
FAMILY LAW IN POLAND

WOJCIECH J. KOSIOR, JAKUB M. ŁUKASIEWICZ

EDITED BY JAKUB M. ŁUKASIEWICZ



RZESZÓW 2018

© Copyright by Wydawnictwo

*Legal Publishing House,
sp.c., Rafał Łukasiewicz, Jakub M. Łukasiewicz,
ul. Leska 7/5, 35-505 Rzeszów*

*Desktop publishing: Legal Publishing House
Printed in Poland by Legal Publishing House*

Cover design: Mateusz Kot, Noise Studio

Reviewers:

prof. dr hab. Bronisław Sitek (Uniwersytet SWPS)

prof. UR dr hab. Renata Świrgoń-Skok

Language Consultant: Nadia Harris-Kosior

e-mail: legal.publishing.house@gmail.com

ISBN: 978-83-947073-2-3

INTRODUCTION

The publication you receive is an attempt to present selected institutions of the Polish family law in a synthetic and concise manner.

In this book, theoretical considerations have been presented in a possibly transparent and legible way, allowing the reader from abroad to independently study and explore this extremely interesting area of law. The book is addressed primarily to students of the ERASMUS program, who come to study at Polish law faculties, as well as to all those who come into contact with the matter of Polish family law for the first time or want to systematize and complement their knowledge. It is worth pointing out that this study is based on the Polish textbook for family law, which appeared under the scientific editing of J.M. Łukasiewicz entitled *Family law institutions*, although the major inspiration for the preparation of many fragments were the textbooks of other Polish authors, including M. Andrzejewski, T. Smyczyński, T. Sokołowski, J. Strzebińczyk, G. Jędrejek, A. Zielinski, or J. Ignatowicz and M. Nazar.

The authors would like to thank all involved people who contributed to the creation of this publication, in particular the students of the ERASMUS program, whose comments made the work even more accessible and understandable. At the same time, we would like to express gratitude to the Reviewer - prof. dr hab. B. Sitek, whose assistance and guidance have been extremely valuable, as well as prof. UR dr hab. R. Świgroń-Skok.

The work has been prepared primarily for the purpose of teaching foreign students and therefore the matters concerning the polish family law have been presented in a simplified manner.

The Authors added an English translation of the Polish Family and Guardianship Code as an appendix to this book, which may help students to expand their interests in the subject.

TABLE OF CONTENTS

1.	INTRODUCTORY MATTERS.....	- 9 -
2.	SOLEMNIZATION OF THE MARRIAGE	- 15 -
2.1.	CONDITIONS OF THE MARRIAGE EXISTENCE	- 16 -
2.2.	FORMAL AND LEGAL PREMISES	- 17 -
2.3.	MARRIAGE OBSTACLES	- 19 -
2.4.	MARRIAGE VALIDATION.....	- 21 -
2.5.	ANNULMENT OF MARRIAGE	- 21 -
2.6.	RIGHTS AND OBLIGATIONS OF THE PARTIES	- 22 -
3.	STATUTORY JOINT PROPERTY REGIME	- 25 -
3.1.	MANAGEMENT OF COMMON PROPERTY	- 29 -
3.2.	OBLIGATION LIABILITY OF THE SPOUSES	- 30 -
4.	CESSATION OF STATUTORY JOINT PROPERTY REGIME	- 31 -
5.	TERMINATION OF MARRIAGE	- 35 -
6.	MATERNITY	- 41 -
7.	PRESUMPTION OF PATERNITY AND DETERMINATION OF PATERNITY.....	- 45 -
8.	RECOGNITION OF A CHILD AND DETERMINATION OF VOIDANCE OF CHILD ACKNOWLEDGMENT	- 47 -
9.	COURT DETERMINATION OF PATERNITY	- 51 -
10.	PARENTAL AUTHORITY	- 52 -
11.	FOSTER CARE.....	- 57 -
12.	ADOPTION.....	- 59 -
13.	MAINTENANCE OBLIGATION	- 61 -
14.	CUSTODY	- 65 -
15.	GUARDIANSHIP.....	- 69 -

I. INTRODUCTORY MATTERS

The topic of family law should be started with a basic matters which is the settlement of why a primitive Man did not chose life in an outside-family structure.

He could have limited himself to accidental sexual relations, but he chose life within a family. The history of social philosophy tried to answer this question several times. Generally, two extreme statements have been established:

- A human being possesses the need to live in a society. Such a view was presented by i.e. Aristotle or Thomas Aquinas.
- A human being in an anti-social entity. Such a view was presented by i.e. Jean-Jacques Rousseau or Thomas Hobbes. Hobbes stated that the primary stage of human is war and Rousseau claimed that a naturally good human was destroyed was by human society. However, both stated that society was an artificial and abnormal formation.

In this publication, the authors support the first point of view. Among all arguments, there are two main ones:

- At birth, a human being does not possess essential skills to live, such as: e.g. shelter or getting nutrition by himself. This is why, he needs parental engagement in care and upbringing, and he at least requires a primary relation with the mother.
- Only a relationship of two people of opposite sex enables to transfer life to further generations. No entity can give birth to oneself without the help of another human. Procreation is only possible thanks to sexual contiguity of two people of opposite sex. That is why, in terms of reproduction we are not self-sufficient (despite all newest achievements, the so called embryonic medicine).

In order to sum up, it should be stated clearly that the existence of each person is placed in a social organism and the family is a social primo cell. In other words, in the human nature there is a need for family life.

It should be determined what the notion of family is. The provisions of the Polish family and guardianship code refer to this matter many times. For example, art. 23 of the Code states that *Spouses (...) are obliged to live together, assist each other and remain faithful, and to work together for the “good of the family” their marriage has created.* Art. 27 of the Code states that *Both spouses are obliged (...) to contribute towards meeting the needs of the “family” founded by their marriage.* Another example can be art. 30 of the Family and Guardianship Code, which imposes mutual responsibility of the spouses for contracted obligations by one of them in matters arisen from meeting the needs of the “family”. That is why the notion of this matter should be outlined.

In the provisions of the Family and Guardianship Code there is no definition of family, but the content thereof is mentioned in literature. The spouses are part of the family – which arises directly from the content of art. 27 and 23 of the Family and

1. INTRODUCTORY MATTERS

Guardianship Code because the spouses (...) are obliged (...) to meet the needs of the family which their created through their relationship.

The doctrine includes other people of a family and these are:

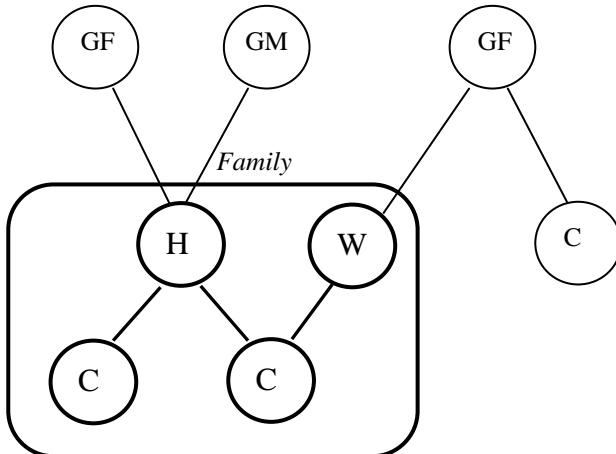
- Mutual minor children
- Mutual adult children that have not become independent
- Mutually adopted children (both full and partial adoption)

As it can be seen, this concerns a one generation family. Beyond the family, there are:

- Children taken for upbringing but not adopted, for example in case of a foster family
- Biological children of one of the spouses (even if both bring the child up). It is commonly recognized that the exclusion of a biological child of one of the spouses, who lives in the same household of both spouses and is brought up by them, would be against the fundamental right of the best interest of the child according to the Polish law. This is why such a child is included in the family as an exception
- Parents in law and further relatives

A family exists despite the change of members:

- After a divorce, a spouse remaining in the community with the children
- After the death of one of the spouses
- After the children become independent



GF- grandfather, GM- grandmother, H – husband, W – wife, C – child.

Fig.1. Family according The Family and Guardianship Code.

Another matter which should be presented is the difference between **social relations** and **legal relations**. As it is known in terms of social relations, a part of those is ruled by the law and gets a character of legal relations. It is similar with family law. Some family (social) relations are ruled by the Family and Guardianship Code and they become the range of legal relations. An example of a family relation which is not a legal relation in Poland is cohabitation. The Polish law does not rule relations between cohabitants. An example of legal relation is marriage because the Polish law rules obligations and rights of spouses towards themselves such as faithfulness, mutual help and other. Among legal relations, we can distinguish:

- marriage,
- cognition (maternity, paternity etc.),
- adoption,
- affinity,
- parental authority,
- alimony relation,
- and also a relation described as the so called property relation between spouses.

Some also add the relation of custody and guardianship which is disputed due to the fact that such relations only underline the protection of someone in reference to the personal family situation rather than a real imitation of a native and legal sphere. What is interesting, only the three first of the previously presented legal relations – marriage, cognition and adoption – appear independently and constitute the basis of the existence of the remaining legal relations. That is why, there is an explicit division in literature being:

- **basic – source relations (such as marriage, cognition, adoption)** and
- **depending relations (affinity, parental authority, alimony relation or property relation between spouses)**. These relations are dependent in this sense that they always arise from a basic – source relation. For example, alimony does not exist independently, but it arises from cognition (art. 128 of the Family and Guardianship Code), marriage (art. 27 of the Family and Guardianship Code) or adoption (art. 131 and 121 §1 and 2 of the Family and Guardianship Code). Another example can be parental authority which also does not exist independently, but it arises from the relation of cognition (parenthood) or adoption.
- In addition, there are relations that are not basic or dependent relations. These are:
 - alimony relation between divorced spouses on the grounds of art. 60 of the Family and Guardianship Code,
 - alimony relation between people whose previous adoption relation was dissolved on the grounds of art. 125 of the Family and Guardianship Code,
 - affinity relations existing after the cessation of marriage on the grounds of art. 61⁸ of the Family and Guardianship Code,

1. INTRODUCTORY MATTERS

- alimony relation between an adulterous child's mother and a man not being her spouse on the grounds of art. 141 of the Family and Guardianship Code.

All these relations are going to be determined as **autonomous legal relations** or separate ones for today's purposes.

In addition alimony can exist as the relation depended on affinity in case of relation between stepparent and stepchild (art. 144).

To sum up, there are following family legal relations;

- basic family legal relations (like marriage, cognation and adoption), that are the source of the other relations
- dependent family legal relations (like affinity, parental authority, alimony relation, and property relation between spouses) that depend on basic relations,
- autonomous family legal relations (like alimony relations on the grounds of art. 60, 125 and 141 of the Family and Guardianship Code and affinity relations on the grounds of art. 61⁸ of the Family and Guardianship Code) that do not depend on basic relations.

Another doubt which should be explained is the question of how the notion of family seems towards legal relations. Family legal relations mainly occur within a family. And that is how the spouses are united by marriage and the following relations arise: property relation between spouses and alimony. The relation of cognation (parenthood) occurs between spouses and their children, which is the source of parental authority and the alimony relation.

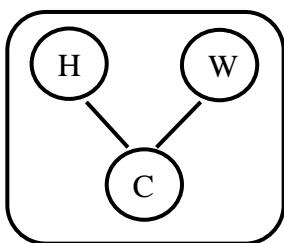


Fig. 2. Family legal relations are included in a family.

However, this is not the end. It needs to be underlined that family legal relations are not limited to family but in some cases they exceed it. For example, on the grounds of the Family and Guardianship Code, grandparents are not included in family, although they are connected by cognation. In various situations, dependent relations may arise from such – for example – the alimony relation.

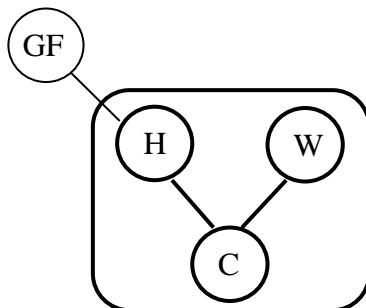


Fig. 3. Family legal relations connect members of family with people outside a family.

The construction of a family legal relation has one more use. It appears there, where a family does not exist on the grounds of the Family and Guardianship Code. For example, cohabitants do not constitute a family because they are not spouses towards each other. However, they will be linked to their children by the basic relation of cognation, out of which dependent relations will arise: the parental authority or alimony relation. We are one step ahead of stating that a family legal relation is a relation which may occur in total separation from family. Thanks to this, real family relations, which differ from the preferred model of a family, receive a new legal meaning and are not completely ignored by the legislator.

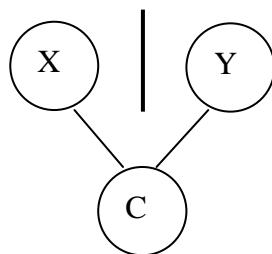


Fig. 3. Family legal relations can exist outside a family.

1. INTRODUCTORY MATTERS

Two of the family legal relations, that is cognation and affinity will be briefly characterized in the points below.

Cognition – is a biological (natural) relation which becomes a native and legal relation when the law ties it to particular legal consequences. According to art. 61⁷ of the Family and Guardianship Code, we can distinguish:

- Lineal cognition – relates two people, one out of which comes directly or indirectly from the other (father, son, grandson),
- Collateral cognition – here, the people do not come one from another in lineal cognition, but they are linked by a mutual ancestor (brother towards sister, cousin towards cousin).

In both cognition lines we can distinguish two more stages of cognition. This is the number of births, due to which cognition has arisen among particular people (in lineal cognition we do not count the first birth, in collateral cognition we do not count the birth of the mutual ancestor).

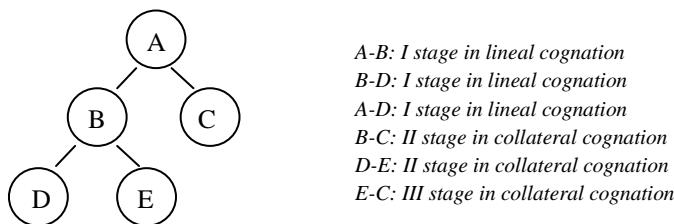


Fig. 4. Cognition.

Affinity – this is not a biological but only a legal knot. It links one spouse with the relatives of the other. Here, we also distinguish lines and stages. The rule is simple: in the same stage and line, as the spouse is cognate with their relatives, in the same stage and line the other spouse is affinitized with them.

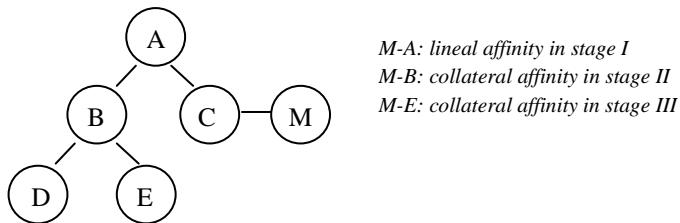


Fig. 5. Affinity.

2. SOLEMNIZATION OF THE MARRIAGE

The word “marriage” makes us think of a solid and lifetime relation between a man and a woman. It is treated similarly in the Polish literature. As it is accepted by the doctrine, marriage is a formalized and permanent (but not inseparable) relation of a man and a woman arisen due to their will. The above pointed doctrine definitely should be read through the prism of four fundamental rules.

- The rule of monogamy – explicitly expressed in the content of art. 13 of the Family and Guardianship Code, according to which: *No one who is already married can marry*. According to paragraph two, a bigamous marriage can be voided on the complaint of anyone, who has an interest to do so.
- The rule of durability – shall mean that marriage is a permanent relation – that is binding until the death of one of the spouses.
- The rule of secularity – means that from the legal point of view, only those marriage relations are considered a marriage, which have been conducted in a civil form or in a religious form but resulted in civil consequences, to which a preparation of a marriage certificate is necessary in a civil registry office.
- The rule of equality – this rule is expressed in the content of art. 23 of the Family and Guardianship Code.

Another matter which should be mentioned is the fact that in the light of the current law, the Polish legal system contains two equivalent forms of conducting the marriage:

- Civil,
- Religious with civil consequences. Marriages conducted in a religious form are not legally neutral, but they are equivalent to marriages conducted in a secular form and they create consequences in the civil and public and legal sphere.

A separate matter is of how to treat the conduction of the marriage. According to one of the views, it is a civil contract, which is a bilateral legal act. A separate statement qualified the conduction of the marriage as a legal event. An analysis of the rules of Family and Guardianship Code leads to the statement, according to which it is a specific legal action. The mentioned specificity can be presented in several pointes – being the subject of a further presentation.

- The Family and Guardianship Code utilizes the notion of “will” in to enter a marriage relation instead of “declaration of will”.
- Provisions referring to the conduction of the marriage often diverge from general provisions of the Civil Code referring to legal actions. For example, provisions of defects in consent are not utilized in terms of conducting marriage. The Family and Guardianship Code introduces separate regulations within this scope.

2. SOLEMNIZATION OF THE MARRIAGE

- Parties, performing legal actions, usually shape the content of future legal relations on the principle of freedom of contract. In the case of conducting the marriage, there is a slight impact of the parties to form the content of the marriage relation. According to this, spouses cannot contrarily regulate the scope of their duties and freedoms through conducting a contract, where they for example allow for mutual betrayal. Of course, as long as such a consent is a “quiet case” of the spouses, legal protection will be excluded. However, in case of taking legal action, none of the spouses will be able to defend oneself through a statement that “it was agreed differently”. As it was underlined above, the impact of spouses on the content of the marriage relation is insignificant – so, it does exist in some way. Generally, the spouses can influence the matrimonial property regime through a conducted prenup, they also influence the last name, which they will use after the marriage. Those matters will be subject to evaluation in further extracts of this work.
- Actions based on conduction of the marriage require the fulfillment of some conditions, that is:
 - The so-called marriage conditions need to occur (art. 1 of the Family and Guardianship Code)
 - Also, the so called formal and order conditions need to be fulfilled
 - Moreover, no marriage obstacles may exist (art. 10-15 of the Family and Guardianship Code).

