

# Legal regulation of the protection of the rights of abducted children (experience of France, Finland, and Sweden)

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**Abstract.** The purpose of the research is to analyze the law enforcement practice of protecting the rights of abducted children by the example of several European countries (France, Finland, and Sweden) and to highlight the main trends in the development of this practice at the international level. Research methods: analysis, synthesis, interpretation, structural-functional approach, classification, synthesis and interpretation of the information obtained. The main method of analysis of documents which are normative legal acts in the field of protection of the rights of abducted children at the level of international legislation, as well as the national legislation of France, Finland, and Sweden. The main result of the research was an analysis of the main national regulations on the protection of the rights of abducted children in France, Finland, and Sweden, as well as the activities of the central authority for international child abduction in these countries. In addition, the main trends in the development of law enforcement practice in the protection of the rights of abducted children at the international level were highlighted, using the examples of the countries studied. Scientific novelty of the research is substantiated by the determining role of The Hague Conventions of 1980 and 1996 as fundamental international documents in the field of international child abduction, the definition of the fundamental principle in the formation of national legislation and resolving the issues of protecting the rights of abducted children, and identifying the specifics of law enforcement practice in protecting the rights of abducted children in individual countries (France, Finland, and Sweden).

**Keywords:** child abduction, law enforcement, convention, protection of rights

## 1 Introduction

If one parent prevents the child from communicating with the other parent, both the child's and the parent's rights are violated. This could be a violation of visitation rights, one parent

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kidnapping the child domestically, or taking the child out of the country. This problem has been recognized as urgent at the international level, and the issue of its legal regulation has been transformed into practice. First of all, we are referring to the adoption and ratification by most countries of the world, including France, Finland and Sweden, of such documents as *The Hague Convention on the Civil Aspects of International Child Abduction (25 October 1980)* and *the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (19 October 1996)*. These Conventions in countries that have ratified them are linked to the development of national legislation to protect the rights of children who need additional protection from the risk of international abduction. The problem of legal regulation of the protection of the rights of abducted children and law enforcement practice in this area is also the subject of theoretical research.

The essence of the problem of child abduction in European and Russian realities, including in the context of the 1980 and 1996 Hague Conventions was studied by Abashidze, Gugunsky, and Keburia [1], Kulakova [2], Pato and Rostovtseva [3], and Khazova [4].

The analysis of legislation and mechanisms for the protection of children's rights at the international level was performed by Ilyichev, Lazareva [5], Krutskikh, Biryukov [6], Lebedeva [7], Nerovnaya [8], and Reznick [9].

Some authors have paid attention to law enforcement practice in solving problems related to the problem of child abduction. For example, Nigmatullin, Bukalerova, and Bisyarina [10] studied international and criminal law aspects of combating child trafficking; Nikitina [11] analyzed the prevention of domestic violence against minors.

Among foreign authors on the topic of interest to us, the most interesting are the works of Garlicki [12], Silvis [13], and Svensson, Staffan [14].

In the interests of the research, the authors set themselves the following tasks: 1) To examine the main national regulations on the protection of the rights of abducted children in France, Finland, and Sweden; 2) to identify the central authority for international child abduction and its main powers in France, Finland, and Sweden; 3) to identify the main trends in the development of law enforcement practice in the protection of the rights of abducted children at the international level, using the studied countries as examples.

*Research Hypothesis.* The principles of formation of legislation regulating the protection of the rights of abducted children and the law enforcement practice in this area of legal relations in European countries (France, Finland, and Sweden) are generally defined at the international level. The national legislation of these countries was formed in compliance with the provisions of The Hague Conventions of 1980 and 1996.

## 2 Methods

The main method of research was an analysis of documents – normative legal acts in the field of protection of the rights of abducted children at the level of international legislation, as well as national legislation of France, Finland, and Sweden.

The main sources of information for the collection and analysis of normative legal acts used documents:

- in terms of international legislation from the United Nations (UN) legal database at [www.UN.org](http://www.UN.org), the International Center for Missing and Exploited Children at [www.icmec.org](http://www.icmec.org);

- in terms of national legislation in France – published on the online database of current French legislative information Légifrance, on the website of the National Observatoire de la protection de l'enfance (ONPE), the legal reference systems [Justice.gouv.fr](http://Justice.gouv.fr), and Yurist-online;

- in terms of Finland's national legislation, as published on the Finlex online database of up-to-date Finnish legislation and other judicial information;

- in terms of the national legislation of the Swedish Kingdom, as published on the official website of Sveriges Riksdag, the national legislative body and the highest governing body of Sweden, the official website of the Swedish Palmen project (Svenska Palmen).

