parent apply to the confirmation and implementation of the right of access referred to in this section.

## **Section 9d (190/2019)**

### **Securing right of access**

When making a decision on right of access, a court may impose a conditional fine to oblige a parent or a custodian with whom the child resides to allow meetings and take any other necessary measures to arrange meetings in the manner specified in the decision, if there is reason to suspect, based on the earlier behaviour of this parent or custodian, that he or she would not voluntarily comply with the decision on the right of access. In other respects, the provisions of sections 18, 20 and 28 of the Act on the Enforcement of Decisions on Child Custody and Right of Access (619/1996) apply to the imposition of a conditional fine.

Payment of a conditional fine imposed in accordance with this section may be ordered in compliance with the provisions of the Act on the Enforcement of Decisions on Child Custody and Right of Access.

## **Section 10 (190/2019)**

### **Decision in a matter concerning child custody and right of access**

A matter concerning child custody and right of access shall, first and foremost, be decided in accordance with the best interests of the child. To this end, special attention shall be paid to how the objectives of child custody and right of access specified in sections 1 and 2 can in future be met in the best possible way.

When deciding whether child custody is to be awarded to both parents jointly or to one parent alone, special attention shall be paid, in addition to what is provided in subsection 1, to the parents' ability to give priority to the child's needs over the conflicts between the parents.

When deciding on the child's residence and right of access, special attention shall be paid, in addition to what is provided in subsection 1, to the child's age and stage of development, his or her character and inclinations, his or her possible special needs, the distance between the parents' places of residence, and the parents' ability to bear joint responsibility for matters concerning the child and to protect the child from all forms of violence in the manner referred to in section 1.

The decision in a matter concerning right of access, the child's residence with his or her parent, or the award of custody to one parent alone or to both parents jointly shall be made in accordance with what has been agreed upon between the parents, if one or both of them are the child's custodians and there is no reason to believe that the decision would be contrary to the best interests of the child.

### **Section 11 (190/2019)**

#### **Ascertaining the child's views**

In a matter concerning child custody and right of access, the child's own wishes and views shall be ascertained and taken into account in so far as this is possible considering the age and stage of development of the child.

The views of the child shall be ascertained tactfully and in a manner that takes the child's stage of development into consideration and does not harm the relationship between the child and his or her parents. The purpose of ascertaining the child's views and the related procedure shall be explained to the child.

### **Section 11a (190/2019)**

#### **Deciding on child custody and right of access during placement in care**

Provisions on deciding a matter concerning child custody and right of access when a child has been taken into care are laid down in section 46 of the Child Welfare Act (417/2007). If it is unnecessary, with regard to the best interests of the child, to make a decision in such a matter because the child is placed in care, the social welfare board need not confirm the agreement or the court may reject the petition.

The existence of an agreement confirmed by the social welfare board or a decision issued by a court does not affect the taking into care or its contents.

Provisions on the court's right to obtain information concerning a child from social welfare authorities are laid down in section 18 of the Act on the Status and Rights of Social Welfare Clients (812/2000).

## **Section 12**

### **Amendments to agreements and decisions**

An agreement confirmed by the social welfare board or a court decision on child custody and right of access may be amended, if the circumstances have changed since the confirmation of the agreement or the issue of the decision or if there is some other reason for this.

## **Chapter 3**

### **Court proceedings**

## **Section 13 (155/2009)**

### **Forum**

Provisions on the competent court in matters concerning child custody and right of access are laid down in chapter 10 of the Code of Judicial Procedure.

## **Section 14 (190/2019)**

### **Institution of matters and right of action**

A matter concerning child custody or right of access is instituted by way of petition that can be submitted jointly by both parents of a child, by one parent alone, by a custodian of the child, or by the social welfare board.

If a child has no custodian because the custodian has died, the petition may also be submitted by a relative or another person close to the child.

In addition to the persons and bodies referred to in subsections 1 and 2, a person for whom a right to receive confidential information concerning the child has been confirmed may submit a petition, if the petition concerns an amendment to this right. A person who is particularly close to the child, as referred to in section 9c, may also submit a petition in addition to the persons and bodies referred to in subsection 1 and 2, if the petition concerns the child's right to meet this person.

