

NATIONAL REPORT: NORWAY

Prof. Peter Lødrup
&
Prof. Tone Sverdrup

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 concept of parental responsibilities may be described as duties and rights relating to a child. According to Art. 30 Norwegian Children Act 1981, the concept includes both a duty to care for the child as well as a right to make decisions on behalf of the child. The concept as laid out in the Norwegian Children Act 1981 does not include duties and rights relating to the property of a child nor legal representation (guardianship). Since guardianship, however, is an automatic consequence of parental responsibilities, the person(s) having such responsibilities will also decide financial matters for the child, within the limits set in the Norwegian Act on Guardianship of 8 April 1927, No. 7.

2. Explain whether your national concept or concepts encompass:

(a) Care and protection

It follows from Art. 30 Norwegian Children Act 1981 that the child may claim that the person or persons attributed parental responsibilities should provide the child with care and consideration. It is expressly stated that parental responsibilities shall be exercised on the basis of the child's interests and needs. Those who are attributed parental responsibilities are under an obligation to raise and maintain the child in a proper manner.

(b) Maintenance of personal relationships

The concept of parental responsibilities includes the maintenance of personal relationships. The parents shall give the child love, security and care while it is young.

(c) Provision of education

As regards education, it follows from the Art. 30 sec. 2 Norwegian Children Act 1981 that parental responsibilities entail the duty to ensure that the child obtains an education according to its interests and abilities. It is expressly stated in Art. 32 Norwegian Children Act 1981 that a child of 15 or older may make all decisions concerning his or her education without the consent of the parents.

(d) Legal representation

The legal representative for a person under 18 is the guardian. But since guardianship follows from the attribution of parental responsibilities, it may be said that for all practical purposes guardianship is included in parental responsibilities.

(e) Determination of residence

The determination of a child's residence is decided by the person(s) to whom parental responsibilities are attributed. This is not expressly stated in the Norwegian Children Act but it is assumed that it lies within the concept of parental responsibilities.

(f) Administration of property

Administration of property is carried out by the guardian(s) who according to Art. 3 Norwegian Act on Guardianship 1927 is the person(s) attributed parental responsibilities. However, a child of 15 or older may dispose of income he or she has earned through work, or received as gifts or through inheritance if the donor or testator has expressly declared that the child shall have full control over the gift or inheritance, Art. 33 Norwegian Act on Guardianship 1927.

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

The right to make decisions for the child comes to an end when the child reaches majority (18 years), according to Art. 33 Norwegian Children Act 1981. There are no general provisions in the Norwegian Children Act on when parental responsibilities cease, but it is generally assumed that after the child has reached the age of majority, he or she has full capacity in all respects. However, when the act was debated in parliament, it was agreed that the 18 year limit in itself should not be relevant to that part of parental responsibilities that refers to the feeling of responsibility and concern for the child.¹ The functions of the guardian(s) cease at the age of 18, Art. 1 Norwegian Act on Guardianship 1927. Parental responsibilities do not cease if a child under 18 marries.

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

The current source of law for parental responsibilities is the Norwegian Children Act 1981. The main rules on parental responsibilities are found in Chapter 5, which contains provisions on the nature of parental responsibilities and to whom such responsibilities are attributed. Case law plays an important part as a source of the current law. The rights and duties related to the property of a child (guardianship) are laid down in the Norwegian Act on Guardianship 1927.

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

Parental responsibilities have been attributed to both parents since the 18th century, if the child was born in wedlock. After a divorce, however, until the 1980s only one of the parents was attributed parental responsibilities. Contact rights for the parent not living with the child were acknowledged by the Supreme Court in 1940.²

¹ Innst. O. (1980-81) nr. 30, p. 10.

² Rt. 1940 p. 155.

To a child born out of wedlock, until 1915 parental responsibilities were attributed to the person(s) with whom the child lived, irrespective of whether this was the mother or another person. The father at that time normally had no relationship, legal or actual, with the child. Art. 3 of the Norwegian Act on Children born out of Wedlock 1915 (The Castberg Act) vested parental responsibilities in the mother. The father could gain parental responsibilities only if the mother died or was unable to care for the child and agreed that the child should live with the father. (The Norwegian Children Acts 1915, however, eliminated the differences between children born in and out of wedlock with regard to their legal status, for example with regard to inheritance from the father.) According to Art. 35 Norwegian Children Act 1981, the mother still has sole parental responsibilities when the parents are not married. The parents may, however, by mutual agreement also attribute parental responsibilities to the father (or to the father alone). This agreement becomes valid when the National Population Register is notified.

