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State Interference With the Scope of Parental Responsibilities – Comparative Legal Analysis
Ingerencja państwa w zakres obowiązków rodzicielskich – analiza prawno-porównawcza

ABSTRACT

RESEARCH OBJECTIVE: The article presents a comparative analysis of legal regulations in selected (according to the author's research interests) European countries regulating issues related to state interference with the scope of parental authority/responsibility, the grounds for this interference and the forms of modification of parental rights and responsibilities.

THE RESEARCH PROBLEM AND METHODS: The author is looking for answers to questions: In what circumstances the interference of state authorities in the sphere of parental rights is possible/necessary? What form can such interference take in the laws of selected countries? Who has the right/obligation to request such interference? The author used the method of analysis of adequate legal provisions of selected countries.

THE PROCESS OF ARGUMENTATION: Analysing the provisions in force in the internal legislation of Poland, Hungary, Norway and Sweden, the author presented adopted legal solutions regulating issues related to the scope of interference with the parental responsibility/authority of the child's parents in the event of its improper implementation.

RESEARCH RESULTS: The analysis of legal provisions regulating the issue of parental responsibilities indicates that each of the four legal systems examined provides for situations in which it is necessary for state authorities to interfere in the sphere of parental rights and responsibilities.

CONCLUSIONS RECOMMENDATIONS AND APPLICABLE VALUE OF RESEARCH: Presented considerations constitute a general overview of the regulations in force in individual countries and, as such, are only an introduction to in-depth reflection on the optimization of the subject scope of social policy.

→ **KEYWORDS:** **PARENTAL AUTHORITY/RESPONSIBILITY, MODIFICATION OF PARENTAL RESPONSIBILITIES, LIMITATION OF PARENTAL RIGHTS, SUSPENSION OF PARENTAL RIGHTS, DEPRIVATION OF PARENTAL RIGHTS**

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STRESZCZENIE

CEL NAUKOWY: Artykuł przedstawia analizę porównawczą unormowań prawnych wybranych (zgodnie z zainteresowaniami badawczymi autora) krajów europejskich regulujących kwestie dotyczące ingerencji organów państwowych w zakres władzy/odpowiedzialności rodzicielskiej rodziców, przesłanek tej ingerencji oraz form modyfikacji obowiązków i uprawnień rodzicielskich.

PROBLEM I METODY BADAWCZE: Autor poszukuje odpowiedzi na pytania: W jakich okolicznościach możliwa/konieczna jest ingerencja władzy państwowej w sferę uprawnień rodzicielskich? Jaką postać w ustawodawstwach wybranych państw może przybrać taka ingerencja? Kto ma prawo/obowiązek zażądać takiej ingerencji? Autor wykorzystał metodę analizy adekwatnych przepisów prawnych wybranych krajów.

PROCES WYWODU: Analizując przepisy obowiązujące w ustawodawstwie wewnętrznym Polski, Norwegii, Szwecji i Węgier, autor przedstawił przyjęte rozwiązania prawne regulujące kwestie związane z zakresem ingerencji organów państwowych w odpowiedzialność/władzę rodzicielską rodziców dziecka w sytuacji niewłaściwego jej realizowania.

WYNIKI ANALIZY NAUKOWEJ: Analiza przepisów prawnych regulujących kwestię władzy/odpowiedzialności rodzicielskiej wskazuje, że każdy z czterech badanych systemów prawnych przewiduje sytuacje, w których konieczna jest ingerencja organów państwa w sferę praw i obowiązków rodzicielskich.

WNIOSKI, REKOMENDACJE I APLIKACYJNE ZNACZENIE WPŁYWU BADAŃ: Przedstawione rozważania stanowią ogólny przegląd regulacji obowiązujących w poszczególnych krajach i jako takie są jedynie wstępem do pogłębionej refleksji nad optymalizacją zakresu przedmiotowego polityki społecznej.

