

## NATIONAL REPORT: POLAND

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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.

Principal Polish law rules concerning parental responsibilities are defined by the Polish Constitution of 2 April 1997.<sup>1</sup> According to Art. 48 sec. 1 of the Polish Constitution, 'parents have the right to rear children in accordance with their own convictions [...]'. Article 48 sec. 2 of the Polish Constitution permits the limitation or deprivation of parental rights only as specified by statute or on the basis of a final court judgment. Further, Art. 72 sec. 2 of the Polish Constitution ensures that a child deprived of parental care shall have the right to care and assistance provided by public authorities.

The constitutional regulation is further developed in the provisions of the statute of 25<sup>th</sup> February 1964 Polish Family and Guardianship Code (*Kodeks rodzinny i opiekuńczy* further quoted as Polish Family and Guardianship Code).<sup>2</sup> The main principle is that a minor child remains under parental authority (Art. 92 Polish Family and Guardianship Code), which is held, as a rule, by both parents (Art. 93 § 1 Polish Family and Guardianship Code) and in exceptional cases by one of the parents. Parental authority, regulated as one of the elements of relations between parents and the child, is the key element to parental responsibilities in Polish law. This notion also finds direct application in adoptions.

A complementary idea in that respect is the concept of custody. If neither of the parents has parental authority over the child, a family court should appoint and supervise a curator to exercise guardianship over the child. The provisions on the exercise of parental authority are applicable to the exercise of guardianship (Art. 155 § 2 Polish Family and Guardianship Code), but the guardianship provisions state that the rights and obligations of the guardian are different from those of parents who have parental authority over the child. The Polish Family and Guardianship Code permits the establishment of guardianship over a child, with the guardian being a child-care institution, or some other institution or social organization (Art. 150 Polish Family and Guardianship Code), but the Ministry has not yet issued a regulation on this.

In an adoption, all previous parental authority (or guardianship) over the child ceases to exist (Art. 123 § 1 Polish Family and Guardianship Code). The legal

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<sup>1</sup> Published in *Dziennik Ustaw* of 1997 r., No. 78, pos. 483 with rectifications.

<sup>2</sup> Published in *Dziennik Ustaw* of 1964 r., No. 9, pos. 59.

relation between the those adopted and who are adopting is equivalent to a child and a parent (Art. 121 § 1 Polish Family and Guardianship Code); this also embraces the parental authority. Should the child be placed with a foster family or in a child-care institution, some of the obligations and rights (namely those concerning the care of the child, the child's upbringing and representation in claiming means of subsistence) are vested in the foster family or in a child-care institution. The remaining obligations and rights vest with the child's parents (Art. 112<sup>1</sup> Polish Family and Guardianship Code).

The preliminary question with regard to parental responsibility is the existence of parenthood. In practice, parenthood is indicated by a relevant annotation on the child's birth certificate. The woman who gave birth to the child is indicated as the child's mother.

If the mother of the child is married at the time of the child's birth, the mother's husband is indicated as the child's father. It is, however, possible to deny the fatherhood in a court judgment.

If the mother of the child is not married at the time of the child's birth, but her marriage ended (e.g by the spouse's death or by divorce) less than 300 days before the child was born, the mother's former husband is indicated as the child's father.

In all remaining situations, the law acknowledges either the man who was either declared to be the child's father or who was declared in a court judgment to be the child's father.

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

The general scope of parental authority is determined by the provisions of Arts. 95 and 96 Polish Family and Guardianship Code.

### **(a) Care and protection**

Yes. The provisions refer to custody over the child and the child's upbringing (Art. 95 § 1 Polish Family and Guardianship Code), and the care of the child's physical and intellectual development (Art. 96, sentence 2 Polish Family and Guardianship Code).

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

Yes, Polish legislation points out that the right to personal contact with the child is included in the parental rights and obligations. It is not, however, included in the concept of parental authority and does not form a part of this authority (*dziecka*).<sup>3</sup>

Parents deprived of parental authority maintain the right to personal contact with the child. This can be prohibited by the family court, however, when the child's interests so require (Art. 113 § 1 Polish Family and Guardianship Code). In exceptional cases the family court can limit the parents' personal contact with the child by limiting their parental authority through placing the child with a foster family or child-care institution (Art.113 § 2 Polish Family and Guardianship Code).