Until the 1980s, the concept of parental responsibilities included the rights of custody after divorce. Today, the question of who the child shall permanently live with is considered separately, according to Art. 36 Norwegian Children Act 1981. After divorce the main rule is joint parental responsibilities. With regard to the question of where the child shall permanently reside, if the parents do not agree the court must decide that the child shall have one permanent place of residence, Art. 36 sec. 2.

The Norwegian Children Act 1981 introduced the term 'parental responsibility' instead of 'parental authority'; a change that reflects a shift in attitude more than a shift in content. The content of parental responsibilities has not undergone any major changes in the last hundred years. The statutory provision that allowed parents to physically punish their children was repealed in 1972, and such punishment was explicitly prohibited in 1987. Art. 30 sec. 3 Norwegian Children Act 1981 states that a child must not be subjected to violence or be treated in any way that might harm or endanger his or her mental or physical health.

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

According to Art. 35 sec. 1 Norwegian Children Act 1981 when the mother of a child is not married, she alone is attributed parental responsibilities, if the parents do not agree otherwise. The government has suggested that as a general rule unmarried parents should share parental responsibilities if they live together.³

The Ministry of Children and Family Affairs will in the near future probably suggest amendments to the Norwegian Children Act 1981 to prevent a parent who might subject the child to violence from having contact with the child.

³ St. meld. nr. 29 (2002-2003) p. 7.

B. THE CONTENTS OF PARENTAL RESPONSIBILITIES

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

Parental responsibilities shall be exercised on the basis of the child's interests and needs, and consist of a duty to take care of the child, as well as a right to make decisions on behalf of the child. According to Art. 30 Norwegian Children Act 1981, the child is entitled to care and consideration from those who have parental responsibilities. Those who have parental responsibilities are under an obligation to raise and maintain the child properly. They shall ensure that the child receives an education according to its abilities and aptitude, and that it not be subjected to violence or be treated in any other way that could harm or endanger its mental or physical health.

According to Art.30 Norwegian Children Act 1981, the holders of parental responsibilities have a right and a duty to make decisions for the child in personal matters, within the limits set by Art. 31 (the child's right of co-determination) and Art. 33 (The child's right of self-determination). As the child develops and is able to form his or her own opinions, the parents shall listen to the child's opinions before making decisions for the child on personal matters. They shall pay due regard to the opinions of the child according to its age and maturity. When the child has reached the age of seven, it shall be allowed to state its opinions before decisions are made on personal matters on its behalf, including the question of which of the parents it wishes to live with, according to Art. 31 Norwegian Children Act 1981. When the child has reached the age of twelve, great importance shall be attached to the child's wishes. Parents shall steadily extend the child's right to make its own decisions until its comes of age, according to Art. 33 Norwegian Children Act 1981.

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

(a) Care

According to Art. 30 Norwegian Children Act 1981, the child is entitled to care and consideration from those who have parental responsibility. Those with parental responsibilities are obliged to properly raise and maintain the child. The child must not be subjected to violence or be treated in any other way that might harm or endanger his or her mental or physical health.

(b) Education

According to Art. 32 Norwegian Children Act 1981, a child of 15 or older may make all decisions on its education. It is the duty of those who are attributed parental responsibilities to ensure that the child receives an education commensurate with its abilities and aptitudes; see Art. 30 sec. 2 Norwegian Children Act 1981.

(c) Religious upbringing

In respect to religious matters, if both parents are members of the Church of Norway, they cannot discontinue the membership of the child. According to Art. 2 Norwegian Constitution, such parents have a duty to educate their children in the Evangelical-Lutheran religion. This means that they must allow the child to attend

religious classes in primary schools. This applies until the child reaches the age of 15. After that, the child decides for itself; see Art. 3 No. 5 Norwegian Act on the Church of Norway 1996.

If both parents do not belong to the Church of Norway and the child is under 15, the parents can enter the child in religious societies or discontinue its membership according to Art. 6 sec. 1 Norwegian Act on Religious Societies 1969. If the child is 12 or older, it should be heard before such a step is taken. This act, in Art. 3, gives a child of 15 or older an independent right to become a member or to discontinue membership of a religious group.

