

NATIONAL REPORT: HUNGARY

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A. GENERAL

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

The Hungarian family law title, 'The Rights of Parental Supervision,' regulates the main principles of exercising parental responsibilities, the children's rights in issues of parental responsibilities, the elements of parental responsibilities and the control of the authority exercised over the parental responsibilities.

When parental responsibilities are exercised by a guardian instead of the parents, the rules of parental responsibilities, regulated according to the Council of Europe, are somewhat adjusted. If the parents are alive they may be able to observe or even take part in the child's continuing care.

It is when the duties of the guardian are carried out by the child's close relatives (by 'another person' according to the White Paper) that parental responsibilities most closely resemble those of the parents. The guardians can exercise parental responsibilities temporarily or for the child's entire minority, depending on the reasons for the guardianship. If the unmarried mother is a minor when the child is born, her parental responsibilities are suspended until she reaches majority. In this situation, a temporary guardian, usually one of the child's close relatives, will exercise temporary parental responsibilities. This may also happen when the parents are temporarily prevented from exercising their parental responsibilities and they agree that another person should take the child into his or her household. It is, of course, a different situation when both parents die and the child comes under the guardianship of a close relative.

In a 'traditional guardianship,' the child's guardian is a close relative of the child. The parental responsibilities exercised by this guardian are very close to the parental responsibilities of the child's parents. This guarantees that the child's familial identity and relationships can be maintained.

The 'Child Welfare Guardianship' differs from the traditional guardianship. The state takes the child into a child welfare guardianship if living with the parents puts the child in danger. The child taken into state care is not under the guardianship of the authorities. If the child lives with foster parents, the exercise of the parental responsibilities belongs to the foster parent. If the child lives in a children's home, the exercise of the parental responsibilities belongs to the supervisor of the children's home.

Strong efforts are taken to place children with foster parents rather than in children's homes. The parental responsibilities of foster parents are closer to those of the child's natural parents. As many as forty children can live in each children's home. Children may live in the 'SOS Children's Village,' a special form of children's home which work according to international principles and rules.

A child that is taken into state care is not necessarily completely separated from its parents. Strong efforts are taken to maintain the child's personal family relationships while the child is in state care. State care should be a temporary solution, preserving the possibility that the child may live with its family again.

The parental responsibilities arising from an adoption differ from those in a guardianship. The only difference between a parent-child relationship established by adoption and a parent-child relationship established by descent is the method of establishment. Once the adoption is completed, the adoptive parent has parental responsibilities identical to those of a biological parent.

2. Explain whether your national concept or concepts encompass:

Answering this question cannot be separated from Q 7 and 8 and from Q 10-13. considering the administration of property. The Hungarian national concept of parental responsibilities encompasses:

(a) Care and protection

The care and protection of the child is the first, privileged element of the parental responsibilities. The duties of parental responsibilities cannot be enumerated fully. The rules regulating the parental responsibilities, the Family Act, the Child Welfare Act and the Orders of Guardianships, describe only some of these duties. The duties aside from the ones stated in Q 2b, 2c and 2e guarantee: the child's physical, mental and moral development, the determination of the child's name, the determination of the child's career, the child's health care and the child's permanent residence.

(b) Maintenance of personal relationships

The maintenance of the personal relationship is also part of the parental responsibilities. This right, as emphasised in the Convention on the Rights of the Child, belongs to the parents and to the child. The maintenance of the personal relationship is defined in a broad sense, including the child's personal relationship not only with its parents, but also with other relatives.

The maintenance of personal relationships is especially important when the child lives apart from one of the parents or both of them, or if the child has been taken into state care. The maintenance of the earlier personal relationships must be ensured.

In the first situation, the legal rules enlarge and ensure the right of contact with the child to the circle of relatives beyond the parents. In the other situation, if more than one of the parents' children is taken into state care, the legal rules guarantee siblings the right to have the same residence in order to maintain their personal relationship. In these situations, the belief that state care should not separate the

child from its relatives influences both the legal rules and the practice of the public guardianship authority.

(c) Provision of education

Education is one of the rights of the parental responsibilities that belongs to the 'child's care'. A parent living apart from the child has the right to decide together with the holder of the parental responsibilities on the education of the child. If the child is capable of forming its own views, the child also has the right to express its views on its education. The views of the child should be given due weight, based on the child's age and maturity. The acts require, if possible, the participation of children 12 and older.

(d) Legal representation

The legal representation of the child is one of the duties and powers of the parental responsibilities. In exercising this power, the Civil Code distinguishes between the legal representation of the child under 14, who is incapable of representing self-representation, and of the child over 14, whose capacity to represent itself is restricted. (See Q 8f).

(e) Determination of residence

The determination of the child's residence is a right of the parental responsibilities which belongs to the 'child's care'. The parent living apart from the child has the right to decide the child's residence along with the holder of the parental responsibilities.

(f) Administration of property

The administration of the child's property is one of the duties and powers of the parental responsibilities. See Q 10-13.

Hungarian family law grants parents one more parental responsibilities' right: they can appoint, or exclude persons from being, a guardian for their child if they should die, even without giving the grounds for their disposition. Only the parents can exercise the right of appointing a guardian or excluding someone from the guardianship. This right cannot be exercised by any other guardian of the child who exercises the parental responsibilities.

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

The parental responsibilities automatically end when the child reaches majority, even if the child continues to live with its parents and the parents continue to provide the child's board and education. The parental responsibilities also end, with the permission of the public guardianship authority, if the child marries before reaching the age of majority. Hungary's age of majority is 18; both men and women can marry from the age of 16 with the permission of the public guardianship authority. In this situation the marriage will result in the child's majority.

If the parental responsibilities of the parents end as before the child's majority or marriage, the child must come under the parental responsibilities of another person.

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

The current sources of law for parental responsibilities are the following:

- The Hungarian Family Act, the Act No. IV. 1952. on marriage, family and guardianship, as amended. It was last amended through the Act No. IX. 2002. and Act No. IV. 2003. concerning the issues of parental responsibilities.
- The Hungarian Child Welfare Act, the Act No. XXXI. 1997. on the Child Welfare and guardianship administration, as amended by Act No. IX. 2002. and Act No. IV. 2003.
- The Hungarian Order of Guardianship, the Order of Government No. 149/1997. on public guardianship authority and proceeding in Child Welfare and guardianship cases, as amended by the Order of Government No. 262/2001., No. 14/2003. and No. 203/2003.
- The Hungarian Act No. XV. 2001. on amending several Acts in connection with legal capacity and curatorship. This Act concerns the legal representation and administration of property.

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

The history of the main developments of the law concerning parental responsibilities can be summarised briefly as follows. The sources of today's parental responsibilities were based on: the Hungarian Guardianship Act, namely the Act No. XX. 1877 and the Hungarian Marriage Act, namely the Act No. XXXI. 1894. These essence of these Acts as they pertained to parental responsibilities remained unchanged until 1945.

These Acts, along with other European rules of the time, regulated paternal authority instead of the jointly exercised parental responsibilities of today. Paternal authority gave the everyday care of the child to the mother, but the father could decide, at least according to the Act, in matters affecting the child. The father also had the powers of the paternal responsibilities. A consequence of divorce, which rarely occurred, the child was placed with the mother. The mother could not have the full parental responsibilities even if the father died. She could be the 'natural and legal guardian of her child' only if the father had not appointed another person as guardian for the child.

The powers of the paternal authority were similar to the powers of today's parental responsibilities. An essential difference between the legal rules of past and today is that the age limit of majority was 24, although there were other ways to obtain majority. The child was generally under paternal responsibilities until reaching the age of 24. If the woman was younger than 24 but married with the proper permission, the marriage resulted in her majority; however, if the man was younger than 24 and married, he remained under paternal authority despite the marriage.