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<sup>3</sup> Supreme Court judgment of 05.05.2000, II CKN/761/00.

**(c) Provision of education**

The Polish Family and Guardianship Code does not refer specifically to education, but more generally to the obligation to care for the child's intellectual development and to prepare the child for future work that will benefit society, in accordance with the child's abilities (Art. 96 Polish Family and Guardianship Code).

**(d) Legal representation**

Yes, parents are the legal representatives of a child under their parental authority (Art. 98 § 1 Polish Family and Guardianship Code). The limitation of their representation is prescribed by Art. 98 § 2 Polish Family and Guardianship Code, which states that no parent should represent a child in legal actions involving other children remaining under their parental authority, or in legal actions between a child and the other parent or the parent's spouse (except for the cases when the legal act is gratuitous and for the child's benefit or concerns the means of child's subsistence and upbringing due from the other parent).

If neither of the parents can represent the child, the child is represented by a curator appointed by the family court (Art. 99 Polish Family and Guardianship Code).

**(e) Determination of residence**

For a child remaining under parental authority, the civil code binds the child's place of residence with that of the child's parents, or with the parent who has sole parental authority or who the family court entrusted with the exercise of the parental authority (Art. 26 § 1 of the Polish Civil Code).<sup>4</sup> If parents having joint parental authority over a child do not have a common place of residence, the child's residence is with the parent the child stays with on a regular basis. If the child does not stay with either parent on a regular basis, the child's place of residence is defined by the court (Art. 26 § 2 Polish Civil Code).

**(f) Administration of property**

The parents shall administer the property of a child under their parental authority with due care (Art. 101 § 1 Polish Family and Guardianship Code). The administration exercised by the parents does not encompass the child's earnings or objects given to the child for the child's free use (Art. 101 § 2 Polish Family and Guardianship Code). Parents cannot, without the authorization of the family court, perform acts exceeding the regular management standard, nor can they agree to such acts being performed by the child (Art. 101 § 3 Polish Family and Guardianship Code). Analogously, the property management is generally exercised by the guardian (under the supervision of the family court) (Art. 155 Polish Family and Guardianship Code).

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

The parental authority ceases when the child comes of age (Art. 92 Polish Family and Guardianship Code); i.e. when the child either reaches 18 years of age or marries before then (Polish law prescribes that by marriage a minor achieves

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<sup>4</sup> *Kodeks cywilny*, statute of 23.04.1964, published in *Dziennik Ustaw* of 1964, No. 16, pos. 93.

maturity – Art. 10 § 2 Polish Civil Code). Previous parental authority or guardianship also ceases when a child is adopted (Art. 123 § 1 Polish Family and Guardianship Code). The adoption creates the equivalent of a parent-child relationship between the adopted and the adoptive persons (Art. 121 § 1 Polish Family and Guardianship Code) which also encompasses also the parental authority. Parental authority may also cease when a parent holding it loses the full capacity to perform acts in law (e.g. by the parent's legal incapacitation) as the result of a judgment terminating the parental relationship (e.g. negation of the paternity) or in case of parent's or child's death.

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

The principal source regulating the parental responsibility in Polish law is the Family and Guardianship Code.<sup>5</sup> In Title II: *Kinship* Part I: *Parents and children* (Art. 62 - 113 Polish Family and Guardianship Code), Part II: *Adoption* (Art. 114 - 127 Polish Family and Guardianship Code). Within Part I, in particular Chapter II *Relations between parents and children* (Art. 87 - 113 Polish Family and Guardianship Code), and within this chapter - Section II *Parental authority* (Art. 92 - 113 Polish Family and Guardianship Code). In Title III *Guardianship and custody* Part I: *Guardianship of a minor* (Art. 145 - 174 Polish Family and Guardianship Code). Provisions on substitute families are regulated in Social Assistance Act of 12<sup>th</sup> March 2004 (Art. 72 - 79). Procedural provisions regulating the proceedings in parental responsibility cases are regulated by the Civil Procedure Code.<sup>6</sup>

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

After World War II, the principal regulations in this matter were issued in: the decree of 22<sup>nd</sup> January 1964 - Family Law, decree of 14<sup>th</sup> May 1946 - Guardianship Law, decree of 21<sup>st</sup> May 1946 on the proceedings before the guardianship authority (all these acts entered into force on 1<sup>st</sup> July 1946). Subsequently, the Family Code (statute of 27<sup>th</sup> June 1950 entered into force on 1<sup>st</sup> October 1950) and the statute on legal proceedings in family and custody cases issued simultaneously with the Family Code.

