

QUESTIONNAIRE ON PREVENTIVE MEASURES

RESPONSE BY FINLAND

QUESTIONS

A. LEGISLATION AND COURT ORDERS

1. *Please give details of any civil legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.*

When a case relating to child custody or right of access is pending before a court, the court may issue an *interim order* on the person with whom the child is to reside, on the rights of access and on the conditions of visit. If there is a special reason for the same, the court may order someone to act as the custodian of the child, pending a final resolution of the matter. An interim order shall not be subject to appeal. (Child Custody and Right of Access Act, Section 17)

2. *Please give details of any criminal legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.*

The child abductor may be guilty of an offence against personal liberty subject to punishment according to Penal Code Chapter 25. Abduction of a child is regulated in Section 5, Chapter 25 of the Penal Code. It states that a parent, foster parent or custodian of a child under 16 years of age or a person close to the child shall be sentenced for abduction of a child, if such a person takes custody of the child for himself or herself from the person in whose custody the child is. The punishment for the offence is fine or imprisonment for at most six months.

In addition, the abductor may be guilty of a more serious offence against personal liberty, for instance of deprivation of liberty, aggravated deprivation of liberty or hostage taking.

One form of preventive measure is a restraining order. A person feeling threatened or molested may apply for a restraining order, which is given by a district court. A child can also be protected by a restraining order. The punishment for violating an order is a fine or imprisonment. A restraining order is, however, rarely used in the prevention of child abductions since a parent is seldom completely deprived of the rights of access and, if needed, a child can be protected by other means (e.g. by supervised visiting rights).

3. *Please give details of any court orders which can be obtained during, for example, divorce or custody proceedings which prohibit, restrict or criminalise removal or retention of a child.*

A court may issue orders on the duties, rights and obligations of custodians and decide on the responsibilities between them (e.g. order who has the right to decide on the child's place of residence).

When making a decision on the rights of access, the court may issue more detailed orders on the conditions of visit. (Child Custody and Right of Access Act, Section 9). The court may for example order exercising of the visiting rights under supervised conditions or surrender of passports during the visiting period.

4. *Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained out-of-hours and ex parte?*

In emergency situations a parent who has good grounds to suspect that the other parent intends to wrongfully remove the child from the country may contact a bailiff or police directly and these may immediately take the child into custody in order to prevent abduction. The applicant may either be a sole custodian or a joint custodian. The precautionary measure can be obtained out-of-hours and ex parte.

Depending on the situation preventive measures are based on different provisions. The relevant provisions are Section 48 a of the Child Custody and Rights of Access Act and Section 25 subsections 1 and 2 of the Act on the Enforcement of a Decision on Child Custody and Rights of Access.

When the threat of child abduction is imminent an extreme preventive measure may also be an emergency care order in accordance with the Child Welfare Act. The child welfare authorities may take action on the basis of a child welfare report submitted by a parent, the Border Guard or the Police. After taking a child into care the social welfare authorities have the right to decide on the care, upbringing, supervision, other welfare provisions, and on the residence of the child.

5. *Do you have any comments relating to relocation orders?*

Courts rarely make orders that a child can / cannot be removed abroad from Finland.

6. *Do you have any other comments relating to legislative provisions, court orders or administrative measures including any comments on the effectiveness of these provisions, and how often they are used in practice?*

There has been discussion about aggravating the maximum punishment for the offence of child abduction so that all the coercive measures would be available to the Police in child abduction cases. It is, however, obvious that legislative provisions can never completely prevent child abductions. The effectiveness of the Convention's return mechanism is the best preventive measure.

B. BORDER CONTROLS

1. *Please give details of any rules or procedures relating to the issuance or withdrawal of passports which may help to prevent removal or retention.*

Issuance of a Finnish passport for a child is subject to consent of all custodians of the child. A custodian may withdraw his or her consent to the issuance of a passport. When considering the issuance or withdrawal of passports the competent authority has to keep in mind the best interests of the child.

2. *Please give details of any rules or procedures relating to the issuance or withdrawal of visas which may help to prevent removal or retention.*

A visa for a child is issued subject to the consent of all custodians. In addition, the Finnish Missions abroad require that the child come personally to the Mission in order to obtain a visa.

3. *Are you aware of any co-operative arrangements with other States with regard to children who maintain more than one nationality?*

There are no specific agreements but cooperation works well. According to our experience the Missions of other states take seriously into account the possible risk of child abduction if they are alerted to that when they are considering issuance of a passport or visa.

4. *Are there any foreign States which it is possible for nationals from your State to enter without a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?*
5. *Are there any foreign States whose nationals can enter your State without a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?*

According to the Schengen Agreement and the Nordic Passport Agreement persons have the right to free movement in the states that are parties to these agreements. Border controls do not exist.