As with other matters of the family law, there was a huge distinction in the duties and powers of parental responsibilities between the child of marriage and the child

born out of wedlock. If the child was born out of wedlock, only the mother, the natural and legal guardian of the child, had parental duties and powers. There was no legal relationship between the unmarried father and the child born out of wedlock.

Women were also discriminated against when it came to guardianships. A woman could not be guardian, nor could she exercise parental authority as the guardian of any child other than her own natural and legal child.

Partial legislative changes were enacted in 1945 and 1946, namely before the Family Act in 1952.

In 1945 the paternal authority changed to parental authority but this did not mean that the parents could exercise their authority jointly. The mother's parental authority was subsidiary; the mother could exercise her authority only when a judicial judgment after divorce placed the child with her (a right she did not have earlier), and when the father was prevented from exercising his parental authority.

The age limit of majority was also reduced in 1945 to the age of 20, and marriage, for both women and men, resulted in majority if they were under the age of 20 and married with the proper permission.

The most important change was introduced in 1946. Act No. XXIX. 1946 abolished discrimination against children born out of wedlock, This prevented discrimination in the matter of parental authority, therefore the unmarried father obtained the same parental authority as the married father, provided his legal status was secured. The Act also significantly enlarged the opportunities for the establishment of paternal affiliation.

The Family Act in 1952 gave rules about the parental responsibilities, specifically about the parental 'supervision' rights that both parents had jointly. The Act stressed that these parental responsibilities had to be exercised in the interest of the child. The word 'authority' disappeared from the wording of the Act.

It had not yet been specifically stated in 1952 that the unmarried mother or father's parental responsibilities are the same as those of the married mother and father, or that there is only a difference concerning whether the parents live together or not.

At the same time the Family Act was enacted, the age of majority became 18; the age until which a child was under parental responsibilities also became 18.

The revision of the rules of the Family Act started in the 80's. Some of the changes in the parental responsibilities came from divorced spouses; parents living apart from the child demanded comprehensive rights consisting of more than the exercise of the parental responsibilities in connection with their non-resident child. Nevertheless, although the institution of the joint parental responsibilities after divorce, which is allowed in some jurisdictions, is known in Hungary, the joint parental responsibilities after divorce was not regulated in the amendment of the Family Act in 1986. The rights of the parental responsibilities of the parents living apart from the child became broader; these parents obtained the right to decide

important matters concerning the child together with the holder of the parental responsibilities. These matters were, according to the amendment, the determination of the child's name, residence, education and career.

The United Nation's Convention on the Rights of the Child of 1989 was promulgated in Hungary in 1991. Since that time, but especially since 1995, children's rights have gradually broadened in matters concerning the parental responsibilities; primarily the children's rights to express their views and have due weight given to their views, according to the child's age and maturity. The joint parental responsibilities after divorce were admitted and regulated during the amendment of the Family Act in 1995.

In the Child Welfare Act of 1997, the child's right to be brought up in its own family is emphasised. The activities provided by the public guardianship authorities and the Child Welfare services were broadened in order to assist the parent holding parental responsibilities to better care for the child, in the hopes that the child would not be taken from its family.

The Child Welfare Act also rejected the rule that allowed public authority to exercise the parental responsibilities over the children taken into state care. Along with this, the Act strengthened the demand for children taken into state care to live with foster parents, and for foster parents, as guardians, to hold parental responsibilities. The supervisors of the children's homes also obtained rights as guardians by limiting the number of children living in a children's home.

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

There is no recent proposal to reform the rules of parental responsibilities. The revision of the Family Act is now in process and the legislature will almost certainly amend the parental responsibilities regulations during this proceeding. Nevertheless, these matters are now open and being debated.

B. THE CONTENTS OF PARENTAL RESPONSIBILITIES

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

The traditional elements of parental responsibilities are: the care and education of the child, the administration of the child's property, the legal representation of the child and the right of the parents to appoint a person as guardian for their child or exclude persons from the guardianship in case of their death. The views of the child capable of judgment, given the child's age and level of maturity, are of the greatest importance, especially when considering the rights of care and education.

Besides the traditional elements of parental responsibilities, the Child Welfare Act states defines some further elements, including the rights of the children and parents when children are taken into state care.

The most important right of the children among those stated in the Child Welfare Act is the child's right to be raised in his or her own family environment. This right

is provided by several rules of the Child Welfare Act. One of these rules states that a child can be separated from his or her parents or other relatives only if it's in the child's interest. From cases and methods regulated in an act, another rule says a child cannot be separated from his or her family if the child is only endangered because of financial reasons. One more rule in the Act states that a child taken into state care has the right to initiate the return to his or her family environment and to get support for this from his or her caretaker. The Child Welfare Act also contains regulations concerning parental rights: parents have the right to get the support needed to take care of a child in their family, and if the child has already been taken into state care, the parent has the right to bring the child back into the family, to overcome the cause of the state care, to arrange familiar circumstances and to place back the child in the family.

There is also a duty for parents to do their best to take the child back into the family. A further duty of parents whose child is in state care is to maintain contact with the child and co-operate with the persons and institutions taking care of the child, in the interest of the proper education of the child.

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

(a) Care

The position of the Hungarian law concerning the child's care. See Q 2a.

(b) Education

The position of the Hungarian law concerning the child's education. See Q 2c.

(c) Religious upbringing

Hungarian law, following the Hungarian Constitution, does not allow state intervention in the exercise of religious upbringing. In this matter the parents cannot apply for a judgment or decision from either the court or the public guardianship authority.

The Child Welfare Act states that children taken into state care have the right to freedom of religion and conscience, to declare and exercise it and to take part in religious education.

(d) Disciplinary measures and corporal punishment

The Family Act does not regulate disciplinary measures or corporal punishment; however, the Child Welfare Act grants children the right to human dignity, and protection against physical, mental or sexual violence. Extreme cases of corporal punishment may have criminal consequences, too.

(e) Medical treatment

Medical treatment is part of the parental duty to care and protect the child. If medical intervention is needed during the medical treatment that demands the consent of the minor's legal representative, the parent has the right to give consent as the minor's legal representative.

(f) Legal representation

Legal representation of the child includes representation of the child and the child's property. Sometimes there is no possibility of representation; in these situations,

the child under parental responsibilities has the right to decide for himself or herself.

The child's age effects the legal representation of a child's property; a child under 14 is legally incapacitated, a child over 14 has restricted legal capacity. The holder of parental responsibilities, as the child's legal representative, concludes contracts for his or her legally incapable child. If the child is over 14, the parent can represent the child in the above mentioned manner or the child may conclude a contract himself or herself, but prior consent or later approval of the child's legal representative is also needed.

Parents do not have the right to legally represent their child in financial matters concerning property of the child that the parents or legal representatives do not have the right to administer. An example of this type of property is the child's salary, if the child is over 14, that the child can dispose of without the consent or approval of his or her legal representative.

The minor's right to deliver a testament is specifically regulated. A minor over 14 who has restricted capability can freely deliver a testament without the approval of his or her legal representative. This possibility is only limited by the rule that the testament must be made by public instrument.

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?

The Family Act states, as a general rule in connection with the exercise of the parental responsibilities, that the parents must guarantee that a child who is capable of forming his or her own views can express these views concerning all decisions that affect him or her, and that the parents should give due weight to these views according to the age and maturity of the child. This rule is to be applied to every matter covered by the parental responsibilities.

Hungarian law has no general rule applicable to every case that states the age at which a child is considered to be capable of forming his or her own views, and so be heard in matters of parental responsibilities. Nevertheless, in some cases it is expressed that according to Hungarian law a child over 14 is capable of forming his or her views in matters under parental responsibilities. There are rules stating that a child under 14 is to be heard if he or she demands it.

