

**Translation from Finnish**

**Legally binding only in Finnish and Swedish**

**Ministry of Justice, Finland**

**Act on the Enforcement of Decisions on Child Custody and Right of Access**

(619/1996; amendments up to 191/2019 included)

By decision of Parliament, the following is enacted:

**Chapter 1**

**General provisions**

**Section 1**

**Scope of application**

A court decision or an interim order (*decision*) on child custody and right of access is enforced as provided in this Act. The provisions of this Act concerning the enforcement of a decision on child custody also apply to the enforcement of a court decision determining with whom the child shall reside and to the enforcement of a decision ordering a child to be handed over to the person who has custody of the child (*custodian*). The provisions concerning the enforcement of a decision on right of access also apply to the enforcement of a court decision on alternating residence.

(191/2019)

An agreement that a municipal body referred to in section 6 of the Social Welfare Act (*social welfare authority*) has confirmed in accordance with section 8 of the Act on Child Custody and Right of Access is enforced in accordance with this Act similarly to a final court decision.

The provisions of this Act on the enforcement of a decision on child custody and right of access also apply to an application for having a child handed over to his or her legal custodian and to an application for the enforcement of right of access, if the child is in the care of someone else than a person who has been awarded custody, right of access or any other legal right to keep the child with him or her, even if a decision or an agreement referred to in subsection 1 or 2 has not been issued against the person in whose care the child is. An application for having a child handed over may not, however, be filed with an enforcement officer under section 4, subsection 2.

Provisions on the enforcement of a decision issued in a foreign state or an order for the return of a child are laid down in section 33.

## **Section 2**

### **Consideration of the child's will**

If a child has reached the age of 12 years, enforcement shall not take place against the child's will. The same applies to a child who is under 12 years of age, if he or she is mature enough for his or her will to be taken into consideration.

When assessing the significance of the child's opposition, particular attention shall be paid to the grounds presented by the child for his or her opposition and to whether the child's opposition can, taking into account the circumstances that have emerged in the case, be considered to be based on his or her independent will. (191/2019)

## **Section 3**

### **Protecting the child during enforcement process**

All measures directed at a child shall be carried out as tactfully as possible and without upsetting the child.

If a child cannot be collected or some other measure cannot be carried out because of the child's illness, upset state of mind or some other reason, the measure shall be postponed.

## **Section 4 (156/2009)**

### **Applying for enforcement**

Provisions on the competent court in enforcement matters are laid down in chapter 10 of the Code of Judicial Procedure.

An application for the enforcement of a decision on child custody may, instead of a court, be filed with an enforcement officer of the child's place of domicile, the child's place of habitual residence or the place where the child is currently residing, if the decision on child custody has been issued less than three months ago.

An application for the enforcement of a decision shall be filed in writing. The application shall be accompanied by the original decision or a copy of it certified by the authority that has issued it.

## **Section 5 (156/2009)**

### **Transfer of a case**

Notwithstanding the provisions of chapter 10, section 22 of the Code of Judicial Procedure, a matter may be transferred from a competent district court to another competent district court, if it is clearly more appropriate to consider the matter there. The matter cannot be returned to the original court, unless there are new special reasons to do so.

If an application for the enforcement of a decision has, in accordance with chapter 10 of the Code of Judicial Procedure, been filed with the district court that has jurisdiction in the applicant's place of domicile or habitual residence or with the Helsinki District Court, the court shall, under section 32, subsection 2 of this Act, request executive assistance from the police in order to establish the whereabouts of the child and the opposing party of the applicant. If it is, in such a case, discovered that another court is also competent, the matter may be transferred in accordance with subsection 1 of this section. However, until the matter has been transferred, the district court shall take the measures that under this Act are to be taken by the court.