(d) Disciplinary measures and corporal punishment

The general view is that physical punishment of children is prohibited. Art. 30 sec. 3 Norwegian Children Act 1981 states that a child must not be subjected to violence or be treated in any way that might harm or endanger his or her mental or physical health.

(e) Medical treatment

Medical treatment can only be given with the patient's consent, Norwegian Act on Patient Rights 1999, Art. 4 sec. 1. Parents may consent on behalf of a child younger than sixteen years of age. A child older than 16 can consent to treatment independently of its parents' wishes, Art. 4 sec. 3.

(f) Legal representation

It is the guardian who legally represents the child in both personal and economic matters. A child's guardian is normally the one who is attributed parental responsibilities, Art. 3 Norwegian Act on Guardianship, 1927.

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 basic rule is that the child shall be heard on all matters relating to its situation. According to Art. 31 sec. 1 Norwegian Children Act 1981, as the child develops and matures the parents shall listen to its opinions before making a decision on personal matters for the child. They shall pay due regard to its opinions. For a child of 12 or older, the Article in force up to 2003 stated in sec. 2 that great importance should be attached to the child's wishes. The same applies to others with whom the child lives or who are associated with the child. This includes public authorities and the courts. When Norway incorporated the UN Child Convention in national law in 2003, Art. 31 Norwegian Children Act 1981 was amended. In addition to what was previously stated, sec. 2 now says that when a child has reached the age of seven, it shall be given the opportunity to express its opinions before decisions are taken on personal matters, including where it shall live following a separation or divorce.

According to Art. 31 Norwegian Children Act 1981, parents shall steadily extend the child's right to make decisions, as it grows older, until it comes of age. It is expressly stated in Art. 32 Norwegian Children Act 1981 that a child of 15 or older

may make all decisions relating to its education. This age is also decisive for self-determination in religious matters.

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

Yes. According to Art. 3 Norwegian Act on Guardianship 1927, the guardian(s) are those attributed parental responsibilities.

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

The right to administer the child's property is to a large extent limited by Art. 62 and 63 Norwegian Act on Guardianship 1927. All major decisions regarding the child's assets require the consent of the Public Guardian's Office. Financial assets of more than NOK 75,000 shall be managed by the Public Guardian's Office.

12. Are there restrictions with respect to:

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

All major decisions regarding the child's assets require the consent of the Public Guardian's Office. Financial assets of more than NOK 75,000 shall be managed by the Public Guardian's Office, Art. 62 and 63 Norwegian Act on Guardianship 1927. Inherited property or gifts are subject to these general rules, unless the deceased or the donor has stated that the child shall have the right to dispose of the assets itself, Act on Guardianship, 1927, Article 33.

(b) Salary of the child

A child 15 or older can dispose of money he or she earns from work without the consent of the guardian(s), Art. 33 Norwegian Act on Guardianship 1927.

(c) Certain transactions

The guardians need the consent of the Public Guardian's Office to dispose of real property belonging to the child Art. 49 Norwegian Act on Guardianship.

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

There are special rules in Art. 55 Norwegian Act on Guardianship 1927 that protect the child from indebtedness caused by the guardian(s). It is not permissible to incur debt on the child's behalf without the consent of the Public Guardian's Office.

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.

Parental responsibilities do not vary according to the status of the holder(s).

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

When the parents are married at the time of the child's birth, both parents share parental responsibilities on an equal basis, Art. 34 sec. 1 Norwegian Children Act 1981.

(b) Not married at that time but marry later

If the parents marry after the birth of the child, their parental responsibilities continue to reflect the rules of parental responsibility for unmarried parents. This means that if only the mother had parental responsibilities for the child, she alone continues to have these until the parents agree that they both shall be attributed parental responsibilities. They must then notify the public registrar accordingly.

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

(a) Divorce

As a main rule, a divorce does not have any consequences for the attribution of parental responsibilities, Art. 34 sec. 2 Norwegian Children Act 1981.

(b) Legal separation

As a main rule, a legal separation does not have any consequences for the attribution of parental responsibilities, Art. 34 sec. 2 Norwegian Children Act 1981.

(c) Annulment of the marriage

If the annulment of the marriage should lead to a redetermination of paternity, the parental responsibilities will be affected. As annulment of marriage seldom occurs, the legal situation with regard to redetermination of paternity is not clear.

(d) Factual separation

As a main rule, a factual separation does not have any consequences for the attribution of parental responsibilities, Art. 34 sec. 2 Norwegian Children Act 1981.