Family law rules state that a child older than 12 is capable of forming his or her views if there is conflict between the child and the parents regarding the child's schooling, education or the determination of the child's career. In this situation, the public guardianship authority will rule on the controversy. Moreover, the child over 12 has the right to directly ask the public guardianship authority to rule on this. Similarly, if the child is over 12, she or he is to be heard in the Child Welfare mediation proceeding aimed at determining the arrangement of the contact. The public guardianship authority has the duty to hear any child under guardianship in important matters concerning the child if the child is over 12. If the proceeding is about the placement of the child, the child is to be heard and due weight should be

given to his or her views if the child is over 14. According to the Family Act the child is to be heard even if the child is younger than 14 if it is motivated; if the child demands it himself or herself, it is always motivated.

Although this goes beyond the scope of the Questionnaire, it must be mentioned that Hungarian family law demands not only a hearing for a child over 14, but also the child's consent in two issues: The child's adoption and the paternal affiliation of the child by voluntary recognition.

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

The holders of the parental responsibilities have the right to administer the child's property. This is also their duty.

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

The Family Act regulates the administration of the child's property as a right of the parent who is the holder of parental responsibilities, but these rules are also to be applied, with some differences, to the guardians who hold parental responsibilities. Parents administer the child's property without the duty to provide security and account for it, however they must provide the same duty of care in their administration of the child's property as they do to their own matters. They are liable for serious negligence committed during the administration of the property.

There are strong rules regarding the administration of a child's property by guardians who hold parental responsibilities. Guardians have the duty to give an account to the public guardianship authority on a regular basis. When their guardianship comes to an end they must give a final accounting of the child's property. This duty to account is not as severe if the child has no property and the child's regular income does not exceed an amount stated by the Act; it's also easier if the guardian is a close relative of the child.

Both parents and the guardian can allot the income from a child's property to cover the expenses of the property's maintenance and administration, and also to cover the child's necessary expenses *e.g.* schooling, education, medical treatment, etc. There is a special exception if the guardian administers the child's property because the guardian, as opposed to the parent, does not have to maintain the child.

See Q 12 for restrictions to the parent's and the guardian's administration of the child's property.

12. Are there restrictions with respect to:

There are some restrictions with respect to certain goods and valuables of the child's property and also restrictions in respect to certain transactions. These rules are for the most part common to property administrated by either the parent or the guardian.

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

There can be some of the child's property which is not under the parent's administration, and also some property in which the parent's (guardian's) right of administration is restricted.

Property given to a child with a donative clause stating that the property is not to be administered by the parent will not be under the parent's administration, aside from the situation in Q 12b. The donator is not obliged to give the grounds for the clause and can even appoint or propose the person he or she wants to administer the given property. The public guardianship authority will give attention to this proposal, provided it is in the child's interests. If there is no such proposal, the public guardianship authority will appoint a guardian to administer the property.

The parent's (or other holder of parental responsibilities) right to administer the child's property is restricted by the Act. The Act requires following property to be held by the public guardianship authority on behalf of the child:

- money of the child that does not have to be reserved for covering the child's actual expenses or for other grounds;
- valuables of the child, not including jewellery worn by the child;
- museum pieces in the child's ownership which are to be preserved by a museum.

The goods delivered to the public guardianship authority are taken from parental (or of the holder of parental responsibilities) administration only in the sense that they can only be disposed of with the guardianship's approval. The public guardianship authority can approve investing the child's money in assets for the child or investing in state bonds or insurance policies, provided in both cases that this is in the child's interest.

(b) Salary of the child

A child over 14 can freely dispose of his or her salary; it is not under the administration of the holder of parental responsibilities.

(c) Certain transactions

The statutes broadly enumerate transactions for which the holder of parental responsibilities needs the public guardianship authority's approval.

These, among others, include:

- the disposal of the child's property which has been delivered to the public guardianship authority;
- transactions affecting movable or immovable property, securities, shares which are in the child's ownership and exceed a statutory amount;
- the alienation or encumbrance of any immovable the child's owns;
- transactions regarding the apartment in which the child has a lease agreement to live;
- certain legal statements regarding assets which are due to the child from inheritance.

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

Regarding the protection of the child from indebtedness caused by the holder of parental responsibilities there are only the following rules in the family law:

The public guardianship authority can order supervision of the parents' administration of the child's property if the property is endangered, and can also oblige the parents, as the guardian, to give security or an accounting on a regular basis. The power of the guardian to administer the child's property can be restricted if the child's interest requires it, and the guardian can even be removed if the guardian seriously breaches his or her obligation. These measures do not affect the financial liability of the guardian for the damages caused to the child.

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 do not differ according to the marital status of the parents; however, the contents do differ according to whether the parents who exercise it live together or not. With the exception of joint parental responsibilities, if the parents do not live together only the parent with whom the child resides has full parental responsibilities; the non-residential parent only has the right to decide important matters in conjunction with the holder of the parental responsibilities and the right and duty to contact with the child.

If the child's close relatives exercise parental responsibilities instead of the parents, because of the parents' death or on any other ground, their rights of parental responsibilities are the same as those of the parents with one exception: they have the neither the right to appoint nor to exclude a person as a guardian for the child if they (the relative) should die.

The guardian of the child taken into state care (either the foster parent or the head of the children's home) has the right to administer the child's property only if the public guardianship authority has empowered him or her with this right. Of course, they do not have the right to appoint a person as guardian or exclude persons from the guardianship, either. They do have the obligation to regularly render an account of the child's development to the public guardianship authority. Generally, the professional guardian does not take care of the child personally, but the child's property's administration is one of his or her main tasks.

Although a step-parent, or an unmarried partner of the parent who is not the parent of the partner's child, takes part in taking care of the child every day, he or she does not have any parental responsibility.

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 parents are married at the time of the child's birth they exercise joint parental responsibilities together. Married parents can arrange the manner of the exercise of parental rights in informal agreement, especially in regard to the everyday care of the child.

There can be an exception to joint parental responsibilities if the parents are factually separated, but it is not always an exception (see Q 16d).

(b) Not married at that time but marry later

If parents are not married at the time of the child's birth but marry later, the subsequent marriage does not in itself result in the father obtaining parental responsibilities; the voluntary recognition of the father during the marriage is also required. Still, this recognition has more conditions. It is not possible to recognise a child during the marriage if the child already has a father, either from the mother's earlier marriage or from an unmarried partnership. The consent of a child over 14 is also needed. Whether there is a factual filiation between the child and the man recognising him or her cannot be scrutinised during the proceeding. After the recognition is given during a subsequent marriage, both parents exercise joint parental responsibilities together.

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

(a) Divorce

Divorce generally affects the attribution of parental responsibilities. Maintaining joint parental responsibilities after divorce is rather exceptional in Hungary.

With a divorce, parental responsibilities, if they are not joint, are attributed by judicial judgment to the parent with whom the child is placed. The non-residential parent has the right to contact and the right to decide important matters affecting the child in conjunction with the holder of the parental responsibilities. If the parental responsibilities of the holder of these rights and duties comes to an end for any reason, e.g. because of the death of this parent, the divorced parent's parental responsibilities will be revived.

(b) Legal separation

Hungarian law does not recognise legal separation.

(c) Annulment of the marriage

The legal consequences of an annulment of marriage are the same as for a divorce. In Hungarian law, a void marriage results in paternal affiliation, so the parental responsibilities of the father are the same as with a valid marriage, with no regard given to the ground of the invalidity. It makes no difference how a marriage is terminated, parental responsibilities are decided regardless of whether the termination is by divorce or annulment. An annulment of marriage is rare in Hungary.

