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# Act on Child Custody and Right of Access

(361/1983; amendments up to 436/2009 included)

## Chapter 1 *General provisions*

### Section 1 – *Child custody*

- (1) The purpose of child custody is to ensure the welfare and balanced development of a child in accordance with the child's individual needs and wishes. The purpose is also to secure a close and affectionate relationship in particular between the child and his or her parents.
- (2) A child must 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 receive an education that corresponds to his or her inclinations and wishes.
- (3) A child must 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 must be supported and encouraged.

### Section 2 – *Right of access*

- (1) The purpose of the right of access is to ensure a child the right to maintain contact and meet with the parent with whom he or she does not reside.
- (2) The parents of a child must, in mutual understanding and keeping the best interests of the child foremost in mind, strive to fulfil the purpose of the right of access in accordance with the principles laid down in section 1.

### Section 3 – *Persons having custody of a child*

- (1) The parents of a child or other persons who have been awarded custody of a child have custody of the child.
- (2) Custody ends when the child attains the age of 18 years or concludes marriage, whichever is earlier.

### Section 4 – *Duties of a person having custody of a child*

- (1) The person who has custody of a child must ensure the child's welfare and development as provided in section 1. For this purpose, the person who has custody has the right to decide on the care, upbringing, place of residence and other personal matters of the child.
- (2) Before making a decision concerning a child's personal matter, the person who has custody must discuss the matter with the child, if this is possible in view of the age

and stage of development of the child and the nature of the matter. When making a decision, the person having custody must give due consideration to the opinion and wishes of the child.

- (3) The person having custody of a child represents the child in matters concerning his or her person, unless otherwise provided by law.

#### Section 5 – *Joint exercise of custody*

- (1) The persons who have custody 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.
- (2) If one of the persons having custody cannot participate in the decision-making concerning the child due to a trip, illness or another reason and a delay in the decision-making would be detrimental, the consent of this person is not necessary. However, in a matter that is of great significance for the future of the child, the persons having custody may only make a joint decision, unless it is manifest that the best interests of the child do not require this.

### Chapter 2

#### *Persons having custody of a child and right of access*

#### Section 6 – *Custody by virtue of the birth of a child*

- (1) When the parents of a child are married to each other at the time of the birth of the child, they both have custody of the child. If the parents are not married to each other at the time of the birth of the child, the mother has custody of the child.
- (2) If one of the parents has sole custody of the child and the parents conclude marriage with one another, both of them assume custody of the child.

#### Section 7 – *Agreement between the parents on child custody and right of access*

The parents may agree that

- (1) the parents have joint custody of the child;
- (2) the child resides with one of the parents, if they are not living together;
- (3) one of the parents has sole custody of the child;
- (4) the child has the right to maintain contact and meet with the parent with whom he or she does not reside, as agreed upon by the parents.

#### Section 8 (1155/2004) – *Confirmation of agreements*

- (1) An agreement on child custody and right of access must be made in writing and submitted for confirmation to the social welfare board in the municipality where the child is habitually resident.
- (2) If the child is not habitually resident in Finland, the agreement must be submitted to the social welfare board in the municipality where the child last was habitually resident in Finland or, if the child has not 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 must be submitted to the social welfare board of the city of Helsinki.
- (3) When considering whether an agreement may be confirmed, the social welfare board must take the best interests and wishes of the child into consideration in

accordance with the provisions in sections 10 and 11. The agreement must not be confirmed, if none of the parents has custody of the child.

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

#### Section 9 – *Court decision on child custody and right of access*

- (1) A court may order that
  - (1) the parents are awarded joint custody of the child;
  - (2) the child resides with one of the parents, if they are not living together;
  - (3) one of the parents is awarded sole custody of the child;
  - (4) one or several persons who have consented thereto are awarded custody of the child jointly with or instead of the parents;
  - (5) the child has the right to maintain contact and meet with the parent with whom he or she does not reside.
- (2) If one or both parents have 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(4) only if there are especially weighty reasons for this in view of the child.
- (3) Where necessary, a court may issue instructions on the duties, rights and obligations for the persons who have custody of a child and, if two or more persons have custody of the child, decide on the distribution of responsibilities between them. When making a decision on the right of access, the court must issue more detailed instructions on the conditions for visiting.
- (4) When making a decision in a case concerning child custody and right of access, the court must take the best interests and wishes of the child into consideration as provided in sections 10 and 11.