## **Chapter 2**

### **Mediation for the enforcement of a decision**

## **Section 6**

### **Assignment of a mediator**

When a district court has received an application for the enforcement of a decision, it shall assign a person designated under section 9 (*a mediator*) to conduct mediation in the case. For justified reasons, the district court may also assign some other appropriate person to serve as the mediator. Where necessary, the court may assign two or more mediators to conduct mediation.

Mediation need not be conducted if:

- 1) there are serious reasons related to the best interests of the child that require that the decision be enforced immediately;

2) it is evident on the basis of an earlier mediation that no results will be achieved through mediation; or

3) the decision on child custody has been issued less than three months ago, unless there are special reasons to conduct mediation.

## **Section 7**

### **Purpose of mediation and the mediation procedure**

The purpose of mediation is to promote cooperation between the parties in order to ensure the wellbeing of the child as required in the decision to be enforced.

The mediator shall immediately contact the parties personally. The mediator shall also strive to arrange a negotiation together with the parties.

The mediator shall personally discuss with the child, if this is possible considering the child's age and stage of development. The aim of the discussion is to ascertain the wishes and views of the child as provided in section 11 of the Act on Child Custody and Right of Access.

The district court may give the mediator more detailed instructions concerning the mediation.

## **Section 8**

### **Time frame for mediation, mediation report, and secret information**

The mediator shall, within a period determined by the district court, give the court a report on the measures he or she has taken. This period may not exceed four weeks unless there are compelling reasons for this. However, the court may, on the reasoned request of the mediator, extend the period for mediation.

If mediation has not led to any results, the mediation report shall, in an impartial and truthful manner, present the circumstances that may be of importance for resolving the case. However, if the district court deems, after receiving the mediator's report in a case concerning enforcement of a decision on right of access, that cooperation between the parties can be promoted by continuing the mediation, it may, without issuing an enforcement order, order the mediator to continue the mediation. In this case, the mediator shall submit a new report to the district court within the period determined in subsection 1.

If the district court deems that the mediation report is inadequate or if new circumstances have been discovered during the process and supplementing the report is necessary due to these circumstances, the mediator shall, within a period determined by the district court, supplement the report.

The mediator has the right to obtain information in accordance with section 12 and section 20, subsection 1 of the Act on the Status and Rights of Social Welfare Clients (812/2000) and to receive executive assistance referred to in section 22 of the said Act. The provisions of chapter 3 and section 27 of the above-mentioned Act apply to the secrecy obligation of the mediator and other persons who have obtained secret information on the matter. The mediator shall include in the mediation report such secret information that he or she assesses to be necessary, with regard to the best interests of the child, for the court when it resolves a case referred to in this Act. (819/2000)

## **Section 9**

### **Designation of mediators**

The social welfare authority shall designate a sufficient number of persons to carry out the mediation tasks referred to in sections 6–8 of this Act in a municipality. Only a person with expertise in psychological, psychiatric or social work with children and families or with expertise in child welfare may be designated to serve as a mediator. The court shall be notified of the designation of a mediator and of the cancelling of a designation without delay.

## **Chapter 3**

### **Consideration of a matter in court**

## **Section 10**

### **Provisions to be complied with**

Unless otherwise provided in this Act, the provisions on the consideration of a petitionary matter in court apply to the consideration of an enforcement matter in court.

A request for a review of a district court decision shall immediately be submitted to the court of appeal, and the court of appeal shall immediately decide on a stay of enforcement as provided in section 28. The matter shall be considered urgently in all court instances.

## **Section 11 (191/2019)**

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

A court may hear a child in compliance with sections 11 and 15a of the Act on Child Custody and Right of Access.

## **Section 12**

### **Other accounts**

If a case is considered in a court hearing, the mediator may be summoned to appear at the hearing.

