

## NATIONAL REPORT: GREECE

Achilles G. Koutsouradis<sup>1</sup>

### A. GENERAL

#### 1. Having regard to the concept of parental responsibilities as defined by the Council of Europe, explain the concept or concepts used in your national legal system.

The concept of parental responsibilities, as defined by the Council of Europe, encompasses the Greek concepts of parental care and guardianship. Parental care is the usual situation where parents have parental responsibilities for their child. If, for any reason, parental care does not exist, the court will place the child under guardianship, meaning that it attributes parental responsibilities to a third person, the guardian, who is assisted and controlled by a supervisory council and the court (Art. 1590 Greek CC). Both parental care and guardianship consist of a bundle of rights and duties, which have to be exercised in the best interests of the child (Art. 1511 and 1648 Greek CC). Those rights and duties pertain to the physical care of the child, the administration of its property, and the child's legal representation (Art. 1510 para. 1 and 1603 Greek CC). A supplementary institution to parental care and guardianship is foster care (Art. 1655-1665 Greek CC). The foster parents may be charged with the actual care of the child, but the child's legal relationship with its parents or guardian remain, in principle, unaltered.

#### 2. Explain whether your national concept or concepts encompass:

##### (a) Care and protection

The Greek concepts of parental care and guardianship encompass the care and legal protection of the child. This obligation forms part of the physical care of the child and, more specifically, its upbringing.<sup>2</sup>

##### (b) Maintenance of personal relationships

When the child lives with the holder(s) of parental duties and responsibilities, the maintenance of personal relationships constitutes a daily practice. Communication with the child forms part of this duty.<sup>3</sup> Nevertheless, a parent who is not entrusted

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<sup>1</sup> Professor of civil law at the University of Thessaloniki. This contribution has been written in co-operation with HELEN ZERVOGIANNI, Ph.D candidate at the law school of the University of Athens; she is a member of the Athens Bar.

<sup>2</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas, 2003, Art. 1518 Greek CC, p. 259-260, No. 12 [in Greek]. According to Art. 1606 Greek CC, the provisions of Art. 1518 Greek CC apply also, by analogy, when the child is subject to guardianship.

<sup>3</sup> S. KOUKOULI-SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. Sakkoulas, 2003, Introductory Remarks on Arts. 1505-1541 Greek CC, p. 74, No. 159 [in Greek]; A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas, 2003, Art. 1520 Greek CC, p. 308-309, No. 16.

with the physical care of the child still has the right to contact that child (Art. 1520 para. 1 and 3 Greek CC). According to the prevailing opinion, this right does not form part of parental care, but is a distinct right stemming from the ties of kindred between the child and its parents.<sup>4</sup>

**(c) Provision of education**

According to Art. 1518 para. 1 Greek CC, the education and instruction of the child form part of the duty to provide parental care.

**(d) Legal representation**

Both parental care and guardianship encompass the legal representation of the child in any matter, transaction, or litigation regarding its person or its property (Art. 1510 para. 1 and 1603 Greek CC). This is a necessary complement to the care of the child and the administration of its property.

**(e) Determination of residence**

The determination of the child's residence forms part of the duty of care of the child's person (Art. 1518 para. 1 Greek CC).<sup>5</sup>

**(f) Administration of property**

Parental care and guardianship include the administration of the child's property (Art. 1510 para. 1 and 1604 Greek CC). Special provisions of the Civil Code (Art. 1521-1528 and 1611-1630 Greek CC) regulate the formalities of and restrictions on the management of the child's assets.

**3. In what circumstances (e.g. child reaching majority or marrying) do parental responsibilities automatically come to an end?**

Parental responsibilities automatically come to an end when the child reaches the age of majority, dies or is declared to be a missing person (Art. 1538 Greek CC). The child's marriage does not formally amount to the cessation of parental care, but it does restrict its scope:<sup>6</sup> Art. 137 Greek CC provides that a married minor can, of its own accord, enter into every legal transaction which is necessary in order to conserve or enhance its property, or to provide the needs for its personal maintenance and education, as well as to support its family. In addition, the child is entitled to manage its own assets to a certain extent, and to ensure its own legal representation. Finally, the obligations of the spouses to cohabit (Art. 1386 Greek CC) and to engage in conjugal life (Art. 1387 Greek CC) further restrict the scope of parental responsibilities.

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<sup>4</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. Sakkoulas, 2003, p. 70, No. 154, with further references.

<sup>5</sup> See also Art. 56(1) and (2) Greek CC.

<sup>6</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1518 Greek CC, p. 297 - 299, No. 142-143; S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. Sakkoulas, 2003, p. 57, No. 126.

The duties of a specific holder of parental responsibilities come to an end when he dies, is declared to be a missing person, or is legally discharged from this task (Art. 1510 para. 2 and 3, 1538 and 1650-1651 Greek CC), as well as when the child is adopted (Art. 1561 Greek CC). In such cases another person (a guardian or adoptive parent) will take over these responsibilities.

#### **4. What is the current source of law for parental responsibilities?**

The provisions of the Greek Civil Code and particularly Art. 1505-1541 (Relations between Parents and their children), 1589-1654 (Guardianship) and 1655-1665 (Foster Care), constitute the main source of law for parental responsibilities. The Constitution,<sup>7</sup> European law,<sup>8</sup> as well as International Conventions<sup>9</sup> influence the interpretation of these provisions, complement the relevant legal framework and, in the case of conflict of laws, they prevail as *leges superiores*.<sup>10</sup> Nowadays, custom hardly plays a role in this field. Finally, legal literature and court decisions constitute informal sources of law.

#### **5. Give a brief history of the main developments of the law concerning parental responsibilities.**

The first radical reform of the law concerning parental responsibilities was realized in 1983. Before that time the father was solely responsible for the care of the child, the administration of its property, and its legal representation (*patria potestas*).<sup>11</sup> The role of the mother was mostly restricted to cases where paternal authority had come to an end.<sup>12</sup> Law 1329/1983 substituted the term “paternal authority” for “parental care” and significantly reformed the concept along the lines of the

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<sup>7</sup> The most relevant provision is that of Art. 21 para. 1 of the Greek Constitution, which pertains to the protection of the family, marriage, maternity, and childhood.

<sup>8</sup> The most significant legislation by the European Union on this issue is the new Council Regulation (EC) No. 2201/2003 on the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, which repealed Regulation (EC) No. 1347/2000. Also relevant is Art. 24 of the EU’s Charter of Fundamental Rights.

<sup>9</sup> The most relevant International Conventions on the issues dealt with here, which Greece has signed and ratified are, *inter alia*: the (1989) United Nations Convention on the Rights of the Child (Law 2101/1992), the (1950) European Convention on Human Rights (Law 2329/1953, Legislative Decree 53/1974), the (1996) European Convention on the Exercise of Children’s Rights (Law 2502/1997), the (1967) European Convention on the Adoption of Children (Law 1049/1980), the (1975) European Convention on the Legal Status of Children Born out of Wedlock (Law 1702/1987), the (1980) European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (Law 2104/1992), and the (1980) Hague Convention on the Civil Aspects of Child Abduction (Law 2102/1992). Finally, Greece has signed the (1996) Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, but has not yet ratified it.

<sup>10</sup> Art. 28(1) Greek Constitution.

<sup>11</sup> Art. 1500-1501 Greek CC/1940.

<sup>12</sup> Art. 1590 Greek CC/1940.

constitutional imperatives for equality between men and women (Art. 4 para. 2 Greek CC) and the protection of childhood (Art. 21 para. 1 Greek CC).<sup>13</sup>

Law 2446/1996 put into effect the second major reform of the relevant legal framework. More specifically, it restructured the institutions of adoption and guardianship, so as to grant more effective protection for children. In addition, the same law introduced, for the first time in Greek legal history, the institution of foster care for minors.

#### **6. Are there any recent proposals for reform in this area?**

There are currently no proposals for reform in this area.

### **B. THE CONTENTS OF PARENTAL RESPONSIBILITIES**

#### **7. Describe what the contents of parental responsibilities are according to your national law including case law.**

Parental responsibilities consist of the physical care of the child, the administration of its property and its legal representation in any matter, transaction, or litigation concerning the child or its property (Art. 1510 para. 1 and 1603 Greek CC). The physical care of the child comprises, in particular, its upbringing, supervision, education and instruction as well as the determination of its residence (Art. 1518 and 1606 Greek CC). This list is not exclusive. So, other responsibilities, such as the determination of the child's name<sup>14</sup>, its religious upbringing and its medical treatment unquestionably also fall within the concept of the care of the child.<sup>15</sup>

#### **8. What is the position taken in your national law with respect to:**

##### **(a) Care**

The objective of the upbringing of a child is to ensure its material needs, protect it, and to provide for its general physical and mental development.<sup>16</sup> According to Art. 1518 para. 2 Greek CC, parents shall encourage the child to develop its personality responsibly and with a collective conscience, abstaining from any discrimination according to the child's gender. The same is true by analogy in the case of guardianship (Art. 1606 Greek CC).

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<sup>13</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1510 Greek CC, p. 173-174, No. 4 -5 [in Greek].

<sup>14</sup> For determining the child's surname there are specific provisions. See Art. 1505-1506 Greek CC.

<sup>15</sup> E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. II, 3<sup>rd</sup> Edition, Athens-Thessaloniki: Sakkoulas, 2003, p. 288-289 [in Greek]; A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1518 Greek CC, p. 257, No. 4, p. 268-275, No. 50-64, and p. 280-291, No. 86-120.

<sup>16</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas, 2003, Art. 1518 Greek CC, p. 259-260, No.12.