Presently, parental responsibility matters are set out in the Family and Guardianship Code (statute of 25<sup>th</sup> February 1964) and procedural law provisions in the Civil Procedure Code (statute of 17<sup>th</sup> November 1964). Some of the provisions of the Family and Guardianship Code were amended by the statute of 19<sup>th</sup> December 1975 (Art. 109, Art. 112<sup>1</sup>, 112<sup>2</sup>, Art. 113 § 2) and the statute of 21<sup>st</sup> December 2000 (Art. 109 § 2 i § 4, Art. 111 § 1a).

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

Apart from the amendments described in the answer to Question 5, in 1995 the Senate (upper chamber of the Polish parliament) presented a bill of amendments, which was rejected in 1996 by the Sejm (lower chamber of the Polish parliament).

<sup>5</sup> Statute of 25.02.1964, published in *Dziennik Ustaw* of 1964, No. 9, pos. 59.

<sup>6</sup> *Kodeks postępowania cywilnego*, statute of 17.11.1964, published in *Dziennik Ustaw* of 1964, nr 43, pos. 296 with amendments.

The Codification Commission, operated by the Ministry of Justice, is currently drafting an amendment bill, but it has not been published yet.

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

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

Within the regulations of legal relations between parents and children, the provisions governing the legal institution defined as 'parental authority' are of crucial importance. This concept encompasses, in particular, the obligations and rights of the parents to exercise custody over the child and the child's property, and the right to the child's upbringing (Art. 95 § 1 Polish Family and Guardianship Code) and guidance (Art. 96 sentence 1 Polish Family and Guardianship Code). Parental authority obligates the parents to take care of the child's physical and intellectual development and to prepare the child according to the child's abilities for future work that will benefit society (Art. 96 sentence 2 Polish Family and Guardianship Code). Parental authority should be exercised in accordance with the child's best interests and the common interest of the society (Art. 95 § 3 Polish Family and Guardianship Code). A child remaining under parental authority must obey his or her parents (Art. 95 § 2 Polish Family and Guardianship Code).

Irrespective of parental authority, there is a mutual obligation for parents and their children to assist each other (Art. 87 Polish Family and Guardianship Code). The law also sets forth the child's obligations to: help meet the needs of the family if the child has income from work and lives with the parents (Art. 91 § 1 Polish Family and Guardianship Code) or help the parents in the household if the child is maintained by the parents and lives with them.

Maintenance obligations, i.e. the obligation to provide means of subsistence and means of rearing of a child, are regulated independently from the parental authority (Art. 128 - 139 Polish Family and Guardianship Code). Parents are obliged to provide subsistence for a child who is not yet able to provide for himself or herself, apart from situations where the income from the child's own property could cover the costs of the child's maintenance and rearing (Art. 133 § 1 Polish Family and Guardianship Code). Parents' right to personal contact with a child is regulated with the regulation of parental authority (Art. 113 Polish Family and Guardianship Code), but exists separately from it.

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

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

Custody over the child's person and property is the key element of the parental authority.

#### **(b) Education**

Ensuring the child's education is encompassed within the obligation to prepare the child for future work according to the child's abilities (Art. 96 sentence 2 Polish Family and Guardianship Code).

**(c) Religious upbringing**

Article 53 section 3 of the Polish Constitution.

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

There are no provisions in this matter.

**(e) Medical treatment**

The duty to provide the child with necessary medical care is encompassed in the obligation of care for the child's physical development (Art. 96 sentence 2 Polish Family and Guardianship Code).

**(f) Legal representation**

Parents are the legal representatives of children under their parental authority. If a child remains under the joint parental authority of both parents, each of them can act independently as the child's legal representative (Art. 98. § 1 Polish Family and Guardianship Code). The limitation of their representation is prescribed by Art. 98 § 2 Polish Family and Guardianship Code, which states that no parent should represent a child in legal actions involving other children remaining under their parental authority, or in legal actions between a child and the other parent or the parent's spouse (except for the cases when the legal act is gratuitous and for the child's benefit or concerns the means of child's subsistence and upbringing due from the other parent).