#### Section 10 – *Decision in a matter concerning custody and right of access*

- (1) A matter concerning child custody and right of access must be decided in accordance with the best interests of the child. For this purpose, special attention must be paid to how the realisation of custody and right of access may be guaranteed in the best possible way in future.
- (2) A matter concerning the right of access or the award of custody to one or both parents must be decided in the manner agreed upon by the parents, if the parents or one of them have custody of the child and there is no reason to believe that this would be contrary to the best interests of the child.

#### Section 11 – *Ascertainment of the wishes and views of the child*

- (1) In a matter concerning child custody and right of access, the wishes and views of the child must be ascertained in so far as this is possible in view of the age and stage of development of the child. This applies if the parents cannot reach a unanimous agreement on the matter, if the child is in the care of someone else than the person having custody of the child or if this is otherwise deemed appropriate with regard to the best interests of the child.
- (2) The views of the child must be ascertained tactfully, taking his or her stage of development into consideration, and in a manner not harmful to the relationship between the child and his or her parents.

## Section 12 – *Amendment of agreements and decisions*

An agreement confirmed by the social welfare board and 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 *Judicial proceedings*

## Section 13 (155/2009) – *Venue*

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 – *Institution of matters and the right of action*

- (1) A matter concerning child custody or right of access is instituted by way of petition submitted jointly by both parents of a child, by one parent, by the person having custody of the child or by the social welfare board.
- (2) If the person having custody of a child has died and no one therefore has custody of the child, the petition may also be submitted by a relative or another person with a close relationship with the child.
- (3) In connection with 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 15 – *Hearing of the parents, the persons having custody and the child*

- (1) When considering a case concerning child custody or right of access, the court must reserve the parents and the person having custody of the child an opportunity to be heard, if a notice of the hearing can be served on them.
- (2) The child may be heard before the court in person, if there are weighty reasons that make this necessary in view of the resolution of the case. The child may be heard only if he or she consents to it and if it is manifest that the hearing cannot cause harm to the child.

## Section 16 – *Obtaining a report from the social welfare board*

- (1) In a case concerning child custody or right of access, the court must obtain a report from the social welfare board of the municipality where the child, the parents, the person having custody of the child or the person proposed to be awarded custody is habitually resident. If such a person is not habitually resident in Finland, the report must be obtained from the social welfare board of the municipality where the person is staying. However, a report need not be obtained if it is manifest 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 in section 7, the social welfare board must provide the parents with the assistance necessary for the conclusion of such an agreement.
- (3) In the report and in the judicial proceedings concerning the matter, secret information may also be disclosed in accordance with the provisions in sections

18(1), 19 and 27(2)–(4) of the Act on the status and rights of social welfare clients (812/2000, *laki sosiaalihuollon asiakkaiden asemasta ja oikeuksista*). (818/2000)

#### Section 17 – *Interim orders*

- (1) When a case concerning child custody or right of access is pending in a court, the court may issue an interim order concerning the person with whom the child must reside, the right of access and the conditions for visiting. If there are special reasons for it, the court may decide to whom the custody of the child is temporarily awarded until the final decision in the matter is made.
- (2) An interim court order is not subject to appeal.
- (3) An interim order is in force until the court makes the final decision in the matter, unless the interim order is repealed or amended prior to this.

#### 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 18 a (436/2009) – *Law applicable to the exercise of the duties of a person having custody of a child*

The exercise of the duties of a person having custody of a child is governed by the law of the state of the child's habitual residence. In case of a change of the child's habitual residence to another state, the law of the state of the new habitual residence is applied.