**(b) Education**

As regards the education and the professional training of the child, the holders of parental responsibilities should take into consideration the child's particular capabilities and aptitudes (Arts. 1518 para. 3 and 1606 Greek CC). For this purpose they must cooperate with the school authorities, and, if necessary, seek the assistance of the competent public services. They should also take into consideration the child's own opinions with due regard to its maturity (Art. 1511 para. 3 Greek CC applicable, by analogy, in the case of guardianship).

**(c) Religious upbringing**

In principle, the holders of parental responsibilities determine the religious upbringing of the child, which forms part of the duty of care. The child may form its own religious beliefs if it is sufficiently mature (Art. 1511 para. 3 Greek CC). However, there is no general consent as to when the child becomes sufficiently mature in this respect.<sup>17</sup>

**(d) Disciplinary measures and corporal punishment**

The holders of parental responsibilities can only impose disciplinary measures if these are necessary from a pedagogical perspective and do not impinge on the dignity of the child (Art. 1518 para. 2 and 1606 Greek CC). Corporal punishment conflicts with both of these criteria, and is thus not justifiable.<sup>18</sup>

**(e) Medical treatment**

Medical treatment forms part of the duty of care. Hence, the holders of parental responsibilities are entitled to make the relevant decisions on behalf of the child. Nevertheless, if the child is sufficiently mature to understand the significance of a certain treatment, it can decide of its own volition.<sup>19</sup> If the parents deny medical intervention although this is urgent and necessary in order to avert a threat to the life of the child, Art. 1534 Greek CC provides that the public prosecutor at the district court may, upon the request of the responsible physician, or the director of

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<sup>17</sup> It has been claimed that the child is sufficiently mature to reach such a decision at the age of 14, and in any case when the child marries. Other opinions reduce the critical age to 12 years or even to 10 years (A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas, 2003, Art. 1518 Greek CC, p. 270, No. 53, fns. 70 and 71). Nonetheless, it is generally accepted that the maturity of the child does not necessarily depend on its age (see, among others, P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1511, Greek CC, p. 208, n. 31, with further references to court decisions; E. KOUNOUGERI-MANOLEDARI, *Family Law, Vol. II*, 3<sup>rd</sup> Edition, Athens-Thessaloniki: Sakkoulas, 2003, p. 270-271). Thus we believe that there is no reason to deviate from an *in concreto* examination of the child's maturity.

<sup>18</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas, 2003, Art. 1518 Greek CC, p. 263-264, No. 26-27; E. KOUNOUGERI-MANOLEDARI, *Family Law, Vol. II*, 3<sup>rd</sup> Edition, Athens-Thessaloniki: Sakkoulas, 2003, p. 290-291.

<sup>19</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas, 2003, Art. 1518 Greek CC, p. 291, No. 120, referring to Art. 1511 para. 3 Greek CC.

the hospital where the child is being treated, or any competent health authority, grant the required permission. The same holds true by analogy when the child is subject to guardianship.

**(f) Legal representation**

The holders of parental responsibilities represent the child in any matter regarding his person or his property (Art. 1510 para. 1 and 1603 Greek CC). Legal transactions which the minor of a certain age is entitled to enter into (*e.g.* disposing of pocket money, Art. 135 Greek CC), or which are assigned to third persons (*e.g.* the administration of a gift which the child acquired subject to the condition that a third person will administer this gift, Art. 1521 and 1616 para. 2 Greek CC), are exempt from this provision.<sup>20</sup>

**9. What is the position taken in respect of the child's right to be heard with regard to the issues mentioned under Q 8 ((a)-(f)). What relevance is given to the age and maturity of the child?**

Art. 1511 para. 3 Greek CC provides that the child should be heard and its opinion should be taken into consideration on every decision pertaining to parental care and relating to its interests, provided that the child is sufficiently mature. A child is considered to be sufficiently mature if it can conceptualize its interests.<sup>21</sup> The maturity of the child is related to its age, but is not determined by it. Hence, the degree of maturity must be examined separately in each case.<sup>22</sup> The right of the child to be heard is a basic principle of family law and, as such, it also applies when the child is subject to guardianship.<sup>23</sup>

**10. Do(es) the holder(s) of parental responsibilities has(have) the right to administer the child's property?**

The management of the child's assets forms an inherent part of parental care (Art. 1510 para. 1 Greek CC) and of guardianship (Art. 1603 Greek CC). Thus the holder of parental responsibilities has the right to administer the child's property with respect to the best interests of the child (Art. 1511 para. 1 Greek CC).

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<sup>20</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1510 Greek CC, p. 189, No. 83; K. PANTELIDOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas, 2003, Art. 1603 Greek CC, p. 560-562, No. 6, 8, and 9 [in Greek].

<sup>21</sup> P. ARVANITAKIS, in: K. KERAMEUS, D. KONDULIS and N. NIKAS (eds.), *Commentary on the Code of Civil Procedure, Vol. II (Arts. 591-1054)*, Athens-Komotini: Ant. N. Sakkoulas, Art. 681c Greek CCP, p. 1311, No. 4 [in Greek]. This opinion is followed by the courts. See Supreme Court Decisions: 15/1997, *Elliniki Dikaosini* Vol. 38 (1997), p. 1538, 180/1986, *Elliniki Dikaosini* Vol. 27 (1986), p. 496, 577/1989, *Elliniki Dikaosini* Vol. 31 (1990), p. 1271.

<sup>22</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1511 Greek CC, p. 208, No. 31.

<sup>23</sup> See also Art. 3 of the European Convention on the Exercise of Children's Rights (Law 2502/1997).

**11. If yes, explain the content of this right.**

The holder of parental responsibilities has, in principle, the right to administer the property of the child and to enter into any transaction so as to preserve, enhance, develop, or even burden the property.<sup>24</sup> It is worth noting, however, that a guardian is subject to more restrictions than the parents and is controlled by a supervisory council.

**12. Are there restrictions with respect to:**

**(a) Certain goods and/or values (inherited property, gift...)**

According to Art. 1521 Greek CC parental management does not extend to assets which the child acquires by will or gift subject to the condition that the parents will not administer them. If the testator or the donor has not assigned the management of these assets to a specific person, the court will appoint a special guardian. Art. 1616 para. 2 Greek CC reiterates this provision in the case of guardianship. In addition, Art. 1616 para. 1 Greek CC provides that the guardian should conform to any conditions set by the deceased or the donor.<sup>25</sup>

**(b) Salary of the child**

Art. 135 Greek CC provides that a minor of 14 years of age or older can freely dispose of his/her earnings gained from employment. Hence, the salary of the child is excluded from management by the holder of parental responsibilities.

**(c) Certain transactions**

The holders of parental responsibilities may not grant donations out of the child's property, unless these are for a special moral duty or by reason of dignity (Art. 1524 and 1617 Greek CC). Furthermore, both the parents and the guardian need judicial permission before entering into certain transactions which may be detrimental to the property of the child, such as the disposition of property, the sale or purchase of real estate, lending or borrowing, acting as a guarantee for the debts of a third person etc. (Arts. 1526 and 1624 Greek CC). In addition, a guardian needs the permission of the supervisory council before taking any action beyond the ordinary administration of the property (Art. 1619 Greek CC). Moreover, he may not use the property of the child for his own benefit (Art. 1618 Greek CC). This last restriction also applies to the parents. However, they may, in principle, use the income from the child's property to a reasonable extent in order to meet the needs of the family (Art. 1529 Greek CC).

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<sup>24</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 60, No. 131.

<sup>25</sup> Nevertheless, the donor or the deceased can neither release the guardian from the restrictions laid down under the law, nor relieve him from his responsibilities. See A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1616 Greek CC, p. 598, No. 3

**13. Are there special rules protecting children from indebtedness caused by the holder(s) of parental responsibilities?**

In the Greek Civil Code there are several provisions on managing the assets of the child, which restrict the rights of the holders of parental responsibilities and impose certain obligations on them in order to prevent indebtedness. The restrictions pertain to the prohibition of donations (Arts. 1524 and 1617 Greek CC) and the use of the property of the child for their own purposes (Arts. 1529 and 1618 Greek CC).<sup>26</sup> Moreover, both the parents and the guardian are subject to certain formalities when they wish to enter into any transaction which might burden the property of the child (Art. 1526 and 1624 Greek CC: the need to obtain judicial permission, Art. 1619 Greek CC: the requirement that the guardian needs to obtain the consent of the supervisory council).<sup>27</sup>

In addition, the holders of parental responsibilities must draw up an inventory of any asset that falls under their management (Art. 1523 and 1611 Greek CC).<sup>28</sup> They must also use the money of the child productively or invest it without delay (Art. 1525 and 1613 Greek CC). Further, a guardian has an obligation to secure the bonds, the stocks, the valuables, as well as the important legal documents of the child (Art. 1614 Greek CC).<sup>29</sup> Finally, the guardian reports to the supervisory council on a yearly basis (Art. 1626 Greek CC),<sup>30</sup> which is also entitled to audit him (Art. 1643 Greek CC).

Non-compliance with most of the abovementioned restrictions and obligations lead to the nullity of the relevant actions.<sup>31</sup> The nullity may be relied upon by the father, the mother, the child itself, and its successors, in the case of parental care, and by the guardian, the supervisory council, the child itself, and its successors, in the case of guardianship.

Furthermore, both the parents and the guardian are liable to the child for all their actions (Art. 1531 and 1632 Greek CC).<sup>32</sup> If there is a (serious) conflict of interests between the holder of parental responsibilities and the child, for example in the context of the administration of property, the court will assign a special guardian to represent the child (Art. 1517 and 1627 Greek CC).

