Legalisation of Public Documents within the EU Member States

FINLAND

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PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements

Introduction
Due to the small significance of the matter, there is not a lot of legalisation literature in Finland. The only publication about the issue is Julkisen notaarin tehtävien kehittäminen (Developing the tasks of the Notary Public) published by the Ministry of Justice. This book discusses the tasks of the Notary Public and therefore also legalisation. There is not any act solely on legalisation but the basic regulations are in the Act on Notary Public (287/1960). In Finland, the competent authority to legalise public documents is the Ministry for Foreign Affairs. In compliance with Section 7 of the Act on Notary Public, the Head of the Legal Department of the Ministry for Foreign Affairs of Finland, or a state official appointed by him, has competence to the issue of certificates for the authorities of other states. More details of the act shall be introduced later in chapter A.4.

One thing, worthy of mentioning, is that there is no significant national case law relevant to the issue. This report is based on the publication mentioned above and on interviews. I have discussed with District Registrar, Notary Public Raija Ahvamaa; District Registrar, Notary Public Hannu Mäkelä; District Registrar, Notary Public Peter Oljemark; Senior Officer of the Ministry of Justice Maarit Rubanin and Secretary Irene Aliska, who works on legalisation subjects in the Ministry for Foreign Affairs of Finland.

A.1 European Community law

Legislative measures taken to implement the relevant EU legislation in Finland are following: National provisions concerning the Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, are Amendment (972/2004) of Legal Aid Act (257/2002) and Amendment (997/2004) of Government Decree on Legal Aid (338/2002). In compliance with Section 19 of the Amendment of Government Decree on

Legal Aid public legal aid offices are competent transmitting authorities and added to this, concerning family law matters the Ministry of Justice is a competent transmitting authority. Competent receiving authority is Helsinki public legal aid office.

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00180 Helsinki, Finland
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00181 Helsinki, Finland
phone number: +358 10 36 60100
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e-mail address: helsinki.oikapu@om.fi

According to the same Section 19, in addition to Finnish and Swedish, English is acceptable language to the competent receiving authority for completion of the legal aid applications to be received.

In Finland, foreign public documents, which fall under the scope of the Community law provisions referred to in the questionnaire, have a legal status equivalent to comparable domestic public documents. Foreign public documents also produce the same evidentiary weight in judicial proceedings and administrative matters as the analogous domestic public documents. According to Section 11b of Chapter 17 of the Code of Judicial Procedure (4/1734) a document presented as evidence shall be delivered to the court in the original, unless the court deems it sufficient that it be presented as a copy. In the legal order of Finland the foreign public documents at issue have the same status as domestic public documents.

As far as Community law is concerned, there are some problems on application of Regulations. For example application procedure of Regulation (EC) 44/2001 varies somewhat. The regulation states to use certificates defined in its annex. These are not always attached, only a copy of the court order or of the settlement is delivered to Finland.

The intention to abolish legalisation or other equivalent requirements and for direct co-operation between national authorities would benefit from more specific information on the regulations and their application procedures.

A.2. The Apostille Convention

The convention was implemented in Finland by an act on Approving of the Convention abolishing the requirement of legalisation for foreign public documents (675/1985). Draft legislation includes

In accordance with the Ministry of Justice Decree 893/1996 there are 36 local register offices in Finland designated as Competent Authorities under Article 6 of the Apostille Convention. The operational area of each local register office is comprised of one or more jurisdictional districts. In addition, the local register offices have a number of service units in order to ensure that register services are as available to the public as possible. Twenty-
four of the local register offices operate as departments of jurisdictional districts and 13 as their own separate bureaux. In the Åland Islands, the county government is responsible for carrying out the same tasks. Contact information on local register offices can be found at http://www.maistraatti.fi, they are also listed at http://www.hcch.net/upload/auth12_fi.pdf. Contact information list is also in annex I.

The approachable contact person (related to Apostille Convention) is district registrar, notary public Peter Oljemark, who works at the local register office of Helsinki. His contact details are: email address peter.oljemark@eslh.intermin.fi and phone number +358 9 6954 4222.

In principle an Apostille can be requested in person, by mail and by registered mail. Prevailing practice varies, some local register offices accept Apostille requests by mail only from abroad.