#### Section 19 (186/1994) – *Jurisdiction by virtue of the habitual residence of a child*

- (1) 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.
- (2) A social welfare board may confirm an agreement on child custody or right of access, if the child is habitually resident in Finland.
- (3) A child who has lived in Finland without interruptions for at least a year immediately before the matter was instituted is deemed to be habitually resident in Finland, unless otherwise shown in the case.
- (4) 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 present 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*

- (1) 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 present 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 with Finland.
- (2) 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 persons having custody of the child have, after the matter has been 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*

- (1) A Finnish court may issue an interim order concerning the person with whom the child is to reside, the right of access or the custody of the child, if this is deemed necessary in order to secure the best interests of the child, even if the Finnish court has no jurisdiction in the case.
- (2) The provisions in section 17 apply, where appropriate, to interim orders.

#### Section 22 (436/2009) – *Law applicable to decisions on custody and right of access*

Finnish law is applied when deciding 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 is in the best interests of the child.

#### Section 23 (186/1994) – *Recognition and enforcement of decisions*

- (1) 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.
- (2) 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.
- (3) 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*

- (1) A decision that has been issued in Iceland, Norway, Sweden or Denmark is recognised and enforced in Finland without separate confirmation.
- (2) 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 is to be recognised or enforced as provided elsewhere.

Section 25 (186/1994) – *Recognition and enforcement of decisions issued in another foreign state*

- (1) 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. Helsinki Court of Appeal may, however, upon application confirm that the decision is recognised in Finland.
- (2) A decision which 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 Helsinki Court of Appeal has confirmed, upon application, that the decision may be enforced here.
- (3) When the Court of Appeal 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 visiting as it deems appropriate with regard to the best interests of the child.

Section 26 (186/1994) – *Enforcement of a decision determining the removal of a child wrongful*

Helsinki Court of Appeal 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 in 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 in the European Convention, that could have served as a basis for enforcement.

Section 27 (186/1994) – *Grounds for the refusal of recognition and enforcement*

- (1) 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 (*ordre public*) relating to families and children;
  - (2) it is manifest that the recognition or enforcement of the decision would, due to a change in the circumstances, no longer be in 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.
- (2) If the decision is issued in a foreign state that is not a Contracting State in 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*

- (1) 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 has been 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.
- (2) Failure to serve the summons or the notice of the hearing in accordance with subsection 1(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) the decision has been appealed against by using the ordinary means of appeal; or
- (2) a case concerning child custody or right of access is in Finland pending in judicial proceedings initiated before the initiation of corresponding proceedings 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 29 a (436/2009) – *Subsidiary nature of provisions*

The provisions in sections 19–21 and 23–29 are applied only 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 II a regulation*, or in another convention binding on Finland.

Section 29 b (436/2009) – *Incompatibility with the Finnish public policy and references to a foreign law*

- (1) A provision of a foreign law that would be applicable under the provisions of this Chapter must 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.
- (2) Unless otherwise provided in this Chapter, when referring to a foreign law in this Chapter, the rules of private international law of the foreign state in question are not referred to.



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, must 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 in 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 request, by Helsinki Court of Appeal.

Section 32 (186/1994) – *Wrongful removal and retention*

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

Section 33 (186/1994) – *Rights of custody*

For the purposes of 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*

- (1) 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.
- (2) A child who has attained the age of 16 years cannot be ordered to be returned.
- (3) 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 in Article 11(4) of the Regulation are also applied to the rejection of an application for return under subsection 1(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*

- (1) In Finland, the Ministry of Justice is the Central Authority referred to in the European Convention and in the Hague Convention.
- (2) The state social welfare authorities, the municipal social welfare authorities and the police must, upon request, provide the Ministry of Justice with executive assistance in order to establish the whereabouts of a child and his or her circumstances, in order to secure the enforcement of a decision on child custody issued in a foreign state and the return of the child, and in order to prevent the wrongful removal of a child.