Where necessary for resolving a case, the court shall obtain a statement on the case from the competent state or municipal authority and hear persons who may provide information on the case. A person who is heard in court may disclose information that has been classified as secret under the law or an order, if this information has been or could have been included in the mediation report under section 8, subsection 4. The provisions of the Act on the Publicity of Court Proceedings in General Courts (370/2007) apply to the publicity of court proceedings. (379/2007)

The court may also order that a child be examined by a physician or another specialist assigned by the social welfare authority. The provisions of the Act on Certain Blood Tests and Other Examinations to Determine Hereditary Characteristics (702/1975) apply, as appropriate, to an obligation to be imposed on the custodian in order to make him or her comply with such an order.

## **Chapter 4**

### **Court decision in an enforcement matter**

#### **Section 13**

##### **Specifying or temporarily changing the conditions of right of access**

Upon request, the court may, for the duration of the consideration of a matter or otherwise temporarily, change the conditions of right of access, or make permanent smaller changes to them, or specify the conditions of right of access, if this promotes the exercise of right of access and serves the best interests of the child. The conditions may be changed permanently only if the decision to be enforced is final.

#### **Section 14**

##### **Rejection of an application for the sake of the best interests of the child**

A district court shall reject an application for enforcement, if the enforcement would, due to changes in the circumstances or for some other reason, be manifestly contrary to the best interests of the child.

However, if the application is about having a child handed over to his or her legal custodian under section 1, subsection 3, the district court may reject the application only if:

- 1) the child has been given into the care of someone else with the consent of the child's custodian and there is reason to believe that handing over the child back to the custodian could be contrary to the child's best interests, considering the duration of the care relationship, the contacts between the child and the custodian, and the nature of the relationship between them; or
- 2) there are other serious reasons related to the best interests of the child that require that the matter concerning child custody be referred to a court for decision.

The district court shall state reasons for the rejection in its decision.

If a district court has rejected an application under subsection 1 or 2, a matter concerning child custody, right of access or handing over of a child may be instituted in court by way of petition submitted by the applicant or the social welfare board in accordance with the Act on Child Custody and Right of Access, unless the matter is already pending in court. The opposing party may also institute the matter. The district court shall inform the parties concerned and the social welfare

board of their right of action. If the matter is already pending in court, the district court shall notify the said court of its decision.

## **Section 15**

### **Enforcement order concerning a decision on child custody**

When a court decides that a decision on child custody shall be enforced, the opposing party is obliged to hand over the child to the applicant.

The enforcement may be effected either by obliging the opposing party to hand over the child under threat of a fine or by ordering the child to be collected.

## **Section 16**

### **Enforcement order concerning a decision on right of access**

A decision on right of access is enforced by obliging the applicant's opposing party to allow meetings between the child and the applicant and to take any other necessary measures to arrange meetings in the manner specified in the decision to be enforced.

The enforcement may be effected by obliging the opposing party to comply with the decision under threat of a fine.

However, the enforcement of a decision on right of access may also be effected by ordering that the child be collected, if it can be deemed probable that the meeting will not otherwise take place and if there are very serious reasons for this in view of the best interests of the child.

## **Section 17**

### **Precautionary measures to secure enforcement**

When a court orders the enforcement of a decision on child custody and right of access, it may, in addition to the obligations specified in sections 15 and 16:

- 1) order that the applicant or the opposing party not be allowed to move the child to a different location or place the child in care outside of his or her home;
- 2) oblige the applicant to be present when the child is collected;



- 3) order that the applicant notify before the date of a meeting or visit if he or she is prevented from meeting the child or keeping the child with him or her;
- 4) oblige the applicant in a matter concerning enforcement of a decision on right of access to give his or her own and the child's valid passport into the possession of the local enforcement officer;
- 5) oblige the opposing party to disclose the whereabouts of the child;
- 6) oblige the applicant or the opposing party to do something or prohibit them from doing something; or
- 7) impose other such obligations on the applicant or the opposing party that are necessary to secure the enforcement and to protect the best interests of the child.

The obligations imposed to secure enforcement are ordered to be fulfilled under threat of a fine. However, an obligation imposed on the applicant may also be ordered to be fulfilled under threat that otherwise the enforcement based on the court's enforcement order shall lapse.