**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?**

When assessing the child's rights, Article 72 sec. 3 of the Polish Constitution provides that all public authorities and persons responsible for the child are obliged to hear the child and, to the extent possible, the child's opinion. This provision is to be applied directly.

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

Yes, through the concept of care over the child's property (Art. 95 § 1 Polish Family and Guardianship Code).

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

The scope and contents of the right differ depending on the circumstances, i.e. whether a child remains under parental authority of both parents, under parental authority of one of the parents (Art. 104 Polish Family and Guardianship Code) or under guardianship (Art. 160-162 Polish Family and Guardianship Code). The parents are obliged to administer the property of a child remaining under their parental authority with all due care (Art. 101 § 1 Polish Family and Guardianship Code). The net income from the child's property is to be used first to cover the child's and her or his siblings' (brought up together with the child) maintenance and upbringing costs; the remaining income can be used to cover other reasonable needs of the family (Art. 103 Polish Family and Guardianship Code).

If only one of the parents holds parental authority, the court may order that parent to prepare the inventory of the child's property and notify the court as to all major changes in the property (Art. 104 Polish Family and Guardianship Code).

After the administration of the child's property ceases, the parents are obliged to return the property to the child or to the child's guardian. On child's (or guardian's) request, given up to a year following the end of the administration, the parents should present a financial report of the administration. The child, however, cannot demand an accounting regarding the income realised from property during the exercise of parental authority (Art. 105 Polish Family and Guardianship Code).

A guardian cares for the child and the child's property under the supervision of the family court (Art. 155 § 1 Polish Family and Guardianship Code). In comparison to a person holding parental authority, the guardian's rights are limited. Firstly, the guardian should obtain the court's authorization in all major issues regarding the minor (Art. 156 Polish Family and Guardianship Code). Additional obligations of the guardian are: to prepare an inventory of the property of the one under guardianship (Art. 160 § 1 Polish Family and Guardianship Code), to deposit specific items with the court (Art. 161 Polish Family and Guardianship Code) and to present an annual financial report of the property administration (Art. 165 Polish Family and Guardianship Code) to be confirmed by the court (Art. 166 Polish Family and Guardianship Code).

With regard to property administration, parents holding parental authority over a fully incapacitated child are subjected to restrictions analogous to those imposed on a guardian (Art. 108 Polish Family and Guardianship Code).

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

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

Yes. A contract for a gift or a Testament of the donor or the testator may stipulate that the objects acquired by the child as a gift or inheritance shall not be administered by the parents. In this situation, the administration is carried out by a curator appointed by the donor or testator. In the absence of such an appointment the curator is to be named by the court (Art. 102 Polish Family and Guardianship Code).

**(b) Salary of the child**

Yes. The administration of the parents do not cover the child's salary or items given to the child for the child's free use (Art. 101 § 2 Polish Family and Guardianship Code).

**(c) Certain transactions**

Yes. Parents cannot act without court authorization in cases exceeding the regular administration, nor can they consent to such acts being performed by the child (Art. 101 § 3 Polish Family and Guardianship Code).

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

No. A parent who does not properly administer the child's property may be held liable for damage incurred by the child, based on general regulation of contractual responsibility (art. 471 and subs. Polish Civil Code).

**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 general regulations of parental responsibility are to be applied to the child's parents, with the prerequisite that they have full capacity to perform legal acts (Art. 94 Polish Family and Guardianship Code). If the parents are not married to each other or they are married but live separately, the court may appoint one of them to exercise parental authority, limiting the authority of the other parent to certain obligations and rights with regard to the child (Art. 107 § 1 and 2 Polish Family and Guardianship Code).

The person adopting a child obtains parental authority equal to that of a parent (Art. 121 § 1 Polish Family and Guardianship Code).

The scope of parental responsibility held by a guardian is limited by the constant supervision of the family court (Art. 155 § 1 Polish Family and Guardianship Code), according to the rules set forth in Arts. 165 - 168 Polish Family and Guardianship Code. The guardian should obtain the court's authorization for all major issues regarding the minor before deciding the issues (Art. 156 Polish Family and Guardianship Code). The guardian should hear the child under the guardianship if the minor's mental and health state allows that and, if possible, the guardian should take into consideration the minor's reasonable wishes (Art. 158 Polish Family and Guardianship Code).

