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To Whom It May Concern,

We the undersigned wish to bring some human rights issues to your attention because the public discourse in Finland and the Finnish government overlook them almost entirely. The issues significantly affect the well-being of Finnish families. We focus on the families of divorce and those affected by child protection because hardly anywhere else is the role of the government so crucial and the challenges of the existing policies so glaring.

1. Families of Divorce Suffer from Severe Violations of Human Rights

Finland violates the European Convention on Human rights: articles 6 (Right to a Fair Trial), 7 (No Punishment Without Law), 8 (Right to Respect for Private and Family Life), 10 (Freedom of Expression), 13 (Right to an Effective Remedy), 14 (Prohibition of Discrimination), 17 (Prohibition of Abuse of Rights) in child and family matters.

Similarly, one can argue that Finland violates the UN Convention on the Rights of the Child (UNCRC) in child and family matters: articles 2 (Non-discrimination), 3 (Best Interests of the Child), 4 (Implementation of the Convention), 5 (Parental Guidance and a Child's Evolving Capabilities), 6 (Life, Survival and Development), 7 (Birth Registration, Name, Nationality, Care), 8 (Protection and Preservation of Identity), 9 (Separation from Parents), 10 (Family Reunification), 11 (Abduction and Non-return of Children), 12 (Respect for the Views of the Child), 18 (Parental Responsibilities and State Assistance), 19 (Protection from Violence, Abuse and Neglect), 13 (Children with a Disability), 24 (Health and Health Services), 25 (Review of Treatment in Care), 26 (Social Security), 27 (Adequate Standard of Living), 35 (Abduction, Sale and Trafficking), 36 (Other Forms of Exploitation), 37 (Inhumane Treatment and Detention), 39 (Recovery from Trauma and Reintegration), and 42 (Knowledge of Rights).

The violations cause a great deal of suffering in the society for children and parents, but the Finnish authorities are reluctant or slow to address the issues.

1.1. Shared Parenting after Divorce Still not a Reality for Most Children and Parents, a Clear Violation of the Rights of Parents and Children to Family Life and Best Possible Care, Development, and Health

Professor Edward Kruk from the University of British Columbia leads the International Council on Shared Parenting, which advises also the Council of Europe. Kruk has called the Western lack of support for shared parenting a form of political violence. There is no justification for effectively removing good and involved parents from the lives of their children when parents separate. Yet this is what happens to most divorced fathers and their children in Finland.

In 2020, a large survey was conducted by the State of Finland to assess the prevalence of shared parenting and issues surrounding it (Miettinen et al. 2020). Effective fatherslessness was found to be the norm for most children of divorce in Finland. It was discovered that 62 percent of children residing with their mothers spent four nights a month with their fathers at most according to the custodial mothers. Moreover, 29 percent of children living with their mothers spent even less than one night a month with their fathers according to the mother respondents. Only 20 percent of children, who live primarily with their mothers, overnights on 12 or days a month with their fathers.

Statistics Finland shows that 27 % of all children aged 0-17 are from families with only one biological parent present. Out of these children, 82 % live with their mothers.

1.2. Best Interests of Children of Divorce According to Empirical Research - Lack of Knowledge and Caring in Government, Continuation of Stereotypes and Myths

It has been recognized by the Council of Europe resolution 2079 already in 2015 that the empirical research supports shared parental responsibility and shared residence of children following divorce as being in the best interests of children. The resolution begins by emphasizing that the role of the fathers has not been properly recognized and valued and urges governments to introduce shared parenting and sharing of resources as the default custodial arrangement.

As has been documented by the Elvis Project in Stockholm and Dr. Malin Bergström, children of divorce who spend half of their time with each parent fare almost as well as children of nuclear families. On the other hand, children who live primarily in one home experience well-being problems almost twice as frequently as those from shared parenting backgrounds. In Sweden, a full half of the new children of divorce spend an equal amount of time with each parent. (Bergström 2015)

It is worth noting that Finland and Sweden resemble each other so closely that the results could be deemed directly applicable to the Finnish society.

The overall picture from 60 studies across the western world is that shared parenting promotes the well-being of children as shown in Linda Nielsen's review in 2018. In psychological research literature published in English, there are no well-conducted studies showing that shared parenting harms children (the famous McIntosh study in 2010 concerning babies and toddlers has been largely discredited by the research community because of, e.g., the small sample size and the narrow-minded interpretation of the results.) (Nielsen 2018, Nielsen 2014)

Linda Nielsen has argued that, based on her extensive meta-analysis in 2017, high-quality parent-child relationships are the best predictor of children's well-being and the living arrangement matters less (Nielsen 2017a).

