



***Conditions Relating to the Adoptee for Domestic
 Adoption in the Light of Polish and Norwegian Law.
 A Comparative Legal Analysis***
***Przesłanki adopcji krajowej dotyczące osoby
 adoptowanego w świetle prawa polskiego
 i norweskiego – analiza prawno-porównawcza***

ABSTRACT

RESEARCH OBJECTIVE: The aim of the article is to present conditions relating to the adoptee for domestic adoption in the light of Polish and Norwegian law, based on a comparative analysis of the collected research data.

THE RESEARCH PROBLEM AND METHODS: Using the theoretical and dogmatic legal method as well as the method of analysis (and synthesis) of relevant legal provisions, the author compares the legal solutions adopted in Poland and Norway, looking for similarities and differences regarding the issue of conditions relating to the adoptee for domestic adoption.

THE PROCESS OF ARGUMENTATION: The author presents similarities and differences in the legal regulations regarding the conditions relating to the adoptee for domestic adoption in the national law of Poland and Norway.

RESEARCH RESULTS: The analysis of legal provisions in Polish and Norwegian law regulating the conditions relating to the adoptee for domestic adoption indicates that despite certain differences, both legal systems introduce similar legal solutions. Both regulations in force in Poland and Norway distinguish three basic conditions for adoption relating to the adoptee, which are: exclusive consideration of the best interests of the child; the age of the adoptee and the child's consent/ the child's hearing/ the child's opinion.

CONCLUSIONS, RECOMMENDATIONS AND APPLICABLE VALUE OF RESEARCH: Due to the editorial limitations on the length of the article, the author has limited the analysis to the conditions relating to the adoptee for domestic adoption. In the longer term, the author intends to present a comparative legal analysis of the conditions relating to the adopter(s) and other persons for domestic adoption in force in Polish and Norwegian law. The author wishes also to investigate

conditions for intercountry adoptions in both countries and thus provide a more complete picture of the legal conditions of adoption in both countries.

→ **KEYWORDS:** **ADOPTION, CHILD, THE BEST INTERESTS OF THE CHILD, POLISH FAMILY AND GUARDIANSHIP CODE, NORWEGIAN ACT ON ADOPTION**

STRESZCZENIE

CEL NAUKOWY: Celem artykułu jest przedstawienie przesłanek adopcji krajowej dotyczących osoby adoptowanego w świetle prawa polskiego i norweskiego na podstawie analizy porównawczej zgromadzonego materiału badawczego.

PROBLEM I METODY BADAWCZE: Wykorzystując metodę teoretyczno-dogmatyczno-prawną oraz metodę analizy (i syntezy) odpowiednich przepisów prawnych, autorka porównuje rozwiązania prawne przyjęte w Polsce i Norwegii, poszukując podobieństw i różnic w kwestii przesłanek adopcji krajowej dotyczących osoby adoptowanego.

PROCES WYWODU: Autorka przedstawia podobieństwa oraz różnice w prawnych regulacjach przesłanek adopcji krajowej dotyczących osoby adoptowanego w prawie krajowym Polski i Norwegii.

WYNIKI ANALIZY NAUKOWEJ: Analiza przepisów prawa polskiego i norweskiego określających przesłanki adopcji krajowej dotyczące osoby adoptowanego wskazuje, że pomimo pewnych różnic oba systemy prawne wprowadzają podobne rozwiązania prawne. Zarówno prawo polskie, jak i norweskie wyróżnia 3 podstawowe przesłanki adopcji krajowej dotyczące osoby adoptowanego, którymi są: wyłączny wzgląd na dobra dziecka; wiek adoptowanego oraz zgoda dziecka/wysłuchanie dziecka/opinia dziecka.

WNIOSKI, REKOMENDACJE I APLIKACYJNE ZNACZENIE WPŁYWU BADAŃ: Ze względu na ograniczenia redakcyjne dotyczące objętości artykułu autorka ograniczyła analizę rozwiązań prawnych do kwestii przesłanek adopcji krajowej dotyczących osoby adoptowanego. W dalszej perspektywie autorka zamierza przedstawić analizę prawnoporównawczą obowiązujących w prawie polskim i norweskim przesłanek adopcji krajowej, odnoszących się do osoby/osób adoptujących i innych osób. Autorka pragnie również zbadać przesłanki adopcji międzynarodowej, aby w ten sposób uzyskać pełniejszy obraz prawnych uwarunkowań adopcji w obu krajach.