In connection with a petition in a case concerning child custody or right of access, a claim for the confirmation of maintenance payable to the child or for the modification of confirmed maintenance may also be presented.

### **Section 14a (190/2019)**

#### **Rejection of petition in written procedure**

If it is evident based on a petition, any possible written statements issued due to the petition, or earlier decisions in the case that there are no grounds for amending an agreement or a decision cannot be amended, the petition shall be rejected in written procedure.

### **Section 14b (190/2019)**

#### **Consideration without undue delay**

A case concerning child custody or right of access shall be considered promptly. If a case is to be considered in a district court session, the first session shall be arranged without undue delay.

### **Section 15 (190/2019)**

#### **Hearing of parties concerned**

When considering a case concerning child custody or right of access, the court shall give the parents and custodians of the child an opportunity to be heard.

The following persons shall also be given an opportunity to be heard:

- 1) a person for whom a right to receive confidential information concerning the child has been confirmed, if the petition concerns a potential amendment to this right;
- 2) a person who is particularly close to the child, as referred to in section 9c, if the petition concerns confirmation of the right of access referred to in the said section or if the decision to be issued in the matter may affect the realisation of right of access already confirmed.

An opportunity to be heard need not, however, be given if a notice of the opportunity to be heard should be served on the person concerned by way of a public notice referred to in chapter 11, section 9 of the Code of Judicial Procedure.

## **Section 15a (190/2019)**

### **Hearing of a child in court**

In order to ascertain the wishes and views of a child, the child may be heard in court in person, if this is necessary for resolving the case and the child requests it or consents to it. Children under 12 years of age may, however, be heard in person only if the hearing is absolutely necessary for resolving the case and it is estimated that the hearing will not cause the child any significant harm.

In court, a child may be heard in person in the main hearing or in some other manner deemed appropriate by the court. The court may use an expert assistant referred to in section 17b to assist the child in the hearing. A child may be heard in person with nobody else but one or more members of the court present, if this is necessary to protect the child or to find out the child's independent opinion. The hearing of a child may be audio-recorded.

If a child is heard without other parties to the case being present, the parties shall be given an opportunity to listen to the recording of the hearing or given an account of the circumstances brought up in the hearing in so far as they may affect the decision in the case. They shall also be given an opportunity to issue a statement on the circumstances brought up in the hearing of the child.

## **Section 16 (190/2019)**

### **Obtaining a report from social welfare board**

In a case concerning child custody or right of access, the court shall, where necessary, obtain a report from the social welfare board of the municipality where the child or his or her parents or another party to the matter is habitually resident. If such a person is not habitually resident in Finland, the report shall be obtained from the social welfare board of the municipality where the person is residing. When requesting a report, the court shall specify the questions that particularly need to be looked into.

The purpose of the report is to provide the court with information about the family's situation, the child's living conditions, and other circumstances affecting the resolution of the case. If it turns out in the course of drawing up the report that the case could be resolved by an agreement confirmed by the social welfare board, the social welfare board shall provide the parties with any necessary assistance in drawing up such an agreement.

The author of the report shall personally discuss with the child if this is possible considering the age and stage of development of the child and the child consents to this, unless a discussion is manifestly unnecessary. The purpose of the discussion is to ascertain the child's own wishes and views as provided in section 11.

The court shall set a time limit for submitting the report. If the court considers that the report provided by the social welfare board is incomplete, or if new circumstances requiring further clarification have emerged during the consideration of the case, the court may request the social welfare board to supplement the previous report or to provide an additional report.

In the report and court proceedings concerning the matter, confidential information may also be disclosed in accordance with the provisions of section 18, subsection 1, section 19, and section 27, subsections 2–4 of the Act on the Status and Rights of Social Welfare Clients.

### **Section 16a (190/2019)**

#### **Hearing of the author of a report**

The court shall summon the author of a report referred to in section 16 to be heard orally in court if:

- 1) the court considers this necessary for the purpose of determining the best interests or views of the child or for some other reason; or
- 2) a party to the matter requests this and the hearing is not manifestly unnecessary.

