Parental responsibility - child custody and contact rights

Finlandia

1 What does the legal term "parental responsibility" mean in practical terms? What are the rights and obligations of a holder of parental responsibility?

The holder of parental responsibility has a duty to ensure the balanced development and well-being of the child in accordance with her or his individual needs and wishes. Thus the purpose of parental responsibility is to secure close and affectionate relationships, especially between children and their parents. Children must be assured of good care and upbringing, as well as the supervision and protection that correspond to their age and stage of development. Children should be brought up in a secure and stimulating environment and receive an education that corresponds to their inclinations and wishes. Children must be brought up with understanding, security and affection. They must not be subject to corporal punishment or otherwise treated in an abusive manner. Children should be supported and encouraged to reach independence, responsibility and adulthood (Act on Child Custody and Right of Access 361 /1983, section 1).

The holder of parental responsibility must ensure the well-being and development of the child as described above. For this purpose, she or he has the right to make decisions on the child's care, upbringing, place of residence and other personal matters. When making a decision, the child's opinion should be taken into account.

2 As a general rule, who has the parental responsibility over a child?

If the parents of a child are married at the time of the child's birth, they both have parental responsibility. If the parents are not married at the time of the child's birth, the mother has parental responsibility. The parents can agree on who has custody in connection with the confirmation of paternity. If one of the parents has sole custody of the child and the parents then marry, both parents assume parental responsibility.

3 If the parents are unable or unwilling to exercise parental responsibility over their children, can another person be appointed in their place?

A court can assign custody of the child to one or more persons, with their consent, in addition to or instead of the parents. The decision must be based on the child's best interests and only if there is a compelling reason from the child's point of view for assigning custody to a person other than the parents. If the parents are deceased, the social welfare board must take action to assign custody of the child.

4 f the parents divorce or split up, how is the question of parental responsibility determined for the future?

Custody and access rights must always be arranged with the best interests of the child in mind and so that these rights can be exercised in the best possible way in future. The parents can make a parental responsibility agreement. If the parents cannot reach an agreement, the dispute must be taken to court.

5 If the parents conclude an agreement on the question of parental responsibility, which formalities must be respected to make the agreement legally binding?

The agreement on child custody must be drawn up in writing, and the parents may ask the local social welfare authority to validate it. The social welfare authority must ensure that the agreement is in the child's best interest. An agreement validated by the social welfare board is valid and enforceable in the same way as a final court decision.

6 If the parents cannot come to an agreement on the issue of parental responsibility, what are the alternative means for solving the conflict without going to court?

If the spouses cannot reach an agreement, they can request assistance from a municipal child welfare officer or a family mediator. Child welfare officers provide guidance to parents and have the power to validate agreements between them. A validated agreement is regarded as equivalent to a court decision. Family mediators assist parents in resolving their disputes through negotiation, and can also provide assistance in drawing up agreements. Family mediators must pay special attention to securing the best interests of any minors in the family.

The court's power of decision covers child custody, living arrangements, access rights and maintenance payments. **(Act** on Mediation in Civil Matters and Confirmation of Settlements in General Courts 394/2011, section 10). Court mediation is a separate procedure from judicial proceedings. It can commence when a case pending in court is referred to court mediation or by direct request of the parties to the dispute. The mediator is a judge assisted by an expert, usually a psychologist or a social worker. A confirmed agreement is regarded as equivalent to a court decision. If an agreement cannot be reached, it is returned to court proceedings or the court closes the case.

7 If the parents go to court, what issues can the judge decide upon relating to the child?

The court's power of decision covers child custody, living arrangements and access rights. If necessary, the court can also rule on the custodian's rights and duties as well as on the sharing of duties between custodians. When ruling on access rights, the court must provide detailed provisions on the conditions for visiting and on whom the child will live with. The maintenance payments can also be determined in conjunction with determining custody.

8 If the court decides that one parent shall have sole custody of a child, does this mean that he or she can decide on all matters relating to the child without first consulting the other parent?

In the case of a single custodian, she or he alone makes all decisions related to child care. However, the court ruling may include stipulations on the rights and duties of the single custodian, including the right to change the child's place of residence.

9 If the court decides that the parents shall have joint custody of a child, what does this mean in practice?

Joint custodians share responsibility for all issues related to the child. If the custodians are separated, they make everyday decisions related to the child depending on which parent the child lives with. However, the consent of both custodians is needed for major decisions. These include, for example, changing the child's religious denomination or place of residence, a foreign passport, educational decisions and healthcare or hospital care issues.