→ **SŁOWA KLUCZOWE:** **PRZYSPOSOBIENIE, DZIECKO, DOBRO DZIECKA, POLSKI KODEKS RODZINNY I OPIEKUŃCZY, NORWESKA USTAWA O ADOPCJI**

Introduction

Adoption (in Polish: przysposobienie) is a legal family relationship modeled on the relationship between parents and their natural child. It is the recognition of another person's child as one's own (Gromek, 2020). Legally, an adopted child becomes the child of the adopter(s), and the adopter becomes the parent(s) of the adopted child (Sokołowski, 2013). Adoption creates a legal family relationship that closely mirrors the natural, biological parental relationship (Prucnal-Wójcik, 2024).

The family constitutes the best environment for a child to live, raise and develop (Le Blanc, 1995), the natural environment for his or her growth and well-being (Preamble to the UN Convention on the Rights of the Child of 1989 (CRC)). In the case of a child permanently deprived of a family environment, all countries of the world have committed themselves to providing children with alternative care (Article 20 CRC), the best form of which – as an institution closest to the family – is undoubtedly adoption (Article 21 CRC).

The legal nature, conditions, form, manner of establishment, and consequences of adoption are regulated in detail by the domestic legislation of individual countries.

The most frequently cited division of adoption conditions is:

1. conditions relating to the adoptee;
2. conditions relating to the adopter(s);
3. conditions relating to other persons (adoptee's parents, adoptee's guardian).

In this article, I present a comparative legal analysis of the conditions relating to the adoptee for domestic adoption in force in Polish and Norwegian law looking for similarities and differences adopted in both countries.

Legal Basis Regulating the Institution of Adoption in Poland and Norway

In Poland, the most important act of law regulating the institution of adoption is the Polish Family and Guardianship Code of 25 February 1964 (KRO) (articles 114–127) (Ustawa..., 1964b).

In Norway the institution of adoption is mainly regulated by the Act on Adoption of 16 June 2017 (Lov om adopsjon (adopsjonsloven), 2017) (LA).

The current shape of the institution of adoption functioning under Polish and Norwegian law is influenced by international instruments which both states are Parties to, namely: the UN Convention on the Rights of the Child of 1989 (CRC), European Convention on the Adoption of Children of 1967 (1967 Convention) and the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993.

In this article I will concentrate on Polish and Norwegian domestic law indicating conditions for domestic adoption relating to the adoptee.

Conditions Relating to the Adoptee

Analysing the regulations in force in Poland and Norway, we can distinguish three basic conditions for adoption relating to the adoptee. These are:

1. exclusive consideration of the best interests of the child;
2. the age of the adoptee;
3. the child's consent/ the child's hearing (Poland); the child's consent/ the child's opinion (Norway).

The Best Interests of the Child

Under Polish law, the first and decisive criterion that guides the guardianship court when deciding on adoption is the best interests of the adoptee. According to art. 114 § 1 KRO it is only possible to adopt only for his/her (minor) wellbeing.

Polish law lacks a legal definition of 'the best interests of the child' ('the child's wellbeing'). In the context of adoption, 'the best interests of the child' is most often understood as ensuring the adoptee's upbringing that meets his or her needs and guarantees his or her best development (Stojanowska, 1999; Radwański, 1981). According to the authors, implementing the child's wellbeing principle requires an individual assessment of the child's situation, 'taking into account, in particular, their age, gender, health, abilities, character traits, psychological sensitivity, and the actual emotional bonds between them and their environment' (Haak, 1996).

Adoptee's wellbeing also justifies the possibility for the guardianship court to establish – before issuing an adoption decision – the manner and period of personal contact between the adopter and adoptee (art. 120¹ § 1 KRO).

The main condition for adoption in Norway is the same as in Poland – i.e., the best interests of the child. According to Sec. 4 LA the adoption authority may grant an application for adoption and for prior consent to adopt only 'when it is clearly probable that the adoption will be in the best interests of the child.' Referring to Section 1 LA indicating the purpose of the Act on Adoption, the principle of the child's best interests in the context of adoption can be understood as providing adopted children 'with a secure upbringing by establishing lasting legal ties corresponding to the relationship between a child and his or her parents'. The purpose of LA in case of adoption of 18 or older person, is 'to legally confirm existing ties corresponding to the relationship between a child and his or her parents.'

Norwegian law, similarly like Polish law, lacks a legal definition of 'the best interests of the child.' To better understand this principle, also in the context of adoption, we can refer to Section 1–3 of Act relating to child welfare (Child Welfare Act) of 2021 (Lov om barnevern (barnevernsloven), 2021) which underlines that the best interests of the child must be a fundamental consideration in all actions and decisions affecting and concerning the child and 'what is in the best interests of the child must be decided on the basis

of a specific assessment of the individual case.’ The legislator indicates that the key factor in assessing the child’s best interests will always be the child’s opinion.