Professor Michael Lamb, on his own right, identified common threats to children of divorce in his research review in 2016: 1) poverty, 2) parents' increased emotional strain and the resulting deterioration of parenting quality, 3) loss of parents' time for children, 4) high and sustained conflict between the parents if the children are made part of it, and 5) loss of a meaningful relationship with the other parent, usually the father.

Professor Edward Kruk has summarized the emerging consensus among custody researchers: as the children of divorce are threatened by the parents' fighting over custody, the society should embrace the equality of parents when doing so is sensible and children are not threatened by neglect or abuse.

The Finnish Government Is Responsible for Gender Discrimination and Violations of Children's Rights - Manifestations in Widespread Parental Alienation, Lopsided Sharing of Parenting Time, and Almost Complete Lack of Financial and Social Support for Fathers and Their Offspring in the Fathers' Homes

OECD reported in 2015 that Finnish fathers spent slightly more active time with their school-aged children than Finnish mothers (OECD 2017). Despite Finnish fathers not wanting to be secondary parents and lose their relationship with the children also after parental separation (Terävä 2021), the Finnish society pushes most fathers to the sidelines and reserves a secondary role typically also for the fathers who've been more actively involved in the upbringing of children than mothers before separation (Isät lasten asialla 2018, Isä rakastaa sinua 2021).

A study conducted by Isät lasten asialla ry in 2018 on the associations' Facebook pages showed that fathers typically lose the residence of their children regardless of parenting quality; 35 % of the 124 overall father respondents (incl. 10 grandparents or new spouses) thought that the mother had won the residence despite being a less able parent. (Isät lasten asialla ry 2018, Attachment 1). By comparison, only 11 % of the 35 mother respondents felt the mother had lost despite being the best-equipped

parent. Out of the 60 fathers who had given more active time to the children than the mother, 48 % had been given less than 35 % of the parenting time.

Another survey conducted on *Isä rakastaa sinua* Facebook pages in 2021 replicated the previous survey's findings. Of the 81 respondents, 57 % felt that the judge had not been impartial in documenting and deciding the court case, 54 % felt the judge had not understood the best interests of the children involved, 51 % felt the judge had been presented an account of parental alienation but that the judge had not even documented the facts pertaining to the alienation in the decision. (*Isä rakastaa sinua* 2021)

The largest survey conducted in the Nordic countries in 2021 by Föreningen Far in cooperation with national associations in each country, Lasten oikeudet ry in Finland, showed that the overwhelming majority of the surveyed 2700 Nordic fathers deemed themselves victims of severe psychological violence after divorce. The violence resulted essentially from the lack of rights or the inadequate enforcement of those rights - 80 % of the respondents stated that judicial rights were needed to correct the situation. Among the study findings were that 58 % of the fathers had suffered from mental health deterioration significantly or catastrophically; 64 % had lost their trust in authorities to a significant, or even to a catastrophic, extent; and 37 % reported that their children's health and well-being had suffered significantly or even catastrophically. (Föreningen Far 2021)

Continuing Lack of Support for Two Homes

Even the new Finnish law on child custody from 2019 discourages shared parenting in situations where there is conflict between the parents. In their statement to the law review workgroup in the Ministry of Justice, *Isät lasten asialla ry*, for example, asked that parents no longer be rewarded for creating conflict and behaving badly (*Isät lasten asialla* 2018).

Some attention was given to the issue of parental alienation, but the new law, like the previous one, overlooks the typically one-sided nature of conflict in custody disputes (Hannuniemi 2015) and even discourages shared parenting when one parent opposes it and creates an impression of conflict (Eduskunnan lakivaliokunta 2018). This is the result of persistent rules of thumb that are not based on empirical research but largely on the good mother myth (Lamb 2016) and, e.g., misguided perceptions of family violence, and misuse of gendered research into family violence.

Traditionally, Finnish courts have virtually never awarded equal amounts of time to both parents (Palo-Repo 2015). This flies in the face of research showing that most shared parenting arrangements were initially opposed by one of the parties and agreed to in mediation, as a result of consultation, or due to a court decision (Nielsen 2017b).

Attitude of the Finnish Government, Judiciary, and Social Workers

The reluctance of the Finnish society to acknowledge that fathers and mothers both

mean a great deal to children is displayed in the all-too-common dismissive attitude of government workers towards fathers, documented, for example, by Emilia Kumpusalo in 2018 in her master's thesis on parents' custodial abuse of one another after divorce (Kumpusalo 2018).

Indepth criticism of the judicial system can be found, e.g, in Ph.D. Anja Hannuniemi's thesis from 2015 (Hannuniemi 2015). Hannuniemi concluded that since there were no follow-up studies of custody decisions in Finland, the society could keep imagining that the judicial system worked reasonably well even though the situation was alarming in reality. Hannuniemi's study included 103 prolonged custody cases. A fourth of the children involved were eventually placed into foster care following often unwise court decisions. Hannuniemi identified two problems above all else: the good mother myth and inadequate investigations into families. She lamented that wrong-minded decisions set the paths of children on wrong tracks and led them to become outcasts in society.