Lack of fulfillment of the first group of conditions lead to lack of marriage conduction. From the legal point of view, marriage is treated as non-existing. In case of lack of fulfillment, the second group of conditions, marriage is still valid. Their sense refers to underlining the seriousness of marriage and they are only a formality. The appearance of marriage obstacles means that the marriage is still valid but it can be voided.

2.1. CONDITIONS OF THE MARRIAGE EXISTENCE

Moving to the conditions of marriage existence (art. 1 of the Family and Guardianship Code), the following conditions should be pointed:

- gender difference of bride and groom, as according to the Polish law it is impossible to conduct same gender marriages,
- compliance of statements of both bride and groom, as they both need to express a “yes”,
- concurrent presence of both bride and groom but it is possible to conduct the marriage by an attorney on the grounds of art. 6 of the Family and Guardianship Code,
- participation of a public official.

This premise generally relies on the fact that, when the marriage is conducted in a religious form, the declaration of the bride and groom are performed in the presence of a priest or ecclesiastical representative, whom the Polish state has granted the competency to perform marriages with occurrence of civil and legal results. In the light of the current legal provisions that is: the Roman Catholic Church, the Polish Orthodox Church, the Augsburg Lutheran church, the Evangelical-Reformed Church in Poland, the Evangelical-Methodist Church in Poland, the Christian Baptist Church in Poland, the Seventh-day Adventist Church in Poland, the Polish-Catholic Church, the Union of the Jewish Communities, the Old-Catholic Mariavite Church, the Pentecostal Church.

In terms of marriages conducted only in a civil form, the person obtaining the statement is solely a head of a register office. It may also be a Polish consul, as long as the bride and groom express their will to express statements abroad and they both possess a Polish citizenship.

These premises are joint premises for both a civil marriage as well as a marriage conducted in a religious form with civil consequences. In case of a marriage conducted in a religious manner, there are still two additional premises which are necessary for the marriage to cause civil and legal consequences. Those are:

- statements of the bride and groom about the civil and legal consequences
- and the preparation of a marriage certificate by the head of the register office (which is retroactive as the marriage is treated as conducted at the moment of making a statement of entering into marriage before an ecclesiastical person).

2.2. FORMAL AND LEGAL PREMISES

Getting to the second group of premises, that is formal and order matters premises, it should be reminded that this is the so called “marriage conduction scheme”. Each stage, which the bride and groom need to go through in order to lead to marriage. This matter will be presented “step by step” in a few brief points.

In the beginning, it should be underlined that in the initial stage of formalizing a marriage relation, the marriage conduction scheme in a civil form as well as a religious marriage, generally does not differ. Just after a moment, there are significant differences which will be indicated in a proper place.

1. The first step which should be taken while conducting marriage is a visit at the civil registry. Whether it is a marriage conducted in a civil form or a religious one, it may be any civil registry (art. 17 Law on Civil Status Records).

2. In what aim do the bride and groom go to the civil registry? The answer is art. 2 § 1 of the Family and Guardianship Code, according to which: *Anyone wishing to enter into marriage should submit or present to the head of the registry office the documents necessary to enter into marriage, as set out in separate regulations.* Which separate regulations are meant? Those are regulations indicated in art. 76

2. SOLEMNIZATION OF THE MARRIAGE

and next of the Law on Civil Status Records. According to those provisions, the required documents are:

- Written assurance of the bride and groom about lack of circumstances excluding the conduct of the marriage (this assurance includes among others: statements concerning lack of marriage obstacles and the statement about the choice of a future last name of the spouses and their children),
- A document stating age of majority and identity,
- In case of existence of relative marriage obstacles, a court permit in order to conduct the marriage (e.g. a permit to conduct marriage by a 16-year old woman). In case when a marriage is supposed to be conducted through an attorney, a court permit to conduct the marriage through an attorney,
- in the previous legal status, a short copy of the birth certificate had to be filed, as well as a shortened copy of the marriage certificate with an annotation of divorce, marriage annulment or non-marriage determination. However, now it is not required as the head of the civil registry office directs the initial application to that registry office where all remaining documents are located in order to proceed with their migration to the (already being active for 4 years) information system of state registers - SOURCE, to which all heads of civil registry offices in Poland have access to,
- If the marriage conduction should take place before a consul, the bride or groom presents a short copy of the birth certificate and proof of termination of previous marriage if a person remained in a marriage relation before,
- In the case of a foreigner, a marriage permit issued by the foreigner's country, in accordance with the provisions of Polish private international law on the possibility of marriage, shall be settled by the alien's *lex patriae* (e.g. a British citizen gets married in Poland, then British law settles his eligibility to get married) Obviously, it is difficult to require a Polish civil law office manager to know foreign law, hence the requirement to present such a document. If such a document can not be obtained by a foreigner, a Polish court may grant a marriage permit. In addition, a foreigner presents a copy of the birth certificate and proof of cessation of the previous marriage.

After all the above-mentioned documents have been submitted, the further marriage procedure proceeds separately:

- in a civil marriage,
- and separately in case of a marriage in the denominational form.

A civil form. After the written assurance of absence of circumstances for the exclusion of the marriage, a period of one month must pass (art. 4 of the Family and Guardianship Code). After that date, it is possible to marry in a civilian form and at any

civil status office. Significantly, it does not have to be the same registry office where the documents were filed. As a result, future spouses may file documents, e.g. in Rzeszow, where they work, while the marriage itself (after a month) can take place in Warsaw. It would be unnecessary for formalism to bother interested parties, e.g. from Rzeszow, especially in Warsaw, to file documents. The next stage is the marriage itself, with all the requirements required by the law - the civil status law, witnesses are required and a protocol for the acceptance of marital claims is prepared. The head of the civil registry office then prepares the marriage act at the latest on the next working day.

A religious form. After submitting all documents at the registry office, the head thereof shall issue a certificate to the clergyman on the basis of a written assurance statement of the bride and groom of the absence of circumstances precluding the marriage. It is valid for six months. The next step is to conclude the marriage in the religious form and issue a license by the clergymen to conclude the marriage, which he completes after the marriage ceremony, and then forward the marriage license to the head of the civil registry office within 5 days. The head of the registry office draws up a marriage certificate or, pursuant to special provisions, refuses to register if the five-day deadline has not been fulfilled by the clergyman.

2.3. MARRIAGE OBSTACLES

Turning to the marital obstacles the following should be mentioned;

1) Bigamy. According to art. 13. § 1 of the Family and Guardianship Code: He cannot marry anyone who is already married. In this case, this second marriage - bigamy - may be annulled. As long as this does not happen, both marriages produce legal effects. In some cases, the so-called validation the healing of a bigamous marriage, which causes the marriage to acquire the attribute of legality and it will not be possible to invalidate it. According to art. 13 §3: *A marriage cannot be annulled because one of the spouses has previously been married, if the previous marriage has ceased or has been annulled unless the marriage has been terminated by the death of the person who has re-entered the marriage.*

2) Full incapacitation. In the light of art. 11 § 1 of the Family and Guardianship Code: A person incapacitated completely cannot marry. The judgment on full incapacitation pursuant to art. 13 § 1 of the Civil Code followed; ... *if (natural person) as a result of mental illness, mental retardation or other mental disorder, in particular drunkenness or drug addiction, is unable to manage his or her behavior.* Of course, if, despite the existence of the obstacle in question, marriage is to be got, then such marriage may be annulled. However, according to art. 11 § 3 of the Family and Guardianship Code: *The marriage can not be annulled because of legal incapacitation if the legal incapacitation has been annulled. In that case, the marriage will be validated.*

3) Kinship (cognition). Art. 14 §1 sentence 1 of the Family and Guardianship Code, Contains a simple formula that one cannot conduct a marriage with a relative

2. SOLEMNIZATION OF THE MARRIAGE

in a straight line (without any degree restrictions) and siblings. Hence, it is acceptable to marry, for example, by cousins. Of course, there is a possibility of annulment of marriage and there is no possibility of any revalidation.

4) Adoption. Art. 15. § 1 of the Family and Guardianship Code states: It is not possible for an adopter and adoptee to marry. However, if an obstacle is disclosed "after the fact," then it is possible to annul the marriage unless it has previously been rectified, i.e., a court resolution of adoption annulment.

5) Age. According to art. 10 §1 sentence 1 of the Family and Guardianship Code you cannot marry a person under the age of eighteen. However, for important reasons, a court of custody may authorize the marriage of a woman who has reached the age of sixteen, and the circumstances indicate that the marriage will be consistent with the good of the family. Conduction of marriage in spite of obstruction of age gives rise to the annulment of such marriage unless a validation takes place. In the light of art. 10 § 3 of the Family and Guardianship Code are three cases:

- the required age has been reached,
- the court has given an ex post permit, i.e. after the marriage, provided the woman has completed the required age of 16 and the man is 18 years of age;
- and after the marriage, the validation occurs in that the husband cannot demand the marriage annulment, but only the wife. It is worth recalling that, according to art. 10 § 2 sentence 1 of the Civil Code: by concluding a marriage, the minor shall be of age.

6) Mental illness. The obstacle to this is the content of art. 12 § 1 of the Family and Guardianship Code. A person who is afflicted with mental illness or mental retardation cannot be married. However, if the health or mind of such person does not jeopardize the marriage or health of the future offspring and if the person has not been completely incapacitated, the court may authorize her to marry. Validation is possible if, according to art. 10 §3 of the Family and Guardianship Code, the psychiatric illness has ceased.

7) Affinity. Recalling again the content of art. 14 § of the Family and Guardianship Code one should look at the passages referring to this obstacle. As a provision: They cannot marry (...) in a straight line. However, for important reasons, the court may authorize marriage between relatives. Remember that in the light of art. 61⁸ of the Family and Guardianship Code affinity continues despite the cessation of marriage.

Concluding, in the event of marriage at the so-called marriage marital problems are valid but may be annulled. It should be remembered, however, that in accordance with art. 18 of the Family and Guardianship Code, you cannot request a marriage annulment after it ceases. However, this regulation allows two exceptions, namely, the obstacle of kinship and the obstacle of bigamy. The third exception is contained in

art. 19 of the Family and Guardianship Code: *§ 1. If one of the spouses has filed an action for annulment of a marriage, the annulment may also take place after the death of the other spouse, in whose place the curator established by the court enters the proceedings.* § 2. *In the event of the death of a spouse who has filed an action for marriage annulment, his or her descendants may be annulled.*

2.4. MARRIAGE VALIDATION

As it has already been emphasized in some situations, marriage cannot be annulled because it has been validated. This is the case in four cases:

- the required age is reached - art. 10§3,
- termination of legal incapacity- art. 11§3,
- cessation of adoption- art. 15§3,
- the first marriage ceased, hence the bigamic relationship lost the feature of bigamy - art. 13§3,

At the end of this part of the discussion it is worth mentioning that among the marital obstacles mentioned in points 1,2,3,4 (see 2.3 above) the so called irrespective obstacles (absolute obstacles). The point is that the court cannot, under any circumstances, allow marriage. In the meantime, the obstacles indicated in paragraphs 5,6,7 are relative obstacles - the court may grant a marriage permit in the cases indicated by the law.

2.5. ANNULMENT OF MARRIAGE

According to the above content, in the event of a marital obstacle, the marriage is valid, although it is possible to annul it.

Other reasons for the annulment of marriage can also be:

- a) there was a defect in the declaration of marriage in art. 15¹ of the Family and Guardianship Code,
 - excluded awareness,
 - error regarding the identity of the other party (i.e. the confusion of the individual, but it will not be an error as to the characteristics of the individual, such as error in the genetic load, sexual ability, personal data, civil status, etc.), although in the Polish literature opinions on the identity of the other party also include errors about the characteristics of the individual if they adhere to the nature of marriage as for example the error of sexual orientation - this view is controversial),
 - illegal threat.
- b) or the power of attorney for marriage was defective art. 16 of the Family and Guardianship Code.

2. SOLEMNIZATION OF THE MARRIAGE

2.6. RIGHTS AND OBLIGATIONS OF THE PARTIES

At the end of this part of the discussion, it should be pointed out that the marriage rights and obligations arise when the marriage is conducted. According to the short and concise provision of art. 23 of the Family and Guardianship Code: *Spouses have equal rights and obligations in marriage. They are obliged to live together, for mutual help and fidelity, and to work together for the good of the family they have founded.* In the context of the cited regulation, the doctrine is quite clear in favor of accepting that the individual rights and obligations of spouses regulated in the text of art. 23 of the Family and Guardianship Code differ materially from the classical rights and obligations resulting from civil law relationships. Because of the moral and moral character of the law and the obligations of marriage, they are permeated by a certain special character. Its meaning can be summarized in three concise points, which will be presented below.

- I.** First and foremost, marital rights and obligations stemming from the content of art. 23 of the Family and Guardianship Code are mutual, but there is no equivalence. For example, in the case of severe disability, one of the spouses is obliged to help only the other spouse, although he cannot count on any equivalent. This demonstrates that the provisions of the Family and Guardianship Code derogate from the civil-law principle of free-market trade, i.e. service for service. Another example: spouses are obliged to be faithful to one another, but the betrayal of one of them does not release the other spouse from the obligation of fidelity. If the betrothed spouse also betrays, then he is exposed to a complicity in the distribution of life at a possible divorce, which puts him on an equal footing with the spouse so far betrayed. In other words, the duty of fidelity is non-equivalent - it exists independently of the actions of the other spouse.
- II.** No forced execution, or lack of direct sanction. For example, betrayal does not expose your spouse to any civil, criminal, or fiscal penalties. However, it must be remembered that family law is very often operated by an indirect sanction, such as a cheating spouse is exposed to divorce, the sole guilty in the distribution of life and, consequently, the possible payment of alimony.
- III.** The property elements are closely intertwined with non-material elements. For example, a married couple may rely on money, spiritual support, or just personal endeavors.

Further provisions of the Family and Guardianship Code introduce further powers and duties of the spouses. These include:

- obligation to cohabitation (art. 23 of the Family and Guardianship Code),
- fidelity (art. 23 of the Family and Guardianship Code),
- mutual assistance (art. 23 of the Family and Guardianship Code),

- co-operation for the good of the family (art. 27 of the Family and Guardianship Code),
- spouse surname rights (art. 25 of the Family and Guardianship Code),
- obligation to meet the material needs of the family (art. 27 of the Family and Guardianship Code),
- the right to use an apartment (art. 28 [1] of the Family and Guardianship Code)
- spouse's representation right (art. 29 of the Family and Guardianship Code),
- and the obligation to bear joint liability for commitments to current family needs (art. 30 of the Family and Guardianship Code).

Discussing individual rights and responsibilities is beyond the scope of this study. It should be noted, however, that all of these rights and obligations in Title I, Chapter II, are universal in nature, i.e. they apply independently of the spouses of the matrimonial system.

2. SOLEMNIZATION OF THE MARRIAGE

3. STATUTORY JOINT PROPERTY REGIME

Due to the origin of the foundation, we distinguish the following property regimes:

- I. The statutory system (preferred by the legislator) is created by the sole fact of conducting marriage, unless the spouses have previously entered into prenup or the basis for the establishment of a compulsory regime does not exist between them. In the Polish legal system, the statutory regime, in accordance with art. 31 of the Family and Guardianship Code is the so-called joint property.
- II. The contractual arrangement arises as a result of marriage by a spouse of a matrimonial agreement (commonly known as a prenup), which can take place both before and during the marriage. On the grounds of art. 47 of the Family and Guardianship Code, we can distinguish the following contract structures:
 - extended community,
 - limited community,
 - full resolution,
 - separation of property with the balance of acquisitions.
- III. The compulsory system is characterized by the fact that it arises in strictly defined by the family and care codes of exceptional circumstances and consists in the fact that spouses are created compulsory property separation. As a consequence, each spouse has their own property. We can distinguish, the following cases of the establishment of a forced regime on the basis of art. 52 and next of the Family and Guardianship Code:
 - determination of separation,
 - the decision to totally or partially incapacitate a spouse,
 - bankruptcy declaration of a spouse.In addition, a compulsory regime may be imposed:
 - upon request of one of the spouses for important reasons
 - and upon request of the creditor of one of the spouses if he or she is satisfied that the satisfaction of the enforceable title requires the division of common property.In all the above cases, the compulsory regime cannot be replaced by a contractual regime arising out of prenup. However, there are two exceptions:
 - If a forced marriage was made upon request of one of the spouses for important reasons, then the spouses can "get along" and conduct a matrimonial agreement.
 - if the compulsory system has been created upon request of the creditor, the spouses may conclude a prenup: after the division of the joint property, after the creditor has secured the collateral after satisfaction of the claim, or after three years from the establishment of the resolution.

3. STATUTORY JOINT PROPERTY REGIME

The statutory system will be the first one to be discussed. According to art. 31 of the Family and Guardianship Code: At the time of the marriage, there arises between the spouses, by operation of law, the joint property regime (...). The wording of the passage is quite clear - the mere conclusion of a marriage is sufficient for the statutory system of property relations between spouses to arise, and without any other additional activities, statements or declarations. In this system there are three property masses:

- **the personal property of the husband,**
- **the personal property of the wife**
- and **the common property of the spouses**, which is covered by the so-called joint property.

The term used for **joint property** should be distinguished from **joint co-ownership**. These concepts are not identical. Co-ownership refers to a physically existing, concrete and individualized individual (such as a car, real estate, computer, suit), whereas joint property is a broader term - it refers to the wealth - including a variety of components that can include both things as well as other common property rights e.g. limited property rights, copyrights or claims. Art. 31 §1 of the Family and Guardianship Code not accidentally refers to the date of joint property, not co-ownership. Despite this, these terms will be used interchangeably in further considerations of the work.