(d) Factual separation

Joint parental responsibilities do not automatically come to an end with a factual separation - their maintenance or termination depends on the agreement of the parents. Nevertheless, each parent has a right to file a claim, without a corresponding petition for divorce, for a judgment on who of them the child is

placed with. This judgment will govern issues of parental responsibilities, just as with a judgment made in the course of the divorce proceeding. Therefore, the attribution of parental responsibilities happens as in case Q 16a.

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 can agree on maintaining joint parental responsibilities either in a divorce or an annulment proceeding. According to law, in this case the parents have to make declarations about how they are going to co-operate with each other, especially on issues regarding the care and education of the child. The parents' agreement about the joint parental responsibilities after divorce needs the judicial approval (the court is the competent authority). Primarily, the court must scrutinise whether the agreement is in the interest of the child.

Nevertheless, although it is rare and the Act is silent about it, the parents can agree, without agreeing on the full joint parental responsibilities, to continue to exercise certain parts of the parental responsibilities together, or that these parts will be exercised by the parent living apart from the child.

See Q 46 about the agreement on contact.

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 cannot attribute joint parental responsibilities to the parents against the wish of even one of the parents. An element essential for a decision favouring joint parental responsibilities is that the divorced parents, or the parents living apart, can permanently co-operate with each other in matters concerning the child. The exercise of joint parental responsibilities would be impossible without this co-operation; forcing the parents to exercise their parental rights jointly would not be in the child's interests.

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

Unfortunately we do not have exact statistics on the attribution of parental responsibilities after either divorce or annulment. Legal separation is unknown in Hungary. With regard to an annulment of the marriage it has to be mentioned that lawsuits concerning annulment occur extremely rarely in Hungary.

Nevertheless, there is some statistical information about marriages with common children which ended by divorce. In 2002 the total number of divorces was 25,506. In 10,085 divorces there were no common children alive. In 15,421 divorces there were one (in 8,833 cases), two (in 5,292 cases) or more children affected (in 1,296 cases there were three or more common children). The number of common minor

children at the time of the divorce totalled 23,630. Among these children 6,861 were under the age of 6 and 16,769 were between the ages of 7-17.

II. Unmarried Parents

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

The answer for this Question must be seen together with the answer for Q 22.

If the parents are not married, the mother and the father living in a non-formalised partnership exercise parental responsibilities jointly, just as the married partners - provided the legal status of the mother's partner is settled. Hungarian law makes no distinction between the parental responsibilities of married and unmarried parents, provided the legal status of the parents is settled.

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*...).

Hungarian law does not recognise any form of the formalised relationship, including registered partnerships, civil unions and *pacte civil de solidarité*.

22. Under what condition, if at all, can

(a) The unmarried mother obtain parental responsibilities

An unmarried mother's parental responsibilities arise automatically unless the mother is a minor at the time of the child's birth. The extent of her parental responsibilities are identical to those of a married mother. The unmarried mother either exercises parental responsibilities with the unmarried father or she has sole parental responsibilities, depending on whether the father and mother live together.

If the unmarried mother is a minor when the child is born, a guardian will be appointed to exercise parental responsibilities until the mother reaches majority. This is not a rare occurrence in Hungary. This issue does not emerge for a minor mother who is married, as the minor's marriage results in majority.

(b) The unmarried father obtain parental responsibilities

The unmarried father's parental responsibilities do not arise automatically. These come about as the consequence of two conditions: one is that the unmarried father should have legal affiliation towards the child; the other is that the father should live with the mother in a relationship that has not been formalised.

The father's legal affiliation can be established either by voluntary recognition or by judicial decision. The legal status established by recognition has importance with respect to parental responsibilities because a father whose legal affiliation is established by judicial decision generally does not want to take part in the exercise of parental responsibilities. The number of the legal affiliations established by recognition increases parallel to the increasing number of non-formalised partnerships.

The conditions for the recognition of an unmarried father are similar those required for a subsequent marriage. This recognition can be made with respect to the unborn child who is already conceived.

If the recognition is made by a father who is still a minor, which is rarer than mothers under 18 who give birth, the father's parental responsibilities are suspended until he reaches majority.

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

If the unmarried parents' relationship comes to an end they are given the legal status of parents who live apart. Their joint parental responsibilities do not automatically come to an end, they can arrange it either by agreement (even by an informal agreement) or by filing an action in the court that decides on the placement of the child.

In this proceeding, similar to a proceeding on the placement of a child after divorce, the court will generally use its discretion to attribute parental responsibilities to the parent with whom the child continues to live. The non-resident parent has the right to decide important matters concerning the child with the parental responsibilities holder and, of course, also has the right and duty to contact with the child.

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?

The court cannot attribute joint parental responsibilities to the parents against the wish of even one of the parents. An element essential for a decision favouring joint parental responsibilities for parents that have never married each other is that they can co-operate with each other in matters concerning the child after their relationship ends. The exercise of joint parental responsibilities would be impossible without this co-operation; forcing the parents to exercise their parental rights jointly would not be in the child's interests.

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?

Unmarried parents are free to agree upon the attribution of parental responsibilities after their relationship ends. They can agree to continue with their joint parental responsibilities or they can agree that one of them will now have the sole exercise of parental responsibilities. There is an important difference between this agreement and the agreement during a divorce proceeding: while the arrangement of parental responsibilities in a divorce proceeding requires judicial approval and is therefore the subject of inquiry, unmarried couples are not obliged to obtain approval from either the court or any other authority.

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

Unfortunately, we do not have exact statistical data on the attribution of parental responsibilities for unmarried parents. We do have statistics on the number of the paternal recognitions. In 2003 the number of the minors whose family status was settled by the public guardianship authority was 7,736. Among these, 5,302 were paternal recognitions.

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

A partner who is married to a parent with parental responsibilities (this married parent is the step-parent according to the Hungarian law) generally doesn't have any right to the parental responsibilities. Of course he or she can take part in the everyday care of the child, unless there are special rules preventing it. He or she does not have the right to legally represent child or administer the child's property, especially if a third person is involved.

Whether the step-parent can take part in decisions having to do with the education and schooling of the child obviously depends on how old the child is when the step-parent marries the holder of the parental responsibilities.

Nevertheless, a partner who is married to a holder of the parental responsibilities can have rights of parental responsibilities in certain cases or with regard to certain aspects:

- A step-parent can obtain full parental responsibilities through step-parent adoption, which has conditions that are simpler than those of an adoption by persons who are not relatives or not step-parents. Nevertheless the consent of the child's other parent and the consent of a child over 14 to the adoption are requirements even to an adoption by a step-parent. These consents are required because the other parent's parental responsibilities, including the right to contact, come to an end with an adoption, even in an adoption by a step-parent.
- If the spouse of a parent is related to the child, the spouse's right to contact with the child remains even if the child is placed with the other parent or with third persons.
- If both parents die or the parental responsibilities of both persons end by any other reason, the spouse of the parent with parental responsibilities (a person who has a familial relationship with the child) is among the persons the public guardianship authority will consider when a guardian for the child is appointed.

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

Hungarian law does not recognise any form of formalised relationship.

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

A partner who lives with the parent in a relationship that is not formalised does not have the right to the parental responsibilities, similar the situation in Q 27a. He or she can take part in the care of the child without legal regulation, the partner does not have any other right or duty simply because he or she is the parent's partner.

Among the rights enumerated in Q 27a, this parent can only have the one mentioned under point 3. If both parents die or the parental responsibilities of both persons end by any other reason, the spouse of the parent with parental responsibilities (a person who has a familial relationship with the child) is among the persons the public guardianship authority will consider when a guardian for the child is appointed. He or she does not have the right to step-parent adoption or to contact with the child.