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<sup>26</sup> For further details see the answer to Q 12c.

<sup>27</sup> For a complete list of those transactions, see the full text of Art. 1527 and 1624 Greek CC as well as Art. 1619 Greek CC.

<sup>28</sup> On the aim of the inventory, see A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1523 Greek CC, p. 352, No. 1.

<sup>29</sup> Nevertheless, the parent who has the right to appoint a guardian upon his death may also exonerate him from these obligations (Art. 1633 Greek CC).

<sup>30</sup> The supervisory council may designate a different point in time for the submission of these reports, but this control should take place at least every five years (Art. 1626 Greek CC).

<sup>31</sup> Art. 1528 Greek CC specifies that nullity is the consequence of a violation of the provisions of Art. 1524-1526 Greek CC, whereas the provision under Art. 1630 Greek CC covers any action where the guardian did not follow the required formalities.

<sup>32</sup> The parent's level of care is determined by the care which they exercise in organising their own affairs, whereas the liability of the guardian is determined on the basis of objective criteria (Art. 1531 and 1632 Greek CC).



**14. Do the contents of parental responsibilities differ according to the holder(s) of parental responsibilities (e.g. married, unmarried, parents not living together, stepparents, foster parents or other persons). If so, describe in some detail how it differs.**

The contents of parental responsibilities correspond to the needs of the child, so they do not depend on who is the holder of these responsibilities. Thus the content of parental care (that the parents are married, natural or adoptive) coincides with that of guardianship. Nevertheless, several legal provisions, especially those which assign powers to the supervisory council, restrain the guardian as regards the exercise of his responsibilities.<sup>33</sup> This circumspection with regard to the guardian is justified because of the fact that the guardian is a third person.

When the holders of parental responsibilities are at least two persons, the parental responsibilities may thereby be distributed between them on the basis of a common decision, according to Art. 1511 para. 1 Greek CC, so that each one is responsible for a distinct part of these responsibilities (e.g. one holder is responsible for the care of the child and the other for the management of its property).

As regards foster families, these are usually responsible for the actual care of the child and in no case can they have more responsibilities than those relating to the actual care of the child.<sup>34</sup>

## **C. ATTRIBUTION OF PARENTAL RESPONSIBILITIES**

### **I. Married Parents**

#### **15. Who has parental responsibilities when the parents are:**

##### **(a) Married at the time of the child's birth**

If the parents are married at the time of the child's birth, the law attributes parental responsibilities to both of them and provides that they have to exercise these responsibilities jointly (Art. 1510 para. 1 Greek CC).

##### **(b) Not married at that time but marry later**

If the parents marry after the birth of the child, and the father has recognised the child as his own, the child has in all respects the same status as a child born in wedlock (Art. 1473 Greek CC). Thus, in this case both the parents are holders of parental responsibilities, but the exercise of the relevant duties and responsibilities belongs to the mother, according to Art. 1515 para. 1 Greek CC. Both (still unmarried) parents can exercise parental responsibilities jointly, if this is permitted by the court, respecting the best interests of the child (Art. 1515 para. 2 Greek CC). If the parents subsequently marry, but no recognition of the child takes place, the relationship between the father and the child is not established (*filius nullius*). In

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<sup>33</sup> See the answer to Q 13 above as well as the provisions of Art. 1607, 1612, 1619, and 1621 Greek CC.

<sup>34</sup> P. SKORINI-PAPARRIGOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1659 Greek CC, p. 815-816, No. 15 [in Greek].

this case, therefore, the parental responsibilities belong to the mother alone (Art. 1515 para. 1 Greek CC).<sup>35</sup>

**16. How, if at all, is the attribution of parental responsibilities affected by:**

**(a) Divorce**

Art. 1510 para. 1 Greek CC provides that the parents exercise parental care jointly, without referring to the relations between them (*i.e.* if they cohabit, if they are factually separated, if their marriage has been annulled, or if they are divorced). Thus, the parents continue to exercise joint parental care also after divorcing, unless they submit a petition to the court to regulate parental care.<sup>36</sup> In this last scenario, the court has a wide range of possibilities: It may grant the exercise of parental care to one of the parents, or to both parents jointly, or it may distribute it between the parents,<sup>37</sup> or attribute it to a third party (Art. 1513 Greek CC). Independent of the court decision on the exercise of parental care, both parents will continue to engage in parental care.

**(b) Legal separation**

The institution of legal separation does not exist in Greece.

**(c) Annulment of the marriage**

Greek law does not differentiate between the effects of a divorce and an annulment of the marriage.<sup>38</sup> Hence, the court regulates the exercise of parental responsibilities on the basis of the abovementioned options (Art. 1513 Greek CC).

**(d) Factual separation**

The provisions on the attribution of parental responsibilities in the case of a divorce and an annulment of the marriage also apply factual separation of the parents (Art. 1514 Greek CC).

**17. To what extent, if at all, are the parents free to agree upon the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage? If they are, are these agreements subject to scrutiny by a competent authority.**

The parents are free to agree upon the attribution of parental responsibilities after divorce or an annulment of the marriage. If the parents wish to deviate from the

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<sup>35</sup> See, additionally, the answer to Q 20

<sup>36</sup> This is the prevailing opinion which is also followed by the courts. Nevertheless, it has been claimed that the courts should always regulate the attribution of parental care after divorce or the annulment of the marriage. Hence, if the parents continue to exercise parental care jointly, as they did before the divorce or annulment, this is only a *de facto* exercise. On this question see, among others, P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1513-1514 Greek CC, p. 216, No. 2-3.

<sup>37</sup> This distribution may relate to the functions of parental care or to time. P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1513-1514 Greek CC, pp. 230-231, No. 77.

<sup>38</sup> See Art. 1382 Greek CC.

provision of Art. 1510 para. 1 Greek CC (i.e. joint parental care), a court decision should always regulate this issue for the benefit of the child.<sup>39</sup> In deciding, the court shall take into consideration any relevant agreements between the parents (Art. 1513 para. 2 Greek CC), as well as the child's own opinion, depending on its maturity (Art. 1511 para. 2 Greek CC).

The only case where an agreement between the parents is legally required and may temporarily regulate the attribution of parental responsibilities is when they file a petition to the court for a divorce by mutual consent. A prerequisite for this is that they also submit a written agreement on matters of parental care over the children as well as the contact with them. This agreement is subject to the scrutiny of the court and is valid until the court decides on this issue (Art. 1441 para. 3 Greek CC).<sup>40</sup>

**18. May the competent authority attribute joint parental responsibilities to the parents of the child even against the wish of both parents/one of the parents? To what extent, if at all, should the competent authority take account of a parent's violent behaviour towards the other parent?**

The court will only attribute joint parental responsibilities to the parents if they both agree to this, and, at the same time, if they determine the location of the child's residence (Art. 1513 para. 1 Greek CC).

The guideline for the courts in deciding on the exercise of parental care is the best interest of the child (Art. 1511 para. 2 Greek CC). Within this framework a parent's violent behaviour towards the other parent is certainly a factor to be taken into account.

**19. Provide statistical information on the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage.**

In Greece no reliable statistics exist on this issue. From an unofficial study of court decisions it appears that the courts usually attribute parental responsibilities after divorce or annulment to the mother.<sup>41</sup>

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<sup>39</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1513-1514 Greek CC, p. 216, No. 3.

<sup>40</sup> A. KOUTSOURADIS, 'Scheidung und nachehelicher Unterhalt in Griechenland', in: HOFER, SCHWAB, HENRICH (eds.), *Scheidung und nachehelicher Unterhalt im europäischen Vergleich*, Bielefeld 2003, p. 123.

<sup>41</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1513-1514 Greek CC, p. 224, No. 45, citing numerous court decisions.

## II. Unmarried Parents

### 20. Who has parental responsibilities when the parents are not married?

When the parents of the child are not married the exercise of parental responsibilities belongs to the mother. If, however, the father has voluntarily recognised the child as his own, or he has not appeared as a defendant in a case on judicial recognition, he will also take part in the parental care. However, he will only exercise this duty if the mother's parental care has ceased, or if she is unable to do so (Art. 1515 para. 1 Greek CC). The court can, at the father's request, also assign the exercise of parental care to the father in other cases, if the interest of the child merits this. The consent of the mother on this issue constitutes an important, but not decisive factor (Art. 1515 para. 2 Greek CC).<sup>42</sup> It is worth noting that, according to the prevailing opinion, the court may attribute the exercise of parental care to the father alone.<sup>43</sup> Finally, in the case of judicial acknowledgement where the father has appeared as the defendant, he may not take part in the parental care or replace the mother in the exercise thereof (Art. 1515 para. 3 Greek CC).

### 21. Does it make a difference if the parents have formalised their mutual relationship in some way (registered partnership, civil union, pacte civil de solidarité...).

In Greece there is no way to formalise or legalize a relationship other than marriage.<sup>44</sup>

### 22. Under what condition, if at all, can:

#### (a) The unmarried mother obtain parental responsibilities

The unmarried mother obtains parental responsibilities at the moment of the child's birth (Art. 1515 para. 1 Greek CC).

#### (b) The unmarried father obtain parental responsibilities

Until the father acknowledges the child as his own, his relationship with the child is not established. Thus, the unmarried father can only take part in the parental care if he acknowledges the child as his own. The extent to which he can exercise his parental responsibilities depends on the form of the acknowledgement. For further details see the answer to Q 20.

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<sup>42</sup> M. KARASIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentray, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1515 Greek CC, p. 238, No. 8 [in Greek].