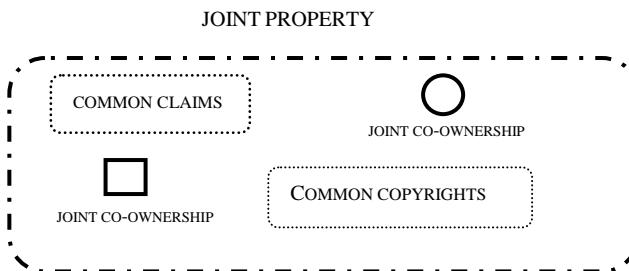


Fig. 6. Joint property.

Another point: Polish civil law distinguishes two varieties of co-ownership:	
"ordinary" referred to as co-ownership in fractional parts governed by the Civil Code (and fractional commonality as a broader concept),	as well as joint co-ownership occurring among others in the matrimonial system of joint property (and joint property as a broader concept).
At the first of the co-ownership indicated, four important characteristics can be distinguished: <ol style="list-style-type: none">1. Self-contentedness of co-ownership. This community exists independently, that is, its existence is not dependent on the existence of any other legal relationship, as is the case with joint co-ownership (joint property).2. Share character. In the literature it is empha-	The statutory co-ownership is based on completely different principles. First and foremost, its main feature is that it cannot, apart from the commonality in fractional parts, exist independently. The existence is dependent on the existence of another - basic - legal relationship, namely the relation of marriage. As long as marriage lasts, there can be statutory co-ownership. At the moment of the cessation of mar-

<p>sized that the "ordinary" community is a fractional community, and it is to be understood that each of the co-owners has a certain share of commonality. It should be noted that the share of each of the co-owners, for example by one-third, does not mean that each of the co-owners has a specific share of the common thing (e.g. one third). As it follows from the essence of the "common" co-ownership, each co-owner is entitled to the exclusive right in full and regardless of the share held. Participation refers only to the degree to which co-owners participate in income and benefits derived from common things, burdens, expenses, and is relevant in the event of possible shared ownership and the allocation of certain amounts in the case of sale of common stock.</p> <p>3. Transferability of shares. Another issue: With fractional ownership - "ordinary" there is the possibility of transferring shares. In the light of art. 198 of the Civil Code: <i>Each of the co-owners may dispose of their shares without the consent (as well as knowledge) of the other co-owners.</i></p> <p>4. Possibility of division of common assets. The legislator in this type of co-ownership also allows the possibility of sharing common property. According to art. 21 sentence 1 of the Family and Guardianship Code: Each of the co-owners may demand cessation of co-ownership. In this case, the co-owners participate in the sharing of the common item in relation to the amount of share held, with possible compensation payments.</p>	<p>riage, co-ownership ceases. However, property and hitherto shared communion are subject to begin the rules of fractional commonality. In addition, art. 35 of the Family and Guardianship Code give some of the special features of cognitive communion that will be indicated below.</p> <ul style="list-style-type: none"> • The spouses' share is not defined and therefore it is impossible for the spouses to dispose of them in the course of their life. • Prohibition of the division of common property at the time of the duration of the community. • Prohibit the spouse's commitment to the regulation by future participation.
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

In the light of the above findings in the statutory joint property regime, the common property of the spouses is the centralized place. It is important for the rest of the discussion to find out what common property is, and what objects belong to it. Expressed in art. 31 §1 of the Family and Guardianship Code, the rule is relatively straightforward –the property which has been acquired by one or both spouses during the lifetime of the commonality of property, is included therein. In the second paragraph, the legislator points to several examples (the most important of which are: remuneration for work and income from other paid work).

Quoting art. 31. § 1 of the Family and Guardianship Code: *§ 1. At the time of the marriage, there arises between the spouses, by operation of law, the joint property regime (statutory property regime) covering property acquired by both spouses or by*

3. STATUTORY JOINT PROPERTY REGIME

either one of them while the marriage lasts (joint property). Property not covered by the joint property regime is the personal property of each spouse. § 2. Joint property includes in particular: 1) remuneration received for work and income from other gainful activities of each of the spouses, 2) income from joint property as well as the personal property of each of the spouses, 3) amounts collected in an account or an employee pension fund for either of the spouses.

Returning to the discussion of common assets, it is worth noting that the assets are exclusively assets. Debts are therefore not included in the joint communion, though undoubtedly the common property is encumbered.

According to art. 33 of the Family and Guardianship Code, the personal belongings are included in the items listed below has arisen.

- property acquired before the statutory joint property regime arose,
- property acquired by inheritance or donation, unless the bequeather or donor decides otherwise,
- joint property rights that are fully covered under separate provisions,
- property that is used exclusively to satisfy the personal needs of one of the spouses,
- rights that cannot be transferred and may only be exercised by one person,
- items received as damages for bodily injury or triggering a health disorder, or as compensation for harm suffered; this does not include disability benefit due to an injured spouse through a partial or total loss of earning ability or an increase in needs or a decrease in prospects for the future,
- debts concerning remuneration or other gainful activities by one of the spouses,
- property received as a prize for individual achievement by one of the spouses,
- the copyrights and related rights, industrial property rights and other rights of a creator,
- property acquired in exchange for elements of personal assets, unless particular provisions state otherwise.

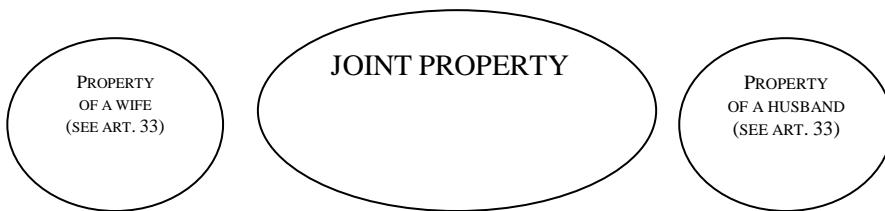


Fig. 7. The statutory system.

3.1. MANAGEMENT OF COMMON PROPERTY

Going back to the problem of common property, one should recognize another issue closely related to the community, namely its management. There is a problem; under what conditions should spouses manage joint property? Prior to January 20, 2005, there was a division into the activities of ordinary management, which could be undertaken by each spouse himself and activities beyond ordinary management, to which the consent of the other spouse was required. Unfortunately, in the context of the existing division, there have been many practical difficulties with distinction; When the activity was part of the normal management and when it was not. Consequently, the Act of 17 June 2004 (effective date: 20.01.2005) simplified the rules of management of common property by breaking down the division into ordinary management and activities beyond the ordinary management. Currently, there are completely different rules. Art. 36 § 2 provides for the simple principle that each spouse has the right to self-management of common property. Of course, such broadly understood autonomy could constitute a significant danger for the spouses themselves. Therefore, the legislator has envisaged four restrictions.

- a) Obligation of mutual information - art. 36 of the Family and Guardianship Code (sanctions are art. 40 and art. 52 of the Family and Guardianship Code).
- b) Right of objection - art. 361 of the Family and Guardianship Code.:
§ 1. A spouse may object to the management of joint property intended by the other spouse, except for everyday matters or matters intended to meet the ordinary needs of the family, or matters undertaken as part of gainful activity.
- c) Inability of the spouse to manage the property of another spouse for business purposes - art. 36 §3 of the Family and Guardianship Code.
- d) Obligation to obtain consent for activities indicated in art. 37 § 1 of the Family and Guardianship Code under pain of nullity. So, the rule is self-reliance, except - the so-called obligatory consent granted by the other spouse. Art. 37 §2 of the Family and Guardianship Code indicates activities requiring consent:
 - o any legal action leading to the disposal, the encumbrance or the purchase of real estate or the right of perpetual usufruct, as well as leading to real estate being given for use or for exploitation,
 - o any legal action leading to the disposal, the encumbrance or the purchase of property rights concerning a building or premises,
 - o any legal action leading to the disposal, the encumbrance or the purchase or tenancy of a farm or an enterprise,
 - o any donation of joint property, except for small donations normally accepted.

It is worth noting that art. 37 of the Family and Guardianship Code indirectly still concerns activities beyond the scope of ordinary management of common property, but the reservation that they were explicitly stated in the law. The revolutionary nature of this provision consists in the fact that all doubts about whether the spouse's consent is or is not required, have been removed.

3. STATUTORY JOINT PROPERTY REGIME

3.2. OBLIGATION LIABILITY OF THE SPOUSES

Another issue that needs to be addressed is the liability of the spouses for obligations. It is known from the preliminary findings that the presence of a joint property is inextricably linked to the problem of establishing the rules on which the spouses manage it, but that is not the end of the problem. A separate issue is the question of whether, and if so, when, the spouses will be jointly responsible for the liabilities they have committed. Of course, it cannot raise doubts about the situation in which the debt was taken as a party both spouses. Then they will respond as a party to the whole of their property, both personal wealth and common property. But what if only one of the spouses enters the obligation? Naturally, his responsibility as a debtor's personal asset is undisputed. The question is only whether the creditor will also be able to reach the common property. Prior to January 20, 2005, there was a principle of unlimited liability for the spouses of common property. This rule applied in the case of commitments entered into as ordinary management and in the case of commitments entered into with the consent of the other spouse in activities beyond the ordinary management. Of course, the law allowed, in certain situations, partial or even total exemption of the property in common with the claimant's claim, as art. 41 §3 of the previous wording provided that it would be possible in particular cases to limit or exclude joint property liability, but this was an exceptional solution and required the debtor's spouse to be active in court. A totally different solution was adopted in the current regulations.

According to the content of art. 41§1 of the Family and Guardianship Code, the rule is relatively simple; The way to the common property opens the asset of the other spouse to the creditor. According to the above provision: if the spouse has entered into an obligation with the consent of the other spouse, the creditor may also claim the common property. In case of absence of such consent of the spouse, the debtor is solely responsible for his personal property and for the assets of the joint property indicated in art. 41 §2 of the Family and Guardianship Code.

The indicated consent is defined as optional consent, although the obligatory consent of art. 37 of the Family and Guardianship Code also produces the effects of optional consent. In the absence of obligatory consent, of the response, the responsibility for the obligation falls, of course, since the legal act is not valid at all.

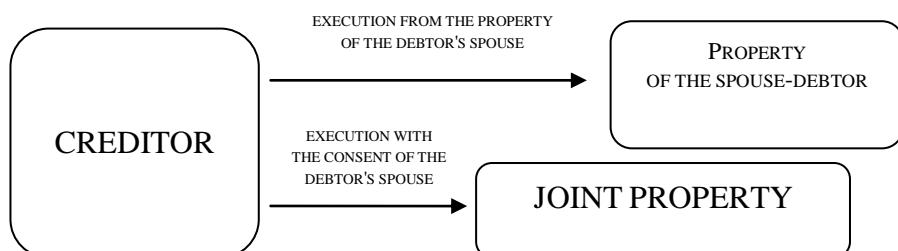


Fig. 8. Obligation liability of the spouse.

4. CESSATION OF STATUTORY JOINT PROPERTY REGIME

Turning to the problem of cessation of the joint property, it should be pointed out that this commonality ceases in two ways, i.e.:

- by the fact that the marriage ceases:
 - in the case of divorce,
 - annulment of marriage,
 - or the death of one of the spouses,
- and by the cessation of the commonality, despite the fact that the marriage continues:
 - in the case of a prenup conducted between the spouses introducing, in place of the common system of property, separation of property or financial separation with the compensation of achievements,
 - and also in the event of a compulsory system.

At the cessation of the commonality in all the above cases, two stages can be distinguished.

- i. Conversion of the commonality into a fractional one (compare art. 46 of the Family and Guardianship Code, art. 1035 of the Civil Code and art. 195 and next of the Civil Code). In the light of art. 43 of the Family and Guardianship Code married couples have equal shares.
- ii. Division of common property. After the transformation mentioned above, the spouses can request division.

In case of divorce and separation, however, it is not necessary, because the court can make a division at the request of the spouses immediately at the divorce or separation case, as long as it does not cause excessive length of proceedings. Otherwise (i.e. in the event of a dispute that would slow down the proceedings) everything proceeds according to the traditional order, i.e. first the commonality ceases (through the divorce or separation) and the court deals with the division of property only in the next proceeding.

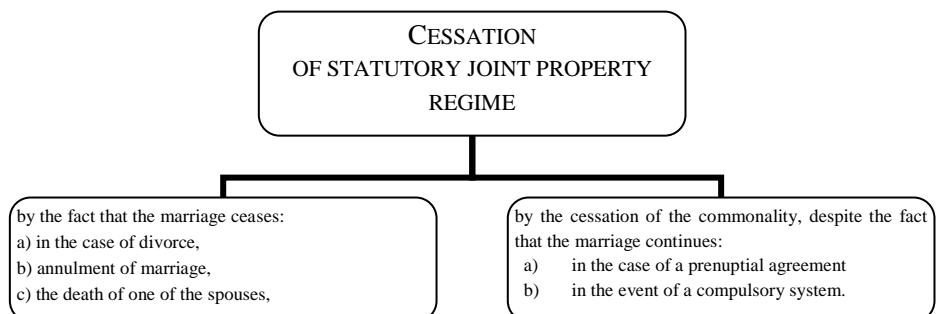


Fig. 9. Cessation of statutory joint property regime.

4. CESSATION OF STATUTORY JOINT PROPERTY REGIME

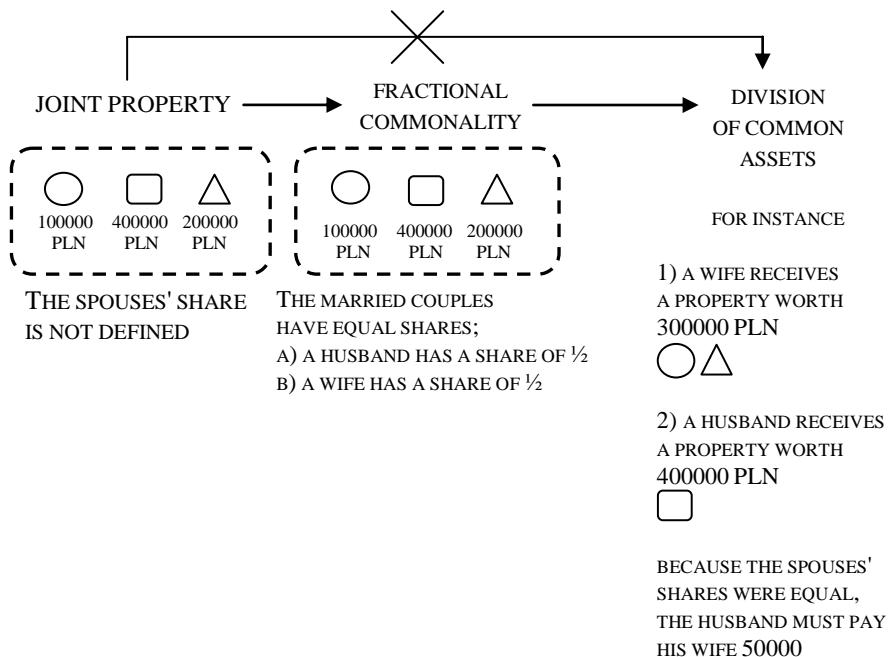


Fig. 10. Conversion of the commonality into a fractional one.

The system of statutory joint-ownership binding under the Act may also cease as a result of the concluded prenup (before as well as during the marriage). According to art. 47 §1 of the Family and Guardianship Code: *Spouses may bring claims against other parties on an agreement on marital property, if its conclusion and nature were known to the parties.*

Such an agreement may precede the conclusion of a marriage. In the quoted regulation, four specific features of a matrimonial property agreement can be found:

- it is primarily a named contract,
- concluded in the form of a notarial deed
- introducing the matrimonial property regime,
- and finally, having the character of an organizational agreement.

The last point requires a wider comment. This is because the question arises as to what should be understood by an agreement of an organizational nature. The response is: the point is that the main purpose is to regulate - organize - the property relationships between spouses for the future. Or otherwise: such an agreement is to serve only in the introduction of a contractual system. A matrimonial property agreement never leads to a change in the legal regime of a specific right or subject. It does not lead to shifting of assets from one property to another. It does not decide about the present assets but organizes the belonging of such objects for the future. However, one exception can be made, namely that spouses may, during their marital relationship, modify the system

of commonality in such a way that, as a result of the conclusion of the prenup, the spouses decide to extend it. From the content of art. 49 of the Family and Guardianship Code in connection with art. 33 point 1 of the Family and Guardianship Code it follows that it is possible in such an agreement to transfer assets from personal property to the mutual property, being acquired before the establishment of the joint property regime. In other cases, a prenup should be treated separately from the agreement transferring assets from one piece of property to another one. However, it is not impossible to conclude these two contracts simultaneously in one act. It should be emphasized that in the light of the Polish law, agreements transferring property components between property masses are admissible and they do not require a form of a notarial deed - because they are not inter-personal and are referred to as the so-called unnamed contracts.

4. CESSATION OF STATUTORY JOINT PROPERTY REGIME

5. TERMINATION OF MARRIAGE

The family and legal relationship of marriage ceases naturally in the case of the loss of one of the spouses. In the majority of world's legal systems, it is also acceptable to dissolve a marriage during the life of the parties by a ruling of the court or other authorized body on the principles of divorce and annulment of marriage. By the way, the topic of separation will be discussed.

On the basis of applicable law in Poland when adjudicating separation and divorce, the court examines whether there are positive premises between the spouses as well as whether there are no negative premises. Regarding separation, among the positive premises, a complete breakdown of life is mentioned, and negative premises are contradictory to the good of minor children or contradiction with the principles of social coexistence.

In the case of a divorce, positive and lasting terms include a permanent and complete decay of life, and negative premises mention a contradiction with the good of minor children, or contradiction with the rules of social coexistence, and cannot be demanded by the spouse being solely responsible for the divorce. The legislator adopts two exceptions from that last negative premise, namely, divorce is permissible if the other spouse consents to divorce, or the spouse's lack of consent for divorce would be contrary to the principles of social coexistence.