The provisions concerning the summoning of an expert laid down in chapter 17, sections 41 and 42 of the Code of Judicial Procedure apply to the summoning of the author of the report.

### **Section 17 (190/2019)**

#### **Interim orders**

When a case concerning child custody or right of access is pending in a court, the court may issue an interim order concerning the child's residence and right of access. A conditional fine cannot be imposed to enforce an interim order concerning right of access. A court may, for a special reason, issue an interim order determining to whom the custody of the child is awarded and who has the right to receive confidential information concerning the child. An interim order may be issued without hearing the persons referred to in section 15, if the case cannot be delayed.

In connection with the consideration of a case concerning child custody and right of access, the court may also issue an interim order concerning the maintenance payable to the child, if this is necessary to secure the maintenance of the child.

An interim order issued by a court is not subject to appeal.

An interim order is in force until the court makes the final decision on the matter, unless the order is repealed or amended prior to this.

### **Chapter 3a (315/2014)**

#### **Court mediation in disputes concerning child custody and right of access**

### **Section 17a (315/2014)**

#### **Application of the Court Mediation Act**

The Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts (394/2011) applies to court mediation in disputes concerning child custody and right of access.

### **Section 17b (190/2019)**

#### **Organisation of expert services**

The municipality in whose territory the administrative registry of a district court is located shall ensure that the district court has at its disposal a sufficient number of expert assistants referred to in section 5 of the Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts for mediating disputes concerning child custody and right of access and for assisting in the hearing of children as referred to in section 15a of this Act. In bilingual judicial districts, the municipality shall ensure that the district court has access to expert services both in Finnish and in Swedish. In each municipality, the body responsible for social services referred to in section 6, subsection 1 of the Social Welfare Act (710/1982) is in charge of organising the expert services.

A court of appeal may use an expert assistant assigned to serve in any of the district courts within its judicial district as its assistance when hearing a child. The Supreme Court may use an expert assistant assigned to serve in any district court as its assistance when hearing a child.

## **Section 17c (293/2016)**

### **Required qualifications for expert assistants**

An expert assistant shall have the right to practise the profession of psychologist or child psychiatrist as a licensed professional, granted by the National Supervisory Authority for Welfare and Health under the Health Care Professionals Act (559/1994), or the right to practice the profession of social worker as a licensed professional, granted by the National Supervisory Authority for Welfare and Health under the Act on Social Welfare Professionals (817/2015), or another suitable Master's degree. In addition, an expert assistant shall have completed the continuing professional education or vocational further education and training that is necessary for the performance of the task as well as have experience of working with divorced families.

## **Section 17d (190/2019)**

### **Compensation for costs for expert services**

The State compensates the municipality responsible for organising expert services for the costs incurred for using an expert assistant in court mediation in custody disputes and in the hearing of a child. The compensation is paid as an imputed daily compensation for assistance provided in a court session and as an hourly compensation for measures taken outside a court session. If mediation is carried out or the child is heard outside the municipality where the administrative registry of the district court is located or where the expert assistant has his or her separately agreed principal workplace, the municipality is reimbursed for the travel and accommodation expenses incurred for the mediation or hearing of the child and for the daily allowance paid to the expert. Further provisions on the amount of the daily and hourly compensation, the measures for which the hourly compensation is paid, and the expenses to be reimbursed are issued by government decree.

## **Chapter 4**

### **Rules of private international law (186/1994)**

## **Section 18 (436/2009)**

### **Child custody by act of parties or operation of law**

The attribution and termination of child custody by act of parties or operation of law is governed by the law of the state designated in Articles 16, 19 and 21 of the Hague Convention of 19

October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

### **Section 18a (436/2009)**

#### **Law applicable to the exercise of the duties of a custodian**

The exercise of the duties of a custodian is governed by the law of the state of the child's habitual residence. If the child's habitual residence changes to another state, the law of that state applies.

### **Section 19 (186/1994)**

#### **Jurisdiction by virtue of the habitual residence of a child**

A Finnish court may consider a matter concerning child custody or right of access, if the child has his or her habitual residence in Finland when the matter is instituted.

A social welfare board may confirm an agreement on child custody or right of access, if the child is habitually resident in Finland.