→ **SŁOWA KLUCZOWE:** **WŁADZA/ODPOWIEDZIALNOŚĆ RODZICIELSKA, MODYFIKACJA OBOWIĄZKÓW RODZICIELSKICH, OGRANICZENIE PRAW RODZICIELSKICH, ZAWIESZENIE PRAW RODZICIELSKICH, POZBAWIENIE PRAW RODZICIELSKICH**

Introduction

When a child is born, he/she is entrusted to the care of adults. This care is usually provided by the child's parents. In the legislation of most countries in the world, child care provided by the child's parents is called parental responsibility or parental authority. The principle is that parents should fulfil parental obligations towards the child jointly and on equal terms. It is also a rule that both parents are entrusted with full parental rights towards the child, related to his/her upbringing, maintenance, care for her/him and her/his property, representing the child and protection against dangers. There is a belief that due to the closest relationship to the child, parents are the child's best guardians (Błasiak, 2018; Błasiak & Chmura, 2018; Stadniczeńko, 2020). In most cases this is

true. Unfortunately, there are also situations when parents improperly fulfil their parental duties, neglect them or abuse their position in relation to the child. In a situation where there is a serious threat to the child's well-being or a violation of the child's best interests in the form of repeated neglect or violence against the child, it is often necessary to interfere with the parental authority/responsibility by legally authorized persons or institutions responsible for ensuring the child's safety. Such interference may result in deprivation of the parents or one of them of parental rights, limitation of the scope of their parental rights or other consequences, including criminal sanctions.

The aim of the article is to present a comparative analysis of legal regulations in selected European countries regulating issues related to state interference with the scope of parental authority/responsibility, the grounds for this interference and the forms of modification of parental responsibilities.

The presented research problem concerns the answers to the following questions: In what circumstances the interference of state authorities in the sphere of parental rights is possible/necessary? What form can such interference take in the laws of selected countries? Who has the right/obligation to request such interference? Searching for the answers to the above questions, the author used the method of analysis of adequate legal provisions of selected European countries.

Analysing the provisions in force in the internal legislation of Poland, Hungary, Norway and Sweden, the author presented adopted legal solutions regulating issues related to the scope of state interference with the parental responsibility/authority of the child's parents in the event of its improper implementation.

Comparative analysis of legal solutions in various countries allows for in-depth reflection on the legal solutions adopted in another country (and the practices of their application), thus providing an opportunity and possibility of modifying the applicable legal solutions in order to better protect the interests of the child and family, which – in the discussed context – should play a primary role.

Analysis of Legal Solutions in Selected European Countries

Poland

The principal source regulating the parental responsibility in Polish law is the statute of 25th February 1964 – Polish Family and Guardianship Code (further quoted as PFGC) (Ustawa…, 1964a). Procedural provisions regulating the proceedings in parental responsibility cases are regulated by the statute of 17th November 1964 – Civil Procedure Code (further quated as PCPC) (Ustawa…, 1964b).

According to Article 92 PFGC, a minor child remains under parental authority, which – as a rule, is held by both parents (Article 93 § 1 PFGC). The parental authority ceases when the child comes of age – when the child either reaches 18 years of age or marries before then.

The grounds for court interference in parental authority were specified in Polish Family and Guardianship Code (Articles 109–112).

PFGC distinguishes three types of court interference in parental authority. They are respectively: the limitation of parental authority (Article 109 PFGC); the suspension of parental authority (Article 110 PFGC) and the deprivation of parental authority (Article 111 PFGC).

The Limitation of Parental Authority

The court rules the limitation of parental authority when the child's best interests are at risk. It is irrelevant whether the threat was caused by the parents' inappropriate behaviour, their incompetence, or a false idea of what the child's best interests require. It is also irrelevant whether the parents' behaviour is at fault (Postanowienie…, 1967).

Limitation of parental authority – pursuant to Article 109 PFGC, may apply, depending on the circumstances, to both or only one of the parents. It may refer not only to all children, but also to some or just one child (Gajda, 2023; Słyk, 2023; Gromek, 2020; Haak & Haak-Trzuskawska, 2019; Ignaczewski, 2019).

Pursuant to Article 109 § 1 PFGC, if the child's well-being is at risk, the guardianship court will issue an appropriate order. The court may therefore issue any order that is required in the best interests of the child in the given circumstances. These may be both ad hoc orders and those with lasting effects. According to Article 109 § 2 PFGC, the guardianship court may in particular:

1. oblige the parents and the minor to specific conduct, in particular to work with a family assistant, carry out other forms of work with the family, refer the minor to a day support facility specified in the provisions on family support and the foster care system, or refer the parents to a facility or a specialist for providing family therapy, counselling or providing other appropriate assistance to the family, while at the same time indicating how to control the implementation of the issued orders;
2. specify what activities cannot be performed by parents without the court's permission, or subject the parents to other restrictions to which the guardian is subject;
3. subject the exercise of parental authority to the constant supervision of a probation officer;
4. refer the minor to an organization or institution established for vocational training or to another facility providing partial care for children;
5. order the placement of a minor in a foster family, a family children's home or in institutional foster care, or temporarily entrust the function of a foster family to spouses or a person who does not meet the conditions for foster families, in the scope of necessary training specified in the provisions on family support and the foster care system, or order the minor to be placed

in a care and treatment facility, in a nursing and care facility or in a medical rehabilitation facility.[1]

Application of the measures provided for in Article 109 PFGC does not lead to the complete cessation of the exercise of parental authority, as is the case with its suspension and deprivation (Słyk, 2023).

The Suspension of Parental Authority

Pursuant to Article 110 § 1 PFGC, if there is a temporary obstacle to exercise of parental authority, the court may rule on its suspension. Should the obstacle cease, the court is to revoke the suspension (Article 110 § 2 PFGC).

A temporary obstacle in the exercise of parental authority is an obstacle that can be predicted to cease to exist in the not too distant future (Gajda, 2023). A temporary obstacle is usually not at fault. The obstacle justifying the suspension of parental authority must be 'on the parents' side'; it must be such an obstacle that the parents cannot oppose it (Postanowienie…, 1964). Examples of a temporary obstacle are the parent's illness, which is long-lasting but promising improvement; a parent's long-term trip abroad; placing a parent in prison.

In addition to the premise of a temporary obstacle, the court also takes into account the purposefulness of ruling suspension of parental authority, assessed in terms of the child's best interests. As Ignatowicz (2000) and Ignaczewski (2019) underline in each case, the best interests and interests of the child must justify the suspension of parental authority, and it must be a decision implementing a specific goal of intervention in the sphere of parental authority, hence the optional nature of Article 110 § 1, expressed in the statement: "the court may." The same reason that could justify the suspension of parental authority if it occurs on the part of both parents or the only parent does not have to lead to the suspension of parental authority if it can be exercised by one parent (Słyk, 2023).

Issuing a decision by the guardianship court on suspension of parental authority means that, although the parents do not lose this authority, they cannot exercise it. Suspension of parental authority may be imposed on both parents or one of them (Słyk, 2023; Gajda, 2023).

The Deprivation of Parental Authority

Deprivation of parental authority leads to its complete loss by the parents. It is the most far-reaching instrument of interference in parental authority. In decision of June 19, 1997 (Postanowienie…, 1997) the Supreme Court pointed out that "deprivation of parental

[1] Author's own translation.

authority is the most severe measure of court interference, which can be applied only when the milder measures used so far have proven ineffective or when in the circumstances of a given case it is obvious that the use of milder measures is pointless." In the opinion of Słyk (2003), the purpose of deprivation of parental authority is not repression against parents, but – as in the case of other instruments of interference in parental authority – protection of the child's well-being.

Pursuant to Article 111 PFGC, the grounds for deprivation of parental authority are: 1) permanent obstacle to the exercise of parental authority, 2) abuse of parental authority, 3) gross neglect of the parents' duties towards the child, 4) continued reasons for placing the child in foster care, despite the assistance provided to the parents, in particular persistent lack of interest in the child (Gajda, 2023; Słyk, 2023; Kamińska, 2023; Gromek, 2020; Haak & Haak-Trzuskawska, 2019; Ignaczewski, 2019).

The premise of a permanent obstacle to the exercise of parental authority is objective and does not have to be the fault of the parents (e.g. long-term mental illness that prevents the exercise of parental authority or the parent's permanent departure abroad).

Abuse of parental authority is a condition attributable to the parents. It should be understood as parents using their rights for purposes other than those covered by parental authority, to the detriment of the child (Ignatowicz, 2000; Słyk, 2023). Examples of abuse of parental authority by parents include persuading the child to commit crimes, forcing the child to work excessively, using the child to commit illicit acts, and using unacceptable discipline to the child (Gajda, 2023; Słyk, 2023; Kamińska, 2023; Gromek, 2020; Haak & Haak-Trzuskawska, 2019; Ignaczewski, 2019; Ignatowicz, 2000). Abuse of parental authority also occurs when the parent's behaviour objectively has a destructive impact on the process of upbringing and mental development of the child, even if it is not related to the parent's subjective, negative attitude towards the child (Słyk, 2023; Postanowienie…, 2000).

