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Dissertation: The fate of the child after divorce. A comparative studies of Polish and Finnish regulations on the backgrounds of international law.

SUMMARY

The family is a natural and fundamental unit of society, which creates an essential environment for the development of the child. That is why, the international law highlights its importance and guarantees protection from society and state. The right of the child to a family can be reconstructed from the regulations of the Convention on the Rights of the Child from 1989. The Convention emphasizes, in the Preamble, that *“the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”*. Moreover, the Convention codifies rights and obligations of parents that which help to implement the right of the child to be brought up in a family.

The child, due to its dependence, needs help and protection from adults. This task was entrusted to parents by nature and was confirmed by states, through their legislation. This fact is the origin of a legal institution known as parental authority in Poland and *lapsen huolto* (child custody) in Finland.

However, above mentioned institution is very complex and a lot of difficult problems can occur. One of them is the position of the child in the divorce procedure. Courts are facing a tough task to reconcile the interests of divorcing spouses and their children. They decide not only about ending of the marriage, but also, among others, about matters such as the arrangements for childcare and contact with him.

The aim of the dissertation is to analyze two national legal systems – Polish and Finnish - in the context of the fate of the child after divorce of parents. The main task is to find the optimal solutions which allow to implement the principle of the best interest of the child and international standards into national regulations in the most beneficial way. It is worth to mention that the Convention on the Rights of the Child recognizes the best interest of the child as a value superior over the interest of others, including parents.

Undoubtedly, institution of parental authority/child custody has a similar role in both countries, which is a result of implementation of standards foreseen in international law, such as the Convention on the Rights of the Child – which designates the direction of the national law development. However, there are differences between matters related to divorce proceedings and courts' decisions with respect to parental authority and contact with the child.

In Poland, the basis for the dissolution of a marriage by divorce is a complete and permanent breakdown of marriage. During the proceedings, the court thoroughly examines whether these premises exist. Moreover, due to the existence of negative premises, the court conducts divorce proceedings regarding the spouse's guilt in the breakdown of the marriage, the best interest of common children and compliance of the divorce request with the principles of social coexistence. Thus, the court strongly interferes into the private life of spouses. The questions arise whether this kind of divorce proceeding exacerbates the conflict between the spouses? Do parents remember about the well-being of their children? Does the refusal to dissolve the marriage against the will of the parties change something in the actual situation of the family?

In Finland, the divorce proceedings are based on the principle of divorce on demand, which in practice means a possibility to end marriage on the request of the interested parties. The divorce procedure adopted in Finland, which is characterized by a lack of divorce

premises and simple and fast proceedings, allows parents to focus on a custody arrangement and finding solutions which take into account the best interests of their children.

Another important issue, which should be taken into account during the discussion about the child custody, is the issue of the place of the child in the divorce proceedings. The question is how Finland and Poland fulfill the obligation of hearing of "*the child who is capable of forming his or her own views...in all matters affecting the child*", which is stipulated in article 12 of the Convention on the Rights of the Child.

Finally, what should be considered is how parents, who decide to divorce, have come to an agreement in the field of parental responsibility and contacts with children. First of all, attention should be put on the possibility of making these decisions outside the courtroom with mediation as a main tool to achieve the best solutions.

Additionally, I will analyze Strasbourg case-law to assess how Poland and Finland complies with their international obligations.