Section 36 (186/1994) – *Application*

- (1) An application for the confirmation of the recognition or enforceability in Finland of a decision issued in a foreign state 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 in the European Convention may also be submitted by the Ministry of Justice or by a representative authorised by the Ministry.
- (2) The application must be submitted in writing, in Finnish or in Swedish. The application must 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.
- (3) A document written in a foreign language and appended to the application must be supplemented with a certified translation into Finnish or Swedish, unless an exception to this is granted by Helsinki Court of Appeal.

Section 37 (186/1994) – *Consideration of a case concerning the confirmation of a decision and the return of a child*

- (1) A case concerning the confirmation of a decision issued in a foreign state and the return of a child must 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 must, upon request of the Ministry of Justice or the applicant, provide a statement of the reasons for the delay.
- (2) 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 is to 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 to be deemed necessary to make a decision in the case.

- (3) The Court of Appeal may conduct a hearing also in the courtroom of a court of first instance within its own judicial district or within the judicial district of another court of appeal.
- (4) In other respects, the provisions of this Act on judicial proceedings in a case concerning child custody or right of access apply, where appropriate, to the judicial proceedings.

Section 38 (186/1994) – *Hearing of a party to the matter*

Before the Court of Appeal accepts an application for the confirmation of a decision issued in a foreign state or for the return of a child, it must reserve the parties to the matter an opportunity to be heard if their whereabouts are known, unless this causes delay in the consideration of the case.

Section 39 (186/1994) – *Hearing of the child*

- (1) Before the Court of Appeal decides 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 must ascertain the opinion of the child. This applies if the child may be presumed, based on his or her age or other circumstances in the knowledge of the Court of Appeal, to have attained such a degree of maturity that it is appropriate to take his or her opinion into consideration.
- (2) The provisions in sections 15 and 16 are applied, where appropriate, to the ascertainment of the opinion of the child.
- (3) When requesting a report from the social welfare board, the Court of Appeal must exhort the board to submit the report urgently.

Section 40 (186/1994) – *Interim order*

- (1) 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 of Appeal 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 designate the person with whom the child is to reside or concern child custody or right of access.
- (2) The provisions in section 17 apply, where appropriate, to an interim order.

Section 41 (186/1994) – *Free legal aid and costs incurred by the return of a child*

- (1) 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 in the European Convention, the applicant must, upon request, be granted a free trial without liability to compensate the state, even if a free trial would not otherwise be allowable.
- (2) When the court orders the return of a child 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 by the return of the child.
- (3) If the opposing party loses a case referred to in subsection 1, he or she is rendered liable to compensate the Ministry of Justice for the costs incurred in the case in accordance with the provisions that apply to the compensation of legal costs to the parties to a case. The liability for the compensation may be waived or the

compensation reduced, if the liability would be unreasonable in view of the financial circumstances of the party concerned.

Section 42 (186/1994) – *Appeal in a case concerning the enforcement of a decision issued in a foreign state or the return of a child*

- (1) The appeal period for a decision issued by Helsinki Court of Appeal confirming that a foreign decision on child custody and right of access is enforceable in Finland or ordering the return of a child is 14 days from the date of the decision of the Court of Appeal.
- (2) In other respects, the provisions in Chapter 30 of the Code of Judicial Procedure apply to appeals against decisions of the Court of Appeal.

Section 42 a (1155/2004) – *Relationship with the Brussels IIa Regulation*

- (1) The provisions in 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 is applied.
- (2) 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 in Article 11(2), Article 11(3) and Article 11(5)–(8) of the Regulation are applied 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 (186/1994) – *Enforceability of a decision not yet final*