<sup>43</sup> M. KARASIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentray, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1515 Greek CC, p. 238, No. 8; E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. II, 3<sup>rd</sup> Edition, Athens-Thessaloniki: SAKKOULAS, 2003, p. 248, No.10.

<sup>44</sup> An engagement (Art. 1346-1349 Greek CC) is a mere promise to marry and, as such, it cannot be considered as a separate method of formalising a relationship.

**23. How, if at all, is the attribution of parental responsibilities affected by the ending of the unmarried parents' relationship?**

The attribution of parental responsibilities when the parents are not married is not linked to their relationship. Thus the ending of the parents' relationship does not directly affect parental responsibilities. Nevertheless, the ending of the relationship does constitute a change of circumstances and, as such, it entitles each parent to request the court to adjust the decision on parental care according to the new circumstances (Art. 1536 Greek CC). This has a practical significance in the case where the exercise of parental care was initially attributed to both parents.

**24. May the competent authority attribute joint parental responsibilities to the parents also against the wish of both parents/one of the parents? To what extent, if at all, may the competent authority take into account a parent's violent behaviour towards the other parent?**

Although there is no specific provision in the law on this issue, it is accepted that a prerequisite for the attribution of joint parental responsibilities is the consent of both parents.<sup>45</sup> This opinion is based on the provision of Art. 1513 Greek CC, according to which the attribution of joint parental responsibilities to the parents after divorce or annulment presupposes that they both agree to this. As far as the violent behaviour of one parent towards the other is concerned, the court may take this into account to the extent that affects the interests of the child.

**25. To what extent, if at all, are unmarried parents free to agree upon the attribution of parental responsibilities after the ending of their relationship?**

The parents are free to agree upon the attribution of parental responsibilities after the ending of their relationship. The court must decide on any deviation from the initial regulation on parental responsibilities. Both parents can request an adjustment to the initial court decision if there are any new circumstances (Art. 1536 Greek CC). See also the answer to Q 17.

**26. Provide statistical information available regarding the attribution of parental responsibilities for unmarried parents.**

No official statistics exist on this issue in Greece.

**III. Other Persons**

**27. Under what conditions, if at all, can the partner of a parent holding parental responsibilities obtain parental responsibilities, when, he/she is:**

**(a) Married to that parent**

The partner of the parent can only obtain parental responsibilities if she/he adopts the child. For this purpose a court decision is required. The court ascertains

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<sup>45</sup> M. KARASIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentry, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1515 Greek CC, p. 238, No. 8.

whether the adoption serves the interests of the child and whether further conditions laid down by the law have been met (Art. 1558 Greek CC). These conditions refer to the consent of the holders of parental responsibilities (Art. 1550 Greek CC), to the consent of the child itself, if the child is above 12 years old (Art. 1555 Greek CC), as well as to the age difference between the adoptive parent and the child, which should never be less than 15 years (Art. 1544 para. 3 Greek CC). When the judgement becomes final, the two spouses (*i.e.* the adoptive parent and the natural parent) have parental responsibilities (Art. 1562 in connection with Art. 1510 para. 1 Greek CC), whereas the relations between the child and its other natural parent are invariably interrupted (Art. 1561 Greek CC).

**(b) Living with that parent in a formalised relationship (registered partnership, civil union, pacte civil de solidarité...)**

In Greece there is no formalised relationship other than marriage.<sup>46</sup>

**(c) Living with that parent in a non-formalised relationship**

The partner of a parent in a non-formalised relationship can only obtain parental responsibilities if he adopts the child. Nevertheless, in practice this is not an option since it results in an interruption to the relations of the child with both its natural parents. Art. 1562 Greek CC, which provides that the relations of the child with the natural parent, who is the partner of the adoptive parent, still prevail, is not applicable in this case, since it presupposes that the partners are married. In spite of the prevailing opinion in the legal literature,<sup>47</sup> according to which the provisions of the Civil Code on marriage can be applied, by analogy, during cohabitation, the courts are rather reluctant to do so.<sup>48</sup> Thus, in practice, adoption is not really an option.

**28. Does it make any difference if the partner of the parent holding parental responsibilities is of the same sex?**

The issue is the same as in Q 27c. In other words, the partner of a parent can only obtain parental responsibilities if he adopts the child. In such a case, however, the relations of the child with both its natural parents are interrupted. The exception under Art. 1562 Greek CC only applies to married couples. However, same-sex marriage is still not possible in Greece,<sup>49</sup> and the courts deny the application of Art. 1562 Greek CC by analogy in the case of cohabitation. In any event, it is questionable whether adoption would serve the interests of the child in such a case.

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<sup>46</sup> See An engagement (Art. 1346-1349 Greek CC) is a mere promise to marry and, as such, it cannot be considered as a separate method of formalising a relationship.

<sup>47</sup> P. AGALLOPOULOU, 'Cohabitation and one-parent Families According to Greek Law', *International Family Law*, 2003, p. 24-28 at 25, with further references.

<sup>48</sup> This reluctance on the part of the Supreme Court can be seen in decision 14/2004, accessible at [www.dsanet.gr](http://www.dsanet.gr).

<sup>49</sup> Although the relevant articles of the Civil Code do not explicitly provide that different sexes is a prerequisite for marriage, same-sex marriage is excluded, according to prevailing opinion. On this issue see E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. I, 3<sup>rd</sup> Edition, Athens-Thessaloniki: Sakkoulas, 2003, p. 64, with further references [in Greek].

**29. How, if at all, is the attribution of parental responsibilities in the partner affected by the ending of his/her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q 28.**

The partner of the parent can only obtain parental responsibilities if he adopts the child. This is not linked to the relationship between the parents, so it does not directly affect the attribution of parental responsibilities. Nevertheless, in view of the new circumstances, the holders of parental responsibilities may request the court to regulate this issue. For the case where the partner and the parent have been married, see the answer to Q 16a and for the case where they remained unmarried see answer to Q 23. The court will decide on this issue in the interest of the child by taking into consideration all the relevant factors. Under these circumstances, the attribution of parental responsibilities to the natural parent may be more probable, in view of the normally stronger ties of the child with its natural parent.<sup>50</sup>

**30. To what extent, if at all, is the parent holding parental responsibilities and his/her partner free to agree upon the attribution of parental responsibilities after the ending of his/her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q 28.**

The parent of the child and his partner holding parental responsibilities can decide on the attribution of parental responsibilities after the ending of their relationship. The court may decide on this issue, in order to ensure that the interests of the child are ensured. For further details, see the answers to Q 17 (for married couples) and Q 25 (for unmarried couples).

**31. Under what conditions, if at all, can other persons not being a parent or a partner of a parent holding parental responsibilities, obtain parental responsibilities (e.g. members of the child's family, close friends, foster parent...)? Specify, where such other persons may obtain parental responsibilities, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.**

Other persons, not being parents of the child, may obtain parental responsibilities as a substitute to the parents if these parents do not have or are unable to exercise parental care (Art. 1589 Greek CC). A lack of parental care will arise when the child is of unknown parents, or the parental care of both parents has ceased because they have died, they have been declared to be missing persons, or they have forfeited this right (Art. 1538 Greek CC). Further, the court may only deprive the parents of parental responsibilities if it is of the opinion that they have abused their rights, violated their duties, are not in a position to be able to carry out this task (Art. 1532 para. 1 Greek CC), or, after divorce, annulment or factual separation, they are unsuitable for this purpose (Art. 1513-1514 Greek CC)<sup>1</sup>. Finally, the court can, at the request of the parents, discharge them from the exercise of parental care on important grounds (Art. 1535 Greek CC).

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<sup>50</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1513-1514 Greek CC, p. 226-227, No. 55.

A guardian is always appointed by the court and he/she may be, in order of precedence: the spouse of the minor; a person appointed by the parent who was holding parental care until his death;<sup>51</sup> or any other person whom the court considers suitable, preferably from among the relatives of the child (Art. 1592 Greek CC). When the parents request that parental care be attributed to a third person on the basis of Art. 1535 Greek CC they will also nominate the guardian. The court appoints a supervisory council at the same time, whose tasks may be to consult, control or take decisions, depending on the circumstances.<sup>52</sup> This council is composed of three to five members, who are acquaintances or relatives of the parents (Art. 1634 Greek CC).

If the holders of parental responsibilities, be they parents or guardians, require assistance in the exercise of parental responsibilities, they may assign the actual care of the child to third persons, *i.e.* foster parents.<sup>53</sup> The court may, in addition, attribute the entire physical care of the child to a foster family, especially when the parents cannot effectively exercise parental care.<sup>54</sup> Foster care is an institution which is supplementary to parental care and guardianship (or even to adoption). Thus, it does not affect, in principle, the attribution of parental responsibilities (Art. 1655 Greek CC).<sup>55</sup> Nevertheless, if the child has been integrated into the foster family for a long period and at the same time its ties with its parents or its guardian have weakened, the foster parents may request the court that they be assigned, wholly or partly, with parental responsibilities. If the court accepts their request, it will appoint them as guardians (Art. 1660 and 1661 Greek CC).

**32. Under what conditions, if at all, can a public body obtain parental responsibilities? Specify, where it is so obtained, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.**

If the court determines that there is no natural person who is suitable to obtain parental responsibilities, it may assign the guardianship of the child to a special foundation or society, or else to the competent social services (Art. 1600 Greek CC). These bodies cannot reject this assignment (Art. 1599 Greek CC).