The Apostille is placed on an allonge. If the public document consists of multiple pages, Apostille placed on an allonge will be attached to the document as a last page and all pages will be sealed. Prevailing practice varies also in one insignificant detail; some local offices use state official watermark paper in apostilles but some offices do not so. Languages used in Apostille are the official languages of Finnish authorities; Finnish and Swedish. The Apostille used in Finland (with English translation) is in annex II.

The total process generally takes about ten to twenty minutes. Normally, the Apostille will be issued while waiting. The system used for the issuance of an Apostille is mechanical.

The fee for issuing an Apostille is 9 euro. It is being enacted in Section 3 of the Ministry of the Interior Decree (1065/2005) on Fees for services produced by Notary Public, by virtue of Section 8 of the Act on the Charge Criteria of the State (150/1992) enacted on 21 February 1992, as amended by Act No 348/1994, and by virtue of Section 34 of the Act on the Openness of Government Activities (621/1999), as amended by Act No 495/2005. The fee is purely for covering costs.

The register is stored mechanically. Apostille issued is being copied and the register consists of copies. Also in this subject matter, the prevailing practise varies. In some local register offices both the Apostille and the document (or some part of it) are being copied. The register can be consulted by mail, by fax and by phonecall. There are only few requests per year. They come mainly from the Baltic Countries and from Spain. If consultation is requested, the Finnish authority sends by fax a copy of apostille in question.

In Finland the geographical scope of application of the provisions of the Apostille Convention has not been extended beyond the states party to the convention. The way to avoid extension is the definite distribution of the work concerning legalisation and issuing of Apostille. Competent authorities concerning Apostille are local register offices whereas legalisation is the duty of Ministry for Foreign Affairs. However in practise, apostilles are not required for documents meant for the authorities of the Nordic Countries and Great Britain. For instance incoming documents from Belgium and from the Netherlands seem to be equivalent to Finnish documents.
The material scope of application of the convention has not been limited or extended by any authority. According to the local registrars, purpose of the authorities is not to extend or limit the material scope, but in practise it is sometimes difficult to categorise documents.

Most of the Apostilles are given to the documents issued by other Finnish authorities or to notarial acts. In practise most of the actors are known by notaries public and there are no specific measures taken in order to avoid fraud. If some document is unknown or of doubtful quality, the document will be revised thoroughly.

There are some problems with apostille concerning incoming documents. In principle there is a list of competent authorities under the Apostille Convention at hcch web site. Despite the fact, it is sometimes difficult to know the exact competent authority at issue. Also the low number of apostille, with only a few per year, arriving in Finland from some countries make it difficult to recognise their validity. When considering apostille convention the third problem is that it seems to be an automation to get an apostille. One possibility to improve on the reliability of the convention is the e-Apostille proposal. If the whole document would be scanned onto the e-Apostille register, the reliability would increase. Apostille in some other language than Finnish or Swedish is often requested. E-Apostille proposal might enable the possibility to give apostille in language asked for.

At the present moment there are no plans to modernize the system in Finland, but Finland is willing to follow the proposal. Basically there are technological basis and legislation, which provides for e-Apostille, at the ready. Besides the Population Information Centre is willing to participate in the project. Finland considers the participation, but at the moment due to lack of funds the project is not yet current. Also more information on project is needed in order to participate in it.

There is not a register of Notaries Public in Finland. That would be needed both for the e-Apostille project and for the domestic administration.

Practical application of the Apostille Convention:

In Finland it is not possible to categorise to which kind of public documents an apostille has been attached, this subject matter is not recorded. The local register office of Helsinki issued 239 Apostilles during the week 38, (73 on Monday, 49 on Tuesday, 27 on Wednesday, 48 on Thursday and 42 on Friday). In a year 2006 time scale, the local register office of Helsinki has issued on average 283 Apostilles per week and that office issues approximately one third of all the apostilles issued in Finland.

A.3 Parallel international agreements

1968 Council of Europe Convention for the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular officers is not in force in Finland.

1987 Brussels Convention Abolishing the Legalisation of Documents in the Member States of the European Communities is not in force in Finland.

The Hague Convention concerning the International Administration of the Estates of Deceased persons is not in force in Finland.

The implementation of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children is being prepared.

In Finland the Helsinki Court of appeal is the central authority referred to in article 13 of The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children.