In the context of divorce and separation, explain what life together is. According to the literature and jurisprudence, it consists of three ties, i.e. a physical, spiritual and economic bond. In cases justified by the statement of completeness of the breakdown of life, it is enough to break only the physical and spiritual bond in the presence of an economic bond.

In the divorce decree, the court not only decides on the dissolution of marriage, but also on other disputable matters that were expressly indicated in the Act. There are also such decisions that the court makes at the request of the spouse or both spouses - optional - often depending on the circumstances of the particular case. Nevertheless, there is a statutory calculation here, which may be considered on the motion of the divorce court, which is not at all the court's jurisdiction and is not taken into consideration. All these decisions will be presented below in seven concise items.

1) Termination of marriage (falls out of office) This decision is actually the core of the divorce decree, because the remaining decisions depend on it. At the same time, it is important that the court does not specify the date of the dissolution of the marriage in the divorce decree, since it is always the moment when the divorce decree becomes final.

2) Fault for the breakdown of life (falls out of office). According to art. 57 §2 of the Family and Guardianship Code, deciding on the dissolution of the marriage, the court decides which of the spouses is to blame in the breakdown of the marriage. At the same time, you can indicate three situations: when only one spouse is guilty of the breakdown of the marriage, both spouses are guilty or both are innocent. There

5. TERMINATION OF MARRIAGE

are no other possibilities; in particular, it is forbidden to include the so-called graded guilt in the sentence. Upon a compliant request of the spouses, it is permissible not to adjudicate on guilt (the court is bound by the spouses' application). In this case, both spouses are treated as innocent of the breakdown of their lives.

3) Parental authority over joint minor children (falls out of office). The decisions regarding parental authority over joint minor children are made regardless of the arrangements for the fault of the breakdown of their lives. What is more, the court, while determining parental authority, does so in relation to each of the children individually. The divorce court is in principle a substitute for a guardianship court, which means that the court can take any decision regarding parental responsibility if it deems it appropriate. Practice suggests that the most frequent decisions are:

- Granting full parental authority to both spouses (the court adjudicates *ex officio* or on the grounds of a parental agreement)
- Granting full parental authority to one of the spouses with the limitation of the other. It must be remembered at the same time that the restriction in the power of one of the spouses is not a sanction for inappropriate education. Rather, it is based on the fact that the spouse with whom the child will not live by the nature of things cannot fully exercise authority. Continuing: the court determines the scope of rights and obligations in terms of custody over the child (co-deciding on change of place of residence, travel abroad, treatment, choice of school and extra-curricular activities) as well as the way of contact with the child. It never decides about the custody of the child's property, as this is only exercised by the spouse who has full power (*a contrario* art. 58§ 1a of the Family and Guardianship Code). Of course, this translates into the scope of the statutory representation of each parent towards the child after the divorce.
- Restriction of parental authority pursuant to art. 109 of the Family and Guardianship Code. In contrast to the restriction of parental authority under art. 58 of the Family and Guardianship Code (when parents live separately), this restriction occurs in case of a threat to the child's good. It basically means that the court issues orders ordering specific behavior towards the child. The parent partially loses the authority in the scope of the issued order. On the basis of art. 109 of the Family and Guardianship Code, the court may properly issue any ordinance it deems necessary; both of an ad hoc nature (e.g. drawing blood from a child under the age of thirteen) and permanent (e.g. permanent supervision of a probation officer, placement of a child in a care and educational institution). Parents limited according to art. 109 of the Family and Guardianship Code retain full parental authority in the remaining scope.
- Suspension of parental authority (art. 110 of the Family and Guardianship Code).
- Deprivation of parental authority (art. 111 of the Family and Guardianship Code).

- 4) Alimony for common minor children (it falls out of office). This decision applies only to minor children, whereas adults can claim maintenance by an independent action under art. 133 of the Family and Guardianship Code. In a divorce decree the court usually orders a maintenance allowance in a given amount from one of the spouses, obliging the other spouse to incur other expenses. It may also happen that the court imposes a maintenance allowance on both spouses in a specified amount, in cases when both spouses lose direct guardianship over the child - that is, when it is entrusted to another person.
- 5) Resolving a flat or a house (it is taken out of office or upon request).
 - The decision on how to use the shared flat - art. 58§2 of the Family and Guardianship Code (falls out of office). At the same time, it is not important who has the legal title to the flat; the point is only that if the spouses live together in some place, then for the duration of this state, it is necessary to determine the rules according to which this joint residence is to take place. Usually, the court assigns a specific part of the apartment to each of the spouses for exclusive use, indicating the common use area, i.e. the hall, kitchen and bathroom. When it is impossible or not advisable, the court may determine the manner of using the flat through other decisions, such as a prohibition on placing third parties in the flat. Decisions of this type are, by definition, temporary - ad hoc. For example, a wife lives with her husband in a flat that is his sole property. As it is easy to guess after a divorce, the husband will, with a large degree of probability, be going to dismiss his ex-wife. In such a state of affairs, before a judgment on eviction is made, the divorce court determines the joint use.
 - Spouse eviction order – art. 58§2 of the Family and Guardianship Code (falls upon request). The general rule is that in the divorce decree, the court does not deal with eviction - this is the subject of other proceedings, which may be brought by the spouse only after the marriage ceases. Nevertheless, there are situations such that during the marriage, one of the spouses "prevents from living with him due to abusive behavior". In such cases, the other spouse can file an eviction request at the divorce proceedings stage, provided that he has a legal title to the flat together with the spouse being evicted or at his exclusive property. In the first case, the evicted spouse does not lose the title to a shared flat - it can be the subject of subsequent proceedings for the division of property.
 - The division of the flat, if possible, or the granting of a flat to one of the spouses, if the other spouse consents to it without providing a replacement and substitute room (art. 58 §2 of the Family and Guardianship Code). This decision is made only on a compliant application of both spouses and concerns only the flat to which both spouses have a common legal title (may also apply to the common lease, which in the case of division of property is excluded). It is also possible to award appropriate repayments under art. 211 and 212 of the Civil Code. The last point: in the case of a decision regarding the division of a

5. TERMINATION OF MARRIAGE

shared flat (house), this flat is not the subject of any proceedings for the division of property.

- 6) Maintenance for the benefit of the other spouse (it is requested by the eligible spouse). The principle is simple; a spouse who is solely guilty of marital breakdown, can never demand maintenance. In other cases, two situations should be distinguished (art. 60 of the Family and Guardianship Code)
- o An innocent spouse from an innocent one or a guilty spouse from another guilty spouse can claim maintenance only when being in a state of scarcity.
 - o On the other hand, a spouse who is innocent may claim maintenance from a guilty spouse only if, as a result of a divorce, his financial situation has significantly deteriorated (hence he must not be in a state of scarcity).
 - o The maintenance obligation on the grounds of art. 60 of the Family and Guardianship Code expires whenever a spouse who is entitled to maintenance conducts another marriage. In addition, in the case of alimony awarded from an innocent spouse to an innocent spouse, this obligation expires five years after the divorce, unless due to exceptional circumstances the court extends the five-year period at the request of the right holder.
- 7) The division of joint property (is made upon request). After the end of marriage, the commonality is transformed into a fractional community, which can be broken down in non-contentious proceedings on the basis of art. 566-567 of the Civil Procedure Code. However, if the spouses agree on the method of splitting, the court may decide on the matter in the divorce judgment.

Turning to the matter of marriage annulment, as per art. 17 of the Family and Guardianship Code, marriage can be annulled only for reasons provided for in the provisions of the Code. These are: marital impediments, defects of the declaration of marrying, defective power of attorney. In the cases indicated above, marriage is fully valid until it is annulled. As a consequence, the annulment judgment is of a constitutive nature and, what is important, it acts retrospectively (*ex tunc*), i.e. as if the marriage had never existed. This results in, among others; return to the previous surname, loss of the status of a spouse, affinity also ceases, etc. Provision of art. 21 of the Family and Guardianship Code predicts two exceptions from the rule being indicated. The point is that the marriage annulment ruling does not apply retroactively to the joint marriage of the spouses and to the property relationships that existed between the spouses. Continuing: the marriage annulment verdict resembles a divorce decree in its structure. The only really significant difference is that the court, instead of fixing guilt in the breakdown of the marriage, determines the good or bad faith of each of the spouses, i.e. when the marriage was known they were incompatible with the legalization of marriage. On the other hand, it seems to be impossible for the spouses to submit an application for abandoning the settlement determining good or bad faith.

The provisions of the Family and Guardianship Code indicate certain cases when a marriage being subject to annulment disappears, i.e. it has been cured. Then the possibility of annulment of the marriage is eliminated and the union acquires full legality in the light of law. Among the reasons leading to the cure, one can mention:

- 1) in the case of marital obstacles:
 - o reaching the required age - art. 10 §3 of the Family and Guardianship Code,
 - o termination of legal incapacitation - art. 11§3 of the Family and Guardianship Code,
 - o cessation of adoption - art. 15§3 of the Family and Guardianship Code,
 - o the end of the first marriage, as a result of which the bigamic marriage lost its bigamic character - art. 13§3 of the Family and Guardianship Code,
- 2) in the case of defects in the statement on conducting the marriage
 - o the expiry of a period of 6 months from the defect being determined
 - o or the expiration of a period of 3 years from the date of the marriage,
- 3) on the power of attorney
 - o establishing a joint life - art. 16 sentence 2 of the Family and Guardianship Code.

According to art. 18 sentence 1 of the Family and Guardianship Code, a marriage annulment cannot be demanded after its cessation. The second sentence of the cited regulation, however, permits a certain exception, namely kinship and bigamy. On the basis of art. 19 of the Family and Guardianship Code a marriage annulment is also possible after it has been terminated if the spouses have filed a lawsuit.

The provisions on annulment of marriage do not deal with the matter of capacity to be sued, and therefore do not determine against whom the claim is to be brought. This means that the general provisions in this case apply, according to which such an action is filed against both spouses, and if one spouse is the plaintiff, then it is against the other spouse.

The capacity to sue is held by:

- o each of the spouses - with marital obstacles except bigamy and kinship (cognition),
- o anyone who has a legal interest in it - on bigamy and kinship (cognition),
- o only one strictly indicated spouse, namely:
- o only the principal with defective power of attorney,
- o only the spouse who has made a faulty statement about the conduction of marriage,
- o at the age barrier, only a woman when she is pregnant.

5. TERMINATION OF MARRIAGE

6. MATERNITY

The relationship between parents and the child is a relation defined as the relation of kinship. From such a basic - source - family and legal relation arise, among others; the relationship of parental authority, the maintenance relationship, the right to contact the child, the right to surname after parents, as well as many other rights and obligations, the indication of which in this place is not advisable. It should be remembered at this point that the sole proof for the existence of paternity and motherhood is the birth certificate of a child in the light of art. 4 of the Law on Civil Status Records. In other words, until the father or mother is revealed in the child's birth certificate as the child's parent, from the point of view of the law of any rights and obligations of the parents towards the child, and vice versa, there can be no question.

According to the Latin paroemia - *mater sepner certa est*. This truth is confirmed by the regulation of art. 61⁹ of the Family and Guardianship Code - according to which: The mother of the child is the woman who gave birth to it. The legislator could not, however, ignore such situations, when the mother of the child is unknown, or in a birth certificate, there is a woman who is actually not the mother. The practice knows many such cases, among others:

- in situations of abandoned children (in the so-called windows of life or in trashcans, etc.),
- in situations of intentional misleading of the head of a registrar's office, when another woman reported birth and pretended to be a mother (e.g. to circumvent the adoption regulations),
- or in situations of confusing children in the hospital.

In the indicated examples, it is necessary for the Family and Guardianship Code to introduce a regulation concerning, firstly, the establishment of motherhood, and secondly, the denial of motherhood.

The determination of motherhood occurs in two modes;

a) ordinary mode. In the event that the child is actually born and the child's birth certificate is not prepared, motherhood is determined in the ordinary mode. It essentially consists in the fact that the head of the registry office draws up the birth certificate after receiving a written notification about the birth of a child issued by a doctor, midwife or a health care unit (art. 40 of the Law on Civil Status Records). As reported by M. Nazar; the necessary condition for preparing the birth certificate in the above way is to show the fact of birth (delivery). It is not enough, therefore, to show kinship, because a woman claiming to be a mother could actually be only a gamete female giver, and the same birth took place by another woman (in the light of art. 61⁹ of the Family and Guardianship Code the child's mother is the woman who gave birth to it).

b) proper mode. It is a case regulated in art. 61¹⁰ §1 of the Family and Guardianship Code, according to which:

6. MATERNITY

- if a birth certificate of the child of unknown parents was established (i.e. with the use of fictitious names and surnames),
- or the motherhood of a woman inscribed (so far) in the birth certificate of a child as his mother has been denied,

it is then possible to demand that the mother be established in court. This will also concern further considerations. The principle is therefore simple, to determine motherhood, one must first deny the motherhood of the woman entered in the birth certificate of the child (if it is entered).

The action for establishing motherhood is performed;

- a child against the mother, and if the mother is dead, against the guardian appointed by the guardianship court (art. 61¹⁰ § 2 of the Family and Guardianship Code),
- mother against child (art. 61¹⁰ § 3 of the Family and Guardianship Code).
- prosecutor - (if the good of the child requires it or protection of the public interest) against the mother of the child, and when she is dead against the probation officer appointed by the court. (art. 61¹⁶ of the Family and Guardianship Code and art. 454 of the Civil Procedure Code). By prosecution, the prosecutor indicates as a plaintiff the child for whom the suit is performed.
- deadlines for bringing an action for the determination of motherhood;
- the child is not bound by any dates, (if the child has filed a lawsuit for establishing motherhood during his lifetime, after his death, the descent of his descendants' motherhood can be claimed within 6 months from the date of the decision to suspend the motherhood proceedings)
- the mother of the child is connected with the date when the child reaches the age of majority,
- prosecutor - he is not bound by any deadlines, he can also bring an action even after the child's death.

According to the generally accepted view, it is not possible to demand the establishment of motherhood before the birth of a child (art. 61⁹ of the Family and Guardianship Code).

Determining motherhood combines the matter of denial of motherhood, which in accordance with art. 61¹² §1 of the Family and Guardianship Code follows; *If the birth certificate of a child is entered as a mother, a woman who has not given birth to a child (...).* In the light of art. 61⁹ of the Family and Guardianship Code it is not permissible to deny maternity of a surrogate mother. The indicated provision clearly states that; The mother of the child is the woman who gave birth to it. In connection with the above, a substitute mother, colloquially referred to as a surrogate, is treated equally with the biological mother when making an entry in the child's birth certificate. The fact that another woman, i.e. the genetic mother gave her female gametes, does not really matter. In practice, there are occasional surrogate offers for services consisting in receiving an in vitro fertilized ovum of a woman into a female uterus of another woman who can not become pregnant herself or can not report her pregnancy. The role of a surrogate mother

comes down to reporting pregnancy, childbirth and giving it to parents. Of course, if, according to the "agreement", the substitute mother renounces parental authority over the born child problem basically does not exist and everything takes place "in private" between the parties. The situation becomes more complicated when a surrogate mother senses a maternal instinct and changes her mind - not willing to give up her child. In this case, the genetic mother can not rely on a previously concluded civil law contract in this regard, because such a contract could be recognized on the grounds of art. 5 of the Civil Code as an abuse of subjective right.

An action for denial of motherhood can be filed by:

- a child against a woman inscribed in the birth certificate as his mother, and when she is dead, this is against a probation officer appointed by the court (art. 61¹²§2 of the Family and Guardianship Code),
- the biological mother of a child against a woman inscribed in the birth certificate of a child as his mother and against a child, and if that woman is dead - against a child (art. 61¹²§3 of the Family and Guardianship Code),
- A woman entered on the birth certificate of a child as his mother against a child (art. 61¹²§4 of the Family and Guardianship Code),
- a man entered in the birth certificate as a father, (i.e. the husband of a woman entered on the birth certificate as a mother or her partner, who recognized the child or in relation to whom the paternity was judged) against the child and the woman, and if she is dead - against the child (art. 61¹²§5 of the Family and Guardianship Code),
- a prosecutor - (if the child's good or protection of the social interest so requires) against a woman inscribed in the birth certificate as a child's mother and against a man whose paternity was established with regard to motherhood, and if they are not alive, against the court appointed curator (art. 61¹² of the Family and Guardianship Code and 454 of the Civil Procedure Code).
- Deadlines for bringing an action for denial of motherhood;
- a child within 3 years of reaching the age of majority (art. 61¹⁴ of the Family and Guardianship Code)
- a biological mother of a child or a woman entered on the birth certificate as the mother of a child within 6 months of the date of birth of a child (61¹³ §1 of the Guardianship Code),
- a man entered on the birth certificate of a child within six months from the day on which he learned that a woman enrolled in the child's birth certificate is not the child's mother but no later than the child reaches the age of majority (art. 61¹³§2 of the Family and Guardianship Code),
- prosecutor - he is not bound by any dates other than the fact that he can not bring an action for denying motherhood after the death of a child (art. 61¹⁶ of the Family and Guardianship Code).

By way of interpretation, it is unacceptable to deny motherhood before the birth of a child.

6. MATERNITY

7. PRESUMPTION OF PATERNITY AND DETERMINATION OF PATERNITY

As can be seen from the above - determining the origin of the child does not cause particular difficulties for the mother. Pregnancy and childbirth is an easily visible event. Establishing paternity, on the other hand, may involve much larger problems, hence the Family and Guardianship Code provides for three possible ways of its investigation, i.e.:

- by the presumption that the child comes from the mother's husband,
- by acknowledging the child by the father with the simultaneous consent of the child's mother,
- as well as by determination through court proceedings.

It is only after applying one of the three methods of investigation that the child's father can be disclosed in the child's birth certificate.