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

The parents are free to agree upon the attribution of parental responsibilities after legal separation or divorce, Art. 34 sec. 2 Norwegian Children Act 1981. Their agreement is not subject to public scrutiny. Since 1997, agreements concerning parental responsibilities must be reported to the National Population Register. Agreements concerning parental responsibilities which are not reported to the National Population Register are not valid, Art. 39. If no agreement is reached, the parents continue to have joint parental responsibilities until a court, at the request of one of the parents, decides otherwise. If the parents disagree as to who shall

have parental responsibility, either of them may institute legal proceedings, according to Art. 56 and 48.

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?

According to Art. 48 Norwegian Children Act 1981, the decision of the court shall first and foremost be taken on the basis of what is best for the child. The court may attribute joint parental responsibilities to the parents of the child against the wish of one of the parents, and, in principle, also against the wish of both parents. The main rule is for both parents to share parental responsibilities after a separation or divorce, Art. 34 sec. 2 Norwegian Children Act 1981. If one of the parents wishes sole responsibility, the courts will comply with such a request only if there are special circumstances that support the claim. Such "special circumstances" will include, for instance, the possibility that the other parent might be considered unsuited to share parental responsibilities. A recent case decided by the Supreme Court illustrates this:⁴ A suitable parent was not allowed to continue sharing parental responsibilities. In the judgment concerning an autistic child, the mother was awarded sole parental responsibilities. It was emphasised that the relationship between the parents was poor and, in the view of the court, "there was a gulf impossible to bridge". Further, the child's negative reactions to the father, relating to her autism, were of significance, and if he were granted the right of contact, this would exacerbate the dysfunctional parental communication and hurt the child. An important issue was that the mother might become unable to care for the child, due to the stress caused by contact with the father.

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

There is no official statistical information on the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage. Court decisions on this matter are rare, and there is no public scrutiny of the agreement of the parents. It is the general view that in the great majority of cases the parents agree upon continued joint parental responsibilities.

II. Unmarried Parents

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

If the mother of a child is not married, she alone will have parental responsibilities, Art. 35 sec. 1 Norwegian Children Act 1981.

⁴ Rt. 2003 p. 35.

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...).

It does not make any difference if the parents have formalised their mutual relationship.

22. Under what condition, if at all, can

(a) The unmarried mother

The unmarried mother obtains parental responsibilities upon the birth of the child, Art. 35 sec. 1 Norwegian Children Act 1981,.

(b) The unmarried father obtain parental responsibilities

If the father and mother agree upon joint parental responsibilities and inform the National Population Register of their agreement, the agreement is legally valid, Art. 35 sec. 2 Norwegian Children Act 1981. Since the great majority of unmarried mothers live together with the father of the child, such agreements are very common. If the parents disagree as to who shall have parental responsibilities, either of them may initiate legal proceedings on this issue, according to Art. 56. According to Art. 48, the decision of the court shall first and foremost be taken on the basis of what is best for the child.

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

If an unmarried couple end their relationship and both have parental responsibilities, it does not affect the attribution of their parental responsibilities. But one of the parents, under the same conditions as married couples, may obtain a court decision that grants the said parent sole parental responsibilities, Art. 56 Norwegian Children Act 1981. According to Art. 48, the decision of the court shall first and foremost be taken on the basis of what is best for the child.

If one of the parents had sole parental responsibilities during the relationship, the attribution of parental responsibilities is not affected if the relationship ends. If the parents disagree as to who shall have parental responsibilities in the future, either of them may initiate legal proceedings on this issue, according to Article 56. According to Article 48, the decision of the court shall first and foremost be taken on the basis of what is best for 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?

According to Art. 48 Norwegian Children Act 1981, the decision of the court shall first and foremost be taken on the basis of what is best for the child. The court may attribute joint parental responsibilities to the parents of the child against the wish of one the parents, and, in principle, even against the wishes of both parents. If one

of the parents wishes sole responsibility, the court will comply with the request only if there are special circumstances to support the claim. Such "special circumstances" will include, for instance, the possibility that the other parent might be considered unsuited to share parental responsibilities, and in this judgment the court may take into account a parent's violent behaviour towards the other parent.

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?

After ending their relationship, unmarried parents are free to agree upon the attribution of parental responsibilities. There is no public scrutiny of such an agreement. Agreements concerning parental responsibilities which are not reported to the National Population Register are not valid; Art. 39 Norwegian Children Act 1981.