6. *Please give details of any port alert or similar emergency systems which can operate to prevent removal from your jurisdiction including the conditions required to put these procedures into effect.*

If alerted, the Police cooperates with the Border Guard as well as with airline and shipping companies in order to prevent illegal removals. The police also have world-wide cooperation through Interpol. This requires that the police have been notified of a potential child abduction or of a missing child.

7. *Please give details of any specific duties on air carriers / ferries relating to the carriage of children.*

They have a duty to register the identity of all passengers.

8. *Do you have any other comments relating to border controls, including any comments on the effectiveness of these measures to prevent removal or retention and how often they are used in practice?*

Taking into account the above-mentioned areas of free movement without border controls it is, in practice, difficult to prevent a removal from Finland if the itinerary and date of departure is unknown.

C. INFORMATION FOR PARENTS

1. *Please give details of any web pages, and provide copies of any brochures, or information packs or similar which contain information or advice on preventive measures and which are available to parents in your State. Who provides this information?*

Information on prevention measures is included in a booklet "International Child Abduction". The booklet was prepared in cooperation between the Ministry for Foreign Affairs, the Ministry of Justice, the Ministry of Social Affairs and Health, and the Association for Abducted Children.

2. *When was this information compiled? When was it last updated? How is the information made available?*

The booklet was made in December 2000. It is available in paper version in the Ministry of Justice and in various agencies involved in dealing with children's issues (i.e. social welfare authorities, police stations, lawyers etc.). A regularly updated version in different language versions is available on the Internet at: www.om.fi/9604.htm.

3. *Do you have any other comments relating to information for parents, including any comments on whether such information is effective in preventing abductions?*

See answer to question E.3 below.

D. TRAINING AND EDUCATION FOR PROFESSIONALS

1. *Please give details of any training or education that is available in your State for professionals (including, Central Authority personnel, lawyers, mediators, police officers, port or airport authorities and social workers) as a means of assisting them to operate preventive measures.*
2. *Who provides this training and education?*

Each Ministry provides training for the authorities that belong to its administration. The central authority i.e. the Ministry of Justice provides training especially for judges, lawyers and bailiffs. It also organises training that is open to other interested professionals, for example to policemen and social workers. Furthermore, it cooperates with other authorities in providing information on these issues. Central Authority personnel participates in international seminars and conferences.

Ministry for Foreign Affairs organizes training for the personnel of the Finnish Missions abroad. The training takes place twice a year and it focuses on the main points of the Convention and especially on the preventive measures. Ministry for Foreign Affairs participates in education of other agencies as well.

3. *What form does this training take and how regularly does it occur?*

The training usually takes the form of seminars, conferences and information packs.

4. *Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of preventing abduction?*

We have noticed that professionals become interested in these issues only after they have got involved in child abduction cases in practice. Therefore training "on the spot" is usually more effective than general training in seminars.

E. PUBLICITY

1. *Please give details of any means used to publicise the Convention or the work of the Central Authority.*
2. *Please give details of any means used to publicise other preventive measures operating in your State.*

The above-mentioned booklet "International Child Abduction" on these issues has been prepared. The main points of the Convention are often published in media in connection with news on individual child abduction cases.

3. *Do you have any other comments relating to publicity, including any comments on the effectiveness of publicity regarding preventive measures?*

We have a feeling that the public awareness of the Convention and its summary return mechanism has had some preventive effect on potential abductors. News on individual abduction or return cases on media may have a similar effect.

F. CO-OPERATION

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

A national group of representatives from different authorities dealing with international child abduction issues was built up in 1998. The group consists of contact persons from the Ministry for Foreign Affairs, the Ministry of Justice, the Ministry of Social Affairs and Health, the Police, the Bailiffs, Helsinki Social Welfare Board, the SOS-center and the Border Guard. The group has regular meetings twice a year. In addition, the group has gathered in smaller combinations in order to discuss specific issues or individual cases.

The network has proved to be very useful in information sharing in general. It has strengthened the understanding of different agencies for these matters and contributed to better cooperation in individual cases. Moreover, the group has developed practical forms of cooperation between the authorities in urgent cases.

2. *Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies How did this co-operation develop?*

In general the cooperation with other central authorities has been very good. Various international meetings have offered opportunities to get to know colleagues from other states which has made the cooperation even easier and more fruitful.

3. *Please provide details (including contact details, web sites etc.) of all agencies in your State which have a role to play in preventing the removal or retention of children.*

Please see booklet on "International child abduction" at www.om.fi/9604.htm (under "Authorities and organisations").

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

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G. OTHER INFORMATION

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