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Parental responsibility - child custody and contact rights

Poland

1 What does the legal term “parental responsibility” mean in practical terms? What are the rights and obligations of a holder of parental responsibility?

No definition of parental responsibility is contained in the Polish Family and Guardianship Code. In Polish legal literature, parental responsibility is understood to cover a set of obligations and rights of parents with regard to a child for the purpose of the proper care of the child and his or her assets.

2 As a general rule, who has the parental responsibility over a child?

Both parents have parental responsibility over a child.

Where one parent is dead or does not have full legal capacity, the other parent is the holder of parental responsibility. The same applies in the event that the parental responsibility of either parent has been suspended.

3 If the parents are unable or unwilling to exercise parental responsibility over their children, can another person be appointed in their place?

In the event that the parents are unable to exercise parental responsibility, they may apply to the court dealing with guardianship matters (*sąd opiekuńczy*) or another public authority to have the child placed under foster care. In cases of extreme urgency, at the request or with the consent of the child's parents, the child may be placed under the care of a foster family on the basis of an agreement between the head of a district (*starosta*) and a foster family or persons running a family foster home (*rodzinny dom dziecka*).

Where the parents are unwilling to exercise parental responsibility over a child, they may consent to his or her adoption. There are three forms of adoption under Polish law: complete, complete and irrevocable (also known as 'full adoption'), and incomplete.

Should the child's interest be jeopardised by parents duly exercising parental responsibility, their parental responsibility may be restricted by decision of the court dealing with guardianship matters and the child may be placed in a foster family, in a family foster home, under institutional foster care, in a care and treatment centre, in a nursing care centre, or in a therapeutic rehabilitation centre.

4 If the parents divorce or split up, how is the question of parental responsibility determined for the future?

When delivering a judgment on divorce, legal separation or marriage annulment, a Polish court is required under the Family and Guardianship Code to resolve the question of parental responsibility over a child unless it has no jurisdiction with regard to parental responsibility in a specific case. There are three ways in which the question of parental responsibility may be resolved by the court: 1) it may take into account a written agreement between the spouses concerning the manner in which parental responsibility is to be exercised, providing that it is in the best interest of the child, or where no agreement is reached between the parents, it may take into account the child's right to be brought up by both parents; 2) it may decide upon joint exercise of parental responsibility; 3) it may grant parental responsibility to either parent and restrict the other parent's parental responsibility to specific obligations and rights with regard to the child.

5 If the parents conclude an agreement on the question of parental responsibility, which formalities must be respected to make the agreement legally binding?

While no form is specified by law for such agreement, it should be noted that an agreement between the parents concerning the manner in which parental responsibility is to be exercised has no legal effect and may be regarded merely as a basis for the judgment of the court in that respect.

6 If the parents cannot come to an agreement on the issue of parental responsibility, what are the alternative means for solving the conflict without going to court?

The parents may be assisted by a mediator. Mediation services are provided on the basis of a mediation agreement or a decision of the court referring the parents for mediation. The agreement may also be concluded through the consent of a parent to mediate where the other parent has requested mediation. However, a settlement before a mediator does not have the legal force of a court settlement until it is approved by the court.

7 If the parents go to court, what issues can the judge decide upon relating to the child?

The parents may go to a court in Poland dealing with guardianship matters in relation to various issues concerning parental responsibility over a child, such as:

- 1) the manner in which parental responsibility and rights of access to the child are to be exercised in the event that parental responsibility is shared by both parents who live apart;
- 2) resolution of a dispute concerning important matters in respect of the child in the event that the parents are unable to agree on how such matters are to be resolved, including the determination of the place of residence, choice of school, choice of name and surname, decisions concerning medical treatment, travel abroad, etc.
- 3) legal transactions between a child and a parent where such legal transactions go beyond the ordinary management of the child's assets.

8 If the court decides that one parent shall have sole custody of a child, does this mean that he or she can decide on all matters relating to the child without first consulting the other parent?

Under Article 58(1) of the Family and Guardianship Code, a judgment on divorce (legal separation or marriage annulment) may not grant parental responsibility to either parent while depriving the other parent of all rights in that regard. That possibility, in turn, is provided for under Article 112 in conjunction with Article 111 of the Family and Guardianship Code; in the event that parental responsibility cannot be exercised due to a permanent impediment, the parents abuse their parental responsibility, or they grossly neglect their obligations vis-à-vis the child, the court dealing with guardianship matters will terminate the parents' parental responsibility. The court may terminate the parents' parental responsibility in the event that they show no interest in the child on a permanent basis despite having been offered assistance.

9 If the court decides that the parents shall have joint custody of a child, what does this mean in practice?

Granting joint custody to the parents means that they may and must exercise the same rights and obligations vis-à-vis the child. This means, inter alia, that important matters concerning the child will be resolved jointly by the parents, or by a court dealing with guardianship matters where they are unable to reach an agreement.