Helsinki Court of appeal
Radanrakentajantie 5
00520 Helsinki, Finland
Postal address. PO BOX 76, 00521 Helsinki
telephone number +358 10 36 40500
telefax number +358 10 36 40512
e-mail address: helsinki.ho@om.fi

Referred to in other Hague Conventions, the Ministry of Justice is the central authority in Finland. Ministry of Justice
International Affairs
Eteläesplanadi 10
00130 HELSINKI
Postal address: PO Box 25
00023 GOVERNMENT, Finland
telephone number: +358 9 160 03
telefax number: +358 9 1606 7524
e-mail address: central.authority@om.fi

Agreements abolishing the requirement of legalisation for foreign public documents between two countries

All treaties mentioned in this chapter are found in Finnish at www.finlex.fi. Substantive regulations concerning legalisation are translated into English in this report.

Finland has concluded the following bilateral agreements:

Finland and Austria have concluded an agreement on the simplification of legal aid according to the Hague Convention on Civil Procedure (1954), (Collection of treaties 29/1988). The agreement was signed on 17 November 1986 and ratified on 22 April 1988. The agreement entered into force on 1 July 1988. In compliance with Section 8 of the agreement all public and private documents as well as copies thereof, certified by notary public, by administrative authority or by the court of the contracting state, will be exempt from legalisation or any analogous formality.
Finland and Hungary have concluded an agreement on Legal Protection and Legal Aid in Civil, Family law and Criminal Matters (Collection of treaties 39-40/1982). The convention was signed on 22 May 1981, ratified on 24 June 1982, and it entered into force on 1 August 1982. According to Section 11 of the agreement in the context of this convention, the contracting party shall accept public document or copy thereof, issued by competent authority of the adverse party, without any requirement of legalisation or other equivalent formality.

Finland has concluded an agreement on Legal Protection and Legal Aid in Civil, Family law and Criminal Matters with Poland (Collection of treaties 67-68/1981). The agreement was signed on 27 May 1980 and ratified on 12 June 1981. The convention entered into force on 16 October 1981. In compliance with Section 11 of the agreement concerning the providing of legal aid, public documents given by contracting party shall be accepted without any requirement of legalisation or other equivalent formality.

There is also one old convention pertaining to legalisation, which is still in force, but in practice it does not have any significance; in 1928 Finland and Italy made an agreement on Provision of Information on Marital Status (Collection of treaties 26/1928). The agreement was signed on 21 August 1928 and it entered into force on 11 January 1929.

A.4 National law

In Finland, the basic regulation on the legalisation is in the Act on Notary Public (287/1960) as mentioned above in the introduction. Travaux preparatoire de the Notary Public Act are The Report of the Legal Affairs Committee 5 / 1960, The Report of the Grand Committee 34/1960 and Response of the Parliament to the Government Bill. The Parliament passed the Government Bill with proposed alterations by the Legal Affairs Committee. Amendments did not pertain to legalisation. The only section about legalisation in the Act is the before mentioned Section 7, whereby the authorised body to legalise is the Ministry for Foreign Affairs. Thus, as far as legalisation is concerned, all the act says is that the Ministry for Foreign Affairs has competence to the issue of certificates for the authorities of other states. The original text of act in Finnish is found at annex III. It is also available at www.finlex.fi. Regulation relates to all public documents requiring legalisation.

Legalisation can be requested in person or by mail. Privates and companies usually operate in person, but for instance organisations organising international adopt use to operate by mail. Legalised documents, requested by mail, shall be returned with collect on delivery. The legalisation fee is 20 euro per one stamp of legalisation.

The same procedure applies to all documents and to all states when legalisation is necessary. Legalisation will be issued while waiting except for situations when more than ten legalisations at the same time are needed. In practice certificates for the authorities of other EU member states are exeptional, because of the Apostille Convention and EU conventions mentioned above.

The main measures taken in order to avoid fraud are following: Firstly in the Ministry for Foreign Affairs there are examples of the signatures of every notary public working in local...
register offices. Secondly, there are two significant registers, register of authorized translators and trade register, in order to check the capacity in which the person signing the document has acted. Thirdly, the Ministry for Foreign Affairs sends the examples of signatures of authorities its own competent to legalise documents to every embassy.