Also used the site of the information and legal company "Garant", reference legal system "Consultant Plus".

### 3 Results

A systematic list of the normative acts analyzed, as well as a description of the central authority for international child abduction in France, Finland, and Sweden, is presented in Table 1.

**Table 1** Normative legal acts and the central body in France, Finland, and Sweden to protect the rights of abducted children

Country	The main national normative legal acts in the field of protection of the rights of abducted children	The Central Authority for International Child Abduction and its main powers
France	<ul style="list-style-type: none"> <li>- Criminal Code of France [15] (as of July 1, 2000.);</li> <li>- Constitution of October 4, 1958 [16];</li> <li>- Declaration of the Rights of Man and of the Citizen, 1789 [17];</li> <li>- <b>Social Security and Family Code, 2000</b> [18];</li> <li>- The Family and Social Assistance Code of 1956 [19]</li> </ul>	The Office of Civil Affairs and the Press of the French Ministry of Justice and Liberties. Receives and files applications for the return of children, as well as applications for the exercise of the right of access under the 1980 Convention.
Finland	<ul style="list-style-type: none"> <li>- Child Protection Act (Child Welfare Act) (April 13, 2007) [20];</li> <li>- Child Custody and Visiting Rights Act (April 8, 1983) [21];</li> <li>- Law on Social Services: Adopted April 01, 2015 [22]</li> <li>- Criminal Code of the Republic of Finland [23]</li> </ul>	Ministry of Justice of Finland [24]. If the child has been removed to a state that has acceded to the 1980 Convention, the Ministry shall assist in the abduction proceedings, gives instructions on how to draw up and submit an application for the return of a child. If the child is taken to a country that is not a party to international agreements, it is advisable to contact the Finnish Ministry of Foreign Affairs [25].
Sweden	<ul style="list-style-type: none"> <li>Criminal Code of Sweden (Brottsbalken) 1962:700 [26];</li> <li>- Family Code of Sweden (Föräldrabalk) (1949:381) [27];</li> <li>- Marriage Code (Äktenskapsbalk) (1987:230) [28];</li> <li>- Law "Social Services Act" (Socialtjänstlag) (2001:453) [29];</li> <li>- Law "On the Compulsory Guardianship of Minors in Special Cases" (<i>Lag med särskilda bestämmelser om vård av unga</i>) (1990:52) [30];</li> <li>- Swedish Citizenship Act (Utlänningslagen) (2001: 82) [31]</li> </ul>	Swedish Ministry of Justice [32]. The Family and Business Law Division investigates international child abduction cases at the federal level under the 1980 Convention.

## 4 Discussion

An analysis of the legal regulation and law enforcement practice of protecting the rights of abducted children in France, Finland, and Sweden allows us to give a certain comparative characteristic between these countries.

French law categorically forbids foreign parents to take their children born in France abroad. If a parent takes a child from France abroad, French justice requires that the child be returned to his or her country of residence.

As France is a member of the European Union (EU), Council Regulation (EC) No. 2201/2003 of 27 November 2003 on “Jurisdiction and the Recognition and Enforcement of Judgments in Family Matters and in Matters of Parental Responsibility” or Brussels II Regulation.

Article 1 of Law No. 2016-297 of March 14, 2016. “On Protection of Children” defines the meaning of child protection, which puts the child and his or her interests at the center of the intervention.

As Abashidze, Gugunsky, and Keburia point out in their study, in order to ensure the voluntary return of an illegally displaced or retained child the Ministry of Justice and Liberties of France contacts the person who may have the child and also offers the parties the use of mediation and other forms of alternative dispute resolution [1].

Provisions on the right of access are contained in the Civil Code of France [33]. With regard to the exercise of the right of access, it is up to the court to decide. An alternative form of resolving international family disputes over child abduction is conciliation in court. Since September 1, 2011, the parties may apply an alternative method of dispute resolution, the so-called “interactive process,” the provisions of which are contained in Articles 2062-2067 of the Civil Code of France [33].

