

DESCRIPTION FOR THE GENERAL PUBLIC

The purpose of the project is to identify the legal nature and the meaning of the joint physical custody in the Polish family law and to determine the legitimacy of introducing into Polish law a developed substantive or procedural regulation of this institution as the primary model of child custody after divorce or in the situation of parents living in separation. The joint physical custody means generally temporary changing the child's place of residence between parents. The main hypothesis of this project is that the joint physical custody does not only mean the systems of symmetrical child care, and its correct application by courts requires the court consider many individual factors. This kind of custody is allowed by the Polish Family and Guardianship Code, but not directly, as a part of the so-called parenting plan (written agreement of the parents on how to exercise parental authority, and maintain contact with the child after the divorce or separation). However, the concept itself has appeared in the provisions of the Act on state aid in raising children, but without any definition or instance of this term. Similarly, the provisions of the Code of Civil Procedure (art. 582¹ § CCP, art. 598²² CCP, art. 756² CCP) concerning the implementation of family court judgments refer expressly to court rulings that allow the child to live with each of the parents in recurring time periods. It can be presumed that the above-mentioned regulations should include the joint physical custody, but also in the Code of Civil Procedure this term is not stated. Thus, in this matter there is a great deal of legal uncertainty leading to different treatment of citizens by the public authorities and courts, hence the need for determination of the joint physical custody in Polish legal system.

In foreign legal systems the rule has been to maintain parental authority of both parents in divorce rulings for a long time. Exception is awarding the exercise of parental authority to one of the parents, restricting the parental authority of the second parent to specific rights and duties in relation to the child. This corresponds to stronger and stronger belief at the international forum that such a decision is the most appropriate for the best interest of the child and best guarantees the interests of both parents who divorce (officially separate or factually part) by maintaining a healthy and meaningful relationship with the child. As a result, the courts rule on the joint physical custody more and more often. In so far as maintaining parental authority of both parents in divorce rulings is not in doubt, the issue of the admissibility of the deciding the joint physical custody has been recently debated more widely. Also it has raised some controversy.

Similarly to Poland, in the legal systems of other countries, there is a lack of formal definition of the joint physical custody, e.g. in the UK, but in their general understanding, it means that the child is living alternatively with each of the parents for a predetermined period of time. In contrast, in countries where this concept is defined in a system of law, e.g. in the USA and Australia, it does not mean symmetrical custody. The project is going to change the stereotypical views on the joint physical custody as in a proportion 50/50. The research will cover legal solutions previously unknown to Polish law concerning parental authority when parents live apart, which work well in the foreign legal systems, for instance, *approximation rule* (a concept developed by the American Law Institute to help decide child custody cases by maintaining approximately the same parenting routines after the divorce as before) or *collaborative counselling* (diagnostic and consultation centers for helping parents, combining support with mediation and family therapy).

The project is conducted because of the ongoing process of modernising family law regulations and their adaptation to changing social reality in Poland. The study plan consists of following four parts: 1) custody of a child; 2) joint physical custody - general assumptions; 3) joint physical custody in the legal systems of other countries; 4) practical challenge of correct regulation of the joint physical custody in law. The first step concerns the legal background of the joint physical custody and the general characteristics of the relationships between parents and children. In this respect, special attention shall be given to the parental authority, parental responsibility, as well as the concept of the child's welfare. The next step includes the essence, types and conditions of application of the joint physical custody, with particular emphasis on the parenting plan. The third step applies to different legal systems, including first of all states belonging to the EU, but also Australia, which stands a relatively young and modern regulation on the joint physical custody, and the USA (at the federal level, as well as at the level of individual states). Another part of the project concerns, among other things, syndrome of parental alienation, parental child abductions, nest theory or rational partnership between parents and children in respect to the joint physical custody.

As a general point it should be stressed that the project is universal, because it concerns all children and their parents around the world.