The regulations of the Family and Guardianship Code, as the first method of determining paternity – the least strenuous one - provide for presumption. In essence, it means that a child born in a marriage is treated (by the head of the civil registry office) by assumption as a child coming from the mother's husband. Of course, the Family and Guardianship Code had to foresee a way to disprove such a presumption if it were to lead to false statements. Hence, the institution of judicial denial of paternity.

Presumption of paternity follows:

- when the child was born during the marriage,
- and if the child was born before the end of 300 days from the cessation or annulment of the marriage, or from the decision between the spouses of separation.

However, the presumption does not work in the case of:

- 300 days from the cessation or annulment of marriage, as well as 300 days from the separation,
- conclusion of a new marriage within 300 days; a conflict arises between two conflicting presumptions, which the legislator decides in art. 62§2 of the Family and Guardianship Code in favor of the presumption relating to a new marriage. The literature emphasizes that art. 62§2 of the Family and Guardianship Code can also be used in the case of a bigamous marriage,
- when the mother's husband is a different man than the one who recognized paternity. This is a situation where one man recognized paternity in a child's fetal life, i.e. before birth (which is possible under art. 75 § 1 of the Family and Guardianship Code), and then another man just before the birth of a child married a child's mother.

The presumption of the child's origin from the marriage is used by the head of the civil registry office when drawing up the civil status record.

The presumption indicated in art. 62 of the Family and Guardianship Code is rebuttable. It is possible to bring an action for denying paternity, which in the light of art.

7. PRESUMPTION OF PATERNITY AND DETERMINATION OF PATERNITY

67 of the Family and Guardianship Code is to show that the mother's husband is not the father of the child. It is worth recalling the content of art. 68 of the Family and Guardianship Code according to which; *denying paternity is not allowed if the child was conceived following a medical procedure for which the mother's husband agreed.*

Taking into account the above-mentioned regulation, it should be stated that denying paternity will be possible, among others if:

- as a result of heterologous insemination, the child was conceived in a woman who secretly used a so-called sperm bank,
- as a result of inoculation of an embryo resulting from the use of a foreign egg cell and foreign sperm, a child was conceived in a woman who secretly consented to alternative motherhood, the so-called surrogacy.

In conclusion, as the literature says to the denial of paternity, two premises must be followed:

- positive - demonstrating the absence of paternity,
- negative - (the occurrence of which precludes denying paternity) consisting in giving consent to fertilization by means of a medical procedure.

An action for the denial of paternity can be performed by:

- the husband of the child's mother against the mother of the child and the child, and when the mother is dead, against the child (art. 66 of the Family and Guardianship Code) - within 6 months from the day in which he learned about the birth of the child, but not later than the child reaches the age of majority (art. 63 of the Family and Guardianship Code)
- the mother of the child against her husband and child, and when the husband is dead, it is against the child (art. 69§2 of the Family and Guardianship Code) - within 6 months from the birth of the child (art. 69§1 of the Family and Guardianship Code),
- the child - against the mother and her husband, and when the mother is dead, against her husband, but if the mother's husband is dead, then the action is brought against the probation officer appointed by the court (art. 70§2 of the Family and Guardianship Code). A child may bring an action for denying paternity up to three years after reaching the age of majority (art. 70 § 1 of the Family and Guardianship Code).
- a prosecutor - against the child, mother and husband, and if the husband is dead, then against the probation officer appointed by the court (art. 454 §2 of the Code of Civil Procedure). In case of initiating the case by other persons and in accordance with art. 457 of the Code of Civil Procedure, the prosecutor is notified about the date of the hearing.

In the light of art. 71 of the Family and Guardianship Code, it is unacceptable to deny fatherhood after the death of a child. In addition, by interpretation, it is assumed that it is not permissible to deny paternity before the birth of a child.

8. RECOGNITION OF A CHILD AND DETERMINATION OF VOIDANCE OF CHILD ACKNOWLEDGMENT

The second method of determining paternity is the recognition of an "extramarital" child by the child's father with the simultaneous consent of the mother. The way to reverse the effects of such recognition is the institution of determining the voidance of child acknowledgment.

Recognition of a child is possible if:

- there is no presumption that the mother's father is the mother's husband (art. 72§1 of the Family and Guardianship Code),
- or, when the presumption is overthrown (art. 72§1 of the Family and Guardianship Code),
- as well as the case for establishing paternity (art. 72§1 of the Family and Guardianship Code) - the recognition of the child is not admissible when the paternity proceedings are pending.

In the light of art. 73 of the Family and Guardianship Code, recognition of paternity takes place through:

- submission of a statement by the man from whom the child comes from,
- and the mother simultaneously, or within 3 months, confirms that the man is actually the father of the child.

In the light of the above, two statements are necessary which make up the whole recognition of paternity. What is more, the mother can also make a statement in the event of the death of the child's father. It should also be noted that statements made at the time of recognition of paternity are statements of knowledge and not declarations of will - therefore recognition of paternity is not a legal act.

If the declarations are filed with the civil registry office, then in the light of art. 14 of the Law on Civil Status Records, it is possible for each of these declarations to be filed with another civil registry office.

The literature agrees that it is not possible to accept a statement when a man at the same time declares that he is not the child's father (but, for example, he wants to be the father). It is also not possible to recognize the child by the mother's husband, against whom a sentence denying paternity has been issued.

Recognition takes place before:

- any head of the civil registry office (art. 14 of the Law on Civil Status Records, art. 73 § 1 of the Family and Guardianship Code),
- the district court of the applicant's domicile, where the recognition of paternity may also take place before an improper court in accordance with general provisions - in such a case the competent court is to be recognized (art. 581 § 1 in conjunction with art. 508 of the Code of Civil Proceedings and art. 73§4 of the Family and Guardianship Code).

8. RECOGNITION OF A CHILD AND DETERMINATION OF VOIDANCE OF CHILD...

- a Polish consul or a person appointed to perform the function of consul, if the recognition concerns a child whose both parents or one of them are Polish citizens (art. 73 of the Civil Code).
- a notary public and persons indicated in the text of art. 74 §1 of the Family and Guardianship Code in the case of danger directly threatening the life of a child's mother or a man from whom the child comes from.

Dates in which it is possible to recognize paternity;

- an unborn child can be considered (art. 75§1 of the Family and Guardianship Code),
- the child can be recognized until they reach the age of majority (art. 76§1 of the Family and Guardianship Code),
- a child that died before reaching the age of majority within 6 months from the date on which the man making the recognition statement learned about the death of the child can be considered, but not later than the day when the child reached the age of majority (art. 76 §2 of the Family and Guardianship Code).

If paternity is recognized, there may be two situations:

- the conditions necessary to recognize the child have not been met (e.g. no declarations of recognition of paternity were filed on time) - which causes the so-called non-existent recognition of paternity, at which it is required under art. 189 of the Code of Civil Procedure, bring action for establishing non-existence of recognition in order to introduce changes in the birth certificate in this respect,
- there is a discrepancy in the recognition of paternity with biological reality - in such a case it is possible to determine the ineffectiveness of recognition of paternity.

An action for determining the ineffectiveness of the child's recognition is performed by:

- a man who recognized a child against a child and mother, and when the child is dead, it is against the child itself (art. 82 §1 of the Family and Guardianship Code),
- the mother of a child who has confirmed paternity against a child and the acknowledging man, and if he is dead, then solely against the child (art. 82§2 of the Family and Guardianship Code),
- a child against the acknowledging man and against his mother and when he is dead, only against the acknowledging one, and when he is dead he is against the probation officer (art. 82§3 of the Family and Guardianship Code),
- prosecutor against persons indicated in art. 454§3 of the Family and Guardianship Code. It should be remembered that the prosecutor in the light of art. 457 of the Code of Civil Procedure is notified about the action brought before the child's ineffectiveness.

Dates in which it is possible to determine the ineffectiveness of recognition of paternity:

- a man within 6 months from when he learned that he is not the father of the child until the age of majority of the child, whereas the 6-month period counts only from the birth of the child, if the recognition took place before this fact (art. 78 §1 and 80 of the Family and Guardianship Code),
- the mother of the child, on the dates indicated above (art. 79§1 and 80 of the Family and Guardianship Code),
- a child up to 3 years since reaching the age of majority (art. 81 sentence 2 of the Family and Guardianship Code),
- the prosecutor is not bound by deadlines.

After the child's death, an action may be brought to determine the ineffectiveness of the child's recognition; if the recognition itself occurred after the death of the child in the situation specified in art. 76§2 of the Family and Guardianship Code. Such an action may be brought by both the man who recognized the child and the mother of the child (art. 83§2 of the Family and Guardianship Code), as well as the prosecutor (art. 86 sentence 2 of the Family and Guardianship Code).

9. COURT DETERMINATION OF PATERNITY

According to art. 454 of the Code of Civil Procedure, judicial determination of paternity is carried out in separate proceedings. In the light of art. 72 and next of the Family and Guardianship Code, the proceeding occurs when:

- there is no presumption that the child comes from the mother's husband,
- the child's father did not want to make a statement to recognize the child,
- or the father made such a statement, but the child's mother did not agree to acknowledgment, it is then possible to determine paternity in court.

The judicial establishment of paternity may be demanded by:

- a child against the alleged father of a child, and if he is dead against a probation officer appointed by a court (art. 84 §2 of the Family and Guardianship Code), [pursuant to art. 84§4 of the Family and Guardianship Code, Upon the death of a child who had initiated legal action, the establishment of paternity can be asserted by the child's descendants.]
- the mother of the child against the alleged father of the child, and if he is dead, then against the probation officer appointed by the court (art. 84§2 of the Family and Guardianship Code), provided that the child lives and has not reached the age of majority (art. 84 § 1 sentence 2 of the Family and Guardianship Code),
- the alleged father of the child against the child and mother, and when the child is dead, it is against the child (art. 84 § 3 of the Family and Guardianship Code) provided that the child lives and has not reached the age of majority (art. 84 § 1 sentence 2 of the Family and Guardianship Code),
- a prosecutor based on art. 86 of the Family and Guardianship Code, as long as the child is alive.

According to art. 85§1 of the Family and Guardianship Code: *It is presumed that the father of the child is the one who was with the mother of the child no earlier than in the three hundredth, and not later than in the one hundred and eighty-first day before the birth of the child.*

The regulation indicated above makes it easier for the party to prove paternity. Instead of citing such evidence as proof of a group blood test, DNA evidence and other, you only need to prove the fact of coexistence in the so-called conceptual period. According to the view of jurisprudence, in the case of a woman with several men, it is unacceptable to sue several men simultaneously. In addition, in the light of art. 85§2 of the Family and Guardianship Code; *The fact that mother (...) (in the conceptual period) was also associated with another man, may be the basis for rebutting the presumption only when circumstances indicate that the fatherhood of another man is more likely.*

10. PARENTAL AUTHORITY

From the earliest times, a newborn human being who came into the world, required care from at least one of his parents due to physical and mental immaturity. Originally, among others on the basis of ancient Roman law, parental authority had the character of a private legal relationship, because it treated the minor one in an instrumental manner, allowing even for its sale or for being enslaved. What is more, in its initial form, it stretched in time unlimitedly until the father's death. Of course, such a model has gradually evolved over the centuries. At present, the child's wellbeing is in the first place. Moreover, the need to replace the concept of parental authority with others, such as parental custody, parental care or parental responsibility, is increasingly raised. In particular, it was pointed out that the term parental authority puts too much emphasis on the **parental authority** towards the child.

The emergence of parental authority occurs from the moment of birth. The controversy in written sources raises only the question of the legal position of the **nasciturus**, that is, the conceived child, though not yet born. In the doctrine, surrogacy gained a view that lacks the existence of parental authority as to a conceived child that is still unborn. The arguments include the following:

- in some cases, legal abortion of a *nasciturus* is allowed in Polish law, which obviously contradicts the construction of parental authority aimed at the good of the child,
- the institution of a trustee, indicated in art. 182 of the Family and Guardianship Code, to protect the future rights of an unborn child would be unnecessary if the parents had parental authority,
- moreover, the lack of establishing the origin of the *nasciturus*, i.e. the absence of a birth certificate before birth, makes it impossible to determine the parents of the child, i.e. the subjects of parental authority.

The view presented above is, however, controversial and the Polish legal doctrine also presents different views as it presumes parental authority over an unborn child.

According to art. 92 of the Family and Guardianship Code: *The child remains under parental authority until the age of majority*. Parental authority over a minor persists until they reach the age of majority, i.e. until they reach the age of eighteen (art. 10 § 1 of the Civil Code). The second paragraph of this article introduces a breach of this rule, indicating that the marriage is reached by the age of majority. This provision applies to a woman, but also to the illegal marriage of a minor male.

Pursuant to art. 93 (1) of the Civil Code, parental authority is vested in both parents. The legislator requires that parents should have **full legal capacity, which is a fundamental condition here**. It is worth noting here that according to art. 96§2 of the Family and Guardianship Code: *Parents who do not have full legal capacity participate in the current custody of a child and in his upbringing, unless the guardianship court decides otherwise for reasons of the child's best interests*. In accordance with art 97 of

the Family and Guardianship Code: *§ 1. If the parental authority is granted to both parents, each of them is obliged and entitled to perform it.* § 2. However, parents shall decide jointly on significant matters of the child; in the absence of an agreement between them, the guardianship court decides. In accordance with the content of art. 94 § 1 of the Family and Guardianship Code, if one of the parents is dead or is not fully capable of legal acts, the parental authority is vested in the other parent. The same applies to an accident when one of the parents was deprived of parental authority or when his parental authority was suspended. If neither parent is entitled to parental responsibility or if the parents are unknown, then legal protection is established for their child.

As already indicated in the beginning, parental responsibility is the entirety of parents' rights and duties towards the child, aimed at giving him due care and safeguarding his interests. Elements that create parental responsibility are:

- custody over the child,
- custody (management) over the child's property,
- and representation.

The Family and Guardianship Code on the subject of custody over the child in a laconic manner speaks, without creating a detailed catalog of rights and obligations included in the child's person. It is assumed that in a certain simplification, the care of a person includes raising and managing a child, where:

- upbringing should be understood as shaping the personality of the child, and in particular his / her emotional attitudes, view of the world and system of values, compulsiveness, skills of coexistence in the family and beyond.
- management should be understood as a means of education, i.e. as a concern for the child's environment, regulating and supervising the child's lifestyle, deciding on the choice of education, participation in extra-family life, selection and control of reading and information received by the child with the participation of the media.

When passing to the custody of the child's property, the matter of the management of the child's assets is of particular importance. The management can be divided into:

- ordinary management activities that parents can undertake themselves
- and activities that exceed the ordinary, for which the consent of the guardianship court is required.

The last element of parental authority is the representation of a child, which is executed in a form of statutory representation. This is clearly indicated by the content of the provision of art. 98 § 1 of the Family and Guardianship Code, according to which: *Parents are statutory representatives of the child (...).* The doctrine emphasizes at the same time that the representation of a child is basically an element that allows to truly supervise the child's person and property externally, i.e. in relations with third parties. The statutory exception is the provision of art. 98 § 2 of the Family and Guardianship Code, according to which none of the parents can represent a child:

10. PARENTAL AUTHORITY

- in legal acts between children who remain under their parental authority,
- and in legal acts between the child and one of the parents or his spouse.

In the context of the matter of representation, one should bear in mind that the scope of representation made by the parent is determined by the age of the minor.

In relation to a minor who is under thirteen, the scope of his representation by parents is by far the widest. The rule is that the legal act carried out by such a child is invalid. What is more, it cannot be confirmed by parents later. An exception is indicated in art. 14 § 2 of the Civil Code, pursuant to which, if a minor who is under the age of thirteen has entered into a contract that is commonly contracted in minor current affairs of everyday life, such a contract becomes valid as of the moment of its performance, unless it involves grossly harming the person incapable of legal action.

The situation of a child with limited legal capacity – i.e. a child who is over thirteen - looks different. Generally speaking (subject to exceptions provided for in the Act) pursuant to art. 17 of the Civil Code, the legal act of a child over 13 years of contracting a liability or regulation where the law requires the consent of a legal representative for its validity. If in the case of a unilateral act, such consent must be expressed before the act itself is performed, because otherwise such activity will be invalid (art. 19 of the Civil Code), in the case of bilateral activities it is possible to confirm it later. It should be noted that a parent consenting to a child's activity may need a court's authorization if the act he or she consents to is at the same time an activity that goes beyond the ordinary management.

In some cases, a minor with limited legal capacity has full legal capacity. These are:

- activities belonging to contracts commonly concluded in small current matters of everyday life –art. 20 of the Civil Code,
- activities consisting in the disposition of the child's earnings, unless the court guarding for important reasons decides otherwise—art. 21 of the Civil Code,
- activities concerning objects given to the child for free use (the exceptions are legal actions, which cannot be performed according to the law by the sole consent of a statutory representative (art. 22 of the Civil Code),
- in accordance with art. 22 § 3 of the Labor Code, a person limited in legal capacity may, without the consent of a statutory representative, establish an employment relationship and perform legal acts that relate to this relationship (if the employment relationship is contrary to the good of that person, the statutory representative may terminate the employment relationship).

Due to different life situations, the institution of parental authority may undergo various transformations. First of all, it is programmed to last only for a certain period of time, and also the content of parental authority itself may change within its duration. Therefore, it is possible to divide certain situations that cause the cessation or modification of parental authority to:

- 1) events and facts independent of their subjects:
 - obtaining a limited legal capacity by the child,
 - obtaining full legal capacity by the child,
 - death of a child or death of a parent
- 2) changing rulings:
 - rulings changing the marital status of a parent or child,
 - rulings on the incapacitation of the parent,
 - rulings directly interfering with parental authority:
 - a decision depriving parental authority, [Pursuant to art. 111 § 1 of the Family and Guardianship Code, if the parental authority can not be exercised because of a permanent obstacle or if the parents abuse their parental authority or grossly neglect their duties towards the child, the guardianship court will deprive the parents of parental authority].
 - a judgment suspending parental authority, [Pursuant to art. 110 § 1 of the Family and Guardianship Code in the event of a temporary impediment in the exercise of parental authority, the guardianship court may decide to suspend it].
 - a decision restricting parental authority:
 - due to separation of parents (divorce of the spouses – art. 58 § 1, legal separation of spouses – 61³ §1, factual separation of spouses and separation of parents who are not spouses – art. 107 of the Family and Guardianship Code),
 - because of the threat to the good of the child (art. 109 of the Family and Guardianship Code),
 - due to orders issued on the basis of the Act of October 26th, 1982 on proceedings in juvenile cases (art. 2 of the Act when a juvenile shows signs of demoralization or when a minor has committed a punishable act).