A child who has lived in Finland without interruptions for at least one year immediately before the matter was instituted is deemed to be habitually resident in Finland, unless otherwise shown in the case.

A Finnish authority may investigate a case concerning child custody and right of access in the same manner as if the child was habitually resident in Finland, if the child is currently residing in Finland and he or she is, due to disturbances occurring in his or her country of origin, internationally displaced or his or her habitual residence cannot be established. (436/2009)

### **Section 20 (186/1994)**

#### **Jurisdiction in other cases**

A Finnish court may consider a matter concerning child custody or right of access even if the child is not habitually resident in Finland when the matter is instituted, if the child is currently residing in Finland or if the consideration is deemed justified for some other reason, and:

1) the child has been habitually resident in Finland during the year preceding the institution of the matter; or

2) the child has, with regard to all the relevant circumstances, another close connection to Finland.

A Finnish court may, in connection with a case concerning dissolution of marriage, consider a matter between the spouses concerning child custody or right of access even if the child is not habitually resident in Finland when the matter is instituted if:

1) at least one of the parents has custody of the child and at least one of the parents is habitually resident in Finland when the matter is instituted;

2) the custodians have, after the matter was instituted, approved that the matter will be considered in Finland; and

3) the exercise of jurisdiction in the matter is in the best interests of the child.

(436/2009)

### **Section 21 (186/1994)**

#### **Competence to issue interim orders**

A Finnish court may issue an interim order concerning the person with whom the child shall reside, the right of access or the custody of the child, if this is deemed necessary in order to safeguard the best interests of the child, even if the Finnish court has no jurisdiction in the case.

The provisions of section 17 apply, where appropriate, to interim orders.

### **Section 22 (436/2009)**

#### **Law applicable to decisions on custody and right of access**

Finnish law applies when deciding on a case and confirming an agreement concerning child custody or right of access. However, if the case has a close connection with a foreign state, the law of that state may, in exceptional cases, be taken into consideration, if this serves the best interests of the child.

### **Section 23 (186/1994)**

#### **Recognition and enforcement of decisions**

A decision on child custody or right of access issued in a foreign state is, upon request, recognised and enforced in Finland in accordance with the provisions below.

A decision issued in a foreign state means a decision or an interim order issued by a court or another authority and the confirmation of an agreement, if the said measure is recognised as equal to a decision in the state where it was undertaken.

An agreement concluded or an order issued without the involvement of an authority may be recognised and enforced in Finland in the same manner as a decision given in a foreign state, if the measure was legally valid and enforceable in the state where the child was habitually resident.

### **Section 24 (186/1994)**

#### **Recognition and enforcement of Nordic decisions**

A decision that has been issued in Iceland, Norway, Sweden or Denmark is recognised and enforced in Finland without separate confirmation.

The recognition or enforcement of a decision issued in a state referred to in subsection 1 cannot be refused by virtue of this chapter, if the decision shall be recognised or enforced as separately provided.

### **Section 25 (662/2015)**

#### **Recognition and enforcement of decisions issued in another foreign state**

A decision that has been issued in some other foreign state than those referred to in section 24 is recognised in Finland without separate confirmation. However, the Helsinki District Court may, upon application, confirm whether the decision is recognised in Finland.

A decision that is, under subsection 1, recognised in Finland and enforceable in the state where it was issued (*state of origin*) may be enforced in Finland, if the Helsinki District Court has confirmed, upon application, that the decision may be enforced here.

When the court confirms that a decision on the right of access issued in a foreign state may be enforced in Finland, the court may, at the same time, amend or specify the conditions for meeting or visiting as it deems appropriate with regard to the best interests of the child.

## **Section 26 (662/2015)**

### **Enforcement of a decision determining the removal of a child wrongful**

The Helsinki District Court may, upon application, confirm that a decision by which the removal or retention of a child has been determined wrongful is enforceable in Finland if:

- 1) the decision has been issued in a state that is a Contracting State to the Council of Europe Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, done at Luxembourg on 20 May 1980 (*European Convention*); and
- 2) when the child was removed across an international frontier, there was no decision, issued in a Contracting State to the European Convention, that could have served as a basis for enforcement.