**33. To whom are the parental responsibilities attributed in the case of:**

**(a) The death of a parent holding parental responsibilities**

In the case of the death of a parent holding parental responsibilities, parental care devolves exclusively to the other parent, provided that he/she has also taken part in the parental care (Art. 1510 para. 2 Greek CC). The law provides an exception to

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<sup>51</sup> See also Art. 1535 Greek CC.

<sup>52</sup> For a more detailed description of the powers of the supervisory council see K. PANTELIDOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1642 Greek CC, p. 713, No. 1.

<sup>53</sup> The guardian also needs the permission of the supervisory council (Art. 1607 Greek CC).

<sup>54</sup> See also Art. 1533 Greek CC.

<sup>55</sup> As mentioned above, only the court may entrust the physical care of the child to a foster family. This is only the case if it is considered necessary in order to prevent harm to the physical, psychological or mental health of the child and provided that there are no less drastic means to ensure this. See also Art. 1533 para. 1 and 4 Greek CC.



this rule if the child was born out of wedlock and the father had appeared as a defendant judicial acknowledgement proceedings (Art. 1515 para. 3 Greek CC); then the father is not entitled to exercise parental care even after the death of the mother, unless the court, at his request, enables him to exercise such care, taking into consideration the interests of the child. If the other parent does not have or is not able to exercise parental care, the court will appoint a guardian. For further details see the answer to Q 31

**(b) The death of both parents of whom at least one was holding parental responsibilities at the time of the death**

If both parents die, the court will assign parental responsibilities to a guardian. For further details see the answer to Q. 31.

**34. To what extent, if at all, may the holder(s) of parental responsibilities appoint a new holder(s) upon his/her/their death? If such an appointment is permitted, must it take place in a special form, e.g. a will?**

Only a parent may appoint a new holder of parental responsibilities upon his/her death. The appointment may be included in a will or declared to a notary or to a justice of the peace. A condition for the validity of this appointment is that the parent held parental responsibilities both at the time of the declaration and at the time of his/her death (Art. 1592 para. 2 Greek CC). It is worth mentioning that if one parent is still alive at the time of the other's death, parental care will devolve to him/her exclusively (see the answer to Q 33a), so any appointment by the deceased will have no effect.<sup>56</sup>

## **D. THE EXERCISE OF PARENTAL RESPONSIBILITIES**

### **I. The Interests of the Child**

**35. In exercising parental responsibilities, how are the interests of the child defined in your national legal system?**

In Greek family law there is no determined legal definition of the interests of the child. This concept is somewhat vague and thus flexible, so it can be adapted to the particular circumstances of each case (*in concreto*).<sup>57</sup> As for the content of this concept in general, doctrine distinguishes between the moral and the material

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<sup>56</sup> K. PANTELIDOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1592-1594 Greek CC, p. 538, No. 4. See also No. 5, where it is mentioned that if the parent who died first appointed a guardian and the other parent did not, the appointment of a guardian by the first parent is not binding on the court after the death of the latter.

<sup>57</sup> S. KOUKOULI-SPIMIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 94, No. 206-207; P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1511 Greek CC, p. 205-206, No. 17, citing numerous court decisions.

interests of the child.<sup>58</sup> The first include safeguarding its psychological, mental, and physical health, the development of its personality, as well as the protection of its fundamental rights and liberties. The material interests refer to the property of the child. Important criteria for the specification of the interests of the child can be derived from international law (for instance, the European Convention on Human Rights or the Convention for Children's Rights), the provisions of national law, as well as from the findings of modern psychology and child psychiatry.<sup>59</sup>

## II. Joint Parental Responsibilities

### 36. If parental responsibilities are held jointly by two or more persons, are they held equally?

When two (or more) persons hold parental responsibilities,<sup>60</sup> they hold them equally. Although there is no explicit provision on this issue in the Civil Code, this result is derived from the spirit of equality, which runs through Greek family law, and is manifested by the absence of any provision to the contrary.

### 37. If parental responsibilities holders cannot agree on an issue, how is the dispute resolved? For example, does the holder of parental responsibilities have the authority to act alone? In this respect is a distinction made between important decisions and decisions of a daily nature? Does it make any difference if the child is only living with one of the holders of the parental responsibilities?

If the parents who hold joint parental responsibilities cannot agree on an issue related to the exercise of parental care, although it is necessary to reach a decision thereon, in order to protect the interests of the child the court shall decide (Art. 1512 Greek CC). A lone parent can only regulate pressing or day to day matters relating either to the usual care of the child, or to the ongoing administration of its property (Art. 1516 para. 1 Greek CC). As a matter of fact, if the child lives with only one parent, the latter will often have to act alone. Nevertheless, this does not alter the above provision, which stems from the nature of joint responsibilities.

If the child is subject to co-guardianship, the supervisory council will decide on any dispute between the guardians. If a guardian disagrees with the decision of the supervisory council he/she may bring the case before the courts (Art. 1605 Greek CC). Nevertheless, the guardians may determine that they can decide by majority

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<sup>58</sup> S. KOUKOULI-SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 93, No. 204.

<sup>59</sup> S. KOUKOULI-SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 95-109, No. 211-238.

<sup>60</sup> If the court does not specifically regulate the distribution of parental responsibilities among the holders of this responsibility, it is assumed that joint parental responsibilities are attributed (Art. 1510(1) and 1604 Greek CC).

decision on certain issues, provided that they are at least three in number.<sup>61</sup> In any case, the abovementioned provisions concerning joint parental care may also apply to co-guardianship by analogy.<sup>62</sup> It is worth noting, however, that normally the court will appoint a sole guardian (Art. 1594 Greek CC).

**38. If holders of parental responsibilities cannot agree on an issue, can they apply to a competent authority to resolve their dispute? If applicable, specify whether this authority's competence is limited to certain issues e.g. residence or contact.**

If the holders of joint parental care cannot agree on an issue they may apply to the court to settle their dispute, provided that, in view of the interests of the child, a decision on a particular issue is necessary (Art. 1512 Greek CC). In the case of co-guardianship, the supervisory council will settle the dispute. If a guardian does not agree he may bring the case before the court (Art. 1605 Greek CC). Both the court and the supervisory council may decide on all the relevant matters in the interest of the child, without having to conform to the opinion of one of the holders of parental responsibilities.<sup>63</sup>

**39. To what extent, if at all, may a holder of parental responsibilities act alone if there is more than one holder of parental responsibilities?**

A parent can only act alone in matters of a usual nature (referring either to the care of the child or to the ongoing administration of its property), or in pressing matters (Art. 1516 para. 1 Greek CC). In addition, a lone parent may receive a disposition addressed to the child. The same holds true, by analogy, in the case of co-guardianship.<sup>64</sup>

**40. Under what circumstances, if at all, may the competent authority permit the residence of the child to be changed within the same country and/or abroad (so-called relocation) without the consent of one of the holders of parental responsibilities?**

If the parents do not agree on the residence of the child, they may apply to the court or the supervisory council resolve their dispute (Art. 1512 Greek CC). The guideline for the court in deciding on this matter is the interests of the child. After

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<sup>61</sup> See K. PANTELIDOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1604-1605 Greek CC, p. 567, No. 1.

<sup>62</sup> K. PANTELIDOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1604-1605 Greek CC, p. 567, No. 1.

<sup>63</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1512 Greek CC, p. 213 No. 9; K. PANTELIDOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1604-1605 Greek CC, p. 569, No. 7.

<sup>64</sup> K. PANTELIDOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1604-1605 Greek CC, p. 567, No. 1.

evaluating all the relevant factors the court may permit a change to the child's residence within the same country or abroad. It is worth mentioning that this disagreement between the parents, as well as the change of residence of the child constitute new circumstances. This may indicate that the exercise of joint parental responsibilities is no longer advantageous and thus a new regulation is needed. The same holds true, by analogy, in the case of co-guardianship with the difference being that the dispute is, at least initially, resolved by the supervisory council (Art. 1605 Greek CC).

**41. Under what conditions, if at all, may the competent authority decree that the child should, on an alternating basis, reside with both holders of parental responsibilities (e.g. every other month with the mother/father)?**

Such a case usually arises after the divorce, annulment of the marriage, or the factual separation of the parents. The court may decide that the child should reside on an alternative basis with both holders of parental responsibilities either when it attributes joint parental responsibilities to the parents, who have already agreed on this issue,<sup>65</sup> or when it determines that parental responsibilities should rotate between the parents.<sup>66</sup> In any case, the court has to take the interests of the child into consideration.

**III. Sole Parental Responsibilities**

**42. Does a parent with sole parental responsibilities have full authority to act alone, or does he/she have a duty to consult:**

**(a) The other parent**

If a parent has sole parental responsibilities, he/she never has a (legal) duty to consult the other parent. It is worth noting, however, that the parent to whom parental care is not entrusted, has the right to demand information concerning the child and its property (Art. 1513 para. 3 Greek CC).

**(b) Other persons, bodies or competent authorities**

Parents need the permission of the court before entering into certain transactions concerning the management of the child's assets (Art. 1526 Greek CC which refers to Art. 1624 and 1625 Greek CC). This restriction is applicable to all cases and is not confined to those instances where sole parental responsibilities are attributed.

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<sup>65</sup> The court may only attribute joint parental responsibilities to the parents if they both agree to and, at the same time, they determine the residence of the child. (See the answer to Q 18.) In any event, the court is not bound by any agreement between the parents. See P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1513-1514 Greek CC, p. 229-230, No. 71.

<sup>66</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Arts 1513-1514 Greek CC, p. 232, No. 83-87.

## E. CONTACT

### 43. Having regard to the definition by the Council of Europe, explain the concepts of contact used in your national legal system.