In the context of the matter of parental authority, it should be pointed out that there is a whole range of rights and obligations occurring on the parent-child line, which do not result in any way from parental authority but are a derivative of the legal family relationship. Among them, there are several groups of such rights or duties.

- The obligation to support each other - art.87 of the Family and Guardianship Code,
- The child's duty to contribute to the needs of the family if it achieves its own income from work - art. 91 of the Family and Guardianship Code,
- The right and duty of parents to contact with children – art. 113 of the Family and Guardianship Code. It should be pointed out that the right of access to children can also be restricted or prohibited, but this is done regardless of the decisions regarding parental responsibility,
- Maintenance obligation (alimony),
- Marital status of the child,
- Name of the child.

10. PARENTAL AUTHORITY

11. FOSTER CARE

As part of the previously discussed matter of parental responsibility, it was mentioned that it comprised of custody over the person, looking after the property and representation of the child. In some cases, instead of or next to parental custody, the level of state interference in the care of a child and property is determined by the child's specific situation, or more accurately by a deviation from a recognized canon of proper care. Taking into consideration the above remarks, it is possible to distinguish the following types of custody following M. Andrzejewski:

- 1) Parental custody,
- 2) Foster custody,
- 3) Successive custody - occurring in the case of adoption.

Custody is a legal instrument that is applicable in cases where all forms of assistance to the parents of the child have turned out to be unreliable, as well as when the good of the child requires to receive such care immediately (art. 112³ of the Family and Guardianship Code). The current regulations regulate the forms of helping the family in such a way that interference in the care is directly proportional to the actual needs of the child. Therefore, if it is possible, the first step should be to leave the child to his natural family, and only when it is not enough to apply one of the foster care forms. The matter of foster care is regulated by art. 32 paragraph 1 of the Support for the Family and the System of the System of Care Act. In order to fully illustrate the functions that should be covered by foster custody, for the purposes of this study, the following division of foster custody should be performed:

- 1) foster custody leading to return to the natural family,
- 2) and foster custody leading to adoption.

1) The first type of foster custody is to only be heard in cases of temporary inability to ensure proper existence for the child, ultimately leading to the return of the child to the parental custody. It is dictated by numerous advantages of a pragmatic nature, connected with the possibility of reintegration of the natural family, and thus rebuilding its stability. A child is cared for if the parents: have full parental authority (e.g. in cases where the child's referral to foster care occurred at their request without the court) or are limited by the court, or suspended by the court.

2) The second type of foster custody applies to children who are completely deprived of parental custody, i.e. parents deprived of natural parental authority, they are unknown, they are dead or have renounced parental authority, or there is no contact with them, and it is known that they are alive. Here, the activity is directed at leaving as soon as possible the child's foster custody and finding an adoptive family.

As it can be seen, despite the apparent uniformity of foster care, depending on the child involved, it has a completely different role.

Another matter is the matter of the so-called divided custody, that is not applicable in all cases of foster custody, but only in a situation in which parents retain their parental authority or are limited in it. The point is that the child is partly subject to pa-

11. FOSTER CARE

rental custody and partly to foster custody. Obviously, natural parents are still in charge, but they are still in charge of the child and the foster family is responsible for representation of the child.

The purpose of foster care is to look after the child, while he carries out legal custody;

- parent / parents, if they retain their parental authority or are limited in it.
- legal guardian of the child in other cases (see 14. Custody).

The currently adopted provisions on foster custody have introduced a wide range of its forms. In a dichotomous way, you can divide them into:

- family foster custody, which is considered in the first place (including foster families)
- and institutional care (e.g. care and education centers).

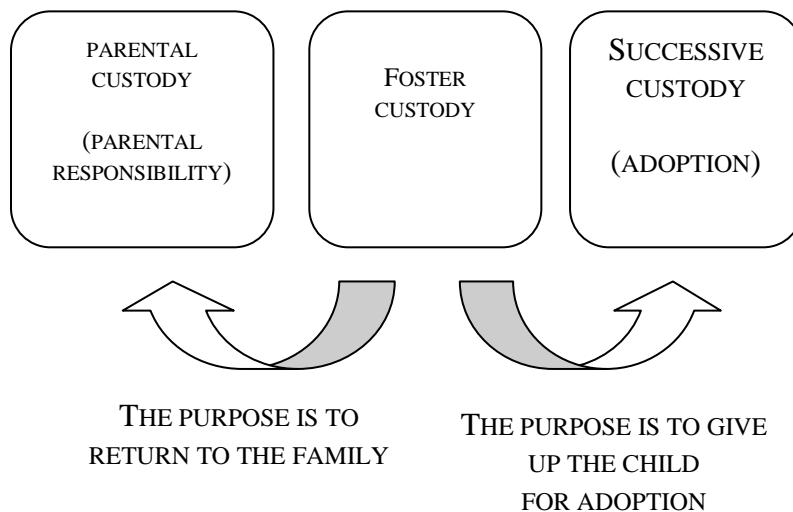


Fig. 11. Foster care.

12. ADOPTION

Adoption has been shaped in the Polish legal order based on the principle of the well-being of the child, which has been expressed *expressis verbis* by the legislator in the content of art. 114 § 1 of the Family and Guardianship Code, according to which: *A minor person can only be adopted for his well-being.* The normative structure of adoption is to imitate the parental relations that are based on blood ties.

1. Premises on the side of the adopted one
 - minority (upon his consent when he turned 13),
 - child's well-being,
 - when adopting a foreign child, pre-adoption contact with a child,
 - prohibition of adoption after the death of the adopted one - discontinuation of proceedings.
2. Premises on the side of the adoptive
 - application to the adopting court –art. 585 of the Civil Procedure Code,
 - full legal capacity,
 - a qualification and training certificate organized by the adoption center (exception - related, related or foster parents),
 - a proper age difference,
 - prohibition of an adopter's decision after the death of the adopter - unless the application was submitted by both spouses and one of them died after fulfilling the conditions of art. 177 §3.
3. Premises on the side of third parties.
 - consent of the other spouse - if only one of the spouses is adopting,
 - consent of the child's legal guardian,
 - consent of natural parents (exception - parents deprived of control, unknown, agreement with parents encounters special difficulties, as well as with parents limited in legal capacity, when special circumstances prevail), this consent takes place either in the adoption proceedings against particular adopting people or as a so-called blanket agreement without indication of adoptive parents - 6 weeks after the birth of the child. The consent may be withdrawn until the decision on adoption becomes valid, but with blanket consent until the application for adoption is submitted.

When talking about the types of adoption, it is necessary to point to the classification based on the subject criterion first. On its grounds, one can distinguish singular adoption, in which there is only one adopter as well as adoption made jointly by the spouses (mutual adoption).

- 1) Singular preparation
 - made by a single person,
 - made by one spouse with the consent of the other,
- 2) Common preparation
 - carried out by spouses simultaneously,

12. ADOPTION

- made by the spouses one by one (different from singular, that adoption by the other spouse does not deny the relationship of the first spouse with the child).
- 3) A special case is the adoption made by the spouse of the biological parent, as it has a singular character, but also the effects of joint adoption.

Due to the effects, the following types of adoption can be distinguished.

- full adoption - without discussing the details, it can be stated in some simplification that this adoption imitates the family relationship, because relationships arise as in a natural family between the adopter and the adopted one (the principle is that in the birth certificate of the child an additional mention of adoption is made, though it is possible to apply to the court to order a new birth certificate for the child)
- incomplete adoption - this is when only the relationship between the adopter and the adopted one is created (an additional mention of adoption is made in the birth certificate)
- complete adoption - called insoluble - or anonymous - it is similar to full adoption and occurs at the so-called permission of a blank mother for adoption. This approach is unsolvable (a new birth certificate is always made).

The adoption procedure can be divided into three stages. The first one in front of the adoption center, where a selection of adopters is made for the adopted one. An appropriate training is provided as well. The next stage is the one before the court that issues the decision on adoption. The final stage is the stage before the head of the civil registry office, who makes relevant mentions in the birth certificate of the child or draws up a new birth certificate of the child, depending on the situation. It should be noted that the practice provides for so-called adoption with indication. It consists in the fact that the biological and adoptive parents "get along" about the handover of the child, and then apply to the court for a decision on adoption. Nevertheless, in such a situation, the adoption center is not omitted, because the court is directing the parties for appropriate training. What is more, the court is not bound by the request of the interested parties.

13. MAINTENANCE OBLIGATION

In contemporary regulations of the Polish maintenance law, one can see a certain element of generally accepted responsibility for family members in isolation from the model of a single generation - a nuclear family. As already indicated (in the first chapter) on the grounds of art. 23 and 27 of the Family and Guardianship Code, a family comprises of spouses and their joint minors or underage children. Meanwhile, the provisions on the maintenance obligation (art. 128-144¹ of the Family and Guardianship Code) do not affect the concept of family at all; they refer directly to a variety of family and family-legal ties.

The maintenance relationship finds its source (by virtue of the itself) in the basic family and legal relationship: kinship, marriage and adoption. However, it can also occur independently of family and legal relations, that is in the case of:

- alimony of the father of a non-marital child against a pregnant mother (art. 141 and 142 of the Family and Guardianship Code),
- maintenance relationship between former spouses (art. 60 of the Family and Guardianship Code),
- maintenance relationship after the dissolution of adoption (art. 125 of the Family and Guardianship Code),

In addition the alimony relation can be relation depending on affinity in case of relations between stepparent and stepchild (see: art. 144 of the Family and Guardianship Code).

According to art. 128 of the Family and Guardianship Code, the obligation to pay maintenance consists in providing means of subsistence and, if necessary (i.e. in the case of children), also on providing education means (art. 135 §2 of the Family and Guardianship Code). The literature and jurisprudence agree that the maintenance obligation may consist in both benefits in cash and benefits in kind. It is also acceptable to fulfill the maintenance obligation through personal efforts. (see chapter 10.1.2, point 3). For example, an adult financially independent child may fulfill his / her maintenance obligation towards an elderly parent by: a cash benefit (e.g. paying for a stay in a nursing home), providing in kind (e.g. providing food, cleaning products, clothing) or through personal endeavors (e.g. inclusion of a parent in the community together with taking care).

- The maintenance relation belongs to the category of bond (obligatory) relations. However, due to the special social significance and the particularly close bond between the parties, it is characterized by many special features.
- This relationship arises ex lege - by virtue of the law itself - regardless of the will of the persons concerned; the maintenance relationship results directly from the act. It is unacceptable at the same time to introduce the maintenance obligation as a result of a civil contract concluded between the parties (e.g., cohabitants).

13. MAINTENANCE OBLIGATION

- The right to maintenance shall not be transferred to heirs. It is explicitly stated in the provision of art. 139 of the Family and Guardianship Code that hereditary persons may be obliged persons, but not by inheritance, but as an obligation on their own, by law. On the other hand, heirs receive validly awarded maintenance installments, which was established as due during the life of the entitled person.
- The right to maintenance is not transferable. Therefore, it is unacceptable, for example, to waive the right to maintenance in exchange for a property received or as a gift.
- Debts cannot be collected from funds obtained as part of a maintenance obligation. (see: art. 833 §6 of the Code of Civil Procedure).

The right to maintenance does not lapse. Therefore, it is possible to demand maintenance at any time as long as there are reasons to do so. A separate issue is the limitation of individual maintenance installments. According to art. 137 of the Family and Guardianship Code: *§ 1. Claims for maintenance lapse after a period of three years. § 2. If the entitled person has outstanding needs from before instituting maintenance proceedings, the court will grant an award of an appropriate amount of money. In justified cases, the court may divide the awarded benefit into instalments.* The second of the indicated provisions is of limited importance, as according to the adopted view, maintenance services serve only to meet current needs. It is unacceptable, therefore, to demand maintenance payments for needs that have already been met in the past. Thus, the provision of art. 137 of the Family and Guardianship Code concerns only two exceptional situations, namely:

- when some unmet needs of a person from the past have remained.
- or when there are outstanding liabilities that have been incurred to meet those needs.

A person requesting alimony can not make a claim against anyone in his family. The provisions of the Family and Guardianship Code indicate a specific order of obligated persons. In principle, four main groups of obligated persons can be distinguished, which will be the subject of presentation in the two following points.

- I. Although no provision mentions it, there is in principle no doubt that the maintenance obligation on the spouse is charged first (art. 27 of the Family and Guardianship Code) and the ex-spouse (art. 130 of the Family and Guardianship Code), and the father of a non-marital child towards a pregnant mother (art. 141 of the Family and Guardianship Code).
- II. The provision of art. 128 of the Family and Guardianship Code provides that: *the obligation to provide means of subsistence, and (...) also means of education (...) burdens relatives in a straight line and siblings*, then the provision of art. 129. § 1 of the Family and Guardianship Code adds that this obligation: *(...) burdens the descendants before the preliminary ones, and the preliminary*

ones against siblings (...). This means that the following persons are the persons liable for alimony in accordance with the above provisions;

- a) Secondly (in relation to point I) there are descendants of the entitled person, i.e. his sons and daughters or grandsons and granddaughters. The content of art. 144 § 2 of the Family and Guardianship Code, according to which: *The child's mother's (stepfather's) husband, who is not his father, may demand maintenance from the child if he contributed to the upbringing of the child, and his demand corresponds to the rules of social coexistence. The same entitlement applies to the wife of the child's father (stepmother) who is not the child's mother.* According to the cited regulation, a stepfather or stepmother, similarly to the biological father or mother of the child, may demand maintenance from the child.
- b) Thirdly, the maintenance obligation is on the pre-empowered, i.e. on his parents, grandparents or great-grandparents (assuming they are independent). At this point, it is necessary to reach out to the content of art. 144 § 1 of the Family and Guardianship Code on the grounds of which: *The child may demand maintenance from the husband of his mother (stepfather) who is not his father if it corresponds to the rules of social coexistence. The same entitlement applies to the child in relation to the wife of his father (stepmother) who is not his mother.* The regulation referred to gives the child the right to claim maintenance not only from his biological parents but also from their spouses, i.e. from their stepfather or stepmother.
- c) In the fourth place, the maintenance obligation is on the siblings of the right holder. However, it should be remembered that pursuant to art. 134 of the Family and Guardianship Code: *In relation to siblings, the obligation to provide maintenance may be avoided if it would involve excessive damage to the obliged person or his/her immediate family.*

In accordance with applicable regulations, in the case of points II (above), the following rules should be applied:

- the maintenance obligation is charged to relatives closer to the degree before the next step (art. 129 § 1 of the Family and Guardianship Code),
- in the case of relatives who are in the same degree, the maintenance obligation encumbers them in proportion to their earning capacity and property (not as it was in the Family and Guardianship Code of 1950).

It should be indicated that those people are legitimate and potentially liable persons. Whether specific authority and a specific obligation arise, depends on specific premises on the eligible party as well as on the obligated side.

- 1) Premises and scope of maintenance obligation on the eligible party. According to art. 133 § 2 of the Family and Guardianship Code: (...) *only*

13. MAINTENANCE OBLIGATION

those who are in a state of inadequacy are entitled to maintenance. In other words, the basic normative premise on which the alimony obligation arises is a **shortage**. Thus, there is no possibility of satisfying their own material and intangible needs being necessary for life. In this case, the entitled person may direct the maintenance claim. The question is only about the extent to which it is obliged to comply with the obligation imposed on it. A person in a state of deprivation can not demand satisfaction of all needs and whims. According to art. 135 §1 of the Family and Guardianship Code: *The scope of maintenance depends on the legitimate needs of the entitled person (...).* Justifiable needs are those whose satisfaction eliminates the state of deprivation. It should be mentioned, however, that poverty is a kind of rule in the Family and Guardianship Code. The legislator allows two exceptions in this respect.

- Children - **they can claim maintenance without the need to show deprivation.**
- Spouse - **also can claim maintenance regardless of deprivation.**

The situation changes in case of divorce:

- An innocent spouse may claim maintenance from an innocent spouse only if he is in **a state of need**.
- A guilty spouse may claim maintenance from a guilty spouse only if he is in **a state of need**.
- On the other hand, a spouse who is innocent may claim maintenance from a guilty spouse only if **the property situation of the innocent one has significantly deteriorated as a result of a divorce**.

2) Premises and scope of the maintenance obligation on the obliged party. According to art. 135 § 1 of the Family and Guardianship Code: *The scope of maintenance is dependent (...) on the economic and property capacity of the obliged one.*

14. CUSTODY

The concept of custody means care and concern for a person in need of help. This help may be provided, among others:

- as part of social care, where a disadvantaged individual is granted financial support while providing basic material goods,
- or by taking real care, consisting in admission to the flat, ensuring maintenance, and therefore real actions aimed at improving the life situation of the helpless unit.

In the Family and Guardianship Code, another kind of care is indicated, referring to the whole custody of the person and property of the child, with the simultaneous right and duty to represent it. This is called legal care, as it results from the legal title granted by the court guardian. According to art. 145 and 175 of the Family and Guardianship Code, legal custody is established for a minor who is deprived of parental custody and for a person being completely incapacitated. The emergence of care over minors, its content and expiration will be characterized in short four points. Then, on the basis of comparison, care will be provided regarding the completely incapacitated person.