Since February 2006, France has adopted a nationwide warning system *Alerte Enlèvement*, which broadcasts (on radio, television, and street screens) information about the abduction of a minor [34]. It should also be noted that *CFPE-Enfants disparus* is a non-profit organization that is a public service where anyone can apply for the free legal advice they need [35].

In Finland, the issue of international child abduction arises when a child under the age of 16 permanently residing in Finland is moved abroad without the consent of the person who has custody of the child, or is retained abroad after a legal meeting with a separated parent.

Support for the return of a child in Finland can be provided by central authorities as well as by social organizations: The Social Welfare and Health Authorities of the Ministry of Social Welfare and Health; the Union of Finnish Lawyers; the Society for Stolen Children; the Mental Health Society of Finland; SOS Centers.

Child custody provisions are included in the Child Custody and Visiting Rights Act (361/1983) [36]. Custody is awarded to the child’s parents jointly, or only one parent is responsible for the child’s custody. The decision to determine custody of the child also answers the question of whether or not the child has been abducted.

There are special mechanisms between the Nordic countries, so that Finnish judgments concerning child custody and contact rights are enforced, particularly in Sweden. In the EU, the most important agreement in this area is the European Convention on the Recognition and Enforcement of Judgments Concerning Custody and Return of Children.

If the judgment is rendered in a country outside the Nordic and EU member states, a condition for its enforcement is a decision to recognize it issued by the Helsinki Court of Justice on an application.

In Sweden, child protection is regulated by the Law [37]. In accordance with it, parents have the right to turn to local social services, where family counseling can be conducted

under the guidance of a social worker with the necessary competence in the pre-trial order [37].

In the Family Code of Sweden [38] it is determined that parents/guardians make joint decisions on all issues related to the upbringing of the child. If there is no possibility of compromise, including on the choice of the child's place of residence, the order of communication with one of the parents/guardians, disputes between the parties are resolved in court, taking into account the interests of the minor. Unauthorized deprivation of communication with a child by one parent (for example, as a result of moving to a new place of residence, including abroad) is considered "child abuse" and falls under the relevant article of the Criminal Code of Sweden [39].

The Swedish Citizenship Act should be mentioned because it is the question of a child's citizenship that is decisive when deciding on further action for his or her return. According to the law, a child is a Swedish citizen by birth if one of his parents is a Swedish citizen.

Apart from the Swedish Ministry of Justice [40] as a central body, children themselves who want to get help nationally can call Children's Rights in the Community (Barnets rätt i samhälle, BRIS). This is a hotline where all children under the age of 18 can go anonymously for help and advice. Each municipality has a "Family Legal Service" (Familjerättsbyrå), which, at the request of the parents, can rule on the establishment of paternity; it deals with disputes between the parents about rights to the child, his residence with each parent. B. Reznik, who paid attention to the activity of this service in his work notes that the main goal of its work is to achieve a verbal and subsequently written agreement between parents on parenting issues [9].

## **5 Conclusion**

The analytical review of legislation and law enforcement practice to protect the rights of abducted children in France, Finland, and Sweden has allowed us to distinguish trends in international practice and the specifics of these processes in individual countries.

General trends in the development of legislation and law enforcement practice at the international level include:

- The defining role of the 1980 and 1996 Hague Conventions as the fundamental international instruments in this field. In all countries studied these documents are ratified and the central body responsible for the implementation of the 1980 Convention is identified;
- The fundamental principle in formulating national legislation and resolving issues related to the protection of the rights of abducted children is the priority of the interests of the child;
- the predominant way of deciding on the return of an abducted child from the country or the right of access to an abducted child in another country is through a judicial resolution of the issue.

Specific features of the development of these processes in individual countries include the fact that:

- In addition to a central authority, the practice of protecting the rights of abducted children in individual countries involves other actors, whose organizational form and functions differ from country to country;
- law enforcement practices in a particular country are influenced by its participation in international organizations, as well as by the priority given to these international ties within the country. In particular, international cooperation on the issue of child abduction between Finland and Sweden is facilitated because of the close ties between them as Nordic countries.

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