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

There is no statistical information on this matter. Since the great majority of unmarried mothers live with the father of the child, agreements on joint parental responsibilities are very common.

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

No person other than the legal father or mother can obtain parental responsibilities, except after the death of a parent.

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

No person other than the legal father or mother can obtain parental responsibilities, except after the death of a parent.

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

No person other than the legal father or mother can obtain parental responsibilities, except after the death of a parent.

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

It does not make any difference if the partners with parental responsibilities are of the same sex.

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.

Not relevant.

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.

Not relevant.

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.

No person other than the legal father or mother can obtain parental responsibilities, except after the death of a parent, compare Art. 38 and 63 Norwegian Children Act 1981. See Q 33.

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.

A public body can never obtain parental responsibilities.

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

(a) The death of a parent holding parental responsibilities

Upon the death of one of the parents having parental responsibilities, the other parent, if he or she had already shared these, will hold sole parental responsibilities, Art. 38 sec. 1. If the child lived with both parents at the time of the death, the surviving parent will be attributed parental responsibilities even if the deceased alone had these, Art. 38 sec. 2 Norwegian Children Act 1981. If the parent who acquires parental responsibilities pursuant to the Art. 38, sec. 1 did not live with the child, or the parent who acquires parental responsibilities pursuant to Art. 38, sec. 2 did not have parental responsibilities when the other parent died, other persons may within six months of the death initiate legal proceedings to claim parental responsibilities and the right to live permanently with the child, according to Art. 63 sec. 1. In these cases, the court may allow one person to have sole parental responsibilities or allow a man and woman who are cohabitants to share it. If any person other than the surviving father or mother is given parental responsibilities, the court shall also decide whether the father or mother shall continue to share in the parental responsibilities according Art. 63 sec. 5 Norwegian Children Act 1981.

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

If the death of both parents results in no one having parental responsibilities, the local police or district court shall be notified on the death certificate, Art. 38 sec. 3 Norwegian Children Act 1981. The decision shall first and foremost be taken on the basis of what is best for the child, Art. 48. If only one claim for parental responsibilities is received, the court shall grant the claim except when there is a risk that the child will not be given proper care and upbringing, or that the child will suffer harm in some other way. Rejection of a claim for parental responsibilities shall be done by court order and may be appealed, according to Art. 63 sec. 3.

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?

A parent cannot appoint a new holder of parental responsibilities in the case of his or her death. If the parents have stated in writing who they wish to have parental responsibilities after their deaths, importance should be attached to their wish, according to Art. 63 sec. 5 Norwegian Children Act 1981.

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 interests of the child are not directly defined in Norwegian legislation. But when the UN's Child Convention was implemented as national law with priority over other legislation, the reference to 'the best interests of the child principle' in Art. 3 was also the foundation of national law. It is reflected in respect to parental responsibilities in the various articles in Norwegian Children Act 1981, which give the child the right to be heard in personal matters from the age of seven, and which attach great importance to the child's wishes. It should also be noted that any form of violence or other action that could harm or endanger his or her mental or physical health is forbidden.

II. Joint Parental Responsibilities

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

When parental responsibilities are jointly held by two persons, they are held equally.

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?

When two holders of parental responsibilities do not agree on issues concerning the child, as long as they live together there are no rules on how such disputes should be resolved. It is considered that such disputes should remain inside the home; one of the parents has to give in. The Norwegian Children Act 1981 has no provisions on the matter. There is no legal distinction between important decisions and decisions of an everyday nature.

However, as regards financial matters, Art. 3 Norwegian Act on Guardianship 1927 allows for the possibility of one parent giving the other the power of attorney to act on behalf of both parents. According to Art. 3 sec. 2, all warnings and communication during the case should be directed to both parents. If only one signs the necessary documents and meets in court on behalf of the child, he or she is considered as having the consent of the other parent unless the court is otherwise informed.

If the child lives permanently with one of the two parents holding parental responsibilities, the situation changes. According to Art. 37 Norwegian Children Act 1981, the parent who does not live with the child may not object to the one with whom the child lives making decisions concerning important aspects of the child's care, such as questions as to whether the child shall attend a day-care centre, where in Norway the child shall live, and other major decisions concerning everyday life. However, both parents must agree to a change of residence to another country, Art. 40 sec. 2.

