

Parental Separation ABC

By Yhden Vanhemman Perheiden Liitto ry

Goal:

To offer basic information about how to arrange a child's custody, visiting and support costs after the parents' separation.

Contents:

Basic terminology

Filing for a divorce

Child custody

Right of access / Visitation rights

Child support

Statistics



Basic terminology

- **Primary guardian – lähivanhempi** = parent with whom the child is living (by the civil register)
- **Non-residential parent – etävanhempi** = parent living apart from the child
- *Elatusapu* – monthly child support paid for the primary guardian by the parent living apart
- *Elatustuki* – child support paid by Kela
- **Right of access, visitation rights – tapaamisoikeus** = child's right to be with the parent with whom he/she does not live
- **Sole custody – yksinhuoltaja, yksinhuoltajuus** = parent who alone has the custody of the child OR single parent
- **Joint custody, shared custody – yhteishuoltajuus**

Filing for divorce

- Applying for a divorce is a two-stage process
 - The first stage consists of the delivery (by post, email or personally) of the divorce application to the district court of your municipality of residence. Spouses can do this together or separately.
 - The six-month reconsideration period commences after submitting a divorce application
 - The second stage refers to applying for a final divorce once the six-month reconsideration period has ended. If no application for a final divorce is submitted within the specified time limit, the divorce application will lapse.
- Divorce by the grounds of living separately
 - If the spouses have been living apart for at least two years when they apply for a divorce, the divorce will be granted without a reconsideration period.
- One spouse cannot prevent the divorce. There is no need to search for a guilty party.

Child custody

Child's custody, residence, visitation rights and support after divorce

- The parents agree on how the child's affairs will be arranged after the divorce and the mutual agreement is confirmed by a child welfare supervisor who is authorized by the social services and health care committee.
- If the parents cannot come to an agreement in these matters concerning the child, either of them can request a decision by a court of law.
- The child welfare supervisor in the child's municipality of residence has no quorum but will assist the parents in drawing up an agreement. He/she can also decide

to not confirm the agreement of parents if he/she considers it not in the best interest of the child.

Custody

- **Joint custody**
 - Both parents are custodians of their child/children
 - If the child is born to parents that are married, they have joint custody of their child by default.
- **Sole custody**
 - Only one of the parents is the official custodian
- **Limited joint custody**
 - The matters that parents can decide upon together are listed separately by the district court
 - Agreement of limited joint custody can also be confirmed by the social services

Joint custodians decide jointly on their child's:

- Name
- Residence
- Religion
- Health care
- Schooling
- Passport
- Mother tongue

On custody

- Both custodians have the right to obtain information on the child from authorities.
- The custodian is normally also the guardian meaning that he/she decides on the child's property including bank account.
- Joint custody does not define the child support or visitation rights, these have to be decided separately
- Custody is also decision-making, not just practical responsibility for care
- The entitlement to Kela's child benefit is based on child's residence and only the parent with whom the child lives is entitled to increased child benefit i.e. single-parent supplement.

Right of access / visitation rights

Agreement on right of access / visitation rights

- Defines how much and how regularly the child is with the parent living in another address and how the care responsibilities are divided.
- The parents' working hours (shift work or irregular hours), distance between the parents' places of

residence, the parents' financial circumstances, child's age and needs all such factors affect the visiting agreement.

- Parents can freely agree on these matters among themselves
- It is not mandatory to have a written contract
- It is recommended that the first agreement would be temporary
- Only the non-residential parent is entitled to income support to cover the visiting costs

Supervised visitation

- Are held by the presence of a third person
- Meetings can take place for example in a park, at the premises of child's hobby or in a meeting point of some organization
- The parent in question needs support and guidance in taking care of the child
- It is the obligation of both parents to contribute to the implementation of the right of access and to avoid causing harm to the relationship between the child and the other parent
- A court of law may also grant a right of access between the child and another adult with whom the child is particularly close, if the relationship is comparable to that between a parent and child, for example a foster parent

Example of a meeting agreement

A child has the right to visit his or her mother:

- Even weeks from Thursday to Monday, pick-up and return at the day care by 18:00 on Thursday and by 09:00 on Monday.
- Every second Christmas from 18:00 on 23 December to 18:00 on 25 December starting in 2010
- Four weeks during the summer holidays in two two-week periods, parents must notify the date by 30 April
- One week in winter, parents must notify the dates by 30 October

Alternating residence

- The child resides alternately and for roughly equal amounts of time with each parent, at least 40% of time with each.
- The child can have only one official place of residence/ address
- Requirements:
 - Parents live near to each other
 - Parents are willing and able to take care of their child
 - Parents are able to co-operate and have resolved their personal crisis of the divorce