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

This question has no meaning in the Hungarian law with regard to the above mentioned; both the married partner of a holder of parental responsibilities and a partner living in a non-formalised relationship with the parent have very restricted rights.

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 rights of a partner when the partnership ends is an issue that has a very restricted meaning in Hungarian law because the partner of a holder of parental responsibilities has very restricted rights even during a marriage or partnership.

If a partner was the spouse of a holder of parental responsibilities:

- If the step-parent adopted the child, the adoption remains even if the marriage to the parent comes to an end.
- The Act does not regulate whether the parent's spouse retains the right of contact with the child when a relationship ends. This will be judged based on whether the marriage ended by the death of the holder of the parental responsibilities or by divorce. If the marriage ended as a consequence of the parent's death, it is logical to assume that the contact of the step-parent should remain, but if it ended by divorce the step-parent's contact with the child seems to be reasonable only if there was a strong emotional relationship between the child and the parent's ex-spouse.
- The appointment of a parent's partner as the child's guardian can result from the death of the holder of the parental responsibilities, provided that the other parent is also deceased or is not able to exercise parental responsibilities for some other reason. Nevertheless, the awakening of the other parent's parental responsibilities will always take priority. If the relationship of the step-parent and the parent ended by divorce, the appointment of the ex step-parent as guardian can never occur.

If the partner lived together in a non-formalised relationship with the parent holding parental responsibilities, only one possibility can emerge among the above

mentioned. The ex-partner can be appointed as guardian, provided of course, that there is no other parent able to exercise the parental responsibilities.

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 partner of the holder of the parental responsibilities, either living together in marriage or in a non-formalised partnership, has very limited rights even during a marriage or partnership, so there is not much of a possibility to agree upon the attribution of the parental responsibilities if the relationship ends. There is one exception: A parent has a right, as part of his or her parental responsibilities, to appoint a person as guardian for the child in case of the death of the parent. A parent can therefore appoint his or her partner, either the new spouse or the person living with him or her in a non-formalised partnership, as guardian. Nevertheless, if the other parent's parental responsibilities can be revived, the designated person cannot be appointed as guardian.

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.

This matter is discussed fully in Q 51 'Discharge of parental responsibilities'.

If a parent is temporarily prevented from exercising parental responsibilities, the parent can initiate the relocation of their child to the home of another family for this period, and the person who takes the child into his or her household will exercise the parental responsibilities as the child's guardian. This person can be a member of the child's family or any other person.

A judicial decree can also rule that the child shall live with a third person and that this person will exercise parental responsibilities as the child's guardian. The court usually chooses this person from among the members of the child's family, nevertheless a condition of this solution only is that the child live with third person.

The public guardianship authority can state that a child endangered by living with his or her parental family should live with a third person, chosen among the child's relatives. If there is no such person, the child will be taken into state care by the guardianship authority and live with foster parents or in a children's home. In these situations, the foster parent or the head of the children's home will usually exercise parental responsibilities as the child's guardian.

Parental responsibilities are suspended if an unmarried mother is a minor. In this case the parental responsibilities are exercised usually by the mother's family members; the child is taken into state care only if there is no suitable person in the mother's family to act as the child's guardian.

In the enumerated cases, a guardian has full parental responsibilities but nevertheless the parents retain some rights: they can have contact with the child, and they have the right and duty to follow the child's upbringing and to support the persons and institutes taking care of the child.

If the reason the child is taken into state care is that his or her parent consented to an adoption by an unknown person, or if the court terminated both parents' parental responsibilities because of their serious parental negligence, the child's guardian will substitute the parents in their parental responsibilities and all parental rights end. Nevertheless, in case of the judicial abolition of parental responsibilities, the parents' right to contact with the child can be maintained to the limited extent that it is in the child's interest.

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.

Hungary uses strong efforts to prevent the exercise of parental responsibilities by public bodies, even with respect to children who are in state care.

Hungarian law recognises the 'professional guardian', which is not seen as public body in the closest sense of the word, who exercises his or her tasks as guardian mostly as a civil servant or working in some other paid position. The task of a professional guardian can be narrowed so as to only include the administration of those children's property whose guardians, especially foster parents and the heads of the children's homes, are not empowered with this power. However, even a professional guardian cannot be the guardian of more than forty children.

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

(a) The death of a parent holding parental responsibilities

If a parent holding parental responsibilities dies, the responsibilities are primarily attributed to the other parent. If the parents exercised their parental responsibilities jointly, the surviving parent's parental responsibilities remain unchanged. If they did not exercise them jointly, the surviving parent's responsibilities are revived. This -happens more frequently because joint parental responsibilities are not common after divorce in Hungary.

After the death of a custodial parent, the public guardianship authority is obliged to call the non-custodial parent to exercise his or her parental responsibilities. If another person (e.g. the new spouse or partner of the custodial parent or the grandparent) takes care of the child when the parent dies, the public guardianship authority orders them to give the child to the surviving parent, who then exercises his or her rights.

In this situation a third person can be empowered with the right to exercise parental responsibilities; a guardian for the child can be appointed, but only if the non-custodial parent cannot exercise parental rights due to a reason stated in the Act.

(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 and at least one was holding parental responsibilities at the time of death, a guardian appointed for the child by the public guardianship authority will exercise parental responsibilities. In this situation, if the parent did not previously name the person as guardian in the case of his or her death, the public guardianship authority will generally appoint a guardian from among the child's relatives or persons who are in a family relationship with the child. A 'family relationship' includes persons who took care of the child. Also, a child who is capable of forming his or her own views has the right to express them in this issue and the public guardianship authority should give a due weight to the child's views with respect to the person according to the child's age and maturity.

Only if there is no suitable person among the child's relatives can anyone else be appointed guardian.

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. will?

The parents, as holders of parental responsibilities, have the right to appoint a guardian to exercise parental responsibilities upon their death. A guardian who was appointed by only one of the parents can take over the parental responsibilities if both parents die.

The appointment for a guardian has to be made in a testament or a public instrument. The latter is usually performed in a recorded declaration before the public guardianship authority.

A guardian appointed by the parent holding parental responsibilities will not automatically become the guardian of the child. The public guardianship authority appoints the guardian of the child. The public guardianship authority can disregard a person appointed by the parent only if he or she cannot be a guardian by a reason stated in the Act, or if his or her appointment would endanger the child's interests.

The guardian, as opposed to the parent, is under the control of the public guardianship authority while exercising parental responsibilities. Nevertheless, if the child's guardian is one of the child's close relatives, the guardian's activity is closer to the parent's parental responsibilities than that of the foster parent or the head of the children's home.

D. THE EXERCISE OF PARENTAL RESPONSIBILITIES

I. Interests of the Child

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

The Family Act states among its fundamental principles that the child's interests must always be taken into account when the Act is applied, and that the child's

rights are always to be ensured. This general statement is repeated specifically in the VIII. Chapter of the Act concerning parental responsibilities and state care. This is also guaranteed by the rule that gives the child who is capable the right to be heard and have due weight be given to his or her view in every important matter affecting him or her.

The rules regulating the rights and duties of the parents are properly applicable to the rights and the duties of the guardian according to the Act; therefore, a guardian must also exercise the parental responsibilities in the best interests of the child.

It has to be mentioned that the Family Act contains the term 'the interest of the child' instead of 'best interest' but the legal literature and practice unambiguously holds the wording of the Act to be understood as the 'best interests of the child'.