In connection with enforcement referred to in this Act, a court may not decide on precautionary measures under chapter 7, section 3 of the Code of Judicial Procedure.

## **Section 18**

### **Imposition of a conditional fine**

When a court imposes a conditional fine, the amount of the fine is determined as a fixed amount in euros. (191/2019)

However, for special reasons, such a conditional fine may be imposed where the total amount of the fine is determined based on the period of non-compliance (*periodic conditional fine*). A periodic conditional fine is imposed by determining a fixed basic amount in euros to which an additional amount is added for each period stated in the decision, during which the decision has not been complied with (*period of non-compliance*). To enforce a decision on right of access, a periodic conditional fine may also be imposed by determining an additional amount that shall be paid for each instance of non-compliance with the decision. A periodic conditional fine may be imposed for a maximum period of six months calculated from the date of imposition.

The court imposing the conditional fine shall immediately notify the person concerned of the obligation to be fulfilled and of the conditional fine.

A new conditional fine may not be imposed before the question concerning the ordering of the payment of the previous conditional fine has been considered and the period determined for the periodic conditional fine has expired.

## **Section 19**

### **Ordering payment of a conditional fine**

If a party fails to fulfil an obligation imposed on him or her, the court may, upon the application of the opposing party, order payment of a conditional fine, even if the decision concerning the imposition of the conditional fine is not yet final. If a child has been ordered to be collected, also an enforcement officer may apply for a court order for payment of a conditional fine, imposed under section 17 to secure the collection, and for the imposition of a new conditional fine.

Before a conditional fine is ordered to be paid, the party concerned shall be given an opportunity to be heard. Payment of a conditional fine may not be ordered, if the party concerned can prove that he or she has had an acceptable reason for not fulfilling the obligation or if the obligation has been fulfilled before the decision ordering the payment of the conditional fine was issued.

## **Section 20**

### **Application of the Act on Conditional Fines**

The provisions of sections 8, 11 and 13 and section 12, subsection 2 of the Act on Conditional Fines (1113/1990) apply, as appropriate, to the imposition of a conditional fine referred to in this Act and to the ordering of its payment.

## **Chapter 5**

### **Enforcement duties falling within the competence of an enforcement officer**

## **Section 21**

### **Competence of an enforcement officer and provisions to be complied with**

In addition to what is provided in section 22, an enforcement officer is responsible for the enforcement when a court has ordered that a child be collected or when a court has issued an order referred to in section 25, subsection 1 or another order referred to in this Act, unless the enforcement is, under this Act or according to the court order, the responsibility of the party

concerned. Provisions on applying for a court order for payment of a conditional fine are laid down in section 19.

The provisions of the Enforcement Code on the enforcement of a judgment or a decision, on enforcement costs and on requesting for a review apply, where appropriate, to the enforcement duties of an enforcement officer, unless otherwise provided in this Act.

## **Section 22**

### **Enforcement without an enforcement order issued by court**

When an enforcement officer decides on the enforcement of a decision on child custody under section 4, subsection 2, the officer shall collect the child, if the parties concerned do not comply with the decision voluntarily.

However, if the enforcement officer considers that the enforcement of the decision would, instead of collecting the child, require that a conditional fine be imposed, the officer shall transfer the matter to the district court referred to in section 4, subsection 1 for consideration. The same applies if the circumstances have changed after the decision was issued and this may be of significance for the enforcement, or if there are special reasons to conduct mediation in the matter, or if there are other justified reasons to transfer the matter.

The enforcement officer shall state reasons for the transfer in his or her decision to transfer the matter.

## **Section 23**

### **Continuation of mediation**

On the request of the enforcement officer, the person who has conducted mediation in the case in accordance with this Act shall, even after the court has ordered the child to be collected, continue promoting cooperation between the parties and supporting the child.

