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I. General information of the Polish system of family law and courts.

Polish legal system is based on the continental legal tradition. The common courts in Poland are the district courts, provincial courts and the courts of appeal. The guardianship courts (Family and Minors Department of District Court) decide in family matters and in custodianship cases. His orders are efficient and enforceable from the moment of their issuance. A court has a competence to suspend their enforcement, by decision, which is subject to appeal. A ground for starting an enforcement proceeding is a decision of first or second instance court with en officio statement of enforceability, issued upon request of a party.

The matrimonial cases are decided in provincial courts.

There is no institution of parental responsibility in Polish law. There is only a notion of paternal authority. According to art. 92 of Polish family and Guardianship Code a child is under parental authority until he or she becomes of age of 18 or maturity, but not before the age of 16. Both parents have equal rights in carrying out parental authority. Parental authority means:

- Parents' right and duty to care for person and property of a child and to bring up a child
- Parents' duty to take care of physical and spiritual development of a child to prepare him or her to work for welfare of society, according to his/her abilities
- Parents' right and duty to be a representative of legally incapable underage children.

As a role, 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 KRIO). When the parents are not married the mother always holds parental authority from the birth of a child. If the father recognizes a child, he always holds parental authority.

The Polish Family and Guardianship Code regulates the competences of the guardianship courts, as to among others:

- grant authority to a father, whose fatherhood was determined by a court
- decide about fundamental matters concerning a child, when parents can not come to understanding
- change a part of divorce or separation judgments concerning parental authority and a way of exercising it, in a case of change of circumstances and if it's required according to child's interest
- grant exercising parental authority to one parent, while limiting the other's to specific duties and rights towards a child, if the parents of a child have parental authority and are not married or are married by live apart
- issue adequate decisions, if a child's good is jeopardy,
- suspend parental authority, in a case of transient obstacle in exercising it
- deprive parental authority if parents abuse it or in a glaring way neglect their duties towards a child
- decide about placing a child in a foster family or adequate care institution
- on a base of civil code regulation, to decide about child's domicile, if a child does not permanently reside any of his/her parents

In case of the decision concerning a child's residence a child should have a right to express his/her opinion guaranteed and this opinion should be taken into consideration, provided that a child has reached a sufficient level of development. This decision lies within a scope of parental authority. Parents should take this decision together, yet if they fail to come to an agreement the decision should be taken by a guardian ship court.

The right of a child to be heard was written in a Polish Constitution (art. 72.3) Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.

But there is no distinct obligation of a guardianship court to hear a child in Polish law. That means that hearing of a child depends on three factors: age (13), maturity and court decision. Child's statement is treated by law, not as evidence, but as statement of knowledge.

A court in divorce judgment (provincial court) decides about parental authority over couple's child. A court can entrust one of parent with exercising of authority, while limiting the other one's authority to certain duties and rights towards a child. A court also decides about the costs of child's living and upbringing and parents' responsibility to pay them.

In the view of Polish practices there are doubts on the efficiency and proper enforcement of contact order/access rights orders in certain situations, when a child lives with one of his/her divorced parents and the other parent has the right to access (according to the court order), and when, there is no agreement between parents. In such a cases there can be a need to fix a time and place for access, but sometimes this can cause more conflicts between the parties.

II. The enforcement of family law judgments.

The enforcement of family law judgments are involved: the guardianship courts, court probation and supervision officer, police, prosecutor.

It is allowed to appeal against first instance courts' decision on the merits of the case, issued in non litigation proceeding. Parties are competent to appeal no latter then two weeks after decision with a motive was delivered to the appealing party. The party can request for a motive of a decision in a time of weeks from the moment the sentence was announced. Decisions of a second instance court are final from a moment of announcement.

It is also allowed to apply a second measure of appeal, which is called a complaint. It is a way of appeal against first instance decision finishing the proceeding in a case, to the second instance court. A time to complain is one week from the moment a decision of first instance was delivered to the party or from the moment of a decision was announced.