II. Joint Parental Responsibilities

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

Two cases have to be distinguished with regard to the joint parental responsibilities, the parental responsibilities exercised by parents living together and by parents living apart from each other. In the legal sense, parents hold parental responsibilities equally in both cases. Practically, if the parents live apart it is not easy to agree on the placement of the child. The Act does not say anything about it but the judicial practice unambiguously holds that even in the case of joint parental responsibilities after divorce the child has to have one residence with one of the parents, of course with their agreement.

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?

With regard to joint parental responsibilities, two situations have to be differentiated: when the parents live together and when they live apart. If the parents live together and they cannot agree on an issue they can petition the public guardianship authority to decide it, excluding issues having to do with the freedom of religion and conscience.

If parents exercising joint parental responsibilities after a divorce can not agree on an issue of parental responsibilities, the competent authority to decide the issue is the court, with the exception of one matter: the public guardianship authority has the authority to determine the residence of a minor over 16.

With regard to the administration of the child's property and the legal representation of the child in financial matters, these can be exercised jointly by the parents, not only for parents with full joint parental responsibilities (either by the parents living together or after divorce) but also if the non-custodial parent is

empowered with the right and duty to administrate the child's property and can represent him or her legally.

The parents can give each other the sole and full authorisation to exercise the legal representation of the child in his or her financial matters through a public instrument or a private document. A parent who represents the child's day-to-day financial transactions of low importance can be regarded to have the authorization of the other parent by third persons acting in good faith. The authorisation of the other parent is not possible for the child's personal matters.

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 parents who live together cannot agree on an issue of parental responsibilities they can apply to the public guardianship authority. If they exercise parental responsibilities after a divorce, they can apply to the court. Either of the parents can apply to the judge that decides in an out-of-court proceeding. The court has the power to determine the residence of the child if one of the parents wants to place the child either with a person or institute away from the child's permanent residence, or abroad, either permanently or longer than a year.

The resolution of a dispute regarding contact can be determined by either the court or the public guardianship authority if the partners can not agree. The court has the power to decide, if the contact emerges in a divorce case, a case on the placement of the child or from a change of contact arranged in a judgment, provided that the suit is brought within two years from the earlier judgment or judicial consent to the partners' settlement.

If a claim for the arrangement of contact doesn't emerge in a divorce case, in a case on the placement of the child or at least two years from an earlier judgment, the public guardianship authority has the power to settle or re-settle the matter.

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?

In one specified situation the holder of the parental responsibilities can act alone when there are joint parental responsibilities: in the child's financial matters - but with the presumption that the parent acts not only in his or her name but also in the name of the other parent. The Act distinguishes between the important financial matters (a formulated authorisation is needed) and the matters of low importance and of daily nature (the authorisation is presumed if the third party acts in good faith).

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 joint parental responsibilities are exercised by parents living together, the public guardianship authority has competence to decide their disputes. If they live apart, the court has competence. If one of the parents wants to change the child's residence within the country and the other parent does not agree to it, the competent authority scrutinises the new residence and the child's maintenance. The competent authority must hear all interested persons, get the opinions of experts, if needed, and can make a study of surroundings as well. The same rules are applied if the child moves abroad.

A child's permanent relocation abroad is specifically regulated. The permission of the public guardianship authority is needed irrespective of whether the child moves alone or with his or her parents, and regardless of whether there is agreement between the parents. The public guardianship authority must scrutinise whether the child will be taken care of and whether his or her education, maintenance and schooling is provided abroad. The possibility of exercising the right to contact is also taken into account. If the parents do not live together, the court's decision is needed.

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 mother/father)?

Hungarian legal practice and literature unambiguously hold that for a child to reside with the child's parents on an alternating basis would harm the child's requirement for stability, which has great importance in the life of the minor. Although it may happen factually through an informal agreement of the parents, the competent authority will not decree the placement of the child on an alternating basis.

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 there are no joint parental responsibilities, one of the parents exercises sole parental responsibilities; still, the other parent can have, more or less, rights and duties. If the other parent's parental responsibilities are not restricted or terminated by the court, although the parent's parental responsibilities are suspended he or she has the right to contact and to decide important matters affecting the child together with the holder of parental responsibilities. Consequently, the holder of parental responsibilities is obliged to consult the other parent when deciding the above-mentioned matters.

The non-custodial parent can be empowered by the court to administrate the child's property and to represent him or her legally. In this case the holder of parental responsibilities has the duty to consult with the other parent.

(b) Other persons, bodies or competent authorities

There are instances the holder of parental responsibilities has to consult with the competent authority, namely the public guardianship authority, irrespective of

whether the parent exercises the parental responsibilities alone or jointly with another parent. The authority's consent is needed for certain issues in connection with the administration of the child's property and for the child's legal representation.

The money and goods of the child, if these do not have to be held in reserve to cover the actual expenses or for other grounds, are to be delivered to the public guardianship authority for the child, according to the Act. A parent can dispose of them only with the public guardianship authority's approval.

The Hungarian Civil Code and the Order of Guardianship enumerates which of the parent's legal declarations need the consent of the public guardianship authority. Generally these are transactions affecting the child's assets, money or maintenance.

E. CONTACT

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

The concept of the contact is the following: there are two main types of contact in Hungarian law and legal practice: in one, the non-custodial parent and this parent's relatives maintain contact with a child who lives with the other parent, and in the other case the parents and other relatives maintain contact with the child who is taken out of the family and put into state care. This has great importance both for the child living apart from one or both of her or his parents and for the parent living apart from the child. The issues of contact are regulated partially in the Family Act and partly in the Order of Guardianship. The non-custodial parent's right to contact is regulated primarily in the Family Act, but the particulars are contained in the Order of Guardianship. The Order of Guardianship also emphasises the contact between the child and his or her grandparents, his or her brother or sister who has reached majority and also the contact between the child and the parent's spouse and the child's aunts and uncles.

The aim of the contact is to maintain the personal and familiar relationship between the child and the parent and the child's other close relatives that have a right to contact and to allow the other parent that ability to continuously watch the development of the child and be supportive of the child. The forms of the contact are: the continuous and periodical contact with the right to remove the child from the child's residence and the duty to return the child back to the child's residence, meeting the child at the child's residence and other forms of communication, such as correspondence, telephone-connection, presentation and sending a package. Continuous contact means regular contact (*e.g.* in every second week-end), periodical contact means irregular contact (*e.g.* two weeks in the summer holiday).

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

A parent holding parental responsibilities but not living with the child is found when parents exercise their parental responsibilities jointly after divorce. An agreement of the parents is the basis of the joint parental responsibilities; they also

have to agree on the time and manner of contact. As the parents have to agree on the residence of the child (namely on the placement of the child according to the Family Act) and the permanent residence has to be one of the parent's residence, they must consequently agree on the contact.

(b) A parent not holding parental responsibilities

The child's right to contact with the non-custodial parent is stated in the Act and in the Order. A parent who does not exercise parental responsibilities still has broad rights. It is important for the child to be in contact with the non-custodial parent, both when the child lives with the custodial parent and when the child lives with a third person or in state care.

According to the Child-Welfare Act the child has the right to maintain contact with both of his or her parents even if they live in different states and the child is in state care, either temporarily or permanently. It is also in the child's interest that if the exercise of this right is a harmful influence to the child, the parents' or other close relatives' right to contact can be restricted or terminated.

The child has the right to maintain a personal and direct contact with his or her non-custodial parent. The non-custodial parent also has the right and the duty to maintain personal and direct contact with his or her child.

The child has the right of contact with the non-custodial parent if this parent's parental responsibilities are suspended and the child is placed with a third person (if the residence by either of the parents endangers the child's development) or if the child is taken into a third person's household with the permission of the public guardianship authority. The child has also the right to contact if he or she is taken out of the family and lives in state care. Even the parent whose parental responsibilities are terminated by the court because of serious harm to the child or because the parent consented to an 'incognito adoption' can have the right to contact with the child if it's in the child's interests.