## **Section 24**

### **Collecting a child**

The person who has conducted mediation in accordance with this Act or a representative of the social welfare authority shall be present when a child is collected. The mediator or the social welfare representative shall request a person who is close to the child to be present and, when necessary, also invite a physician or another expert to be present.

The enforcement officer may oblige the applicant to be present when the child is collected under threat that the court's enforcement order or the enforcement based on section 22 of this Act shall otherwise lapse.

## **Chapter 6**

### **Miscellaneous provisions**

## **Section 25**

### **Interim precautionary measures to secure enforcement of a decision on child custody**

If there is reason to believe that a child will be removed from the country or moved from one location to another in order to prevent enforcement or if the matter for some other reason is urgent, the court considering the enforcement matter may, in order to secure the enforcement of a decision on child custody, order immediately without hearing the opposing party that a social welfare authority shall temporarily place the child in an institution owned or maintained by the state, a municipality or a joint municipal authority or in other appropriate care, or issue an interim order on a precautionary measure referred to in section 17 (*interim precautionary measure*).

In a case referred to in subsection 1 that is very urgent and where it is not possible to request for a court order, an enforcement officer or a police officer may, upon request of the custodian, immediately take possession of the child in order to secure the enforcement of a decision on child custody, regardless of whether an enforcement matter referred to in this Act is pending. In such a case, the social welfare authority shall place the child in care in accordance with subsection 1.

The enforcement officer or the police officer shall immediately notify a measure referred to in subsection 2 to the court considering the enforcement matter or, if an enforcement matter is not pending in court, the district court with jurisdiction in the district where the measure was taken.

The court shall, as soon as possible after receiving such a notification, issue an order on the interim precautionary measure in accordance with subsections 1 and 4 or order the measure to be revoked. The enforcement officer or the police officer shall immediately also notify the enforcement officer who is considering an application for enforcement under section 4, subsection 2 of a measure referred to in subsection 2.

An interim precautionary measure ordered by a court under subsection 1 or 3 is in effect until a decision on the enforcement matter has been issued. However, if an enforcement matter is not pending in court when the district court issues an order on an interim precautionary measure under subsection 3, the precautionary measure is in effect for a period determined by the court, the maximum length of which is one week. An interim precautionary measure shall be ordered to be revoked without delay once the grounds for it cease to exist.

## **Section 26 (674/2002)**

### **Recovery of a conditional fine and imposition of a conversion sentence**

A conditional fine ordered to be paid under this Act is recovered and the person ordered to pay the conditional fine is summoned to a trial for imposing a conversion sentence for unpaid fines as provided in the Act on the Enforcement of Fines (672/2002). However, a conversion sentence may not be imposed for an unpaid conditional fine, unless there are very serious reasons for this. If a conversion sentence has not been imposed, the recovery of the conditional fine is continued through enforcement measures.

## **Section 27**

### **Consideration of an enforcement matter when a matter concerning child custody and right of access is pending**

The fact that a matter concerning child custody and right of access is pending in court does not prevent the enforcement of a decision, unless the enforcement of the decision has been prohibited or ordered to be suspended or unless a new enforceable decision or interim order on child custody or right of access has been issued.

A matter concerning child custody and right of access and an enforcement matter referred to in this Act cannot be considered in the same trial.

## **Section 28**

### **Enforceability of a decision**

A district court decision on enforcement referred to in this Act may be enforced immediately even if the decision is not yet final, unless otherwise ordered in the decision or unless otherwise ordered by an appellate court in compliance with the applicable provisions of the Enforcement Code concerning a stay of enforcement due to a request for a review concerning the enforcement service. However, property that has been attached for the recovery of a conditional fine may not be sold until the decision ordering payment of the conditional fine has become final.

## **Section 29**

### **Submission of a decision to enforcement officer**

When an enforcement officer has been ordered to collect a child, the court shall, if its decision is enforceable, upon request of the applicant submit the decision to the competent enforcement officer and urge the officer to enforce the decision.