The status of a foster family or a child-care institution is regulated by Art. 112<sup>1</sup> Polish Family and Guardianship Code. This states that unless the family court rules otherwise, the foster family or the child-care institution holds the right and duty to carry out regular custody over a minor placed with them, which includes the right and duty to carry out the minor's upbringing and representation in maintenance cases. Other duties and rights resulting from parental authority are held by the parents.

## **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**

In this situation, both parents hold parental authority, so long as they have the full capacity to perform legal acts. On the existence of parenthood: see answer to Question 1.



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

As a rule, parental authority is held by a child's parents, irrespective of their marital status. An exception is made in the situation where paternity is established by the court, in which case the father generally holds no parental authority (Art. 93 § 2 Polish Family and Guardianship Code). Should the parents later marry, upon the father's request their marriage would be a ground for the court to grant the father parental authority (Art. 93 § 2 sentence 2 Polish Family and Guardianship Code).

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

The listed facts do not affect parental responsibility because parental authority in Polish law is independent from a marriage between the parents. However, if the parents are not married to each other, the court may entrust one of them with the exercise of the parental authority, limiting the other parent's rights and duties to certain activities (Art. 107 § 1 Polish Family and Guardianship Code).

**(a) Divorce**

In a divorce judgment, the court rules over the parental authority for the common minor children and decides the proportional amount each parent is obliged to contribute to the cost of the child's upbringing and maintenance. The court may, in particular, entrust one of the parents with the exercise of the parental authority, limiting the rights and duties of the other parent to certain activities (Art. 58 § 1 Polish Family and Guardianship Code).

**(b) Legal separation**

Legal separation results in a situation equivalent to divorce (parental responsibility issues included), unless the law states otherwise (Art. 61<sup>4</sup> § 1 Polish Family and Guardianship Code).

**(c) Annulment of the marriage**

The legal consequences of divorce (see above, point (a)) are applied when a marriage is declared null and void (Art. 21 Polish Family and Guardianship Code).

**(d) Factual separation**

A factual separation of the parents should be treated analogous to a situation of parents not married to each other (Art. 107 § 2 Polish Family and Guardianship Code).

**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 court is to decide on these issues, but nothing prevents it from taking the parents' opinion into consideration, should it not be contrary to the child's interests.

**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 the general principle, the competent authority is always obliged to act in accordance with the child's best interests and aim to safeguard the child's wellbeing. While acting to achieve those goals the court may take the facts discussed into consideration (the parents' will, their behaviour towards each other), but they do not have direct legal significance.

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

Such information is not available.

**II. Unmarried parents**

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

Both parents, in accordance to the general regulation of Art. 93 § 1 Polish Family and Guardianship Code On the existence of parenthood: see Q 1.

**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...).**

Polish law does not recognize those institutions.

**22. Under what condition, if at all, can**

In the discussed situations, the parents are not married to each other.

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

The mother always holds parental authority from the birth of the child.

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

If the father recognises the child, he always holds parental authority. Should the paternity, on the contrary, be established by the court, the father will hold parental authority only if the court grants the authority in the judgment establishing the paternity, or later (Art. 93 § 2 Polish Family and Guardianship Code).

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

It does not affect the attribution.

**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 authority is obliged to safeguard the child's best interests and wellbeing. To achieve those goals it may take the described facts into consideration, but they do not have legal significance.

**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?**

They are not, to any extent.

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

Such information is not available.

**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**

Should the parent's spouse adopt the child, the prior parental authority does not cease (Art. 123 § 2 Polish Family and Guardianship Code), since the adoption of the child is held jointly by the parent and the parent's spouse who adopted the child.

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

Those institutions are not present in Polish law.

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

An informal relationship with the parent of a child does not form a prerequisite to the grant of parental authority.

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

No. There are no formalised same-sex relationships under Polish law. Neither does a non-formalised same-sex relationship (nor any non-formalised relationship) form a prerequisite to the grant of parental authority (see answer to Question 27).