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

If the parents holding equal parental responsibilities do not agree on an issue, there is no public authority to whom they can apply to resolve the dispute so long as they live together. If they do not live together, parents may initiate court proceedings concerning the extent of the right of contact, according to Art. 56 Norwegian Children Act 1981. The same applies to the question of who the child shall permanently reside with, compare Art. 36.

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?

With regards to financial matters, Art. 3 Norwegian Act on Guardianship 1927 allows for the possibility of one parent giving the other the power of attorney to act on behalf of both parents. According to Art. 3 sec. 2, all warnings and communication during the case should be directed to both parents. If only one signs the necessary documents and meets in court on behalf of the child, he or she is considered as having the consent of the other parent unless the court is otherwise informed.

If the child lives permanently with one of the two parents holding parental responsibilities, the parent who does not live with the child may not object to the one with whom the child lives making decisions concerning important aspects of the child's care, such as questions as to whether or not the child shall attend a day-care centre, where in Norway the child shall live, and other major decisions concerning everyday life, according to Art. 37 Norwegian Children Act 1981. However, both parents must agree to a change of residence to another country, Art. 40 sec. 1.

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?

The courts cannot direct that a child shall change its place of residence within the country or permanently move abroad. The parent with whom the child lives may without consent of the other parent move within the country, but may move to another country only if that parent alone is the holder of parental responsibilities, according to Art. 37 and 40 sec. 1 Norwegian Children Act 1981.

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)?

The competent authority, i.e. the court, may not order that the child should reside with both holders of parental responsibilities on an alternating basis (e.g. every other week, month etc.) A child must have permanent residence with one of the parents unless they, by mutual agreement, decide otherwise, Art. 36 sec. 2 Norwegian Children Act 1981.

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

A parent with sole parental responsibilities has full authority to act without consulting the other parent. This includes changing residence to another country.

(b) Other persons, bodies or competent authorities

A parent with sole parental responsibilities has full authority to act without consulting other persons, bodies, or competent authorities.

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 contact in Art. 42 sec. 1 Norwegian Children Act 1981 is expressed as follows: "The child has the right of access to both parents, even if they live apart.

The parents have mutual responsibility for implementing the right of access.' The child is entitled to care and consideration from the parent the child is with, Art. 42 sec. 2.

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 has a right of contact with the child (visiting rights). Parents usually decide the extent of the right of contact. If they do not agree, then this is determined by the courts and done on an individual basis, taking family circumstances into consideration. The extent of the right of contact, if agreed as an 'ordinary right of contact', entitles the parent to spend one afternoon a week, every other weekend, two weeks of the summer holiday, and Christmas or Easter with the child, Art. 43 sec. 2 Norwegian Children Act 1981.

(b) A parent not holding parental responsibilities

A parent not holding parental responsibilities has a right of contact to the same extent as a parent sharing parental responsibilities, see (a) above.

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

Persons other than the parents may be given a right of contact under certain limited conditions, Art. 45 Norwegian Children Act 1981. When one or both of the parents are deceased, relatives of the child or persons who are close to the child may request the court to establish whether they have a right of contact with the child, and the extent of such contact. In cases where a court has denied a parent's right of contact, that parent may request that the court determines whether his or her parents shall have a right of contact with the child and the extent of such contact. Contact by grandparents may be granted only on the condition that the person who has been denied contact is not allowed to be with the child.

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?

The right of contact is mutual. The child has a right of contact with both parents, Art. 42 Norwegian Children Act 1981, and the parent with whom the child does not live, has a right of contact with the child, Art. 43 Norwegian Children Act 1981. It should be added, however, that the child's right of contact cannot be legally enforced upon a parent that does not wish to have contact with the child.

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?

The parents are free to make contact arrangements, Art. 43 sec. 2 Norwegian Children Act 1981. They may also agree that the child shall live with the parents on an alternating basis, even if such an arrangement cannot be imposed by the court against the will of one of the parents. Parental agreements are not subject to scrutiny by any authority.

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

Either of the parents may at any time ask the court to deny the right of contact. The court may also upon request of one of the parents change the visiting rights the parents have agreed to. The decisive criteria are the interests of the child, Art. 48 Norwegian Children Act 1981, and the wishes of the child.