## **Section 30**

### **Prohibition of request for review**

The following decisions are not subject to appeal:

- 1) a decision by which a matter is transferred under section 5 or section 22, subsection 2;
- 2) a decision by which an application under section 14 is rejected;
- 3) a decision ordering a child to be temporarily placed in care under section 25 or a decision imposing a conditional fine; and
- 4) a decision by which the conditions of right of access are changed under section 13 for the duration of the consideration of the matter or otherwise temporarily.

However, a complaint may be filed against a decision by which the court has ordered a child to be placed in care or temporarily changed the conditions of right of access. No specific time limit has been set for filing a complaint.

## **Section 31**

### **Compensations and expenses to be paid from state funds**

The compensations payable to witnesses and experts who have been heard upon order of the court, the compensation payable to a physician or another expert for performing their duties under this Act, and the expenses for conducting mediation and for placing a child in care as referred to in section 25 are paid from state funds.

A party is also entitled to an advance compensation from state funds for the necessary travel expenses and income-related expenses incurred by travel to an examination by a physician or another specialist referred to in section 12, subsection 3 in accordance with the provisions of the Act mentioned in the said provision, as appropriate.

A mediator is entitled to a reasonable fee with regard to the difficulty and scope of the duty and to compensation for his or her necessary expenses from state funds. Further provisions on the measures for which a fee shall be paid, the amount of the fee, compensable expenses, and those reasons pertaining to the matter and the mediator that may lead to a raised or reduced fee are issued by decree of the Ministry of Justice. (931/2008)

The compensations and expenses referred to in this section are borne by the State.

## **Section 32**

### **Executive assistance**

Upon request of an enforcement officer, a social welfare authority shall provide any executive assistance that is necessary for the enforcement of a decision.

Upon request of a court or an enforcement officer, the police shall provide any executive assistance that is necessary for establishing the whereabouts of a child and his or her custodian and for securing the enforcement of a decision.

### **Section 33**

#### **Provisions on the enforcement of a decision issued in a foreign state or an order for the return of a child**

Under sections 8 and 12 of the Act on the Recognition and Enforcement of Nordic Judgments Concerning Claims under Private Law (588/1977), a decision on child custody and right of access issued in Norway, Sweden or Denmark is enforced in Finland as provided in this Act. The same applies to the enforcement of a decision on child custody referred to in Article 10(1) of the Convention between Finland, Iceland, Norway, Sweden and Denmark on the Recognition and Enforcement of Judgments (Treaty Series of the Statute Book of Finland 9/1933) that has been issued in Iceland.

A decision issued in a foreign state and confirmed to be enforceable in Finland is enforced in accordance with section 45 of the Act on Child Custody and Right of Access, if the decision concerns child custody and right of access and has been issued in some other foreign state than those referred to in subsection 1 or if the matter concerns a decision referred to in section 26 of the Act on Child Custody and Right of Access by which the removal or retention of a child has been determined wrongful.

A return order referred to in section 30 of the Act on Child Custody and Right of Access is enforced in accordance with section 46 of the said Act.

If a decision on child custody and right of access issued in another Member State of the European Union in accordance with 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, is to be enforced in Finland, the decision is enforced in accordance with this Act. The provisions of subsections 1 and 2 do not apply to the enforcement of such a decision. (1156/2004)

### **Section 34**

#### **Further provisions**

Further provisions on the implementation of this Act are issued by decree.



## **Section 35**

### **Entry into force**

This Act enters into force on 1 December 1996. This Act repeals the Act on the Enforcement of a Decision on Child Custody and Right of Access issued on 4 July 1975 (523/1975) as amended. If there are references in other acts to the repealed act, this Act shall be applied instead.

Measures necessary for the implementation of this Act may be undertaken before its entry into force. Transitional provisions are issued by separate act.