## **Section 27 (186/1994)**

### **Grounds for the refusal of recognition and enforcement**

The recognition and enforcement of a decision issued in a foreign state may be refused if:

- 1) the recognition or enforcement of the decision would result in an outcome that is manifestly incompatible with the Finnish public policy relating to families and children;
- 2) it is evident that the recognition or enforcement of the decision would, due to changes in the circumstances, no longer serve the best interests of the child;
- 3) at the time when the proceedings leading to the decision were initiated in the state of origin, the child was a Finnish citizen or was habitually resident in Finland and no such connection existed with the state of origin, or the child was a dual citizen of both the state of origin and Finland and was habitually resident in Finland; or
- 4) the decision is incompatible with such a decision issued in Finland or such a decision issued in a third state and enforceable in Finland where the proceedings leading to the decision were initiated before the application for the recognition or enforcement of the decision had been submitted, and the refusal is in the best interests of the child.

If the decision is issued in a foreign state that is not a Contracting State to the European Convention, its recognition and enforcement may be refused also if the authority that issued the decision would, in accordance with the principles laid down in sections 19 and 20, not have had jurisdiction in the case and the child is habitually resident in Finland, or if the decision is not, for this reason, recognised or enforced in the foreign state where the child is habitually resident.

## **Section 28 (186/1994)**

### **Effect of the absence of the opposing party on the recognition and enforcement**

If the opposing party has not been present during the consideration of the case, a decision may be recognised or enforced in Finland only if:

- 1) a summons or a notice of a hearing, containing information on the essential contents of the case, has been served on the opposing party appropriately and in good time for him or her to be able to act in the case; and
- 2) the jurisdiction of the authority that issued the decision was based on the habitual residence of the opposing party, the last common habitual residence of the parents if at least one of them is still habitually resident there, or the habitual residence of the child.

Failure to serve the summons or the notice of the hearing in accordance with subsection 1, paragraph 1 does not, however, prevent the recognition or enforcement of a decision, if the failure is caused by the opposing party concealing his or her whereabouts from the other party.

## **Section 29 (186/1994)**

### **Deferral of a case concerning recognition or enforcement**

A case concerning the recognition or enforcement of a decision may be deferred if:

- 1) a review of the decision has been requested by way of ordinary means of appeal; or
- 2) a case concerning child custody or right of access is being considered in judicial proceedings in Finland that were initiated before corresponding proceedings were initiated in the state of origin;  
or
- 3) proceedings relating to the recognition or enforcement of another decision concerning child custody or right of access are pending.

## **Section 29a (436/2009)**

### **Subsidiary nature of provisions**

The provisions of sections 19–21 and 23–29 only apply if not otherwise provided in the Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, hereinafter the Brussels IIa regulation, or in another convention binding on Finland.

## **Section 29b (436/2009)**

### **Incompatibility with the Finnish public policy and references to a foreign law**

A provision of foreign law that would be applicable under the provisions of this chapter shall be ignored, if the application of the provision would result in an outcome that would, in view of the best interests of the child, be manifestly incompatible with the Finnish public policy.

Unless otherwise provided in this chapter, when referring to foreign law in this chapter, the rules of private international law of the foreign state in question are not meant.

## **Chapter 5 (186/1994)**

### **Return of a child under the Hague Convention**

#### **Section 30 (186/1994)**

##### **Return order**

A child present in Finland and wrongfully removed from the state where he or she is habitually resident, or wrongfully not returned to this state, shall be ordered to be returned at once, if the child immediately before the wrongful removal or retention was habitually resident in a state which is a Contracting State to the Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 October 1980 (the Hague Convention).

#### **Section 31 (186/1994)**

##### **Competent court**

A return order is issued, upon application, by the Helsinki Court of Appeal.

#### **Section 32 (186/1994)**

##### **Wrongful removal and retention**

The removal or retention of a child is deemed wrongful if:

1) it is in breach of rights of custody attributed to a person, an institution or another body, either jointly or alone, under the law of the state where the child was habitually resident immediately before the removal or retention; and

2) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The removal or retention of a child shall not be deemed wrongful, if the holder of the rights referred to in subsection 1, paragraph 1 has consented to it or acquiesced in it either explicitly or implicitly.