10 To which court or authority should I turn if I want to lodge an application on parental responsibility? Which formalities must be respected and which documents shall I attach to my application?

Parental responsibility cases are heard by the family and minors divisions of district courts (*sądy rejonowe*) (courts dealing with guardianship matters) with jurisdiction over the child's place of residence. Where there is no such basis, jurisdiction lies with Warsaw Capital City District Court.

An application must be submitted together with the child's birth certificate, the parents' marriage certificate (when married), other documents supporting the application, such as medical certificates, school certificates, educational assessments etc.

11 Which procedure applies in these cases? Is an emergency procedure available?

Parental responsibility cases are heard in what is known as a non-contentious procedure, which is less formal than a contentious procedure.

At the request of a party to the proceedings, the court dealing with guardianship matters may grant a security in the manner it considers suitable under specific circumstances. Decisions in that regard become effective and enforceable when issued.

12 Can I obtain legal aid to cover the costs of the procedure?

Parties to proceedings concerning parental responsibility are required to pay the fees and expenses provided for in the Act on Legal Costs in Civil Cases. However, under Article 102(1) of the Act, a party to court proceedings may request exemption from legal costs by filing a statement that they are unable to bear such costs without hardship to themselves or their families. The application for exemption from legal costs should be accompanied by a statement detailing the applicant's family status, assets, income and livelihood. A party to proceedings may be partially exempted from legal costs by the court in the event that such party is in a position to pay only a part of such costs (Article 101(1)).

13 Is it possible to appeal against a decision on parental responsibility?

Yes. An appeal against any decision may be lodged before a higher court. Judgments on parental responsibility delivered by a regional court (*sąd okręgowy*) in proceedings concerning a divorce, legal separation or marriage annulment are subject to appeal to a court of appeal (*sąd apelacyjny*).

14 In certain cases, it may be necessary to apply to a court to have a decision on parental responsibility enforced. Which court should I use in such cases and which procedure applies?

The court's enforcement body in cases concerning the return of a child is a court-appointed guardian (*kurator sądowy*). In the event that a court judgment ordering the return of a child is not complied with, the person entitled to have the child returned should request the court which has issued such decision to order a compulsory removal of the child by a court-appointed guardian. In the event that the whereabouts of a person subject to parental responsibility is unknown, the court conducts an investigation in order to establish their whereabouts. The order is issued by the court to a court-appointed guardian in the form of a decision, which may be issued in closed session. No appeal may be brought against such decision. The court-appointed guardian sets the date for the removal of the child and notifies the entitled person. The court-appointed guardian may remove the child from any person with whom the child is staying. For that purpose, the court-appointed guardian may seek the assistance of police officers, psychologists and so on.

A different procedure is provided for in the Code of Civil Procedure with regard to judgments on access. In that case, at the request of a person entitled to access in respect of a child, the court dealing with guardianship matters will threaten to issue an order against the person who has custody who fails to fulfil obligations arising from a judgment or settlement with regard to access to the child, requiring the payment of a specific amount to the entitled person for each infringement of obligation. In the event that a person entitled to access to a child or a person prohibited from such access infringes the obligation imposed by the decision, the court dealing with guardianship matters will threaten to order that person to pay a specific amount to the person in custody of the child.

In the event that a person ordered by the court dealing with guardianship matters to make a payment continues to fail to fulfil their obligation, the guardianship court will order such person to pay a due amount, which is laid down in accordance with the number of infringements.

An enforceable judgment or settlement concerning access to a child must be attached to the application referred to above.

15 What should I do to have a decision on parental responsibility that is issued by a court in another Member State recognised and enforced in this Member State?

The relevant provisions applicable are those of Chapter III of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. An application for recognition or enforcement should be made to the court. The regional court is also competent to examine an application for a declaration of enforceability. In both cases, the application should meet the criteria of a procedural document, which means that it should specifically set out the request, the facts justifying such request, and whether or not the parties have tried to mediate.

16 To which court in this Member State should I turn to oppose the recognition of a decision on parental responsibility issued by a court in another Member State? Which procedure applies in these cases?

An application not to recognise a decision issued by a court in an EU Member State should be made to a regional court. The application should meet the criteria of a procedural document.

17 Which law does the court apply in a proceeding on parental responsibility where the child or the parties do not live in this Member State or are of different nationalities?

The applicable law in matters concerning parental responsibility and rights of access is laid down in the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children done at The Hague on 19 October 1996, or in bilateral agreements to which Poland is a party. Where none of those instruments is applicable, the provisions of private international law apply, which also include references to the provisions of the Hague Convention of 1996. In the event that the child's habitual residence changes to residence in a country which is not a party to the Convention, the law of such country governs from then on changes in the conditions of application of measures adopted in the country of the child's former habitual residence.

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