**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.**

Q 27 (a) A person married to the child's parent who adopted the child acquires parental authority over the child. If then divorced, the person is still treated as a parent, which leads to a situation analogous to that created by the divorce of the child's biological parents (see Q 16 (a)).

Q 27 (b) Those institutions are not present in Polish law.

Q 27 (c) An informal relationship with a child's parent does not create a prerequisite for the grant of parental authority. Termination of such a relationship therefore has no legal significance.

**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.**

Q 27 (a) A person married to the child's parent who adopted and acquired parental authority over the child is to be treated as a parent. As with the parents' divorce, the issue of parental responsibility is decided by the court, which may take the parents' opinion into consideration (see answer to Question 16 (a)).

Q 27 (b) Those institutions are not present in Polish law.

Q 27 (c) No.

**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.**

A guardian is appointed for a child when the child does not remain under parental authority (e.g. when the parents are unknown, have died or have been deprived of parental authority). The guardian must have the full capacity to perform legal acts, and cannot have been deprived of public rights, parental rights or guardianship rights. A person who presumably will not be able to fulfil the guardian's duties cannot be appointed to be a guardian (Art. 148 Polish Family and Guardianship Code).

A person the parents recommend may be appointed guardian, if the parents were not deprived of parental authority and it is not contradictory to the child's interests. (Art. 149 § 1 Polish Family and Guardianship Code). Otherwise, another person from among the child's relatives or persons close to the child or the child's parents (Art. 149 § 2 Polish Family and Guardianship Code) may be appointed. If there is a need to appoint a guardian for a child placed with a foster family, the court should, if possible, appoint the foster parents as guardians (Art. 149 § 4 Polish Family and Guardianship Code).

Appointing a guardian only for children who do not remain under parental responsibility excludes the possibility of the two institutions existing together with regard to one child.

**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.**

Parental responsibilities may be obtained by a foster family; the institution is a form of limiting parental authority.

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

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

If both parents hold parental authority and one parent dies, the surviving parent has sole parental authority (Art. 94 Polish Family and Guardianship Code). If parental authority was held only by the parent who died, a guardian is to be appointed.

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

A guardian is to be appointed.

**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 person the parents recommend may be appointed guardian, if the parents were not deprived of parental authority and it is not contradictory to the child's interests (Art. 149 § 1 Polish Family and Guardianship Code). No specific form is required for the recommendation, but it is not binding for the court.

## **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?**

According to Polish law, the principle of the child's interests has the same contents and scope as are found in the Convention on the rights of a child of 29<sup>th</sup> October 1989 and in the normative acts of the domestic law – in particular Polish Family and Guardianship Code and Polish Civil Procedure Code.<sup>7</sup> It is emphasised that the minor child's best interests remain the basic aim of family law; however, this does not mean that the parents' best interests are completely disregarded.<sup>8</sup>

### ***II. Joint parental responsibilities***

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

The parents have joint parental authority over their child; each of them is obligated and authorized to exercise it. In so doing, the parents may act individually (Art. 97 § 1 Polish Family and Guardianship Code). Decisions of major importance are an exception to the rule; they should be taken unanimously by both parents (Art. 97 § 2 Polish Family and Guardianship Code). Only spouses may exercise joint guardianship (Art. 146 Polish Family and Guardianship Code).

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<sup>7</sup> Supreme Court judgment of 12.12.2000, V CKN 1805/00.

<sup>8</sup> Supreme Court judgment of 05.05.2000, II CKN 765/00.

- 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?**

The unanimous decision of both parents is required for major issues (i.e. those of major importance for the child), regardless of whether the child lives with both parents, so long as both parent's parental authority has not been limited. If the parents cannot reach agreement on them, the court is to decide (Art. 97 § 2 Polish Family and Guardianship Code).

- 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.**

See Q 37, there is no specification of issues other than that one described.

- 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?**

When parental authority is held by both parents, they are both authorized and obligated to exercise it (Art. 97 § 1 Polish Family and Guardianship Code). All major decisions with regard to the child should, however, be agreed to by both parents (Art. 97 § 2 Polish Family and Guardianship Code)

- 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?**

No.

- 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)?**

There is no specific regulation on that; the law permits that the child may stay with only one of the parents (Art. 26 § 2 Polish Civil Code). It should be stated that this is a decision of major importance; therefore, in the absence of parental unanimity the family court is to decide.