### **Section 33 (186/1994)**

#### **Rights of custody**

In this chapter, rights of custody mean the right and obligation to take care of matters relating to the person of a child and, in particular, the right to determine the child's place of residence.

### **Section 34 (186/1994)**

#### **Grounds for the refusal of a return order**

An application for the return of a child may be rejected if:

- 1) the application has been submitted after one year has elapsed from the date of the wrongful removal or retention of the child and the return of the child would be contrary to his or her best interests;
- 2) there is a grave risk that the return of the child would expose him or her to physical or psychological harm or otherwise place the child in an intolerable situation; or
- 3) the court finds that the child objects to being returned and has attained such an age and degree of maturity at which it is appropriate to take his or her views into account.

A child who has attained the age of 16 years cannot be ordered to be returned.

If the child's habitual residence immediately before the wrongful removal or retention was in a Member State referred to in Article 2(3) of the Brussels Ia Regulation, the provisions of Article 11(4) of the Regulation are also applied to the rejection of an application for return under subsection 1, paragraph 2. (1155/2004)

## **Chapter 6 (186/1994)**

### **Procedure for the confirmation of a decision issued in a foreign state and for the return of a child**

#### **Section 35 (186/1994)**

##### **Central Authority**

In Finland, the Ministry of Justice is the Central Authority referred to in the European Convention and in the Hague Convention.

The state social welfare authorities, the municipal social welfare authorities and the police shall, upon request, provide the Ministry of Justice with executive assistance for establishing the whereabouts of a child and his or her circumstances, for securing the return of a child and the enforcement of a decision on child custody issued in a foreign state, and for preventing the wrongful removal of a child.

#### **Section 36 (662/2015)**

##### **Application**

An application for having it confirmed that a decision issued in a foreign state is recognised or can be enforced in Finland may be submitted by a person to whom the right of custody or the right of access to the child has been attributed. An application for the return of a child may be submitted by a person whose rights have been violated in the manner referred to in section 32. An application for the return and an application for the recognition and enforcement of a decision issued in a state that is a Contracting State to the European Convention may also be submitted by the Ministry of Justice or by a representative authorised by the Ministry.

The application shall be submitted in writing, either in Finnish or in Swedish. The application shall indicate:

- 1) the personal details of the applicant, the child and the opposing party;
- 2) the date of birth of the child, where available;
- 3) the grounds for the claim; and
- 4) the available information on the whereabouts of the child and on the person with whom the child is presumed to be.

A document written in a foreign language and appended to the application shall be supplemented with a certified translation into Finnish or Swedish, unless an exception to this is granted by a court.

### **Section 37 (692/2016)**

#### **Consideration of a case concerning the confirmation of a decision and the return of a child**

A case concerning the confirmation of a decision issued in a foreign state and the return of a child shall be considered urgently. If the Court of Appeal has not reached a decision in a case concerning the return of a child within six weeks from the submission of the application, the court shall, upon request of the Ministry of Justice or the applicant, provide a statement of the reasons for the delay.

The consideration of an application for the return of a child may be deferred or the application may be ruled inadmissible, if there is reason to believe that the child has been removed to another state. When deferring a case, the Court of Appeal may order that the consideration will be resumed only after the applicant has notified the court of the return of the child to Finland or after the applicant has presented other circumstances on the basis of which it is considered necessary that a decision be made in the case.

In other respects, the provisions of this Act concerning court proceedings in a case concerning child custody or right of access apply, where appropriate, to the court proceedings.

### **Section 38 (662/2015)**

#### **Hearing of a party to the matter**

Before the court accepts an application for the confirmation of a decision issued in a foreign state or an application for the return of a child, it shall give the parties to the matter an opportunity to be heard, if their whereabouts can be determined without difficulty.

## **Section 39 (190/2019)**

### **Hearing of a child**

Before the court makes decision on an application for the enforcement of a decision on child custody or right of access issued in a foreign state or an application for the return of a child, it shall ascertain the views of the child. This applies if the child can be presumed, based on his or her age or other circumstances in the knowledge of the court, to have attained such a degree of maturity that it is appropriate to take his or her views into consideration.