There are hardly any official statistics on custody decisions in Finland, and the most recent government studies are from 2006 and 2008. In 2006, it was reported that only 13 percent of the first-time residence decisions favored the father, 17 percent when counting the divorce cases in addition to the child custody cases (Valkama & Litmala 2006).

District courts were dealing with more follow-up cases than first-time cases in 2005-2006, showing that the parents were not happy with the rulings. Despite this, the largest court of appeals in Finland, the Helsinki Court of Appeals, overturned a district court decision on residence only twice a year in favor of the father in 2003-2006 (Palo-Repo 2015). This means that at most three percent of the district court decisions on residence are changed in the appeals process.

Hannuniemi also concluded that there were no cases whatsoever solved by the Supreme Court of Finland that would have significantly altered prior decisions on custody.

Ph.D. Sanna Koulu also looked into custody decisions in her thesis in 2014 (Koulu 2014). She concluded that the Supreme Court of Finland did not understand the best interests of children and did not care about the quality of parenting.

Koulu observed that the best interests of children were a phrase used in rulings but not actually weighed. Koulu proposed that the law be changed to include the quality of parenting and to detail the best interests of children. This was not accomplished in the child custody law of 2019. The law review work group was led a Supreme Court justice Tuomo Antila who has, in the words of a senior activist lawyer, been one of the persons preventing progress for a long time.

The Supreme Court has, for example, correctly seen that both parents need an equal amount of money to look after the children in 50-50 physical custody but refused to correct the situation in decision KKO 2010:38 by appealing to a lack of receipts. District courts have, thereby, continued to use the child support formula from 2007 (Oikeusministeriö 2007) that leaves only 600 €/mo for the non-custodial parent for his

own everyday needs (food, clothing, etc.) and only 5-6 €/day/child for children in the home of the non-custodial parent. The non-custodial parent is not eligible to housing aid. In the welfare calculations, child support paid to the custodial parent is not counted as a valid expense (Kela 2022), which means that non-custodial parents can live in abject poverty well below the poverty limits set by welfare statutes.

There's no legal remedy available when the courts misuse their authority. The Ombudsman and the Chancellor of Justice, who are responsible for the oversight of the judiciary, never step in to address clearly illegal and unethical decisions by the courts. The lawyer working for the Ombudsman of Justice lamented, e.g., to a representative of our association that there was judicial oversight of legality available only for a select few in the Finnish society. In 2020, the Ombudsman of Justice received over 7000 complaints about misconduct by government workers and didn't press charges in any of the cases; only 51 reminders were given.

The attitude of the employees in the highest offices in the Ministry of Justice is that the Finnish officials' work is of a high quality, there's no need for government studies into decisions and customer experiences (supposedly, "losers always complain"), and that all the problems explained by accidental judicial errors, for which there's no remedy. The representatives of our association have talked with a wide range of public officials, and the complete denial of systematic failures is striking and appalling.

An illustrative case study

A Finnish father has documented his child custody cases thoroughly in his blog (Lapsen etu 2021). We will use his case as an illustration of the severe and purposeful discrimination affecting the father and the child.

In short, the child had lived with the father with the consent of the mother until age 10. The father wanted child support from the mother, and the mother, then, demanded that the father be stripped of custody. The Helsinki District Court did what the mother requested despite the father's evidence and wishes.

The child continued to live roughly two thirds of the time with the father despite the father not being a legal guardian anymore. The family went to court several times and appealed to the Helsinki Court of Appeals and the Supreme Court.

In their final decision in 2021, the father and the 16-year-old son applied, together, that the Helsinki District Court give the father sole custody, or at least joint custody. The judge presiding the case was the head judge of child affairs in the court, Suvi Lahtinen. She wrote, in essence, that the case had no merit. Meanwhile, in 2020, Kela had decided to start paying child benefits to the father – because the child lived primarily with the father – and wanted the mother to pay back child support she had received from Kela. The child had changed his home address himself to his father's home at age 15 when he was legally able to do so.

1.3. Conclusions

Finland struggles with recognizing the human and constitutional rights of children and fathers. The best interests of children are not understood by the judicial system appropriately, and parents frequently complain they don't have a voice. Sometimes the courts use absurd criteria in decisions and, even on purpose, decide against the best interests of children.