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

The child's right to contact with persons other than the parents is also regulated. The Child-Welfare Act says the child generally has the right to grow up in his or her family and mentions the child's right to maintain the personal relationships.

According to the Order of Guardianship, the right to contact with the child is attributed to the parent, the grandparent and the brother or sister who has reached the age of majority. The brother or sister of the parent and the parent's spouse has the right to maintain the contact with the child only if the parent and grandparent died, they are prevented in maintaining contact on a permanent basis or they do not exercise the right of contact through fault of their own. The guardian of the child taken into state care can allow that the child could maintain his or her personal relationships with other relatives as well. If there is a dispute on it between the child and the guardian, the public guardianship authority decides.

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?

With regard to the parent: the non-custodial parent has both the right and the duty to maintain contact with the child and to keep in touch with him or her on a regular basis. If the child is taken into state care temporarily, the parent has such a right to contact with the child the failure of which can be even sanctioned. The other close relatives - the grandparent, the brother or sister of full age, the parent's brother or sister and the parent's spouse - have right to contact with the child.

With regard to the custodial parent or other person: the person, usually the parent is obliged to ensure that the contact is untroubled.

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?

Parents are free to make arrangements about how to maintain contact with their child. If they exercise the parental responsibilities jointly they have to agree on the particulars, including issues of contact. If only one parent holds parental responsibilities, the law prefers their agreement to the contact. The agreement has special importance in a divorce by consent as the arrangement of contact is one of the issues which the parties have to agree on. The court scrutinises whether this arrangement is in the interests of the child.

If there is no arrangement between parents on the contact, either the court or the public guardianship authority will resolve the case, primarily by establishing a settlement between the parents. The settlement will be approved if the contact is in the interests of the child and convenient to the aim of contact.

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

Both the public guardianship authority and the court have the power to limit or withdraw the right of contact of a parent who shows imputed behaviour or to order the right's interruption in the interests of the child.

The competent authority will reject a petition to rule on contact if the claimant seriously endangered the child's physical, mental, psychical and moral development or did not consistently perform his or her parental obligations through his or her own fault, or neglected them and did not change this behaviour.

The competent authority will limit the right of contact if the entitled person abuses the right, causing damage to either the child or the person taking care of the child. This power of the authority cannot be exercised *ex officio* but only upon application. According to the law an abuse is realised if the entitled person exercises a right of contact that is not in compliance with a ruling, or does not maintain contact for a period of six months through his or her own fault. The limitation also means a change to the form of contact, its frequency or its length.

An interruption of contact can also be ordered, upon application, for the reason that the entitled person abused the right of contact by causing serious damage to either the child or the person taking care of the child. The maximum length of the interruption is six months, according to the law.

The most severe sanction, the termination of the right of contact, is also a consequence of the entitled person's behaviour: the competent authority withdraws this right if the entitled person not only seriously abuses this right, but also seriously endangers the child's upbringing and development. The entitled person can apply for the court or the public guardianship authority to re-establish the terminated, or restore the limited, right of contact and the authority can allow this claim if the circumstances the sanction was based on have changed.

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

There can be consequences affecting parental responsibilities if a holder of parental responsibilities disregards the child's right to contact with the other parent, but only if the measures of enforcement enumerated in the Order of Guardianship remain unsuccessful. Therefore, if the parent living with the child continually turns the child against the other parent and does not allow performance of the contact order in spite of enforcement measures, it is possible to petition for a change of the child's residence. Judicial practice gives great emphasis to the fact that one of the parents continually prevents the maintenance of contact.

(b) Other persons

A parental responsibilities holder's disregard of child's right to contact with other persons, usually with the child's close relatives, will not in itself affect the parental responsibilities. There are cases in which grandparents apply for contact with the child and consequently for a change of the child's residence (placement), but these claims are rejected if the parent properly exercises their parental responsibilities.

F. DELEGATION OF PARENTAL RESPONSIBILITIES

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

The possibility for a holder of parental responsibilities to delegate the exercise of these rights is exceptional in Hungarian law. Two situations allow for this possibility.

The delegation of parental responsibilities is partial and temporary when parents, because of their health, reasoned absence or any other family reason, initiate the transfer of their child to another family. This other family then takes over the care of the child, and the parents' parental responsibilities are suspended. They are then exercised by the persons who have taken the child into their household as the child's guardians. The parents have right to contact with the child and to make decisions with these persons about all important matters affecting the child. The consent of the public guardianship authority is needed to transfer a child into

another person's household; the public guardianship authority governs whether the persons designated by the parents are suitable to exercise the parental responsibilities and whether it is in the child's interests to take him or her into another person's household. When the circumstances for taking the child into another household cease, the parents take the child back into the parental family and their parental responsibilities are revived. (If the help of other persons (usually a grandparent, or the sister or brother of the parent) is temporarily required temporarily to take care of the child, this is not seen by family law as a delegation of parental responsibilities and does not affect the parents' parental responsibilities.)

The other possibility for the delegation of the parental responsibilities arises when a parent gives his or her consent to the adoption of his or her child, whether the consent is for an adoption by an unknown person (so-called incognito adoption) or by a person known to the parent. If the parent does not know the person adopting the child, the parent's parental responsibilities end with the consent itself. The public guardianship authority will then take the child into care, with the parental responsibilities exercised either by a foster parent or children's home until the adoption. If the parent knows the person adopting his or her child, the parent's parental responsibilities remain until the adoption. After the adoption, the adoptive parents will exercise parental responsibilities.

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?

A non-custodial parent who applies to the competent authority for the delegation of the parental responsibilities can, at the same time, apply to change the judicial decision about the child's placement. If the court changes the earlier decision, the non-custodial parent will become the custodial parent and the other parent will exercise the rights and duties of the non-custodial parent. No third person can file a claim concerning the child's placement.

If both parents die, the guardian the parents appointed through use of their parental responsibilities can petition the public guardianship authority for the delegation of the parental responsibilities and to be appointed as guardian. If there is no such person, the child's close relatives can petition the public guardianship authority for the delegation of the parental responsibilities and to be appointed as guardian. In this latter case, the issue of who amongst the close relatives should be appointed as guardian and be delegated with the parental responsibilities is within the discretion of the public guardianship authority.

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?

Hungarian family law discharges parental responsibilities by ordering the suspension or termination of parental responsibilities.

The court can terminate parental responsibilities if a parent's behaviour seriously damages or endangers his or her child's interests, especially their physical, mental or moral development. This happens specifically if a parent commits an intentional criminal offence against his or her child, but any other mistreatment or abuse of a child may also lead to termination. A parent's violent behaviour towards the other parent is not regulated separately by the Act.

Suspension by judicial decision or by the order of the public guardianship authority is a lesser form of discharge of parental responsibilities, usually also ordered as the consequence of parental failure. Two situations belong here: one is when the court places the child with a third person because it sees that one of the parents would endanger the child, the other is when the public guardianship authority takes the child into institutional care because his or her family endangers his or her growth and the situation can not be solved in any other way, e. g. by designating a family caretaker.

In these cases the discharge of parental responsibilities does not leave the family without rights. The parents retain some rights and duties of parental responsibilities, both with respect to children living with third person and children living in institutional care.

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

The court holds exclusive power to terminate parental responsibilities. Those persons having the right to file an action to terminate the parental responsibilities are: the other parent, the child, the public guardianship authority and the public prosecutor. The court is the competent authority to decide on the placement of the child. The public guardianship authority is the competent authority to order the child into institutional care; in this case the child will live in foster parent or a children's home.

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 or her parental responsibilities?