- (1) A court decision on child custody or right of access, or a court decision determining with whom a child is to reside, may be enforced immediately, even if the decision is not yet final, unless otherwise determined in the decision.
- (2) A decision of Helsinki Court of Appeal ordering the return of a child may be enforced immediately, even if the decision is not yet final.
- (3) A decision on child custody and right of access issued in a foreign state may be enforced immediately after Helsinki Court of Appeal has confirmed that the decision is enforceable in Finland, even if the decision of the Court of Appeal is not yet final. However, the Court of Appeal may order that the decision is to be enforced only after the decision issued in the foreign state or the decision of the Court of Appeal has become final.
- (4) Provisions in subsection 3 are not applied where the Brussels IIa Regulation is applied to a case concerning the enforcement of a decision issued in a foreign state. (1155/2004)

Section 44 (620/1996) – *Submitting a decision to a district court*

- (1) When Helsinki Court of Appeal has ordered a child to be returned under section 30, the Court must, by virtue of office, submit the decision to the competent district court for enforcement and exhort it to undertake urgent measures to enforce the decision as provided in section 46.
- (2) When the Court of Appeal has confirmed that a decision issued in a foreign state is enforceable in Finland, the Court must, upon request of the applicant, submit the decision and the application for the enforcement to the competent district court, if

the decision is enforceable under section 43(3). In connection with this, the Court of Appeal must exhort the district court to undertake urgent measures in order to enforce the decision as provided in section 45.

- (3) Separate provisions apply to the submission for enforcement of such a judgment that has been declared enforceable under the Brussels IIa Regulation. (1155/2004)

#### Section 45 (186/1994) – *Enforcement of a decision issued in a foreign state*

- (1) 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 a decision on child custody and right of access (619/1996; *laki lapsen huoltoja tapaamisoikeutta koskevan päätöksen täytäntöönpanosta*). 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 that has been passed in a foreign state and that is enforceable under the Brussels IIa Regulation. (1155/2004)
- (2) Subsection 1 is also applied to a decision referred to in section 26 determining that the removal or retention of a child is wrongful.

#### Section 46 (186/1994) – *Enforcement of a return order*

- (1) An order for the return of a child, issued under section 30, must 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 also apply to the enforcement of a return order, unless otherwise provided in subsection 2 or 3 below. (620/1996)
- (2) If an order for the return of a child is based on an application that had been 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 opinions into consideration. (620/1996)
- (3) An order for the return of a child must be enforced regardless of any possible decision on child custody or on taking the child into the care of the social welfare board. However, no return must be undertaken after the child has attained the age of 16 years.

#### Section 47 (186/1994) – *Determination of the 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 the 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 must 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 48 a (620/1996) – *Interim measure*

- (1) If there is justified reason to assume that a person having custody of a child intends, without the consent of the other person having custody of the child, to wrongfully remove the child from the country, a bailiff or a police authority may, upon request of the person having custody, take the child immediately into care. In that event, the child must be placed in accordance with section 25(2) of the Act on the enforcement of decisions on child custody and right of access (*interim measure*). An interim measure may be undertaken only if the matter is so urgent that the person having custody of the child cannot prevent the removal of the child by requesting an interim order referred to in section 17.
- (2) An interim measure must immediately be brought to the court for consideration, by virtue of office, as provided in section 25(3) of the Act on the enforcement of decisions on child custody and right of access. A court decision ordering the child to be temporarily placed is in effect for a maximum of one week, as determined by the court. In other respects, the provisions on the interim measure referred to in section 25 of the above-mentioned Act apply to the measure, where appropriate.

#### Section 49 (186/1994) – *Authority to issue decrees*

- (1) Further provisions on the implementation of this Act shall be issued by decree.
- (2) It may be provided by decree that the provisions on the return of a child must be applied, in full or in part, also when the child is not habitually resident in a foreign state that is a Contracting State in the Hague Convention.
- (3) It may further be provided by decree that the applicant must be granted a free trial, in accordance with the grounds laid down in section 41(1), also in a case concerning right of access.

#### Section 50 – *Entry into force and transitional provisions*

- (1) This Act enters into force on 1 January 1984.
- (2) The provisions of this Act apply also to children born before the entry into force of this Act. The provisions of this Act apply also 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.
- (3) 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 person having custody of the child.
- (4) 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.