The most common reason for depriving parents of parental authority is the parents' gross neglect of their duties towards their children. The breach of obligations towards the child must be of a flagrant nature, i.e. particularly serious, constituting a significant threat to the child's well-being (Słyk, 2023; Postanowienie…, 1997). Examples of such neglect include: abandoning a child, committing significant educational negligence, e.g. not sending the child to school, failing to respond to the child's criminal activity, neglecting the child manifested by lack of care for the child's nutrition and hygiene, creating negative parenting models for the child (Gajda, 2023; Słyk, 2023; Kamińska, 2023; Gromek, 2020; Haak & Haak-Trzuskawska, 2019; Ignaczewski, 2019; Ignatowicz, 2000). In its decision of 14th October 1970, Supreme Court (Postanowienie…, 1970) pointed out that depriving a child of a natural family environment, of direct care of his mother and the opportunity to grow up with his siblings, and detaining him permanently – against the will of the mother – in a foreign country, includes elements of abuse of parental authority, justifying the deprivation of this authority of the parent. In the event that the child continues to be neglected by the parents despite the child being placed in foster care and assistance provided, sufficient to deprive the parents of parental authority is the continuing

state of threat to the child's well-being and their lack of response to the measures used to interfere with this authority (Słyk, 2023).

Hungary

The most important sources of law regulating issues related to the scope of parental rights and duties are in Hungary the following legal acts: The Hungarian Family Act – the Act No. IV. 1952. on marriage, family and guardianship; The Hungarian Child Welfare Act – the Act No. XXXI. 1997. on the child welfare and guardianship administration; The Hungarian Order of Guardianship – the Order of Government No. 149/1997. On public guardianship authority and proceeding in Child Welfare and guardianship cases.

The principle arising from Hungarian family and guardianship law is the joint exercise of parental responsibility by spouses – the child's parents.

The parental responsibilities automatically end when the child reaches majority, it is when child either reaches age of 18 or marries (from the age of 16) with the permission of the public guardianship authority (Weiss & Szeibert, 2004).

Hungarian family law distinguishes 2 types of discharge of parental responsibilities: suspension and termination.

Suspension of parental responsibilities can be ordered either by court or by the public guardianship authority. There are 2 reasons justifying suspension – one, when one of the parents endangers the child and second one – when the child's family endangers child's growth. In first situation the court places the child with a third person, in second one – the public guardianship authority takes the child into institutional care because there is no other solution to the problem (e.g. by designating a family caretaker) (Weiss & Szeibert, 2004). Decision on suspension of parental responsibilities does not deprive the parents of all parental rights and duties towards the child though the child is not living with them.

Termination of parental responsibilities can be ruled only by the court when a parent's behaviour seriously damages or endangers child's interests, "especially their physical, mental or moral development." This situation occurs both when a parent commits an intentional criminal offence against child and in situation of any other mistreatment or abuse of a child by his/ her parent (Weiss & Szeibert, 2004).

The right to file an action to terminate the parental responsibilities belongs to the other parent, the child, the public guardianship authority, the public prosecutor. Both the termination of parental responsibilities and decision on the placement of the child can be ruled exclusively by the court. Decision on child's placement into institutional care is the competence of the public guardianship authority (Weiss & Szeibert, 2004).

Norway

The basic legal act regulating relations between parents and children in Norway is the Act relating to Children and Parents of 8th April 1981 (Lov om barn og foreldre (barnelova), 1981 – further quoted as NACP). The Act regulates primarily issues related to the scope of parental duties and rights towards minor children, carried out in form of parental responsibility (Foreldreansvaret).

Under Norwegian law, parental responsibility arises upon the birth of a child and is granted by operation of law jointly, on equal terms, to the child's married parents in relation to their common children (NACP, Article 34). Norwegian law does not clearly define the moment of termination of parental responsibility. It is assumed that, in principle, parents cease to exercise parental responsibility towards the child when the child reaches the age of eighteen, equivalent to the child reaching the age of majority and, therefore, full legal capacity.

In Norway discharge of parental responsibilities refers to one parent and the only person who has the right to request the court to discharge of parental responsibilities of one parent is the other parent.