This matter is regulated differently depending on whether the parental responsibilities end or are only are suspended. If parental responsibilities are terminated, the right of contact between the child and the previous holder of parental responsibilities is permitted only in exceptional cases. If parental responsibilities are suspended, the Act grants the previous holder of parental responsibilities not only right, but also demands the duty of contact with his or her child. Failure to exercise this right can be sanctioned. In this situation, the right of contact also means the right to watch the shaping 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?

If parental responsibilities are terminated by judicial decision, they can also be revived in this way. The court can re-establish the parental responsibilities if the reason for the termination no longer exists and there is no other reason for the termination. Persons who have a right to file an action to re-establish parental responsibilities are: either parent, the child, the public guardianship authority and the public prosecutor.

If parental responsibilities were suspended and the reason upon which the court decided on the child's placement with a third person ceases and the circumstances upon which the judgment was based change, the parent or parents can petition to change the judgment.

The legislature intended for the taking of a child into institutional care by the public guardianship authority because of his or her endangerment in the family to be a temporary solution. The competent authorities are obliged to support the parents in changing their circumstances by helping them to become able to take care of their child themselves, and the parents are demanded by the law to do their best to change their circumstances so that they can take their child back. The public guardianship authority is legally obliged to review the justification of the child's institutional care from time to time. The parental responsibilities of the parent awaken as a consequence of the authority's order in these cases.

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?

Disputes concerning parental responsibilities, questions of residence (and placement) of the child and the contact are partly in the court's power and partly in the power of the public guardianship bodies, which work not as courts but as administrative authorities in Hungary.

If the parents live together, matters of parental responsibilities are to be decided by the public guardianship authorities according to the law. It is questionable whether parents living together really go to the authorities for the disputes' resolution. Disputes concerning parental responsibility matters between parents not living together are to be resolved by judges in out-of-court proceedings. This can be especially important concerning parental rights attributed to non-custodial parents. There is one issue of parental responsibilities that parents, living together or apart, can not petition either the court or to the public guardianship authority about: it is the child's religious education. Both the Constitution of the Hungarian Republic and the Family Act state that no State intervention is allowed in this matter, even if the parents dispute it.

Usually, courts have the power, in a lawsuit, to decide disputes concerning the placement of the child.

Both the court and the public guardianship authority have the power to decide the resolution of a dispute concerning contact. The court has power to decide, if the claim for the arrangement of the contact emerges in a divorce case or a case on the placement of the child, or if the subject of the lawsuit is a change of contact arranged in a judgment, provided that the lawsuit is within two years from the earlier judgment or the judicial consent to the parents' settlement. If the claim for an arrangement of contact emerges in another context, the public guardianship authority has power to settle or re-settle the matter. The enforcement of the decision, regardless of whether it was court's or the authority's decision, is always in the power of the public guardianship authority.

Both courts and the public guardianship authorities should make their decisions in these cases on the basis of the parents' arrangements, and the parents should be induced to agree on the arrangements themselves. In case of divorce by consent both the agreement on the placement of the child and on the contact are legal prerequisites of filing the action.

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?

An essential change of circumstances can result in a change to either the placement of the child or parental contact with the child, by either agreement or decision. Another condition of the change is that it should be in the child's interests. If the interests of the child demand the change, it is not necessary for any period of time to elapse. Nevertheless, especially with regard to the residence (placement) of the child, it is emphasised that a repeated claim for the change will be reviewed to determine whether the claim is unnecessary harassment.

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?

Mediation is available as an alternative dispute solving mechanism in issues of parental responsibilities, residence of the child and contact. Nevertheless, during a divorce proceeding a mediation agreement entered in to by the parties is to be approved by the court.

There is a special 'child-welfare mediation' that can help parents arrange the matter of contact if they cannot agree on the manner or the time of the contact. This child-welfare mediation is also available in the enforcement stage of the decision or agreement. This proceeding can be applied for by the parties or can be initiated by the public guardianship authority with the consent of the parties.

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?

In practice, the enforcement of a decision or agreement on parental responsibilities, the child's residence (placement) or contact is a problematic matter.

With respect to parental responsibilities and the child's residence (placement), the parent can file an action and claim the obligation of the person (usually the other parent) who illegally withholds the child to give the child back. The regulations of the Execution Act are to be applied to the enforcement of the judicial decisions. According to these rules, the first step is to request the public guardianship authority to promote voluntary performance. If this is unsuccessful, enforcement is provided through a penalty or the assistance of the police.

With respect to the enforcement of contact, the first step is to encourage the parties to take part in the child-welfare mediation. There are also 'contact-services' all around the state which, with its experts, aim to help contact function properly when it breaks down. It may help to have proper rooms available for contact. If these solutions are unsuccessful, administrative sanctions are available against a custodial parent who prevents contact. The last sanction can be the claim for a change of the child's residence, but, of course, only if it is in the child's interests.

A published final judgment of first instance regarded a parent's right to contact with his child to also be the non-custodial parent's personal right and stated that this parent was entitled to damages because of the violation of his personal right.

Instead of refusing enforcement, a revision of the residence or contact decision is possible.

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?

A dispute can emerge not only between the parents, but also between the parents and a child in the matter of parental responsibilities, the child's residence or the contact. If the competent authority is to decide these cases, or if the parents' agreement concerning these matters requires the consent of the authority, a minor capable of forming his or her own views must be heard. This rule has to be applied in cases before both the court and the public guardianship authority, both in the original decision and in a revision of the decision or the approved agreement.

The court is obliged to hear a child over 14; a child younger than 14 is also to be heard if the child is capable of judgment and the child demands it. It seems to be an exception from the rule for the child over 14 to be heard concerning his or her residence (placement) if the parents' have an agreement on the issue. This exceptional rule has application in a divorce by consent, as one of the legal

conditions of the divorce by consent is that the parents agree on the residence of the child and contact with the child.

If the contact is arranged through the child-welfare mediation, a child over 12 is to be heard and children below 12 who are capable to form their own views are to be heard only if it is proposed by the parties or the public guardianship authority. Generally, if contact is not arranged in a mediation proceeding, a child over 14 is to be heard and children younger than 14 who are capable of forming their own views will only be heard at the discretion of the judge. A claim for arranging contact can even be filed by a child himself or herself if the child is over 14.

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

Of course the child has to be heard directly and personally during the Child-Welfare mediation. In other cases it is up to the discretion of the court or the public guardianship authority whether the child is heard personally or indirectly through experts. In proceedings before the public guardianship authority the expert can be also the education advising service, but in judicial proceedings the expert may only be the specially appointed psychologist. Both the court and the public guardianship authority can order that the child has to be heard in the absence of the parents.

In proceedings concerning the child's residence, expert opinions are not only demanded with regard to children being capable of forming their own views; lacking a parental agreement, the court's judgment is usually based on these experts' opinions.

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

(a) Parental responsibilities

There is no general rule concerning how a child is legally represented in disputes concerning parental responsibilities. Nevertheless, when the court decides about hearing the minor as an interested person in a proceeding concerning parental responsibilities, it appoints a guardian *ad litem* for the child at the same time if it is reasonable.

(b) The child's residence

There is also no general rule concerning how a child is legally represented in disputes concerning the child's placement and the change of the decision on the placement. Nevertheless, when the court decides about hearing the minor as an interested person in a proceeding concerning the child's residence or the change of such a decision, it appoints a guardian *ad litem* for the child at the same time if it is reasonable.

(c) Contact

There is no special rule in this case, either.

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

See Q 59.

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In certain cases the child has to be heard if the child is 12 or older, in other cases from the age of 14. The maturity of the child can be stated as the important factor for a child that is even younger, according to the circumstances of the case. It has special import for a child under 12 to himself or herself demand his or her hearing.