The provisions of sections 15a, 16 and 16a apply to the procedure for ascertaining the child's views. A request for ascertaining the child's views shall be addressed to the social welfare board of the municipality where the child is residing.

## **Section 40 (662/2015)**

### **Interim order**

When considering a case concerning the recognition and enforcement of a decision on child custody and right of access or a case concerning the return of a child, the court may, in order to protect the best interests of the child and to secure the return of the child, issue an interim order. The order may determine with whom the child shall reside, or the order may concern child custody or right of access.

The provisions of section 17 apply, where appropriate, to an interim order.

## **Section 41 (190/2019)**

### **Legal aid and costs for the return of a child**

In a case concerning the return of a child and in a case concerning the recognition and enforcement of a decision on child custody and right of access issued in a state that is a Contracting State to the European Convention, the applicant shall, upon request, be granted legal aid free of charge, even if legal aid could not otherwise be granted.

When the court orders that a child be returned or confirms that a decision on child custody is enforceable, it may at the same time, upon request of the applicant, render the opposing party liable to compensate the applicant for the costs incurred for the return of the child.

If the opposing party loses a case referred to in subsection 1, he or she shall be rendered liable to compensate the Ministry of Justice for the costs incurred to the Ministry in the case on the same grounds as parties are compensated for legal costs. The liability for compensation may be waived or the amount of the compensation reduced, if the liability would be unreasonable in view of the financial circumstances of the party concerned.

## **Section 42 (662/2015)**

### **Request for review in a case concerning the return of a child**

A decision of the Helsinki Court of Appeal concerning the return of a child may be appealed against to the Supreme Court, if the Supreme Court grants leave to appeal under chapter 30, section 3 of the Code of Judicial Procedure. The deadline for requesting leave to appeal and for lodging an appeal is 14 days from the date on which the decision of the Court of Appeal was issued.

At the Supreme Court, a case concerning the return of a child may be considered and decided by a division consisting of three members.

In other respects, the provisions of chapter 30 of the Code of Judicial Procedure concerning appeals in cases considered by a court of appeal as the appellate court apply to the procedure for requesting leave to appeal and for considering such a case.

## **Section 42a (1155/2004)**

### **Relationship with Brussels IIa Regulation**

The provisions of sections 36–42 do not apply to such a case concerning the recognition or enforcement of a decision issued in a foreign state where the Brussels IIa Regulation applies.

If the child's habitual residence immediately before the wrongful removal or retention was in a Member State referred to in Article 2(3) of the Brussels IIa Regulation, the provisions of Article 11(2), Article 11(3) and Article 11(5)–(8) of the Regulation apply to the procedure in a case concerning the return of a child in addition to the provisions of this chapter.

## **Chapter 7 (186/1994)**

### **Miscellaneous provisions**

#### **Section 43 (662/2015)**

##### **Enforceability of a decision not yet final**

A court decision on child custody or right of access or a court decision determining with whom a child shall reside may be enforced immediately, even if the decision is not yet final, unless otherwise determined in the decision.

A decision of the Helsinki Court of Appeal ordering the return of a child may be enforced immediately, even if the decision is not yet final.

A decision on child custody and right of access issued in a foreign state may be enforced immediately after the court has confirmed that the decision is enforceable in Finland, even if the decision is not yet final. However, the court may order that the decision can be enforced only after the decision issued in the foreign state or the decision of the court has become final.

The provisions of subsection 3 do not apply where the Brussels IIa Regulation applies to a case concerning the enforcement of a decision issued in a foreign state.

#### **Section 44 (662/2015)**

##### **Submitting a decision for enforcement**

When a court has ordered a child to be returned under section 30, the court shall submit the decision to the competent enforcement officer for enforcement and exhort him or her to undertake urgent measures to enforce the decision as provided in section 46.

When a court has confirmed that a decision issued in a foreign state is enforceable in Finland, the court shall, upon request of the applicant, submit the decision and the application for enforcement to the competent district court, if the decision is enforceable under section 43, subsection 3. The district court shall ensure that the decision is enforced urgently as provided in section 45.