Visiting rights are paramount. They will only be denied under special circumstances. The Norwegian Children Act 1981 has no provisions on the issue, but the criteria formulated by the Supreme Court are that the right of contact should only be denied if there is a reasonably strong possibility that it could be seen as undesirable for the child.⁵ In one case, two children 11 and 13 did not wish to see their father, and the court held that this was a case where contact between father and children was impossible to enforce; hence contact had to be placed on a voluntary basis.⁶ If there were a risk that the parent would abduct the child, right of contact would also be denied.⁷

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

(a) A parent

If the parent with whom the child permanently lives denies these rights of contact, according to Art. 65 Norwegian Children Act 1981, they may be enforced by a coercive fine, according to the general rules of enforcement in Chapter 13 Norwegian Enforcement Act 1992. This means that the parent with whom the child lives will have to pay a fine of a given amount for each day the visiting right is denied. The parent whose visiting rights are obstructed may also request the court to permanently move the child to live with him or her. There are several examples of this.⁸ Thus, it is considered important that a child maintains contact with both parents.

(b) Other persons

According to Art. 45 sec. 3 Norwegian Children Act 1981, the rules described under (a) also apply when the child's right to contact with other persons is disregarded.

⁵ Rt. 1976 p. 1497.

⁶ Rt. 1987 p. 456.

⁷ Rt. 1983 p. 897.

⁸ Rt, 1982 p. 116; Rt. 1991 p. 1148.

F. DELEGATION OF PARENTAL RESPONSIBILITIES

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

Neither of the parents may delegate parental responsibilities to others.

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 person not holding parental responsibilities cannot apply to any authority for a delegation of parental responsibilities.

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?

The question as to whether one of the parents may be freed of his or her parental responsibilities is, in Norway, of practical importance only after a separation or divorce. The main rule is that both parents continue to have parental responsibilities. A discharge may be based on an agreement between the parties, or on a court decision. Such a decision shall be made in the best interests of the child, Art. 48 Norwegian Children Act 1981. It is generally agreed that it will be best for the child if both parents continue to hold parental responsibilities.

According to the practice of the courts parental responsibilities may be taken away from the parent not living with the child if it is considered undesirable for that parent to continue participating in such responsibilities. Examples are where the parent's general behaviour is considered to be harmful to the child: maltreatment, violence, suspicion of sexual abuse *etc.* We have no case on the issue of mental illness.

In some cases the relationship between the parents may be a reason for relieving one of the parents of his or her responsibilities. If the parents cannot co-operate in any way, it could be damaging to the child. A recent case decided by the Supreme Court illustrates this:⁹ A suitable parent was not allowed to continue sharing parental responsibilities. In the judgment concerning an autistic child, the mother was awarded sole parental responsibility. It was emphasised that the relationship between the parents was poor and, in the view of the court, 'there was a gulf impossible to bridge'. Further, the child's negative reactions to the father, relating

⁹ Rt. 2003 p. 35.

to her autism, were of significance, and if he were to be granted the right of contact, this would exacerbate the dysfunctional parental communication and hurt the child. An important issue was that the mother could become unable to care for the child, due to the stress caused by contact with the father.

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

The only person that has the right to request the court that a parent be discharged of his or her responsibilities is the other parent.

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

The fact that one parent is discharged from parental responsibilities does not in itself affect the other aspects of his or her relationship with the child. The right to have contact with the child is not influenced by such a decision. However, the reasons for discharging the parent from parental responsibilities may be relevant to the issue of contact; however, the two issues are legally independent.

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?

A parent who has been discharged from parental responsibilities may regain them through an agreement between the parents, or by a court decision. The court will evaluate the request according to the actual situation at the time the decision is made.

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 of the child and contact rights, are handled by the lower courts, Art. 48 Norwegian Children Act 1981. The parent who is unhappy with the existing situation initiates the proceedings, Art. 56 Norwegian Children Act 1981.

According to Art. 61 No. 6 Norwegian Children Act 1981, the court may obtain statements from the Child Welfare Office and the Social Welfare Office whenever necessary.

The court shall as a main rule summon the parties to one or more preliminary meetings in order to clarify their differences, to discuss the issues, and to try to

obtain agreement between the parties. In doing so, the Court can appoint an expert to give his opinion of the case, Art. 61 No. 1 and 3 Norwegian Children Act 1981,.

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?

A legally effective decision or an agreement between the parties may at any time be reviewed by the court. The parents may also change the residence of the child, the allocation of parental responsibilities and contact rights by mutual agreement, Art. 64 sec. 1 Norwegian Children Act 1981. If the issues have already been decided by the court, a new case may only change the former decision if there are special circumstances that favour such a change. If the court finds that there are no such circumstances, it may decide the case without a full hearing, Art. 64 sec. 2 and 3 Norwegian Children Act 1981. It is not required that a certain period of time must pass after the first decision. However, the existence of special circumstances will seldom occur shortly after the first decision.