Norwegian LA, differently than Polish law, does not clearly indicate the possibility of the adoption authority to establish the manner and period of personal contact between the adopter and adoptee before issuing an adoption decision. Section 25 of Child Welfare Act of 2021 clearly refers only to visits *between the adoptee and his or her biological parents after a decision on adoption*.

Both Polish and Norwegian law reflect the principles stated in the 1967 Convention and CRC, which recognise the principle of the child’s best interests as the fundamental and overriding condition for adoption.

According to Article 8.1. of the 1967 Convention, an adoption shall not be granted by the competent authority ‘unless it is satisfied that the adoption will be in the interest of the child.’ The competent authority is obliged to pay in each case particular attention to providing the child, through adoption, with a stable and harmonious family environment (Article 8.2.). Pursuant to Article 17 adoption may be granted only if the child has been in the care of the adopters for a period of time sufficient for the competent authority to reasonably foresee how their future relationship would be like if adoption were granted.

CRC, in its Preamble, underlines that the child ‘should grow up in a family environment, in an atmosphere of happiness, love and understanding,’ which constitute the basis for the full and harmonious development of his or her personality (6th paragraph). The main principle determining the direction of application of the provisions of the Convention is the principle of the best interests of the child expressed in Article 3 of the Convention. Pursuant to this Article in all actions concerning children, the best interests of the child shall be a primary consideration. This rule also applies to adoption. Pursuant to Article 21, the best interests of the child shall be the paramount consideration in the adoption process. According to Article 20, with respect to this principle, the competent authority considering adoption shall pay due regard to ‘the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.’

The Age of the Adoptee

The second basic condition for adoption under Polish law is the minor status of the adoptee (Article 114 § 2 KRO). Basically, a minor is a person who is under 18 years of age. (Article 10 § 1 of the Polish Civil Code of 1964 – Ustawa..., 1964a). Pursuant to Article 114 § 2 KRO, the criteria of minority must be satisfied on the day of submitting an application for adoption. This condition is rigid, not allowing for exceptions. According to Janusz Gajda (2025), the rigor of this condition is however mitigated by the pertinent view expressed by the Supreme Court’s judgment of 2 June 1980 (Postanowienie..., 1980), according to which the adoption of an adult Polish citizen, in a foreign court’s judgment, is not contrary to the fundamental principles of the Polish legal order.

Norwegian law, unlike Polish law, in addition to basic adoption for minors, allows for the possibility of so-called adult adoption for persons over 18 years of age. According to Section 16 LA adult adoption is possible under special requirements:

1. only 'if it is clearly probable that the adoption would be in the best interests of the person concerned';
2. if the adopted person was raised by the adopter for at least six years, unless other special reasons indicate the necessity of adoption;
3. if between the adoptee and the adopter exist strong bonds – if no family ties are severed as a result of adoption, if the adopter plans to adopt adoptee's siblings at the same time;
4. if the adoptee's guardian consents to the adoption – in case of the adoptee who has been placed under guardianship.

The Child's Consent/ the Child's Hearing/ the Child's Opinion

The third basic condition for adoption under Polish law is the child's consent/ the child's hearing (Article 118 KRO). According to Article 118 § 1 KRO a child who has reached the age of 13 must consent to being adopted. Without the child's consent, the court cannot adjudicate adoption. The adoptee's consent should be expressed unambiguously, expressly, freely, and consciously regarding the significance of the adoption, i.e. its function, purpose, and factual and legal consequences. Such consent may only be expressed before a guardianship court during the adoption proceedings. It should be expressed directly by the adoptee orally and recorded in the minutes of the hearing (Prucnal-Wójcik, 2024).

If the adoptee is under 13 years of age, his or her consent is not necessary for adoption. In such a situation, Article 118 § 2 KRO applies, specifying the guardianship court's obligation to hear an adoptee who is under 13 years of age but is capable of understanding the significance of adoption. The legislature does not specify a lower age limit for the adoptee who is required to be heard in adoption proceedings. Therefore, the guardianship court is obligated to assess in each specific case whether the adoptee is capable of understanding the significance of adoption, taking into account the child's physical, mental, and emotional development. According to Helena Ciepła (2011), Henryk Haak (1996) and Janusz Gajda (2025), a child is capable of understanding the significance of adoption after reaching the age of 7. Therefore, the obligation to hear the adoptive person under Article 118 § 2 KRO should generally apply to children aged between 7 and 13 (Prucnal-Wójcik, 2024).