1) The provision for establishing care and appointing a guardian:

- Establishing legal protection - in the light of art. 570 of the Code of Civil Procedure takes place *ex officio* in non-litigious proceedings. In accordance with art. 572 §1 of the Code of Civil Procedure, everyone who knows the event justifying the initiation of proceedings *ex officio*, is obliged to notify the guardianship court about it. The following events can be included:
 - natural orphanhood - when both parents are dead or unknown
 - social orphanhood - when both parents are alive, but do not have full legal capacity or their parental authority has been lost or suspended.

In other words, it is a case where the child does not remain under the parental authority of at least one of the parents - then the court is always obliged, without any exceptions, to issue a ruling on the establishment of the so-called legal protection for a child.

- Appointment of a guardian. The Family and Guardianship Code adopted the exercise of care by a single person as a rule. The exception is introduced in this respect by the provision of art. 146 sentence 2, according to which; *The court may entrust the joint custody of the child only to the spouses*. In the light of Polish law, however, it is not allowed to exercise the so-called orphan care. When choosing the right person to become the child's legal guardian, the provision of art. 149 §1 of the Family and Guardianship Code recommends that the court should first follow the instructions given by the father or mother of the child, if they were not deprived of parental authority. This indication can be provided by the par-

14. CUSTODY

ents of the child in every possible way, including in will, in a separate letter or orally. The next group of candidates from which recruitment should be conducted are - pursuant to art. 149§2 of the Family and Guardianship Code - relatives and other persons close to a minor, and therefore related by blood or friendship. When also the court does not choose a guardian among those persons, then - pursuant to art. 149 § 3 of the Family and Guardianship Code – it will ask for the person to be referred to the appropriate unit dealing with foster custody. On the basis of the described issues, the content of art. 148 of the Family and Guardianship Code, which indicates features disqualifying the candidate to be appointed as him a guardian. Among them, you can indicate lack of full legal capacity, deprivation of public rights, parental authority, etc. It should be emphasized that the appointment by the guardian does not require the consent of the guardian, but the courts in practice ask for such consent, which is important from the point of view of the mentee.

- 2) Taking into custody. In the light of art. 152 sentence 1 of the Family and Guardianship Code. Anyone who is appointed as a guardian by the guardianship court is obliged to assume care and in accordance with art. 153 sentence 2 of the Family and Guardianship Code - immediately. Otherwise, the appointed guardian exposes himself to the sanctions indicated in art. 598 §1 of the Code of Civil Procedure (i.e. liability), as well as liability for damage caused by art. 471 of the Civil Code. Only the court, on the basis of art. 152 sentence 2 of the Family and Guardianship Code, may remove the guardian from the obligation to take care. Taking up custody consists in making an appropriate promise before a court.
- 3) Performance of custody. As stated in art. 155 §1 and 2 of the Family and Guardianship Code, the custodian supervises and represents the person and property of the minor child. Normalization in its content resembles provisions relating to parental authority. There are more similarities. For example, art. 159 of the Civil Code providing for an exclusion in the care of minors, seems to recall the content of art. 98 §2 of the Family and Guardianship Code, which refers to the exclusion of parents in the exercise of parental authority. When it comes to the diversity of specially devoted care, the following can be indicated:
 - pursuant to art. 156 of the Family and Guardianship Code, a guardian should obtain permission from the court in all major matters that pertain to the person or property of the child, and not as in the case of parents, only to the activities relating to the administration of the child's property,
 - pursuant to art. 158 of the Family and Guardianship Code, also, in the abovementioned cases, the guardian should inform the minor and partly incapacitated part of the child's parents, if they exercise custody of the current child under art. 96 §2 of the Civil Code,

- in the light of art. 155 §1 of the Family and Guardianship Code that, the guardian is subject to constant supervision of the guardianship court, who may rely on ongoing control (art. 165-167 of the Family and Guardianship Code) consisting, among others, of receiving annual reports of a guardian and accounts from the management of the child's property as well as on incidental control (art. 157 and 168 of the Civil Code). According to art. 157 of the Family and Guardianship Code the court may appoint a guardian if the guardian experiences a passing obstacle - this provision resembles the norm of art. 110 on the suspension of parental authority. However, the regulation of art. 168 of the Family and Guardianship Code refers to the case when the guardian does not care properly, which gives the court the basis for issuing an appropriate order similar to the provisions of art. 109 of the Family and Guardianship Code.
- at the request of a guardian based on art. 168 of the Family and Guardianship Code, a guardianship court may grant remuneration for providing care in the form of one-off or periodic remuneration. In accordance with art. 162 §2 of the Family and Guardianship Code: *Wages are not awarded if the caretaker's workload is insignificant or when the care is associated with the foster family function or complies with the rules of social coexistence.*
- the guardian is not obliged to pay for his pupil, unless he is a person obliged to pay maintenance and this obligation is concretized. *At the same time, as in the case of parents, it can not allocate the surplus from the child's income to meet the family's needs.*

4) Expiration of care. It depends on:

- cessation of custody - as a result of reaching the age of majority by the pupil, as well as in the case of restoration or obtaining parental authority by the child's parents,
- the expiration of the guardian's function without effect of termination of care - what happens in the case of death of a guardian, dismissal by the court upon request or ex officio.

Care for fully incapacitated persons is similar to that of minors, however, it differs in that:

- the proceedings for the establishment of guardianship court are instituted after receiving a legally binding order of incapacitation from the court that declared the incapacitation,
- pursuant to art. 176 of the Family and Guardianship Code, the legislator firstly recommends all spouses of those being incapacitated and then their parents,
- pursuant to art. 177 of the Family and Guardianship Code, care for the incapacitated one lasts indefinitely and ceases only when the incapacitation is revoked or modified from full to partial (meanwhile, the care of the minor is limited in time until the child reaches the age of majority),

14. CUSTODY

- the content of care is different, because it does not include upbringing, but special care for improving the health of the incapacitated person.

Care for the incapacitated is not established when a person between 13 and 18 is incapacitated and when at least one of the parents is alive. If the minor does not remain under the authority of any of the parents, then the protection is established on the grounds of general principles, i.e. "care for minors".

15. GUARDIANSHIP

The common feature of guardianship and custody is to provide care over the person or property of a person who is not able to care for oneself due to legal or factual reasons. An expression of this is the content of art. 172 §2 of the Family and Guardianship Code, according to which: *To the extent not regulated by the provisions that provide for the appointment of a probation officer, the provisions on care shall be applied accordingly to the guardianship, subject to the provisions below.*

Among the differences the following should be indicated:

- guardianship covers the whole of the pupil's affairs, whereas custody concerns a narrow section - mainly in the property area,
- guardianship is permanent, whereas guardianship is established ad hoc,
- guardianship is only for the protection of natural persons, and the guardianship, including legal persons,
- if guardianship is a homogeneous institution - as far as its regulations are concerned, the guardianship is extremely dispersed and diverse,
- the guardian is always the statutory representative of the pupil, while the custodian not always is,
- guardianship arises through the decision of the guardianship court, whereas the guardianship in special cases may be established by other courts or public entities,
- the custodian is always established ex officio, while the guardianship is ex officio or upon request,
- pursuant to art. 179 of the Family and Guardianship Code;

§ 1. The authority of the state that appoints a custodian, grants, at his/her request, appropriate remuneration for acting as a custodian. The remuneration is paid from the income or assets of the person for whom the custodian is appointed, and if the person does not have sufficient income or assets, the remuneration is paid by whoever demanded that a custodian be appointed.

§ 2. Remuneration is not granted if the expenses in relation to the custodian's work are negligible, and the exercise of custodianship meets the principles of social coexistence.

Examples of guardianship types:

- guardianship for the protection of future rights of the unborn child –art. 182 of the Family and Guardianship Code
- a guardianship for partially incapacitated persons –art. 181 of the Family and Guardianship Code
- a guardianship for a disabled person –art. 183 of the Family and Guardianship Code,
- a guardianship for an absent person – art. 184 of the Family and Guardianship Code

15. GUARDIANSHIP

- a guardian replacing a statutory representative - e.g. art. 98 §2 of the Family and Guardianship Code, art. 99, 159 of the Family and Guardianship Code, art. 147 and 157,109, 168 of the Family and Guardianship Code,
- guardians for asset management –art. 102, 109§3 and 168 of the Family and Guardianship Code,
- a guardian for state rights - on the basis of provisions on establishing or denouncing the child's origin,
- procedural guardian of art. 143 of the Civil Procedure Code,
- legal person's guardian –art. 42§1 of the Civil Procedure Code,
- inheritance guardian – art. 666 -668 of the Civil Procedure Code.

FURTHER READING

1. Andrzejewski M., *Domy na piasku. Rzecz o sierocwie i domach dziecka*, Poznań 1997.
2. Andrzejewski M., *Ochrona praw dziecka w rodzinie dysfunkcyjnej*, Kraków 2003.
3. Andrzejewski M., *Prawna ochrona rodziny*, Warszawa 1999.
4. Andrzejewski M., *Prawo rodzinne i opiekuńcze*, Warszawa 2004.
5. Arczewska M., *Kierunki zmian w systemie pieczy zastępczej w Polsce*, POW 7/2009.
6. Arczewska M., *Podstawy prawne organizowania i funkcjonowania rodzin zastępczych w Polsce* [in:] Racław-Markowska M, Legat S. (ed.), *Opieka zastępco nad dzieckiem i młodzieżą – od form instytucjonalnych do rodzinnych*, Warszawa 2004.
7. Arczewska M., *Role sędziów rodzinnych w lokalnym systemie pomocy dziecku i rodzinie* [in:] Trawkowska D. (ed.) *Pomoc społeczna wobec rodzin. Interdyscyplinarne rozważania o publicznej trosce o dziecko i rodzinę*, Toruń 2011.
8. Bagan-Kurluta K., *Adopcja dzieci. Rozwiązania prawne w wybranych państwach*, Białystok 2009.
9. Bagan-Kurluta K., *Przysposobienie międzynarodowe dzieci*, Białystok 2009,
10. Bajor B., Czajka D., Siewkowska M., Szymanek T., *Prawo prywatne międzynarodowe, Komentarz*, Warszawa 2012.
11. Balcerk M., *Prawa dziecka*, Warszawa 1986.
12. Bojrski T., Skrutowicz E., *Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, Warszawa 2011.
13. Brzezińska A., *Intercyzy- umowy małżeńskie*, Warszawa 2006.
14. Damasiewicz A., *Intercyzy i umowy między konkubentami. Klauzule umowne*, Warszawa 2008.
15. Dobrzański B., Ignatowicz J., *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 1966.
16. Dobrzański B., *Władza rodzicielska w projekcie kodeksu rodzinnego i opiekuńczego*, Palestra 1963, no 4.

FUTHER READING

17. Dolecki H., *Ingerencja sądu opiekuńczego w wykonywanie władzy rodzicielskiej*, Warszawa 1983.
18. Dolecki H., Sokołowski T., *Kodeks rodzinny i opiekuńczy – komentarz*, Warszawa 2010.
19. Dyoniak A., *Odpowiedzialność majątkowa małżonków wobec osób trzecich*, Warszawa-Poznań 1980.
20. Dyoniak A., *Pojęcie i ważność małżeńskiej umowy majątkowej*, Studia Prawnicze PAN 1983, no 4.
21. Dyoniak A., *Ustawowy ustroj majątkowy małżeński*, Wrocław 1985.
22. Działyńska M., *Pochodzenie dziecka od małżonków*, Poznań 1987.
23. Faulkner N., *Kodeks rodzinny i opiekuńczy. The Family and Guardianship Code*, Warszawa 2018.
24. Gajda J., *Matka jako podmiot wyrażający zgodę na uznanie dziecka poczętego (art. 77§2 kro)*, *Acta Universitatis Wratislaviensis*, Prawo i Administracja 1993, no XXX.
25. Gajda J., *Przysposobienie w prawie polskim* [in:] P. Kasprzyk (ed.) *Prawo rodzinne w Polsce i w Europie. Zagadnienia wybrane*, Lublin 2005.
26. Gajda J., *Tajemnica przysposobienia i jej ochrona w polskim prawie cywilnym*, Przemyśl-Rzeszów 2012.
27. Gajda J., *Zgoda matki na uznanie dziecka poczętego*, *Przegląd Sądowy* 1994, no 5.
28. Gilewicz R., *Podział majątku wspólnego*, *Rzeczpospolita* 1999, no 22.
29. Gnela B., *Kolizyjna problematyka przysposobienia w konwencjach międzynarodowych* [in:] Ogiegło L., Popiółek W., Szpunar M. (ed.) *Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana*, Zakamycze 2005.
30. Goettel M., *Majątek odrębny małżonków*, Szczytno 1986.
31. Goettel M., *Umowy w prawie rodzinny – zarys koncepcji* w: *Europeizacja Prawa Prywatnego*, Warszawa 2008.
32. Goettel M., *W sprawie charakteru prawnego zgody rodziców na przysposobienie*, *NP* 1991, no 1-3.
33. Gołębiowski K., *Zarząd majątkiem wspólnym małżonków*, Warszawa 2012.

34. Góralski W., Laskowska B., *Separacja małżeńska a prawo polskie*, Studia Płockie 1993, no 21.
35. Górecki J., *Obowiązek alimentacyjny między małżonkami*, Zeszyty Naukowe UJ, Prawo, Zeszyt 4, Kraków 1957.
36. Górecki J., *Unieważnienie małżeństwa*, Kraków 1958.
37. Górecki J., *Władza rodzicielska po rozwodzie*, Studia Cywilistyczne 1969, no 13-14.
38. Górecki P., Stachowiak S., *Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, Warszawa 2007.
39. Górnicz K., *Cywилnoprawne skutki zmiany dłużnika* (maszynopis rozprawy doktorskiej), Wrocław 1974.
40. Górski J., *Wina w rozwodzie a moralność (z rozważań nad zasadami rekryminacji)*, PiP 1965, no 1.
41. Gredka I., *Odpowiedzialność majątkiem wspólnym za zobowiązania jednego z małżonków*, Rodzina i Prawo 2007, no 2.
42. Gromek K., *Kodeks rodzinny i opiekuńczy – komentarz*, Warszawa 2006,
43. Grudzińska M., *Kontakty z dzieckiem*, Warszawa 2000.
44. Grzybowski S., „*Ważne powody*“ jako przesłanka rozwiązania stosunku przysposobienia, Państwo i Prawo 1979, no 6.
45. Grzybowski S., *Charakterystyka prawa aktu uznania dziecka oraz konsekwencje przeprowadzonej oceny*, Nowe Prawo 1957, no 4.
46. Grzybowski S., *Pojęcie i cechy socjalistycznego prawa alimentacyjnego*, Zeszyty Naukowe UJ, Prawo 1957, no 4.
47. Grzybowski S., *Prawo rodzinne*, Warszawa 1980.
48. Grzybowski S., *Przysposobienie całkowite*, Państwo i Prawo 1979, no 2.
49. Gwiazdomorski J., *Alimentacyjny obowiązek między małżonkami*, Warszawa 1970.
50. Gwiazdomorski J., *Przesłanki istnienia obowiązku alimentacyjnego*, Warszawa 1974.
51. Gwiazdomorski J., *Roszczenia matki dziecka pozamążyskiego przeciwko jego ojcu, który nie jest jej mężem*, Ruch Prawniczy Ekonomiczny i Socjologiczny 1974, no 3.

FUTHER READING

52. Gwiazdomorski J., *Rozkład wspólności jako podstawa rozwodu*, Nowe Prawo 1954, no 5.
53. Haak H., *Kodeks rodzinny i opiekuńczy. Komentarz do art. 61⁷-91*, Toruń 2009.
54. Halberda J., *Separacja – wybrane zagadnienia materialnoprawne (przesłanki, skutki)*, Rejent 2001, no 11.
55. Holewińska -Łapińska E., *Orzekanie separacji*, Warszawa 2006.
56. Holewińska-Łapińska E., *Adopcje zagraniczne w praktyce sądów polskich*, Warszawa 1998.
57. Holewińska-Łapińska E., *Nowelizacja norm o przysposobieniu – adopcje zagraniczne*, Monitor Prawniczy 1995, no 11.
58. Holewińska-Łapińska E., *Przysposobienie bez zgody rodziców*, Gazeta Prawnicza 1989, no 11.
59. Holocher J., Soniewicka M., *Analiza prawna umowy o zastępcze macierzyństwo*, Prawo i Medycyna, 2009, no 3.
60. Hube R., *Prawo polskie w 14-tym wieku: ustawodawstwo Kazimierza Wielkiego*, Warszawa 1881.
61. Ignaczewski J., *Małżeńskie ustroje majątkowe. Art. 31-54 kro. Komentarz*, Warszawa 2005.
62. Ignaczewski J., *Pochodzenie dziecka i władza rodzicielska po nowelizacji. Art. 61⁹ – 113⁶ kro. Komentarz*, Warszawa 2009.
63. Ignaczewski J. (ed.) *Rozwód i separacja*, Warszawa 2010.
64. Ignaczewski J. (ed.) *Władza rodzicielska i kontakty z dzieckiem*, Warszawa 2010.
65. Ignaczewski J. (ed.), *Komentarze z wokandy. Komentarz do spraw rodzinnych*, Warszawa 2012.
66. Ignatowicz J., Nazar M., *Prawo rodzinne*, Warszawa 2016.
67. Ignatowicz J., *Nowa forma zawierania małżeństw (art. 10 Konkordatu)*, Przegląd Sądowy 1994, no 2.
68. Jagielski K., *Istota i treść władzy rodzicielskiej*, Studia Cywilistyczne 1963, Tome III.
69. Jagielski K., *Krytycznie o ujęciu władzy rodzicielskiej w projekcie kodeksu cywilnego*, Nowe Prawo 1960, no 11.