10 To which court or authority should I turn if I want to lodge an application on parental responsibility? Which formalities must be respected and which documents shall I attach to my application?

A written application for custody or access rights should be filed with the district court (käräjäoikeus) of the child's place of residence. The application can be made by one or both parents, by the custodian or by the social welfare board. A claim and the grounds for the claim should be presented in the application. Any documents to be used as evidence must be enclosed. The application must be signed and submitted to the district court either in person or by an authorised representative. The application can also be sent by post or by fax. The case becomes pending when the application is received by the district court.

11 Which procedure applies in these cases? Is an emergency procedure available?

In custody cases, the Act on Child Custody and Right of Access is applied. According to this Act, the court must give the parents and the custodian the opportunity to speak when hearing a case on custody or access rights. The child can be heard in court, if there are compelling reasons that make this necessary in order to resolve the case. The court usually also obtains a report on the child's circumstances from the social welfare board.
When the case is pending, the court can issue an interim order on which the child should live with and on access rights and related conditions. In special circumstances, the court can assign temporary custody until the final decision is reached. An interim court order cannot be appealed. It is valid until the court reaches a final decision.

12 Can I obtain legal aid to cover the costs of the procedure?

Legal aid is available in custody cases. Access to legal aid depends on personal income. More information on legal aid in Finland is available here: https://oikeus.fi/oikeusapu/en/index.html..

13 Is it possible to appeal against a decision on parental responsibility?

A decision by a district court can be appealed in the court of appeal (hovioikeus).

14 In certain cases, it may be necessary to apply to a court to have a decision on parental responsibility enforced. Which court should I use in such cases and which procedure applies?

Decisions on parental responsibility are enforced as provided in the Act on the enforcement of decisions on child custody and right of access 619/1996. You must apply for enforcement in writing at the district court of the place of residence of the child or the opposing party. Enforcement of a decision on parental responsibility can, however, be requested from a bailiff if the decision was issued less than three months earlier. The decision must be enclosed with the application.
Upon receiving the application and a statement from the other party, the court will usually assign a social welfare board mediator to handle the case. The mediator contacts the parents and discusses the issue with them and, if possible, with the child. The mediator also tries to arrange a joint meeting with both parents. The mediator then reports to the court, after which the court rules on the case. The court can also order that the child be examined by a doctor.
If the court decides that the decision on parental responsibility must be enforced, the other party is obliged to surrender the child. The decision can be reinforced with a conditional fine. As a last resort, the child can be forcibly separated from the party refusing to comply with the decision.
If a district court has ordered a child to be forcibly taken away, mediation may still be continued at the request of the bailiff.

15 What should I do to have a decision on parental responsibility that is issued by a court in another Member State recognised and enforced in this Member State?

Council Regulation (EC) No 2201/2003 is applied in the recognition of decisions on parental responsibility issued in another Member State that fall within the scope of the Regulation. This Regulation does not apply to Denmark.
According to the Regulation, a judgment concerning the dissolution of marriage must be recognised by other Member States without any special procedures. Any interested party may, however, apply for a decision that the judgment be or not be recognised. The application for recognition is filed in Finland with the district court of the child's place of residence.
Decisions on parental responsibility issued in Denmark and, in Sweden, decisions on parental responsibility other than those issued by virtue of the abovementioned Regulation are enforced on the basis of the 1977 Act on the recognition and enforcement of Nordic judgments on civil law claims (laki yksityisoikeudellista vaatimusta koskevien pohjoismaisten tuomioiden tunnustamisesta ja täytäntöönpanosta 588/1977). No separate confirmation of the recognition of a decision is provided. Requests for enforcement are lodged with the district court.
All other foreign decisions on parental responsibility are recognised in Finland without any specific confirmation. Upon application, the Helsinki Court of Appeal (Helsingin hovioikeus) can, however, confirm the recognition or non-recognition of a decision in Finland.
The application for the enforcement of an enforceable custody decision is filed with the district court of the child's or opposing party's place of residence or temporary place of residence. (See section 14) above for further information about enforcement procedures).

16 To which court in this Member State should I turn to oppose the recognition of a decision on parental responsibility issued by a court in another Member State? Which procedure applies in these cases?

Same procedure as specified in section 15.

17 Which law does the court apply in a proceeding on parental responsibility where the child or the parties do not live in this Member State or are of different nationalities?

Finnish legislation is applied in proceedings on parental responsibility that are dealt with in Finland.

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