Article 118 § 3 KRO provides an exception to the rule set forth in Article 118 § 1 and 2 KRO. A guardianship court may, in exceptional circumstances, grant adoption without the adoptee's consent or hearing, provided that one of the following conditions is met:

1. the adoptee's incapacity to consent;
2. the adoptee's belief that he or she is the child of the adopter(s) and requiring his or her consent or hearing is contrary to his or her best interests.

The adoptee's inability to consent to adoption may be the result of his or her mental illness, mental retardation, or other permanent mental disorders (Haak, 1996; Dolecki, 2013).

The situation in which the adoptee believes that he or she is the child of the adopter(s) usually occurs when the adoptee has been growing up in the adopter(s)' family for a long time.

In Norwegian law, as in Polish law, the child's consent/ the child's opinion constitutes the third basic condition for adoption (Sec. 9 LA). In Norwegian law, however, there are other age and form criteria for that condition. The adoption authority cannot grant adoption without consent of a child who has reached 12 years of age. According to Section 9, the child's consent must be in writing and given freely, without any assurances or promises of financial or other benefits to the child. Before consent is given, the child must be provided with information about the meaning of the adoption. Consent may only be obtained or confirmed by a public official who ensures that the child has understood the information.

In Norway, there is an obligation to get an opinion on adoption from the adoptee who has not reached the age of 12 but has reached 7 years of age. Norwegian law also allows situations in which the child younger than 7 years who is capable of forming his or her own opinions shall have the opportunity to express his or her opinion on adoption. In both above mentioned situations the child must be provided with information about the meaning of the adoption.

The Act on Adoption provides an exception to the rules set out in Section 9. The adoption authority may grant adoption without the child's consent/ the child's opinion if the child is clearly incapable of understanding what such consent entails in consequence of his or her mental disability or mental or physical illness (Sec. 9 par. 2 LA).

Both Polish and Norwegian law reflect the principles expressed in the 1967 Convention and CRC, which recognise – as one of the fundamental conditions for adoption – the child's right to be heard in judicial and administrative proceedings affecting him or her.

According to Articles 9.1. and 2. f) of the 1967 Convention, an adoption shall not be granted by competent authority without conducting an appropriate enquiry concerning the adoptive parent, the child, and their family which should include, among other things, findings regarding the views of the child with respect to the proposed adoption.

Article 12.1. of the CRC indicates the child's right to express his or her views in all matters affecting him or her. The Convention does not specify a minimum age for a child to be entitled to this right. It only states that the opportunity to exercise this right should be available to every child who 'is capable of forming his or her own views.' Pursuant to Article 12.2. CRC, 'the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings' affecting him or her. This rule also applies to adoption proceedings. 'The views of the child shall be given due weight in accordance with his or her age and maturity' (Article 12.2. CRC).

Summary

The analysis of legal provisions in Polish and Norwegian law regulating the conditions relating to the adoptee for domestic adoption indicates that legal solutions in force in both countries are very similar. Both regulations in force in Poland and Norway establish three basic conditions for adoption relating to the adoptee, which are: exclusive consideration of the best interests of the child; the age of the adoptee and the child's consent/ the child's hearing/ the child's opinion.

Both Polish and Norwegian law indicate the best interests of the adoptee as the main and decisive condition for adoption. Both countries lack of a legal definition of this principle leaving it to the guardianship court (Poland) or the adoption authority (Norway) to decide on the best interests of the child on the basis of a specific assessment of the individual case. In Poland it is clearly stated in law that the guardianship court acting in the wellbeing of the adoptee has the possibility to establish – before issuing an adoption decision – the manner and period of personal contact between the adopter and adoptee. Norwegian law, differently than Polish law, does not clearly indicate such a possibility.

Both Polish and Norwegian law recognise adoption for minors as exclusive in Poland and basic in Norway. In Poland it is impossible to adopt a person over 18 years of age. Norwegian law, unlike Polish law, allows such a possibility (so-called adult adoption) under special requirements.

As the third basic condition for adoption both Polish and Norwegian law indicate the child's consent/ the child's hearing (Poland) and the child's consent/ the child's opinion (Norway). There are, however, different ages and form criteria for that condition in both countries. In Poland the guardianship court cannot grant adoption without consent of a child who has reached 13 years of age. In Norway the adoption authority cannot grant adoption without consent of a child who has reached 12 years of age. In Poland such consent should be expressed directly by the adoptee orally and recorded in the minutes of the hearing before a guardianship court during the adoption proceedings. In Norway such consent shall be in writing and given freely, without any assurances or promises of financial or other benefits to the child. Consent may only be obtained or confirmed by a public official who ensures that the child has understood the information.