Separate provisions apply to the submission for enforcement of such a judgment that has been declared enforceable under the Brussels IIa Regulation.

## **Section 45 (186/1994)**

### **Enforcement of a decision issued in a foreign state**

A decision on child custody and right of access issued in a foreign state and confirmed to be enforceable in Finland is enforced as provided in the Act on the Enforcement of Decisions on Child Custody and Right of Access (619/1996). However, enforcement cannot be undertaken after the child has attained the age of 16 years. Separate provisions apply to the enforcement of such a judgment passed in a foreign state that is enforceable under the Brussels IIa Regulation. (1155/2004)

The provisions of subsection 1 also apply to a decision referred to in section 26 determining that the removal or retention of a child is wrongful.

## **Section 46 (662/2015)**

### **Enforcement of a return order**

An order for the return of a child, issued under section 30, shall be enforced by collecting the child. In other respects, the provisions of the Act on the Enforcement of Decisions on Child Custody and Right of Access also apply to the enforcement of a return order, unless otherwise provided in subsection 2 or 3 below.

If an order for the return of a child is based on an application that was submitted before one year had elapsed from the wrongful removal or retention of the child, the enforcement of the return order may be refused only if the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take his or her opinion into consideration.

An order for the return of a child shall be enforced regardless of any possible decision on child custody or on taking the child into care by the social welfare board. However, no measures for returning the child shall be undertaken after the child has attained the age of 16 years.

## **Section 47 (186/1994)**

### **Determination of wrongfulness of a removal or a retention**

If a child who is habitually resident in Finland has been wrongfully removed from Finland or retained in a foreign state, a court may, upon application, determine that the removal or retention

is to be deemed wrongful under section 32. A court decision determining that the removal or retention is to be deemed wrongful is not subject to appeal.

### **Section 48 (186/1994)**

#### **Consideration of a case concerning custody of a child wrongfully removed or retained**

If a case concerning child custody is pending in a Finnish court and the court has reason to believe that the child has been wrongfully removed to Finland or retained here, it shall rule the case inadmissible for the time being or defer it in order to investigate whether the return of the child is to be ordered.

### **Section 48a (620/1996)**

#### **Interim precautionary measure**

If there is justified reason to assume that a custodian intends to wrongfully remove a child from the country without consent of the other custodian, an enforcement officer or a police officer may, upon request of the custodian, immediately take possession of the child, in which case the child shall be placed in care as provided section 25, subsection 2 of the Act on the Enforcement of Decisions on Child Custody and Right of Access (619/1996) (*interim precautionary measure*). An interim precautionary measure may be taken only if the matter is so urgent that the custodian cannot prevent the removal of the child by requesting an interim order referred to in section 17.

An interim precautionary measure shall immediately be referred to a court for consideration, by virtue of office, as provided in section 25, subsection 3 of the Act on the Enforcement of Decisions on Child Custody and Right of Access. A court decision ordering a child to be temporarily placed in care is in effect for a maximum of one week, as determined by the court. In other respects, the provisions on interim precautionary measures referred to in section 25 of the above-mentioned Act apply to the measure, as appropriate.

### **Section 49 (190/2019)**

#### **Authority to issue decrees**

If necessary, further provisions on the following are issued by government decree:

1) the duties assigned to the social welfare board in this Act;

- 2) the duties of the Ministry of Justice as the Central Authority referred to in the Hague Convention and the European Convention; and
- 3) the documents to be appended to an application for the return of a child and to an application for the recognition or enforcement of a decision issued in a foreign state.

## **Section 50**

### **Entry into force and transitional provisions**

This Act enters into force on 1 January 1984.

The provisions of this Act shall also apply to children born before the entry into force of this Act. The provisions of this Act shall also apply to a case pending before a court at the time of the entry into force of this Act, and to a case concerning the amendment of a decision on child custody and right of access issued before the entry into force of this Act.

After the entry into force of this Act, the provisions in an act or a decree on the duties and right of a guardian of a child to represent the child in a matter relating to his or her person or maintenance apply to a custodian.

Where there is a reference in an act or a decree to a provision replaced by a provision of this Act, the provision of this Act applies.