References

Miettinen, Anneli et al. 2020. Lasten vuoroasuminen ja sosiaaliturva : Vuoroasumisen nykytila ja merkitys etuus- ja palvelujärjestelmän kannalta. Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja, 2020:51, ISSN 2342-6799.
<https://julkaisut.valtioneuvosto.fi/handle/10024/162548>

Bergström, Malin et al. 2015. Fifty moves a year: Is there an association between joint physical custody and psychosomatic problems in children. *Journal of Epidemiology and Community Health* 69(8). DOI:10.1136/jech-2014-205058

Nielsen, Linda. 2018. Joint Versus Sole Physical Custody: Children's Outcomes Independent of Parent-Child Relationships, Income, and Conflict in 60 Studies. *Journal of Divorce & Remarriage*, 59:4, 247-281. DOI: 10.1080/10502556.2018.1454204

Nielsen, Linda. 2014. Parenting plans for infants, toddlers, and preschoolers: Research and issues. *Journal of Divorce & Remarriage*, 55(4), 315-333. <https://doi.org/10.1080/10502556.2014.901857>

Nielsen, Linda. 2017a. Re-examining the research on parental conflict, coparenting, and custody arrangements. *Psychology, Public Policy, and Law*, 23(2), 211-231. <https://doi.org/10.1037/law0000109>

Lamb, Michael E. 2016. Critical analysis of research on parenting plans and children's well-being. In L. Drozd, M. Saini, & N. Olesen (Eds.), *Parenting plan evaluations: Applied research for the family court* (pp. 170-202). Oxford University Press. <https://doi.org/10.1093/med:psych/9780199396580.003.0007>

Kruk, Edward. 2013. *The Equal Parent Presumption: Social Justice in the Legal Determination of Parenting after Divorce*. McGill-Queen's University Press.

OECD. 2017. *Dare to Share: Germany's Experience Promoting Equal Partnership in Families*. OECD Publishing. Paris. <http://dx.doi.org/10.1787/9789264259157-en>

Terävä, Johanna & Böök Marja Leena. 2021. *Vanhemmuus eron jälkeen. Ensi- ja turvakotien liitto*.

Isät lasten asialla ry. 2018. *Isän ja äidin vanhemmuus. (Attachment 1)*

Isä rakastaa sinua. 2021. *Miten lapsen asia käsiteltiin lapsioikeudessa ja miten oikeus vaikutti lapsisuhteeseen? (Attachment 2)*

Föreningen Far. 2021. *Nordic Survey 2021 - Gender Discrimination Against Fathers and Children. (Attachment 3)*

Isät lasten asialla ry. 2018. Eduskunnan lakivaliokunnalle 4.10.2018. <https://www.eduskunta.fi/FI/vaski/JulkaistuMetatieto/Documents/EDK-2018-AK-210364.pdf>

Hannuniemi, Anja. 2015. *Vanhempien mielenterveyshäiriöt ja vieraannuttaminen lapsen huoltoriidoissa : lääkintäoikeudellinen ja oikeussosiologinen tutkimus*. Helsingin yliopisto, oikeustieteellinen tiedekunta, <https://helda.helsinki.fi/handle/10138/154549>

Eduskunnan lakivaliokunta. 2018. Valiokunnan mietintö LaVM 12/2018 vp - HE 88/2018 vp. https://www.eduskunta.fi/FI/vaski/Mietinto/Sivut/LaVM_12+2018.aspx

Palo-Repo, Mari. 2015. Lasten huolto- ja asumisriidat Helsingin hovioikeudessa 2003–2006. University of Helsinki, Statistics. <http://urn.fi/URN:NBN:fi:hulib-201703273230>

Nielsen, Linda. 2017b. 10 Surprising Findings on Shared Parenting After Divorce or Separation. Institute for Family Studies. <https://ifstudies.org/blog/10-surprising-findings-on-shared-parenting-after-divorce-or-separation>

Kumpusalo, Emilia. 2018. Isien kokemuksia huoltokiusaamisesta. University of Lapland, Social Work. <https://lauda.ulapland.fi/handle/10024/63620>

Valkama & Litmala. 2006. Lasten huoltoriidat käräjäoikeuksissa. Oikeuspoliittinen tutkimuslaitos. <http://hdl.handle.net/10138/152456>

Koulu, Sanna. 2014. Lapsen huolto- ja tapaamissopimukset : Oikeuden rakenteet ja sopivat perheet. University of Helsinki, Faculty of Law. <https://helda.helsinki.fi/handle/10138/135683>

Oikeusministeriö. 2007. Ohje lapsen elatusavun suuruuden arvioimiseksi. Oikeusministeriön julkaisu 2007:2. <http://urn.fi/URN:ISBN:978-952-466-423-3>

Kela. 2022. Mihin menoihin perustoimeentulotukea voi saada? <https://www.kela.fi/toimeentulotuki-mihin-menoihin>

Lapsen etu -blogi. 2021. <https://lapsenetu.wordpress.com/>