In Poland the guardianship court is obliged to hear the adoptive person who is under 13 years of age capable of understanding the significance of adoption. The legislature does not specify a lower age limit for the adoptee who is required to be heard in adoption proceedings. Legal literature indicates that this obligation should generally apply to children aged between 7 and 13 years old. In Norway, there is an obligation to get an opinion on adoption from the adoptee who has not reached the age of 12 but has reached 7 years of age. Norwegian law also allows situations in which the child younger than 7 years old who is capable of forming his or her own opinions shall have the opportunity to express his or her opinion on adoption.

Both Polish and Norwegian law provide exceptions to child's consent/hearing/ opinion rule. In Poland the guardianship court may grant adoption without the adoptee's consent

or hearing, either in situation of the adoptee's incapacity to consent (as the result of his or her mental illness, mental retardation, or other permanent mental disorders) or if the adoptee believes that he or she is the child of the adopter(s) and requiring his or her consent or hearing is contrary to his or her best interests. In Norway, on the other hand, the adoption authority may grant adoption without the child's consent/ the child's opinion if the child is clearly incapable of understanding what such consent entails in consequence of his or her mental disability or mental or physical illness.

Analysing the conditions relating to the adoptee for domestic adoption, we notice that despite certain differences, both legal systems introduce similar solutions.

In the longer term, the author intends to present a comparative legal analysis of the conditions relating to the adopter(s) and other persons for domestic adoption in force in Polish and Norwegian law. The author wishes also to research conditions for intercountry adoptions in both countries and thus provide a more complete understanding for the legal conditions of adoption in both countries.

REFERENCES

- Ciepla, H. (2009). Komentarz do artykułu 114 KRO. In K. Piasecki (Ed.), *Kodeks rodzinny i opiekuńczy. Komentarz* (pp. 843 and the next). LexisNexis.
- Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption. (1993). <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>
- Convention on the Rights of the Child. (1989). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
- Dolecki, H. (2013). Komentarz do artykułu 114 KRO. In H. Dolecki & T. Sokołowski (Eds.), *Kodeks rodzinny i opiekuńczy. Komentarz* (pp. 821 and the next). Wolters Kluwer.
- European Convention on the Adoption of Children. (1967). <https://rm.coe.int/168006ff60>
- Gajda J. (2025). Komentarz do artykułu 114 KRO. In K. Pietrzykowski (Ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*. C.H. Beck, Legalis.
- Gromek, K. (2020). *Kodeks rodzinny i opiekuńczy. Komentarz*. C.H. Beck.
- Haak, H. (1996). *Przysposobienie. Komentarz. Kodeks rodzinny i opiekuńczy*. TNOiK Dom Organizatora.
- LeBlanc, L.J. (1995). *The Convention on the Rights of the Child – United Nations lawmaking on human rights*. University of Nebraska Press.
- Lov om adopsjon (adopsjonsloven) [Norwegian Act on Adoption of 16 June 2017]. (2017). <https://lovdata.no/dokument/NL/lov/2017-06-16-48>
- Lov om barnevern (barnevernsloven) [Norwegian Act relating to child welfare (Child Welfare Act)]. (2021). <https://lovdata.no/dokument/NL/lov/2021-06-18-97>
- Postanowienie Sądu Najwyższego z dnia 2 czerwca 1980 r. [Polish Supreme Court's judgment of 2 June 1980]. (1980). I CR 124/80, OSNCP 1981, No. 1, item 13.
- Prucnal-Wójcik, M. (2024). Komentarz do artykułu 114 KRO. In K. Osajda (Ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*. C.H. Beck, Legalis.
- Radwański, Z. (1981). Pojęcie i funkcja „dobra dziecka” w polskim prawie rodzinnym i opiekuńczym. *Studia Cywilistyczne*, 31, 3–28.
- Sokołowski, T. (2013). *Prawo rodzinne. Zarys wykładu*. Przedsiębiorstwo Wydawnicze Ars boni et aequi.

- Stojanowska, W. (1999). Dobro dziecka jako instrument wykładni norm konwencji o prawach dziecka oraz prawa polskiego i jako dyrektywa jego stosowania. In T. Smyczyński (Ed.), *Konwencja o prawach dziecka – analiza i wykładnia* (pp. 81 and the next). Instytut Nauk Prawnych PAN, Przedsiębiorstwo Wydawnicze Ars boni et aequi.
- Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [Statute of 23rd April 1964 – Polish Civil Code]. (1964a). *Dz. U.* 1964, No. 16, item 93. <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19640160093>
- Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy [Statute of 25th February 1964 – Polish family and guardianship code]. (1964b). *Dz. U.* 1964, No. 9, item 59. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640090059/U/D19640059Lj.pdf>

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