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?

The general view is that an agreement reached between the parents regarding parental responsibilities, the child's residence and contact rights is in the child interests. Therefore, parents having children younger than 16, cannot obtain a separation decree from the competent authorities unless they have been through mediation, Art. 26 Norwegian Marriage Act 1991. If an agreement is not reached, the courts will settle the dispute. According to Art. 59 sec. 2 Norwegian Children Act 1981, the judge shall continually assess the possibility of obtaining an agreement between the parents and prepare the way for this. Art. 61 No. 1 Norwegian Children Act 1981 states that the court shall summon the parties to one or more preliminary meetings and attempt mediation. The court may, according to Art. 61 No. 2, recommend that the parties meet with a certified mediator or another person with knowledge of the case. The intent of mediation, according to Art. 52 Norwegian Children Act 1981, is to have the parents reach a written agreement. Although the parents are supposed to appear at the mediation at the same time, the mediator may decide for them to appear separately. He may also decide that one or both of the parents may bring an advisor.

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?

Decisions by the court on parental responsibilities, where the child shall live and on contact rights are enforceable, Art. 65 Norwegian Children Act 1981. In practice, enforcement is necessary in certain cases. The general rules of enforcement in Chapter 13 Norwegian Enforcement Act 1992 apply. In those cases where the child must change residence, three means of enforcement are available. First, force may be used by the enforcement officer. This is a drastic solution, but it is used in practice. Second, the parent with whom the child shall live may collect the child, but in that case no force can be exercised. Third, the court may determine that a coercive fine be levied for each day the parent refuses to give the child to the other parent. It also determines the amount of this fine.

Enforcement by means of a daily fine may not be chosen if it is considered 'impossible' to enforce such a decision, see the general rule in Art. 13-8 sec. 4 Norwegian Enforcement Act 1992. This follows from decisions of the Supreme Court in cases on the child's residence and contact rights. Such impossibility is present if enforcement might result in serious psychological problems for the child.¹⁰ It is further considered an impossibility if a somewhat older child strongly opposes contact with the other parent.¹¹ That the parent with whom the child lives is strongly against contact with the other parent does not qualify.

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?

When the court decides on parental responsibilities, residence or contact, the child has a right to be heard. The general rule in Art. 31 Norwegian Children Act 1981 is that from the age of seven, the child shall be heard before decisions are taken in personal matters. It is expressly stated that this shall be done in cases concerning the permanent residence of the child. It is further added that when the child has reached the age of twelve 'great importance shall be attached to the child's wishes'. In a recent case¹² where the issue was whether a decision on contact rights should be reviewed, the question arose as to whether the child's right to be heard should be an absolute right, or if this right could be set aside where it was contrary to the best interests of the child. It was decided that the best interests of the child should be given priority.

¹⁰ Rt. 1970 p. 703.

¹¹ Rt. 1963 p. 1369.

¹² Rt. 2004 p. 811.

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

Usually the child's opinion is given to the judge in a closed session, where none of the parties or their lawyers is present, Art. 61 No. 4 Norwegian Children Act 1981. The court may also appoint an expert or other suitable person to hear what the child has to say.

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

(a) Parental responsibilities

A dispute concerning parental responsibilities is a dispute between parents. The child is not a party in these cases. However, according to Art. 61 No. 5 Norwegian Children Act 1981, the court may appoint a lawyer or another representative to protect the interests of the child. The person who is appointed shall hear the child's opinion on the dispute between the parents and convey the child's opinion to the court. He or she has the right to see all documents relating to the case and may bring suggestions regarding the procedures either in writing or to a court hearing and provide advice as to how the case might best be handled. The court can decide whether the person may be present at the court hearing and, if so, the length of time. When the lawyer or representative is present, he or she may put questions to the parties and the witnesses.

(b) The child's residence

See Q 61a.

(c) Contact

See Q 61a.

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

The age and maturity of the child are relevant to all decisions on personal matters. As stated in Art. 31 Norwegian Children Act 1981, as the child matures, not only the parents, but all decision-makers shall hear the child's opinions. Due regard is to be given to the child's wishes according to its age and maturity.

Parental Responsibilities - NORWAY