### **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**

No

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

No. The principle of general protection is formulated in Art. 109 Polish Family and Guardianship Code by establishing specific court competencies in situations where the wellbeing of the child is endangered.

**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.**

There is no specific regulation on this. Personal contact with a child is covered by the more general regulation of Art. 95 § 1 Polish Family and Guardianship Code, i.e. the parents' duty and right to exercise custody over the child and the child's property. According to Art. 96 Polish Family and Guardianship Code, the parents raise and guide the child under their parental authority. Personal contact with the child is necessary to exercise those rights and fulfil those duties.

Polish law emphasises that the parents' personal contact with the child may only be prohibited in exceptional cases, e.g. when it poses a danger to the child's life, health, or safety, or may demoralize the child<sup>9</sup>

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

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

There are no limitations in this respect. In exceptional cases, if a child is placed with a foster family the court may limit the parent's personal contact with the child. (Art. 113 § 2 Polish Family and Guardianship Code).

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

A parent holds the right to contact irrespective of parental authority. The court may prohibit a parent deprived of parental authority from maintaining personal contact with the child, should the child's wellbeing so require (Art. 113 § 1 Polish Family and Guardianship Code).

**(c) Persons other than parents (e.g. grandparents, stepparents, siblings etc...)?** Apart from the duty of maintenance, Polish law does not regulate relations between a child and her or his more distant relatives.

**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?**

**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?**

In this situation, the general rule allowing the parents' free decision (within the child's best interest) is applied. The parent's freedom of decisions is controlled by the court in accordance to general rules.

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<sup>9</sup> Supreme Court judgment of 07.07.2000, I CKN 1115/00.

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

The parental limitation of personal contact with the child may be ordered if their parental authority was limited by placing the child with a foster family or a child-care institution (Art. 113 § 2 Polish Family and Guardianship Code). The contact prohibition may also be effected with regard to a parent deprived of parental authority, should the child's wellbeing so require (Art. 113 § 1 Polish Family and Guardianship Code).

**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**

This situation is not specifically regulated. Article 109 Polish Family and Guardianship Code allows the court to give appropriate orders if the child's wellbeing is endangered; it may in particular obligate the parents and the minor to specific behaviour and appoint control over the orders to a third person (Art. 109 § 2 point 1 Polish Family and Guardianship Code).

**(b) Other persons**

As in Q 48 (a)

## **F. DELEGATION OF PARENTAL RESPONSIBILITIES**

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

No - the exercise of parental authority is the personal right and duty of the parents.

**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**

No.

## **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?**

There are differences in the way Polish law handles the suspension of the parental authority (Art. 110 Polish Family and Guardianship Code), its limitation (Art. 107 Polish Family and Guardianship Code, Art. 109 Polish Family and Guardianship Code) and deprivation (Art. 111 Polish Family and Guardianship Code).



The court may rule on the suspension of parental authority if there is a temporary obstacle to its exercise (Art. 110 § 1 Polish Family and Guardianship Code). Should the obstacle cease, the court is to revoke the suspension (Art. 110 § 2 Polish Family and Guardianship Code).

If the parental authority is held by parents who are not married to each other, the parental authority may be limited in such a way that the court entrusts one of the parents with the exercise of the parental responsibility, limiting the rights and duties of the other parent in certain activities (Art. 58 § 1 Polish Family and Guardianship Code). The provisions are also applicable if the parents are married to each other, but live separately (Art. 107 § 2 Polish Family and Guardianship Code)

The second case of the limitation of the parental authority is, as described in Art. 109 Polish Family and Guardianship Code, a danger posed to the child's wellbeing which requires the court to issue specific orders; in particular, to:

- obligate the parents to specific behaviour and establish a control mechanism in that respect;
- specify which activities cannot be performed by the parents without court authorization, subject the parents to other form of limitation equivalent to those applicable to a guardian, or subject the parents to constant curator's supervision;
- place the minor with an organization or institution responsible for children's custody or prepare them for future work; or
- place the minor with a foster family or a child-care institution. The family court may also appoint a curator for the administration of the minor's property.