Peter Lødrup and Tone Sverdrup underline that "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" (2004, p. 17). It is believed that holding parental responsibilities by both parents is consistent with the rule of best interest of the child. A discharge of parental responsibilities may be based only on an agreement between the parties or on a court decision. According to Article 48 NACP, such a decision shall be made in the best interests of the child. In such a situation "regard shall be paid to ensuring that the child is not subjected to violence or in any other way treated in such a manner as to impair or endanger his or her physical or mental health.'

Authors indicate that practice of the courts present examples of discharging parent of his/her responsibilities when the parent is not living with the child and when it is "considered undesirable for that parent to continue participating in such responsibilities" (Lødrup & Sverdrup, 2004, p. 17) due to his/her general behaviour. Such a behaviour encompass for example the situation of maltreatment, violence, suspicion of sexual abuse; unwillingness to cooperation in upbringing the child.

Sweden

The currently applicable basic legal act regulating relations between parents and children is in Sweden The Children and Parents Code of 10th June 1949 (1949:381) (Föräldrabalk, 1949 – further quoted as SCPC).

Unlike many other European legislation, Swedish legislation does not use the concept of parental responsibility or parental authority. Instead, the terms custody (wvårdnad) and guardianship (förmynderskap) are used. Their total content is identical to the

concept of parental responsibility functioning in the family legislation of most European countries. Pursuant to the provision of Article 2, Chapter 6 of SCPC, a child remains in the care of both parents or one of them, unless the court has entrusted custody to one or two specially appointed guardians or a temporary guardian. Child care lasts until the child turns eighteen.

According to Chapter 6 Sec. 7 para. 4 of SCPC, matters concerning a change of custody of a child shall be considered by the court, on the application of the social welfare committee.

Pursuant to Chapter 6 Sec. 7 of SCPC "if, when exercising custody of a child, a parent is guilty of abuse or neglect or is otherwise wanting in his or her care of the child in a manner which entails an enduring risk to the child's health or development, the court shall make a decision changing the custody position." If both parents have custody of the child and one of them is acting against child's best interest (in the manner referred to in the above provision), the court shall entrust custody solely to the other parent. If both parents are guilty of such behaviour, the court shall transfer custody to one or two specially appointed custodians.

Maarit Jänterä-Jareborg, Anna Singer and Caroline Sörgjerd (2004) notice that transfer of custody stipulated by Chapter 6 Sec. 7 of SCPC to one or two specially appointed custodians

> is very rarely used. […] Restriction of its application is, instead, recommended. It is normally considered sufficient for social welfare authorities to take measures to protect the child e.g. removing the child from the abusing or negligent parents' care. The child is then placed in care in a private home authorised to receive children for care. The child is considered to be sufficiently protected through these measures, stipulated in the Swedish Social Services Act (2001:453) and Swedish Care of Young Persons Act (1990:52), and the parents retain their legal custody (Jänterä-Jareborg et al., 2004, p. 29).

Conclusions and Recommendations

The analysis of legal provisions regulating the issue of parental responsibilities indicates that each of the four legal systems examined provides for situations in which it is necessary for state authorities to interfere in the sphere of parental rights and obligations. These situations concern, broadly speaking, circumstances of improper performance of parental duties by one or both parents, most often related to actions (or lack thereof) that weaken or endanger the child's physical or mental health.

Polish legislation distinguishes 3 types of court interference in parental authority: the limitation; the suspension and the deprivation of parental authority. Hungarian family law distinguishes 2 types of discharge of parental responsibilities: suspension and termination. In Norway a discharge of parental responsibilities may be based either on an agreement between the parties or on a court decision. In Sweden there are 3 possibilities: court's entrustment custody over the child solely to the other parent; court's

transformation of custody to one or two specially appointed custodians and most commonly used – taking the child away from the parents by social welfare authorities and child's placement in care in a private home authorised to receive children for care.

Presented considerations constitute a general overview of the regulations in force in individual countries and, as such, are only an introduction to in-depth reflection on the optimization of the subject scope of social policy.

Due to the editorial requirements regarding the length of the article, the author limited the analysis of legal regulations to the legislation of selected four European countries and to the general analysis of national laws regulating the discussed research problem. In the longer term, a deeper analysis of the above legal provisions, the origins of these institutions and their social effects in a given country seems justified. The analysis of legal solutions in force in other countries, both European and non-European, also seems interesting.

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