The right to contact is regulated in Art. 1520 Greek CC. This right is not included in the concept of parental care, but is a distinct right stemming from the ties of kindred between the child and its family.<sup>67</sup> Nevertheless, contact relates to the physical care of the child.<sup>68</sup> Thus, the provision in Art. 1520 Greek CC gains practical significance for the parent to whom the court has not attributed such parental responsibilities. The concept of contact encompasses personal or telephone communication, correspondence, the offer of a gift, or any other kind of modern communication<sup>69</sup> and it can also be realised through a third person.<sup>70</sup>

### 44. To what extent, if at all, does the child have a right of contact with:

#### (a) A parent holding parental responsibilities but not living with the child

Art. 1520 Greek CC formulates the right of contact as a right belonging to the parent. Nevertheless, Art. 8 of the European Convention on Human Rights establishes the protection of the child's family life. An integral part of this is the right of the child to contact its family and, above all, its parents. Likewise, Art. 9 para. 3 of the Convention on the Rights of the Child explicitly provides the child with the right to contact its parents. Greece has signed and ratified both conventions. This calls for a wide interpretation of Art. 1520 Greek CC, so that the child itself has the right to contact its parents.<sup>71</sup> Nevertheless, the courts seem to deny this interpretation of Art. 1520 Greek CC. In the majority of court decisions, no such right is recognised as belonging to the child.<sup>72</sup>

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<sup>67</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 70, No. 154, with further references.

<sup>68</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, Introductory Remarks on Art. 1505-1541 Greek CC, p. 74, No. 159 [in Greek]; A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1520 Greek CC, p. 308-309, No. 16.

<sup>69</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1520 Greek CC, p. 310-311, No. 19-26.

<sup>70</sup> A relevant example is where the parent sends a good friend to visit the child on his/her behalf. This may be crucial when the parent lives far away and the child is very young, so that other means of contact are not satisfactory. See E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. II, 3<sup>rd</sup> Edition, Athens-Thessaloniki: SAKKOULAS, 2003, p. 297.

<sup>71</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 87-88, No. 184.

<sup>72</sup> Decisions of the Court of Appeals of Athens: 10/1988, *Elliniki Dikaiosiini* Vol. 35 (1994), p. 129, 11697/1989 *Elliniki Dikaiosiini* Vol. 33 (1992), p. 157, 1908/1992, accessed at [www.lawdb.intrasoftnet.com](http://www.lawdb.intrasoftnet.com). Similar is the decision of the Court of Appeals of Piraeus 203/1994 *Elliniki Dikaiosiini* Vol. 35 (1994), p. 1690.

**(b) A parent not holding parental responsibilities**

According to the prevailing opinion, the aim of the abovementioned right of the child is to protect its ties with its family. Hence, it is not dependent on whether or not its parent has parental responsibilities.<sup>73</sup>

**(c) Persons other than parents (e.g. grandparents, stepparents, siblings etc...)**

The European Convention on Human Rights interprets the notion of the family somewhat widely. Thus, the family not only includes the parents and the child, but all persons with whom the child has real ties, for example its grandparents, siblings, as well as other close relatives.<sup>74</sup> Hence, the right of the child must be interpreted accordingly. Nevertheless, the courts do not recognise any right of contact with the child.<sup>75</sup>

**45. Is the right to have contact referred to in Q 43 also a right and/or a duty of the parent or the other persons concerned?**

Contact with the child relates to its care.<sup>76</sup> Thus, the holder of this responsibility would not be exercising this duty properly if he/she does not contact the child. The provision in Art. 1520 para. 1 Greek CC, which establishes the right of a parent to contact the child, gains practical significance when the court has not entrusted the care of the child to the parent. This right in Art. 1520 para. 1 Greek CC does not constitute a part of parental care, but is a distinct right.<sup>77</sup> Therefore, it does not matter whether or not the parent holds parental responsibilities. It is also of no relevance if the parent is adoptive or natural.

Moreover, Art. 1520 para. 2 Greek CC provides that the parents have no right to prevent the child from having contact with its further ascendants (i.e. grandmothers, grandfathers), unless this is justified by serious reasons. This article does not seem to assign the right of contact to the ascendants of the child, but it

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<sup>73</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 70, No. 154, with further references.

<sup>74</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 25-26 No. 48.

<sup>75</sup> Decisions of the Court of Appeals of Athens: 10/1988, *Elliniki Dikaiosisini* Vol. 35 (1994), p. 129, 11697/1989 *Elliniki Dikaiosisini* Vol. 33 (1992), p. 157, 1908/1992, accessed at [www.lawdb.intrasoftnet.com](http://www.lawdb.intrasoftnet.com). Similar is the decision of the Court of Appeals of Piraeus 203/1994 *Elliniki Dikaiosisini* Vol. 35 (1994), p. 1690.

<sup>76</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, Introductory Remarks on Art. 1505-1541 Greek CC, p. 74, No. 159 [in Greek]; A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, Art. 1520 Greek CC, p. 308-309, No. 16.

<sup>77</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 70, No. 154, with further references.

does impose a duty not to impede such contact on the parents.<sup>78</sup> Nevertheless, according to the prevailing opinion of the courts and the doctrine, the ascendants of the child are entitled to contact the child.<sup>79</sup>

The Greek Civil Code does not establish a right for other persons to contact the child. On the other hand, the normal psychological and sentimental development of the child may call for contact with other relatives, like the child's aunts, uncles etc. Depriving the child of this contact may indicate that parental responsibilities are not being properly exercised. Likewise, if an adopted child had lived for many years with its natural family before being adopted, its interests may also require that some contact be maintained.<sup>80</sup>

Finally, the right to contact the child does not entail a corresponding duty.<sup>81</sup> In any event, it is doubtful whether forced contact with the child would serve its best interests.

**46. To what extent, if at all, are the parents free to make contact arrangements? If they can, are these arrangements subject to scrutiny by a competent authority?**

Art. 1520 para. 3 Greek CC provides that the court can regulate the exercise of the right to contact with the child. Nevertheless, it is accepted that the parents may enter into an agreement on this issue. Their contract is binding, but cannot be enforced, unless the court affirms it.<sup>82</sup>

**47. Can a competent authority exclude, limit or subject to conditions, the exercise of contact? If so, which criteria are decisive?**

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<sup>78</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1520 Greek CC, p. 327 No. 98.

<sup>79</sup> See, among others, E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. II, 3<sup>rd</sup> Edition, Athens-Thessaloniki: SAKKOULAS, 2003, p. 301; S. KOUKOULI- SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 89, No. 187.

<sup>80</sup> S. KOUKOULI- SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 77 No. 164.

<sup>81</sup> This is the prevailing opinion in the doctrine and the court decisions. See A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1520 Greek CC, p. 309, No. 17, also with references to the opposite opinion (fn. 20).

<sup>82</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1520 Greek CC p. 314, No. 34-39. For the case of contact after a divorce by mutual consent see the answer to Q 17.

The court specifically regulates the exercise of contact (Art. 1520 para. 3 Greek CC). Thus it may limit such contact, subject it to certain conditions,<sup>83</sup> or in extreme cases even exclude it.<sup>84</sup> In its decision, the court must weigh the interests of both the parents and the child *in concreto*, giving priority to those of the latter.<sup>85</sup> Within this framework, the effect of contact on the physical, mental and psychological health of the child is a decisive factor.<sup>86</sup>

**48. What if any, are the consequences on parental responsibilities, if a holder of parental responsibilities with whom the child is living, disregards the child's right to contact with:**

**(a) A parent**

If the parent with whom the child is living disregards the child's right to contact the other parent, he/she will not be properly exercising his/her rights and responsibilities. Thus this behaviour may lead to the adjustment of the court decision on parental responsibilities in view of the new circumstances (as provided by Art. 1536 Greek CC).<sup>87</sup> The consequences for a guardian are similar. If the child is under foster care, Art. 1656 Greek CC explicitly provides that the foster parents must facilitate the parents' or the guardian's contact with the child, provided that this does not substantially damage the child's interests.

**(b) Other persons**

The answer is in principle the same in this case too. Nevertheless, when the court decides on this problem, it may be of importance that the holder of parental responsibilities disregards the right of the child to contact a person other than its parent, so that the consequences of this infringement are less weighty.

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<sup>83</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1520 Greek CC p. 314, No. 45.

<sup>84</sup> S. KOUKOULI- SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 81-82, No. 175.

<sup>85</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1520 Greek CC, p. 313-314, No. 42, as well as the following decisions: Supreme Court, 534/1991, *Elliniki Dikaosini* Vol. 32 (1991), p. 1505, District Court of Thessaloniki, 3253/1988, *Armenopoulos* Vol. 42 (1988), p. 989. See, however, S. KOUKOULI-SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 80, No. 172 who claims that the interest of the child is the only relevant criterion and cites relevant decisions of the European Court of Human Rights in support of this.

<sup>86</sup> A. POULIADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1520 Greek CC, p. 313-314, No. 42.

<sup>87</sup> E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. II, 3<sup>rd</sup> Edition, Athens-Thessaloniki: SAKKOULAS, 2003, p. 296-297; Decision of the Court of Appeals of Thessaloniki 2773/1992, *Armenopoulos* Vol. 46 (1992), p. 1229.



## F. DELEGATION OF PARENTAL RESPONSIBILITIES

### 49. To what extent, if at all, may the holder(s) of parental responsibilities delegate its exercise?

Parental responsibilities are strictly personal (*ius personalissimum*). Thus the holders of such responsibilities cannot delegate them to others.<sup>88</sup> This does not, however, exclude the possibility to delegate concrete aspects of the exercise of parental responsibilities to others. This is necessarily the case when, for instance, the child attends school, or a summer camp.<sup>89</sup> Likewise, the holders of parental responsibilities may appoint a foster family and assign the actual care of the child to them.<sup>90</sup>

### 50. To what extent, if at all, may a person not holding parental responsibilities apply to a competent authority for a delegation of parental responsibilities?