The use of both measures of appeal will start an appellation proceeding before the court of higher instance. Appeal causes the first instance decision not to be final. But the application of either measure of appeal does not stop the enforcement of a

decision, although a court dealing with a case is competent to suspend the enforcement proceeding.

A guardianship court can change its decision, also a final one, if it is requested according to person's participating in proceeding interest. In such a case a court is obliged to change or repeal previous decision.

Generally speaking lack of compliance with a court decision or lack of enforcement is not a reason for criminal/penal responsibility. Art. 211 of the Criminal code has a preventive effect and at the same time acts as deterrent to potential abductor. A person who abducts from the territory of Poland a minor person shall be a subject to the penalty deprivation of liberty for up to 3 years. A person who attempts, as well as a person who acts as a compliance or who incites the act of abduction shall be subject to the same penalty.

Based on art. 1050 1051 k.p.c. a civil court is competent to apply pecuniary fines against a person who is obliged to act according to court decision. In first case a court has to decide about the date the obligation should be fulfilled at. It is possible to change the fine into arrest. Those provisions are used to cases concerning access rights and also in child's property cases.

There are no specific provisions relevant to enforcement of family judgments in cross border cases. The provisions of k.p.c apply to internal and cross border cases. There is no need to issue any provisions implementing international conventions or EU regulations either. The enforcement of family law judgments is exercised according to EU regulation 2201/2003 and 44/2001. If they don't regulate some specific issue, k.p.c. is applied.

The courts take into consideration the cross border factor but anyhow apply the rules of Brussels II A in relation between member states. In relations with non member states the provisions of multilateral or bilateral conventions are applied. Polish court can also apply the rules of k.p.c., but only if provisions of those conventions do not regulate the issue.

The enforceability means that a merit of a judgment will be enforced and the means used to enforce will arise from polish law. So, there is no way to apply the measures which do not exist in Polish law.

Obstacles to enforcement, like in internal case, can be formed mostly by the parties. If parents cooperate they can modify a foreign order by the virtue of their consent or other circumstances.

The Polish court is not able to change the decision of foreign court. It is obvious. But it should be said that Polish courts can act when they have a jurisdiction (result from EC law, international law or k.p.c.). It is possible that a court recognizing the foreign court orders points to guardianship court that there are reasons to start an ex officio proceeding. And of course the guardianship court can start ex officio proceedings and finally issue a new decision in a case. In such a situation the foreign court order can not be enforced.

There is one part of Polish civil procedure code that concerns cases of removal of a person being under parental authority or under custody (art. 598 (1)-598 (13)). Those provisions are applied in cases of application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, but also in domestic cases (and UE cases of course under regulation 2201/2003 Brussels II A), and have a procedural character.. the specified procedure is applied when, there is a need to remove a person being under parental authority or under custody, when a place of residence of such a person is unknown and also, when there is a need of compulsory deprivation of this person. The provisions state that the court obligation to ex officio suspend the proceeding concerning removal of person being under parental authority or under custody, based on the Hague convention provisions, is started. If the provisions of the convention are not applied, these two cases can be examined together.

By the virtue of art. 1145 k.p.c. efficiency of foreign courts orders in Poland, not suitable for enforcement in a way of execution, depends of Polish court's recognition. Polish court may recognize or enforce foreign court judgment, taking into consideration a principle of reciprocity. The court is also allowed to address a question to Polish Ministry of justice about application of reciprocity by a foreign state. **Anyhow, those provisions are mostly applied to the orders that can be enforced in a way of execution.**

What is worth to know, a guardianship court, in a threat of abduction of a child abroad, may prohibit, by means of provisional order the child to leave the territory of Poland. Moreover, the court may also provisionally apply other preventive measures, which seem to be more effective in given situation. Such a decision is enforceable from the very moment of its issuance. The decision of a court shall be transferred by the court to the Border Guards Headquarters, which is unite responsible for the notification of the border check points.