Polish law emphasises that a prerequisite for limitation of parental authority is a danger posed to the child's wellbeing; in this situation, the court does not require a parent's guilt and the act is not of a repressive nature.<sup>10</sup>

The prerequisite for depriving one or both parents of parental authority is:

- permanent obstacle in its exercise (the law defines such an obstacle as one wherein the exercise of parental authority is excluded<sup>11</sup>),
- abuse of parental authority, or
- negligence of parental obligation with regard to the child, in particular, one placed in a foster family or child-care institution.

Since the Polish Criminal Code of 1997 was enacted, a criminal court cannot rule on the deprivation of parental authority, the power is vested in a family court.

Polish law emphasises that substantial danger to the child's wellbeing induced by a parent may justify depriving the parent of parental authority without first limiting it.<sup>12</sup>

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<sup>10</sup> Supreme Court judgment of 13.09.2000, II CKN 1141/00.

<sup>11</sup> Supreme Court judgment of 02.07.2000, II CKN 960/00.

<sup>12</sup> Supreme Court judgment of 11.01.2000, I CKN 1072/99.

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

According to the provisions of the Polish Constitution, anyone may require the public authorities to protect a child from violence, cruelty, abuse and demoralization (Art. 72 sec. 1 sentence 2 of the Polish Constitution). Family court may initialize the proceedings *ex officio* (Art. 570 Polish Civil Procedure Code). Anyone who has information on circumstances which justify initialising *ex officio* proceedings is obliged to report it to the family court (Art. 572 § 1 Polish Civil Procedure Code).

**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?**

As a rule, parents should have the right to personal contact with their child in this situation. If the child's best interests so require, the family court may prohibit the parents deprived of parental authority to contact the child in person (Art. 113 § 1 Polish Family and Guardianship Code).

**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?**

Should the ground which led to deprivation of parental authority cease to exist, the family court may return parental authority (Art. 111 § 2 Polish Family and Guardianship Code).

## **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?**

Such legal disputes are to be decided by a family court i.e. (according to Art. 569 Polish Civil Procedure Code), the district court of the place of residence of the person concerned (in this situation, the child); in absence of a permanent place of residence, the family court where the person stays. The court may order the court curator to investigate into the social environment of a case (Art. 570<sup>1</sup> Polish Civil Procedure Code).

**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?**

The family court may change its decisions, even ones that are final, at any time, should the wellbeing of the person concerned so require (Art. 577 Polish Civil Procedure Code).

**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?**

Such alternative measures are not provided for. A family having difficulties fulfilling its duties, or the child of such a family, may be assisted in the form of family counselling (Art. 70 of the Polish statute of 2003 on social assistance).

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

The only specific provisions are to enforce the removal of a person remaining under parental authority or under guardianship (Art. 598<sup>1</sup> - 598<sup>13</sup> Polish Civil Procedure Code, added by the statute of 19 July 2001). The exercise of such a judgment may be suspended if it might endanger the person's wellbeing, but only until the danger ceases.

**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?**

Article 72 sec. 3 of the Polish Constitution formulates a general rule, according to which provides that when assessing a child's rights, the public authorities and persons responsible for the child should hear and, to the extent possible, take the child's opinion into consideration. The family court may order the presence of a person under parental authority or under guardianship, as well as forcibly bring the person to a court session (Art. 574 Polish Civil Procedure Code). The court may also exclude the minor from being present during the proceedings, should it find the minor's presence inappropriate (Art. 573 § 2 Polish Civil Procedure Code).

The legal literature points out that to safeguard the minor's interest, the court should inquire about the child's opinion, taking into consideration the child's maturity and the character of the case.<sup>13</sup>

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

A minor may be heard outside the courtroom, if deemed appropriate (Art. 576 § 2 Polish Civil Procedure Code).

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<sup>13</sup> Supreme Court judgment of 15.12.1998, I CKN 1122/98.

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

**(a) Parental responsibilities**

In legal proceedings before a court a child may be represented by each of the parents (Art. 98 § 1 Polish Family and Guardianship Code). In legal actions between a child and a parent or the parent's spouse (except for cases regarding maintenance or upbringing) a child is represented by a curator appointed by the court.

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

Same as Q 61 (a).

**(c) Contact**

Same as Q 61 (a).

**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 legislation does not differ in regard to the child's age or maturity.