Any interested person may apply for the delegation of parental responsibilities to the relevant body falling under the Ministry of Health and Welfare. The competent authority will scrutinize the application in order to conclude whether the family is suitable to care for the child. If this is the case, the family is formally recognized by a decision of the Minister. In exceptional cases an application by single persons may also be considered.<sup>91</sup>

## G. DISCHARGE OF PARENTAL RESPONSIBILITIES

### 51. Under what circumstances, if at all, should the competent authorities in your legal system discharge the holder(s) of his/her/their parental responsibilities for reasons such as maltreatment, negligence or abuse of the child, mental illness of the holder of parental responsibilities, etc.? To what extent, if at all, should the competent authority take into account a parent's violent behaviour towards the other parent?

According to Art. 1537 Greek CC a parent forfeits parental care when he/she has been finally sentenced to a term of imprisonment for at least one month for a fraudulent offence against the child, or because of any offence against the child's

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<sup>88</sup> S. KOUKOULI- SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 50, No. 108; P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1510 Greek CC, p. 187, No. 75.

<sup>89</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1510 Greek CC, p. 187, No. 75.

<sup>90</sup> P. SKORINI-PAPARRIGOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. SAKKOULAS, 2003, Art. 1655 Greek CC, p. 797, No. 5. Art. 1659 Greek CC provides that the foster parents may only regulate pressing matters or matters of a day to day nature, unless the law or a court decision assigns more responsibilities to them.

<sup>91</sup> Art. 9 para. 1 and 4, Law 2082/1992 (as reformed by Art. 65 of Law 2447/1996).

life or health. This is a result of the conviction, without any need for a special provision in the relevant court decision. Under these circumstances, the court may also discharge the parent from the parental care of all his/her children.

In addition, Art. 1532 para. 1 Greek CC provides that if a parent abuses his rights (*e.g.* by maltreating the child),<sup>92</sup> violates his duties (*e.g.* by neglecting the child),<sup>93</sup> or is not in a position to be able to carry out this task (*e.g.* because of a mental illness),<sup>94</sup> the court may only deprive him of the exercise of parental care. As regards a parent's violent behaviour towards the other parent, although this behaviour is not directly aimed at the child, it may imply an insufficient exercise of parental care if it has a detrimental effect on the child itself.<sup>95</sup> In any case, Art. 1533 para. 1 Greek CC provides that the court may only discharge a parent from the care of the child if all other available measures are insufficient, or do not suffice in order to prevent any danger to the physical, mental or psychological health of the child (*ultimum remedium*).

If the child is subject to guardianship, the parental responsibilities of the guardian will immediately cease when he/she loses, wholly or partly, his/her capacity to enter into judicial acts (Art. 1650 Greek CC). Moreover, the court may discharge him/her from these tasks, on important grounds, particularly when it determines that the continuation of the guardianship may imperil the interests of the child (Art. 1651 Greek CC).

**52. Who, in the circumstances referred to in Q 51, has the right or the duty to request the discharge of parental responsibilities?**

If the parent forfeits his/her rights because of a criminal conviction, or the guardian loses his/her full capacity, the discharge of parental responsibilities is immediate, without the need for any further court decision. In the remainder of cases, the court may discharge a parent from parental care at the request of the other parent, the close relatives of the child, or the public prosecutor (Art. 1532 Greek CC). It may also discharge a guardian of his responsibilities at the request of the supervisory council (Art. 1651 Greek CC). The court may also decide on these issues of its own motion (Art. 1532 and 1651 Greek CC). It is worth noting that the law does not entitle the child itself to bring such a case before the court.<sup>96</sup>

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<sup>92</sup> Decisions of the Single Judge District Court of Thessaliniki: 954/1990, *Armenopoulos* Vol. 45 (1991), p. 449 and 229/1991, *Armenopoulos* Vol. 46 (1992), p. 20.

<sup>93</sup> Single Judge District Court of Athens 17182/1997, *Elliniki Dikaosini* Vol. 41 (2000), p. 204, Court of Appeals of Athens, 871/1970, *Armenopoulos* Vol. 24 (1970), p. 884.

<sup>94</sup> Court of Appeals of Thessaloniki 276/2000, *Armenopoulos* Vol. 54 (2000), p. 1385.

<sup>95</sup> Single Judge District Court of Thessaloniki 165/1992, *Armenopoulos* Vol. 46 (1992), p. 632.

<sup>96</sup> The child may, however, intervene in the proceedings (Art. 80 Greek CCP). Relevant is the decision of the Court of Appeals of Athens 10659/1998, *Elliniki Dikaosini* Vol. 35 (1994), p. 129, which recognised this possibility in a case concerning the right of contact. In addition, according to Art. 4 of the (1996) European Convention on the Exercise of Children's Rights (Law 2502/1997), the child itself has the right to apply for the appointment of a special guardian to represent it.

**53. To what extent, if at all, are rights of contact permitted between the child and the previous holder of parental responsibilities after the latter has been discharged of his/her parental responsibilities?**

The right of contact is distinct from parental responsibilities.<sup>97</sup> Thus the discharge of parental responsibilities does not necessarily lead to the exclusion of the right to contact the child. Nevertheless, the court will regulate the exercise of the right of contact (Art. 1520 para. 3 Greek CC). In doing so, the reasons as to why the parent does not have parental responsibilities will be of importance.<sup>98</sup> Particularly in the case where the parent has forfeited his responsibilities because of an offence against the child, contact with the child should rather be exceptional.<sup>99</sup> The main guideline to decide this issue is the best interests of the child.

**54. To what extent, if at all, can the previous holder(s) of parental responsibilities, who has been discharged of his/her parental responsibilities, regain them?**

In the case of parental care, if a parent has forfeited the office, he/she cannot regain it. If, however, the court had only deprived him/her of the exercise of parental responsibilities, it may revoke or amend the relevant decision, in view of a change of circumstances, provided that any of the parents, the close relatives, or the public prosecutor request this (Art. 1536 Greek CC). This article introduces an exception to Art. 321 Greek CCP, which refers to the *res judicata* effect.

If the court discharges the guardian from office, there is no provision which might enable him/her to regain his/her responsibilities. In this case the problem will arise whether or not Art. 1536 Greek CC may apply by analogy. Taking into account the fact that Art. 1536 Greek CC establishes an exception, its application, by analogy, to other cases is methodologically flawed. Moreover, the interests of the child, and particularly the need for the child to live in a stable environment, as well as the fact that the guardian is a third person point in the same direction.

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<sup>97</sup> See S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 70, No. 154, with further references.

<sup>98</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 77, No. 165.

<sup>99</sup> S. KOUKOULI-SPILIOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 77, No. 177.

## H. PROCEDURAL ISSUES

### 55. Who is the competent authority to decide disputes concerning parental responsibilities, questions of residence of the child or contact? Who is the competent authority to carry out an investigation relating to the circumstances of the child in a dispute on parental responsibility, residence or contact?

The competent authority to settle disputes concerning parental responsibilities, questions of the child's residence or contact is always the district court. Depending on the proceedings the case may be heard by a single judge (this is usually the case when the dispute refers to the care of the child)<sup>100</sup> or by a bench of three judges (if the dispute is joined with matrimonial disputes or disputes concerning the relationship between the parents and children).<sup>101</sup> The territorial competence of the court is determined by the domicile of the defendant (Art. 22 Greek CCP).<sup>102</sup> Finally, Greek courts have international jurisdiction when they have territorial competence<sup>103</sup> as well as when any of parties, *i.e.* the parents or the child, are Greek citizens.<sup>104</sup> This depends, of course, on any relevant provisions of European or International law, which prevail as *leges superiores*.<sup>105</sup>

The competent authority to carry out an investigation relating to the circumstances of the child is the social service. The establishment of this social service is provided by Law 2447/1996 (Art. 49-54), but it has not yet been established.<sup>106</sup>

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<sup>100</sup> Art. 17 para. 1 Greek CCP.

<sup>101</sup> Art. 681b para. 2 Greek CCP. Matrimonial disputes are those relating to divorce, annulment of the marriage, declarations on the existence or non-existence of marriage, and the personal relationship of the spouses during the marriage (Art. 592 para. 1 Greek CCP). Disputes concerning the relationship between parents and children are those relating to a challenge to paternity, the recognition of the existence or the non-existence of a parent and child relationship, or of parental care, the acknowledgement of paternity of children born out of wedlock or a challenge to such a voluntary acknowledgement, the recognition or the non-recognition of the nullity of adoption or its termination, and the recognition or non-recognition of the existence or non-existence of guardianship, (Art. 614 para. 1 Greek CCP).

<sup>102</sup> If the dispute on parental responsibilities is joined with matrimonial disputes, the *forum matrimonii* will apply. (Art. 39 Greek CCP).

<sup>103</sup> Art. 3 para. 1 Greek CCP.

<sup>104</sup> Art. 622, Greek CCP. See S. KOUKOULI- SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 111, No. 243.

<sup>105</sup> See, for instance, Art. 8 of Council Regulation (EC) No. 2201/ 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility (2003) OJL 338/1, or Art. 5 para. 1 of the (1996) Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children which provide that jurisdiction is, at least in principle, determined by the child's habitual residence.

<sup>106</sup> S. KOUKOULI- SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 129, No. 272.

