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Parental responsibility - child custody and contact rights

Polen

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

Parental responsibility in particular encompasses parents’ obligations and rights to care for a child’s person and assets and to bring up a child, with respect for the child’s dignity and rights (Article 95(1) of the Family and Guardianship Code (KRiO)).

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.

Parental responsibility may also be limited by a decision of the court. In such circumstances, the other parent is entitled to exercise parental responsibility over the child in so far as specified in the court decision.

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 the child’s adoption. There are three forms of adoption under Polish law: complete, complete and irrevocable (also known as ‘full adoption’), and incomplete.

Should parents duly exercising parental responsibility jeopardise the child’s interests, 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 to resolve the question of parental responsibility over a child unless it has no jurisdiction with regard to parental responsibility in a specific case. When resolving the issue of parental responsibility, the Polish court may take into account a written agreement between the spouses concerning the manner in which parental responsibility is to be exercised, provided it is in the best interests of the child.

If the parents fail to agree, the court may, considering the child’s right to be brought up by both parents:

1) decide upon joint exercise of parental responsibility;

2) grant parental responsibility to either parent and restrict the other parent’s responsibility to specific obligations and rights with regard to the child.

Where warranted by the best interests of the child, the court dealing with guardianship matters (*sąd opiekuńczy*) may alter a ruling on parental responsibility and the manner of its exercise in a judgment on divorce, legal separation or marriage annulment (Article 106 KRiO).

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

No form is specified by law for such parental agreement. It should be noted, however, 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. The agreement may be reached also by mediation. In that case it is made in writing and signed by both parents and a mediator. In order to be legally binding, the settlement must be approved by the court.

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 reached 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?

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?

If a court has entrusted the exercise of parental responsibility to just one of the parents, that parent is free to decide on all matters concerning the child without having to consult the other parent or obtain their consent.

A parent may be deprived of parental responsibility by the court dealing with guardianship matters if parental responsibility cannot be exercised due to a permanent impediment, the parent abuses their parental responsibility or grossly neglects their obligations vis-à-vis the child.

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 decided 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 district court (*sąd rejonowy*) with jurisdiction over the child's place of residence. The district court's family and minors division is the court dealing with guardianship matters (*sąd opiekuńczy*). Where there is no such basis, jurisdiction lies with the District Court for the Capital City of Warsaw.

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 and copies of previous judgments by other courts concerning parental responsibility.

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

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

Additionally, at the request of a party to the proceedings, the court dealing with guardianship matters may grant an interim measure 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 (*Ustawa o kosztach sądowych w sprawach cywilnych*). 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. In the case of protective orders, an appeal is lodged with a court of the same instance. Appeals against judgments delivered by a district court (*sąd rejonowy*) concerning parental responsibility may be brought before a regional court (*sąd okręgowy*). Judgments delivered by a regional court (*sąd okręgowy*) concerning parental responsibility in proceedings for divorce, legal separation or marriage annulment are subject to appeal before 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 to a court-appointed guardian by the court 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 (*Kodeks postępowania cywilnego*) with regard to judgments on contact arrangements. In that case, at the request of a person entitled to contact with the child, the court dealing with guardianship matters (*sąd opiekuńczy*) will threaten to issue an order against the person who has custody and fails to fulfil obligations arising from a judgment or settlement with regard to contact with 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 contact with the child or a person prohibited from such contact infringes the obligation imposed by the decision, the court dealing with guardianship matters (*sąd opiekuńczy*) 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 (*sąd opiekuńczy*) 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 contact with the 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. As a rule, such judgments are recognised and enforced without any additional proceedings. It is, however, possible to lodge an application for recognition and enforcement with a regional 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 mediation.

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

By law, judgments handed down by the courts of foreign countries in civil matters are recognised, unless there is an impediment under the Code of Civil Procedure.

Anyone with a legal interest can apply for the recognition or non-recognition of a judgment handed down by a foreign court. An application for recognition of a judgment handed down by a foreign court must be accompanied by:

- an official copy of the judgment;
- a document confirming that the judgment is final, unless that fact is clear from its wording;
- a sworn translation into Polish.

An application for non-recognition of a judgment handed down by a foreign court must be accompanied by an official copy of the judgment and a sworn translation into Polish.

An application is examined by the regional court (*sąd okręgowy*) that would be geographically competent to consider the case resolved by the judgment of the foreign court or by the regional court of the region in which the geographically competent district court (*sąd rejonowy*) is located or, in the absence of such a court, by the Regional Court in Warsaw (*Sąd Okręgowy w Warszawie*).

A decision on recognition delivered by the regional court is subject to interlocutory appeal (*zażalenie*) and a decision of the court of appeal to cassation appeal (*skarga kasacyjna*); it is also possible to apply for proceedings closed by a final decision on recognition to be reopened and for that final decision to be declared unlawful.
As regards the execution of foreign court judgments, procedures vary so much according to the type of proceedings that it is always best to contact the central authority for information on how to proceed beforehand.

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 contact with the child 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 the Private International Law Act of 4 February 2011 (*Ustawa z dnia 4 lutego 2011 r. - Prawo prywatne międzynarodowe*) apply. 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 that country will govern all subsequent changes in the conditions of application of measures adopted in the country of the child's former habitual residence.

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