Enforcement of the child's visitation and residence takes place if:

- The child does not arrive to the confirmed meeting

- The child does not return from the meeting as agreed to his/her primary guardian's place
- The parent can apply to the district court for enforcement of the visitation or residence order

Enforcement process

- The parent applies to a district court, which can also refer the parents to mediation
- The mediator should submit a mediation report or a suggestion of how to resolve the fault within one month at the latest
- The district court decides whether the parent in breach of contract must hand over the child on pain of a fine or order the holder of the enforcement order to collect the child

If the agreement/decision on custody and visitation rights is new

- Up to 3 months old
- The parent can ask for enforcement directly from the enforcement officer
- Also in the case of acute threat of child abduction

Child support

- The parents are responsible for the child's maintenance according to their ability to support the child
- The calculation assesses the child's needs and the ability of the parents to meet the child's needs, including parents' income, assets, other maintenance liabilities and how much time the child is with each of the parents.
- The Ministry of Justice published a guide on the assessment of the amount of child support in 2007, updated in 2019 https://stm.fi/-/kuntainfo-kuntainfo-elatusapujen-ja-elatustukien-maarat-nousevat-1-1-2019?_101_INSTANCE_yr7QpNmIjMjSj_languageld=fi_FI

Child's need for support

- General costs:
 - for 0-6-years 316 euros/month
 - 7-12-years 368 euros/month
 - 13-17-years 496 euros/month
- Specific costs:
 - Share of housing costs: 1 child 23 %, 2 children 19 % per child, 3 children 16 % per child etc.
 - Day care costs
 - Other (schoolchild's afternoon activity, child's insurance payments, costs of a particular hobby, special health care costs, etc.)

Deductions for child support needs:

- Child benefit
- The child's earned income (only if he or she makes a full transition to working life or retirement, not just income from summer jobs, or the like)
- The child's capital income (very rarely and with strict conditions)

Parents' support capacity

Net earned income

- Wage and salary income
- Income from business activity
- Pension income
- Social benefits
- Child benefit increase for single parent
- Income from capital and dividends
- Other income
- A parent's assets other than those covered by basic social security (own home, car needed for work, etc.) under certain conditions.

Deductions

- General costs of living 634 euros (or 534 euros for a parent in marriage or in common-law-marriage)
 - Dwelling costs as such e.g., loan instalments and interests, condominium charge, rent, electricity and water charge, other dwelling cost)
 - Minus the child's share of the accommodation costs for the primary guardian parent
- Other deductions
 - Special health care costs
 - Commuting expenses
 - Debt servicing (primarily student loan)
 - Parent's other support liability (other own children and in certain circumstances the spouse) 534,265 €
 - Child's meeting expenses (expenses under 128 euros/month or over 256 euros are not considered)

Non-residential parent's deduction for care of the child

Deductions for child support can be made if the child stays with the non-residential parent at least the following amount of time:

- Average 7-9 nights/month = (under 7 years) 32€- (7-12 years) 34,00€- (over 13 years) 37,50€
- Average 10-12 nights/month = 42,50€- 46,00€- 52,50€
- Average 13-15 night/months = 56,00€- 60,00€- 65

How to calculate the amount of the child support

Child support =

$$\text{Child's need} \times \frac{\text{parent's financial capacity}}{\text{parents' combined financial capacity}} - \text{possible deductions}$$

Other matters related to child support:

- An index-linked increase will be added to the child support at the beginning of the year
- Obligation to pay child support ends when the child turns 18
- However, parents are responsible for the child's school expenses even after the child has turned 18, if this is found to be reasonable.
- Child support can be paid in a lump sum
- The spouse may also be entitled to child support

Recovery of alimony and child support payments

- If the non-resident parent does not pay the child support as agreed, the primary guardian can take the matter to foreclosure or apply for child support from Kela (in which case Kela takes care of the recovery proceedings)
- You are entitled to Kela's child support payments (in 2022 172,59€/month/child) IF
 - The paternity has not been confirmed
 - The non-residential parent is officially proved to not have financial capacity to pay the child support
 - The non-residential parent defaults on payments

Statistics

- Single-parent families make up 2020 23,3 % of all families with children (SVT: Perheet 2020, (verkkojulkaisu 2021))
- There are 93000 intercultural families in Finland (2021), half of them having children
- Approximately 30 000 children's parents divorce annually
- In 2020 there were 13478 divorces in Finland, out of which 13% were intercultural
- The vast majority of parents are able to negotiate among themselves on matters concerning their children, only 4 % ends up in court
- Mother is the custodial parent in 85% of the cases
- 16 % of parents have opted for shared custody