**56. Under what conditions, if any, may a legally effective decision or agreement on parental responsibilities, the child's residence or contact, be reviewed by a competent authority? Is it, e.g., required that the circumstances have changed after the decision or agreement was made and/or that a certain period of time has time has passed since the decision or agreement?**

Art. 1536 Greek CC provides that one or both parents of the child, or the child's close relatives, or the public prosecutor may request the court to review the decision, provided that circumstances have changed after the initial decision. This provision refers only to parental care. For the possibility of applying it, by analogy, in the case of guardianship, see the answer to Q 54.

**57. What alternative disputes solving mechanisms, if any, e.g. mediation or counselling, are offered in your legal system? Are such mechanisms also available at the stage of enforcement of a decision/agreement concerning parental responsibilities, the child's residence or contact?**

In Greece there is no way to settle issues of parental responsibilities or contact with the child other than court proceedings. Nevertheless, Art. 681c para. 2 Greek CCP, provides that in a mandatory pre-trial stage the competent social service will investigate the living conditions of the child and will submit the relevant report to the court. Furthermore, the judge may not proceed to hear the case before an attempt at conciliation has been made between the parties. This is for the benefit of the child.

**58. To what extent, if at all, is an order or an agreement on parental responsibilities, the child's residence or contact enforceable and in practice enforced? Describe the system of enforcement followed in your national legal system. Under what conditions, if at all, may enforcement be refused?**

The Greek Code of Civil Procedure provides different enforcement proceedings depending on the content of the relevant claim. Art. 950 Greek CCP introduces special proceedings for the enforcement of the obligation to deliver a child and to allow contact with that child.

More specifically, in such cases the court orders the parent to deliver the child. The parent's compliance with the court's decision is induced by adding a clause ordering the payment of a fine and/or imprisonment for a period of up to one year upon default. If the child is not found, the parent may be compelled to take the "oath of manifestation", certifying that he/she does not know where the child may

be found.<sup>107</sup> Similar is the enforcement of agreements or decisions referring to contact with the child.<sup>108</sup>

At this point it is worth mentioning that the abovementioned provisions were introduced by Law 2721/1999. Until then, the enforcement of the decision to deliver the child was direct, meaning that the bailiff removed the child from the one parent in order to deliver it to the other. This (abated) proceeding was detrimental to the child and was thus incompatible with the protection of its interests.

**59. To what extent, if at all, are children heard when a competent authority decides upon parental responsibilities, the child's residence or contact, e.g., upon a dispute, when scrutinizing an agreement, when appointing or discharging holder(s) of parental responsibilities, upon enforcement of a decision or agreement?**

According to Art. 681c para. 3 Greek CCP, the court, before deciding on issues concerning parental responsibilities or contact, will consider the opinion of the child, due attention being paid to the child's maturity. This is in accordance with Art. 1511 para. 3 Greek CC, which provides that the opinion of the child must be sought and taken into consideration before any decision is taken concerning parental care (Art. 1511 para. 3 Greek CC), at the same time expanding its field of application, so that it not only covers issues of parental care but also any matter which has an impact on the child. The hearing of the child is obligatory as far as the court is concerned, even in cases concerning conservatory measures, provided that the child has sufficient maturity.<sup>109</sup> Nevertheless, the Supreme Court considers that the maturity of the child is a factual matter, so that final decisions are not subject to an appeal in cassation. It further accepts that the courts do not need to justify explicitly why the child has not been heard: when the child is not heard, it is assumed that the court has determined that the child was not sufficiently mature in order to form an opinion on the issue in question.<sup>110</sup> In this way the importance of hearing the child is moderated. This has therefore been criticised by legal literature.<sup>111</sup>

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<sup>107</sup> By analogy from Art. 941 para. 2 Greek CCP, concerning the obligation of the debtor to deliver a movable property. See G. NIKOLOPOULOS, in: K. KERAMEUS, D. KONDULIS and N. NIKAS (eds.), *Commentary on the Code of Civil Procedure, Vol. II (Arts. 591-1054)*, Athens - Komotini: Ant.N. Sakkoulas, Art. 950 Greek CCP p. 1833 No. 1 [in Greek].

<sup>108</sup> See Art. 950 para. 2, Greek CCP, which also refers to the provision of Art. 947 Greek CCP concerning the enforcement of an obligation not to perform or not to oppose a specific act.

<sup>109</sup> P. ARVANITAKIS, in: K. KERAMEUS, D. KONDULIS and N. NIKAS (eds.), *Commentary on the Code of Civil Procedure, Vol. II (Arts. 591-1054)*, Athens-Komotini: Ant. N. Sakkoulas, Art. 681c Greek CCP, p. 1311, No. 4 [in Greek]. This opinion is followed by the courts. See Supreme Court Decisions: 15/1997, *Elliniki Dikaosini* Vol. 38 (1997), p. 1538, 180/1986, *Elliniki Dikaosini* Vol. 27 (1986), p. 496, 577/1989, *Elliniki Dikaosini* Vol. 31 (1990), p. 1271.

<sup>110</sup> Relevant decision of the Supreme Court: 15/ 1997, *Elliniki Dikaosini* Vol. 38 (1997), p. 1538, 283/1986, *Elliniki Dikaosini* 27 (1986), p. 1288, 577/1989, *Elliniki Dikaosini* Vol. 31 (1990), p. 1271, 180/1986, *Elliniki Dikaosini* Vol. 27 (1986), p. 496.

<sup>111</sup> See among others, S. KOUKOULI-SPILOTOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (Eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 126-127 No. 268-271; E.

**60. How will the child be heard (e.g. directly by the competent authority, a specially appointed expert or social worker)?**

According to Art. 681c para. 2 Greek CCP, the competent social service will investigate the living conditions of the child. This may include seeking the opinion of the child. Nevertheless, from the formulation of Art. 681c Greek CCP it is concluded that the judge should also hear the child him/herself during the (main) proceedings.

**61. How, if at all, is the child legally represented in disputes concerning:**

**(a) Parental responsibilities**

The child, in principle,<sup>112</sup> has no capacity to litigate in its own name and therefore needs to be represented in any proceedings in which it takes part. Normally, the holders of parental responsibilities are the legal representatives of the child (Art. 1510 para. 1 and 1603 Greek CC). Nevertheless, when litigation concerns issues of parental responsibilities, there is a conflict of interests between the parents and the child. In such cases the court will appoint a special guardian, whose task it is to represent the child in the particular dispute (Art. 1517 and 1627-1628 Greek CC). If the holders of parental responsibilities are more than one person and the conflict refers only to one of them, the other(s) may be appointed special guardian(s) in this case.<sup>113</sup> Relevant is also the provision of Art. 4 of the (1996) European Convention on the exercise of children's rights, which Greece has signed and ratified,<sup>114</sup> according to which the child itself has the right to apply for the appointment of this special representative.

**(b) The child's residence**

The determination of the child's residence forms an integral part of the care of the child. See above the answer to Q 61(a).

**(c) Contact**

The courts do not recognize a right of the child to contact. Nevertheless, the child may intervene in the relevant proceedings.<sup>115</sup>

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KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. II, 3<sup>rd</sup> Edition, Athens-Thessaloniki: SAKKOULAS, 2003, p. 272.

<sup>112</sup> Nevertheless, the child who has limited capacity to enter into a transaction may litigate in its own name in the relevant disputes (Art. 63 para. 1 Greek CCP).

<sup>113</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary*, Vol. VIII, *Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1517 Greek CC, p. 250, No. 5, 8, and 9.

<sup>114</sup> Law 2502/1997.

<sup>115</sup> The child may, however, intervene in the proceedings (Art. 80 Greek CCP). Relevant is the decision of the Court of Appeals of Athens 10659/1998, *Elliniki Dikaosini* Vol. 35 (1994), p. 129, which recognised this possibility in a case concerning the right of contact. In addition, according to Art. 4 of the (1996) European Convention on the Exercise of Children's Rights (Law 2502/1997), the child itself has the right to apply for the appointment of a special guardian to represent it.

**62. What relevance is given in your national legal system to the age and maturity of the child in respect of Q 59-61?**

The hearing of the child is obligatory for the court, even in proceedings concerning conservatory measures, provided that the child has sufficient maturity. The child should be old enough to understand its interest in the specific case.<sup>116</sup> The maturity of the child is not necessarily determined by its age, but has to be examined in each particular case.<sup>117</sup> For further details see the answer to Q 59.

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<sup>116</sup> P. ARVANITAKIS, in: K. KERAMEUS, D. KONDULIS and N. NIKAS (eds.), *Commentary on the Code of Civil Procedure, Vol. II, (Arts. 591-1054)*, Athens-Komotini: Ant. N. Sakkoulas, Art. 681c Greek CCP, p. 1311, No. 4 [in Greek]. This opinion is followed by the courts. See Supreme Court Decisions: 15/1997, *Elliniki Dikaosini* Vol. 38 (1997), p. 1538, 180/1986, *Elliniki Dikaosini* Vol. 27 (1986), p. 496, 577/1989, *Elliniki Dikaosini* Vol. 31 (1990), p. 1271. It is claimed, however, that it is not necessary that the child is able to understand the full consequences of the court decision, but it is sufficient if it can provide any relevant information on the matter in dispute. See S. KOUKOULI- SPILIOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P. N. SAKKOULAS, 2003, p. 126, No. 267.

<sup>117</sup> P. AGALLOPOULOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2<sup>nd</sup> Edition, Athens: Law & Economy, P.N. Sakkoulas 2003, Art. 1511 Greek CC, p. 208, No. 31.