B.1 Specific documents

The system in Finland is based on registers. Many significant documents used in Finland are extracts from different registers. The local register offices are responsible for maintaining their regional Population Information System and their local information services, as well as for acting as both the local authority handling Trade Register and the Register of Associations matters and the guardianship authority. The Population Information System is one of the most central databases in Finland. It contains up-to-date information on all Finnish citizens as well as foreigners living permanently in Finland. In addition to personal details (name, identity number, address, nationality, native language, family relations, birth, death), the system also contains data on real estate, buildings and apartments. The Population Information System provides data for the administrative authorities and courts of law as well as for statistical and research purposes. The system is maintained by the Population Register Centre, Local Register Offices and the Local Register Office Unit of the Åland County Administration. Information stored in the Population Information System holds public credibility in Finland.

Documents proving a family relationship or other durable relationship, documents proving a person’s death or date of birth, documents proving or contesting a parent-child relationship and documents proving the name and forenames of a child or adult are all extracts from the Population Information System. Some problems follow from that that the authorities of some countries demand some exact document, for instance document proving a person’s date of birth. In Finland it is possible to get a document proving a person’s date of birth from the hospital where a person was born. Still, the more reliable document is the extract from the Population Information System.

Documents proving annulling or terminating a marriage or civil partnership or other durable relationship are court orders in Finland. Up to date information on the civil status is always available also from Population Information System. Difficulties with incoming documents concerning marriage or civil partnership are related to the definitions of these partnerships. Sometimes it is difficult to specify, if the relationship proved in some incoming public document is equivalent to the relationship defined in Finland.

Certificates of unemployment daily benefit issued by the Social Insurance Institution of Finland or by unemployment fund and certificates proving the resumption of unemployment issued by the employment authority are the documents proving involuntary unemployment in Finland. Employment authorities are under the supervision of the Ministry of Labour. The Social Insurance Institution of Finland (KELA) provides basic security for all persons resident in Finland, covering the different stages of their lives. Besides residents of Finland, it serves persons who, while living outside Finland, are covered by the Finnish social security legislation. KELA operates under the supervision of Parliament. It was founded on 16 December 1937. Documents proving involuntary unemployment do not induce problems or difficulties.
Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities are certificates of various instances. Documents proving a person's professional qualifications are in Finland certificates of various schools. Difficulty with these documents is that in Finland they are usually signed by machine language. If the apostille or legalisation is requested, the certificate with the authentic signature has to be provided.

The same problem is connected with the documents proving the latest banking accounts of a company and documents proving the deposit of the cash or certificates of the deposit. These documents are usually signed by machine language and issued by banking companies. Also in this case the authentic signature has to be provided, if the apostille or legalisation is requested.

Documents proving the establishment by the incorporation of a company and documents proving the constitution of a company are in Finland equivalent to extracts from the Trade Register. The Trade Register is under the supervision of The National Board of Patents and Registration which comes under the administrative sector of the Ministry of Trade and Industry. The Trade Register provides official information on businesses in the whole country, including data from current and old register entries, articles of association, partnership agreements or rules and financial statements. The exceptional status of the Finnish Trade Register in relation to other registers is based on the fact that the judicial effects of Trade Register entries are specified by Finnish law. The judicial effects consist of the effect of publicity, establishing a right and the protection of registered company names. Extracts from the Trade Register may include information on incorporation, rules, financial statements et cetera.

The documents mentioned above are processed by various authorities. Information about possible problems has not been collected in Finland, only a few problematic instances are known and they are introduced above in this chapter.

**Conclusions**

Based on the interviews it is my opinion that EU's intention of abolishing legalisation or other equivalent requirements needs mostly a common way in the Member States to applicate regulations. It would also be beneficial to develop the e-Apostille project. It would make it possible to check which document the apostille is attached to. This would increase the functionality and reliability of the Apostille Convention.

The main problem with the demand for legalisation and other such demands is that instead of certifying the contents of a document only the signature or equivalent is certified. This would need serious consideration.
PART II – Incoming documents: Effects in the Member State’s legal order

PART III – Incoming documents: Difficulties

PART IV – Outgoing documents: Difficulties

PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I

PART VI – Suggested action
Legalisation of Public Documents within the EU Member States / Finland