70. Jaroszyński A., *W sprawie wspólnego mieszkania małżonków*, Państwo i Prawo 1977, no 3.
71. Jasiakiewicz M., *Uznanie dziecka poczętego*, Nowe Prawo 1984, no 2.
72. Jędrzejek G. *Kodeks rodzinny i opiekuńczy. Pokrewieństwo i powinowactwo. Komentarz do art. 61⁷ – 144¹*, Wyd. Wolters Kluwer, Warszawa 2014.
73. Jędrzejek G., *Intercyzy. Pojęcie. Treść. Dochodzenie roszczeń*, Warszawa 2010.
74. Jędrzejek G., *Prawo rodzinne i opiekuńcze w zarysie*, Warszawa 2011.
75. Jędruch S., *Majątkowa sytuacja małżonków*, Warszawa 1988.
76. Jędrzejek G., *Uwagi do projektu o zmianie ustawy – kodeks rodzinny i opiekuńczy*, SP 2002, no 3.
77. Joachimowska M., *Rodzicielstwo zastępcze: idea, problemy, analizy*, Bydgoszcz 2008.
78. Justyński T., *Prawo do kontaktów z dzieckiem w prawie polskim i obcym*, Warszawa 2011.
79. Kociucki L., *Problem całościowego uregulowania instytucji prawnych służących zastępcej pieczy nad dziećmi*, Studia Prawnicze 1997, no 1.
80. Krzemiński Z., *Separacja*, Zakamycze 2000.
81. Kusczuk A., *Ustawa o wspieraniu rodziny i systemie pieczy zastępczej*, Wrocław 2012.
82. Lutkiewicz-Rucińska A., *Odpowiedzialność majątkiem wspólnym za zobowiązania cywilnoprawne współmałżonka*, Bydgoszcz-Gdańsk 2003.
83. Łączkowska M., *Stosunki majątkowe między przedsiębiorcą i jego małżonkiem w świetle ustroju wspólności ustawowej*, Warszawa 2006.
84. Łukasiewicz J.M., *Kilka słów o stosunkach rodzinno-prawnych podstawowych, zależnych i oderwanych*, Zeszyty Naukowe Uniwersytetu Rzeszowskiego 77, Seria Prawnicza – Prawo 12, Rzeszów 2013.
85. Łukasiewicz J.M., *Małeńska współzależność majątkowa w polskim prawie cywilnym*, Warszawa 2018.
86. Łukasiewicz J.M., Orłowska Z., *Formalno-prawne obowiązki nupturienta wynikające z treści art. 3 kodeksu rodzinnego i opiekuńczego*, [in:] R. Sztychmiler, J. Krzywkowska (ed.) *Jak przygotować do mażeństwa?*, Olsztyn 2013.
87. Łukasiewicz J.M. (ed.) *Instytucje prawa rodzinnego*, Warszawa 2014.

FUTHER READING

88. Machnij M., *Przeważnie za zgodą partnera*, Rzeczpospolita 1998, no 293.
89. Marciak J., *Treść i sprawowanie opieki nad małoletnim*, Warszawa 1975.
90. Mazurkiewicz J., *Uznanie dziecka poczętego*, Studia Prawnicze 1975, no 46.
91. Mróz T., *Zgoda małżonka na dokonanie czynności prawnej w ustroju majątkowej wspólnoty ustawowej*, Warszawa 2011.
92. Nazar M., *Prawa rozwiedzionych małżonków do wspólnie zajmowanego mieszkania*, Warszawa 1988.
93. Nazar M., *Rozliczenia majątkowe konkubentów*, Lublin 1993.
94. Oleszko A., *Dochodzenie roszczeń o świadczenia alimentacyjne*, Warszawa 1990.
95. Panowicz-Lipska J., *Instytucja separacji w polskim prawie rodzinny*, Państwo i Prawo 1999, no 10.
96. Panowicz-Lipska J., *Przysposobienie dzieci* [in:] Smyczyński T. (ed.), Konwencja o prawach dziecka. Analiza i wykładnia, Poznań 1999.
97. Panowicz-Lipska J., *Zgoda na przysposobienie*, Ruch Prawniczy Ekonomiczny i Socjologiczny 1985, no 1.
98. Pęczyk-Tofel A., Tofel M.S., *Przesłanki zawarcia małżeństwa konkordatowego w świetle przepisów Konstytucji*, Przegląd Sądowy 2007, no 7/8.
99. Piasecki K., *Prawo małżeńskie*, Warszawa 2011.
100. Piasecki K. (ed.) *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2006.
101. Piątowski J.S., *Stosunki majątkowe między małżonkami*, Warszawa 1955.
102. Piechocki S., *Przysposobienie dziecka*, Warszawa 1983.
103. Pietrzykowski K., *Zawarcie małżeństwa i przesłanki jego ważności w prawie międzynarodowym prywatnym*, Warszawa 1985.
104. Pietrzykowski K., *Zawarcie małżeństwa i przesłanki jego ważności w prawie międzynarodowym prywatnym*, Warszawa 1985.
105. Plonka E., *Przysposobienie całkowite w prawie polskim*, Wrocław 1986.
106. Pyziak-Szafnicka M., *Umowa majątkowa małżeńska rozszerzająca wspólność ustawową* [in:] Pazdan M., Popiółek W., Rott-Pietrzyk E., Szpunar M. (ed.) *Europeizacja prawa prywatnego, tom II*, Warszawa 2008.
107. Rzonca S.K., *Pojęcie zarządu majątkiem wspólnym małżonków*, Warszawa 1982.

- 108.Safjan M., *Instytucja rodzin zastępczych. Problemy prawno-organizacyjne*, Warszawa 1982.
- 109.Safjan M., *Osamotnione dzieci. Rodziny zastępce i rodzinne domy dziecka*, Warszawa 1983.
- 110.Skowrońska-Bocian E., *Małżeńskie ustroje majątkowe*, Warszawa 2008.
- 111.Skowrońska-Bocian E., *Rozliczenia majątkowe małżonków w stosunkach wzajemnych i wobec osób trzecich*, Warszawa 2005.
- 112.Smyczyński T. (red.), *Konwencja o prawach dziecka, analiza i wykładnia*, Warszawa 1999.
- 113.Smyczyński T., *Alimentacja członków rodziny w świetle systemu ubezpieczenia społecznego*, Wrocław-Warszawa-Kraków-Gdańsk-Łódź 1989.
- 114.Smyczyński T. (ed.) *Prawo rodzinne i opiekuńcze, System Prawa Prywatnego, tom 12*, Warszawa 2011.
- 115.Smyczyński T., *Prawo rodzinne i opiekuńcze*, Warszawa 2018.
- 116.Smyczyński T., *Stosunek alimentacyjny a stosunek zobowiązaniowy*, Ruch prawniczy ekonomiczny i socjologiczny 1985, no 1.
- 117.Sokołowski T., *Powrót dziecka do rodziny bądź fakultatywne pozbawienie władzy rodzicielskiej*, Ruch Prawniczy Ekonomiczny i Socjologiczny 2003, no 3.
- 118.Sokołowski T., Dolecki H. (ed.) *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2013.
- 119.Sokołowski T., *Prawo rodzinne. Zarys wykładu*, Poznań 2013.
- 120.Sokołowski T., *Skutki prawne rozwodu*, Poznań 1996.
- 121.Sokołowski T., *Swoboda intercyzy. Zakres modyfikacji małżeńskich ustrojów majątkowych*, Warszawa 2013.
- 122.Sokołowski T., *Władza rodzicielska nad dorastającym dzieckiem*, Poznań 1987.
- 123.Stecki L., *Udziały małżonków w majątku wspólnym*, Państwo i Prawo 1968, no 8-9.
- 124.Stelmachowski A., *Przysposobienie w polskim prawie rodzinnym*, Warszawa 1957.
- 125.Stelmachowski A., *Wina a zasady współżycia społecznego w procesie rozwodowym*, Studia Prawnicze 1970, no 26-27.

FUTHER READING

126. Stelmaszczuk Z.W. (ed.), *Rodziny zastępcze. Problematyka prawa*, Toruń 2006.
127. Stelmaszczuk Z.W. (ed.), *Współczesne kierunki w opiece nad dzieckiem*, Warszawa 1999.
128. Stojanowska W., *Ojcostwo prawne a ojcostwo biologiczne*, Warszawa 1985.
129. Strzebińczyk J., *Prawo rodzinne*, Warszawa 2016.
130. Strzebińczyk J., *Zawarcie małżeństwa wyznaniowego podlegającego prawu polskiemu*, Rejent 1999, no 4.
131. Sylwestrzak A., *Skutki prawne separacji małżonków*, Warszawa 2007.
132. Szer S., *Prawo rodzinne*, Warszawa 1969.
133. Szer S., *Wina w rozkładzie pożycia małżonków*, Nowe Prawo 1968, no 5.
134. Szpunar A., *Wykonywanie przez małżonków zarządu majątkiem wspólnym*, Nowe Prawo 1967 , no 1.
135. Telusiewicz P., *Zasada wspólnoty małżeńskiej w polskim prawie rodzinnym*, Stalowa Wola 2008.
136. Tryniszewska A., *Ustawa o wspieraniu rodziny i systemie pieczy zastępczej: komentarz*, Warszawa 2012.
137. Walaszek B., *Przysposobienie w polskim prawie rodzinnym oraz w polskim prawie międzynarodowym prywatnym i procesowym (dokonanie i skutki)*, Warszawa 1966.
138. Walaszek B., *Uznanie dziecka w prawie rodzinnym*, Kraków 1958.
139. Walaszek B., *Zarys prawa rodzinnego i opiekuńczego*, Warszawa 1971.
140. Winiarz J., Gajda J., *Prawo rodzinne*, Warszawa 2001.
141. Wolter A., *Majątek wspólny i majątki odrębne małżonków pod rzędem wspólności ustawowej*, Nowe Prawo 1965, no 2.
142. Wolter A., *Uznanie dziecka pozamążżerskiego*, Państwo i Prawo 1948, no 11.
143. Zieliński A., *Postępowanie o podział majątku wspólnego po ustaniu wspólnoty majątkowej małżeńskiej*, Warszawa 1992.
144. Zieliński A., Jędrzejek G., *Prawo rodzinne i opiekuńcze w zarysie*, Warszawa 2011.
145. Zielonacki A., *Zawarcie małżeństwa*, Wrocław 1982.
146. Ziemiński Z., *Podłożę społeczne przysposobienia dziecka*, Warszawa 1965.

147. Zozula J., *Przysposobienie – instytucja szlachetna, lecz mało konkretna*, Jurysta 11/2006.
148. Żukiewicz A. (red.), *Rodzicielstwo zastępcze w perspektywie teoretycznej i praktycznej*, Toruń 2010.
149. Żywicki W., *Wina wyłączna w procesie rozwodowym*, PiP 1972, no 3.

FUTHER READING

The following translation of the Polish Family and Guardianship Code is added in accordance with the permission of the Global Regulation Inc.*

THE FAMILY AND GUARDIANSHIP CODE

of 25 February 1964

TITLE I. MARRIAGE. DIVISION I. ENTERING INTO MARRIAGE.

ARTICLE. 1. [CONDITIONS]

§ 1. The marriage is concluded, when the man and woman are both present before the head of a registry office and make statements that join together in marriage.

§ 2. The marriage is also included, when a man and a woman containing marriage governed by internal church or another relation of religion, in the presence of a priest they will simultaneously marriage governed by Polish law and head of a registry office then draw up a marriage certificate. If these conditions are met, the marriage shall be deemed to be included at the time of the submission of declarations of intent in the presence of a priest.

§ 3. Provision of the preceding paragraph shall apply, if ratified international agreement or the Act governing relations between the State and the Church or other religious association provides for the possibility of a call by the marriage subject to the national law of this church or another religious, therefore, such effects, which entails a marriage before the head of the registry office.

§ 4. A man and a woman, Polish citizens abroad, can also enter into marriage before the Polish Consul or from a person designated to perform the functions of Consul.

ARTICLE. 2. [ANNULLING A MARRIAGE]

If the failure of the provisions of the preceding article has been drawn up marriage, anyone who has a legal interest, may bring proceedings for the determination of the existence of the marriage.

ARTICLE. 3. [PRE-WEDDING DOCUMENTATION]

§ 1. Anyone wishing to enter into marriage should submit or present to the head of a registry office documents necessary to marry, specified in separate regulations.

* The presented translation was not reviewed by the Language Consultant. The service offered by the Global Regulation Inc. is entirely run by computer algorithms. Translations are not human-vetted. There may be inaccuracies in information due to our algorithmic extraction of information. Always consult the official source when making use of legal information.

THE FAMILY AND GUARDIANSHIP CODE

§ 2. When you receive a document that person intending to enter into marriage shall submit or present to the head of the registry office, faces difficult to overcome obstacles, the Court may release the person from the obligation to submit or submit this document.

§ 3. The head of the registry office explains to people wishing to enter into marriage the importance of marriage, the provisions governing the rights and obligations of the spouses and the provisions named spouses and named their children.

ARTICLE. 4. [WAITING PERIOD]

Marriage before the head of a registry office may not be contained within one month from the day when the people who want to be close, the head of a registry office made a written assurance that they do not know about the existence of the circumstances excluding the conclusion of marriage. However, the head of the registry office may authorize the marriage before the expiry of that period, if the support for this important considerations.

ARTICLE. 4¹. [CERTIFICATE]

§ 1. Persons wishing to enter into marriage as specified in article 1 § 2 and 3 of the head of the registry office shall issue a certificate stating the lack of circumstances excluding marriage and the content and date of the complex before it claims on the names of the future spouses and their children.

§ 2. Certificate expires on the expiry of six months from the date of its issue.

§ 3. On issuing the certificate, the head of the registry office informs the parties about the further actions necessary to conclude the marriage.

ARTICLE. 5. [REFUSAL]

The head of the registry office, which learned of the existence of the circumstances excluding the conclusion of the intended marriage, refuses to accept the claims about joining in marriage or of issue of the certificate referred to in article 4¹, and if in doubt ask the Court whether a marriage can be included.

ARTICLE. 6. [POWER OF ATTORNEY]

§ 1. For important reasons, the Court may allow, to a statement about joining in marriage or a declaration provided for in article 1 § 2 is made by a proxy.

§ 2. The power of attorney shall be given in writing with a signature officially certified and replace the person you marriage is to be contained.

ARTICLE. 7. [FORM OF CONCLUSION]

§ 1. If the marriage is concluded before the head of a registry office, joining in marriage should be made publicly in the presence of two adult witnesses.

§ 2. The head of the registry office asks a man and a woman, whether they intend to enter into a marriage with each other, and when they answer that question in the affirmative, calls on them to make representations about joining in marriage and claims on the names of the spouses and their children.

§ 3. Each containing a marriage consists of a statement about joining in marriage, in the head of a registry office content of a statement or by reading them aloud: "aware of the rights and obligations arising from marriage solemnly declare that the ascending in the marriage of (name of the other people scrutinize marriage) and I promise that I will do

everything to make our marriage was in accordance, a happy and long lasting.". Person, that cannot talk consists of a statement about joining in marriage, by signing the Protocol of acceptance of claims about joining in marriage.

§ 4. After the submission of the claims about joining in marriage by both sides of the head of the Registry Office announces that as a result of the matching of claims both sides of the marriage.

ARTICLE. 8. [DUTIES OF THE CLERGY]

§ 1. A priest, which contained the marriage is governed by the internal of the Church or other religious, therefore, cannot accept the statements provided for in article 1 § 2 – without first presenting him a certificate stating the absence of circumstances excluding marriage, drawn up by the head of the registry office.

§ 2. Immediately after the submission of the claims referred to in § 1, shall draw up a certificate stating that the statements were made in his presence at the conclusion of the marriage subject to the national law of the Church or another religious connection. This certified statement shall be signed by the pastor, spouses and two adult witnesses present at the Assembly of these claims.

§ 3. Certificate referred to in § 2, together with the certificate drawn up by the head of the Registry Office on the basis of article. 4¹ § 1, shall forward to the Office of civil status within five days from the date of the marriage; giving as a courier in the Polish postal facility designated operator within the meaning of the Act of 23 November 2012 - Postal Law is synonymous with the transfer to the registry office. If the behavior of the term it is not possible for reasons of force majeure, the time-limit shall be suspended for the duration of the obstacle. In the calculation of the time limit does not take into account the days recognized by law free from work.

ARTICLE. 9. [PROCEDURE IN THE EVENT OF LIFE-THREATENING]

§ 1. In the event of danger of imminent directly the life of one of the parties, a statement about joining in marriage can be placed immediately before the head of the registry office without filing or presentation of documents necessary to marry. However, and in this case, the parties are required to make to ensure that they do not know of the existence of circumstances of separation and marriage.

§ 2. In the event of danger of imminent directly the life of one of the parties to the declaration provided for in article 1 § 2 may be made before a priest without provide a certificate drawn up by the head of the registry office, stating the lack of circumstances excluding marriage. In this case, shall submit before the priest to ensure that they do not know of the existence of circumstances of separation and marriage. The provisions of article 1§ 3 and article 2 and article 8 § 2 and 3 shall apply mutatis mutandis.

ARTICLE. 10. [AGE]

§ 1. May not enter into marriage without person under eighteen. However, for important reasons, the Court of guardians may authorize the marriage a woman who graduated from sixteen years, and of the circumstances shows that the marriage will be in accordance with the best interests of the established families.

§ 2. The annulment of a marriage contracted by a man who has not attained eighteen years, and by a woman who is under sixteen, or without the permission of the Court

THE FAMILY AND GUARDIANSHIP CODE

entered into a marriage after completing sixteen, but before the age of eighteen, may require each of the spouses.

§ 3. It is not possible to annul a marriage for reasons of age, if the spouse reached marriageable age before the claim is brought.

§ 4. If a woman became pregnant, her husband cannot request the annulment of a marriage due to the lack of the prescribed age.

ARTICLE. 11. [LEGAL INCAPACITATION]

§ 1. May not enter into marriage a person incapacitated completely.

§ 2. Annulment of marriage due to incapacitation may require each of the spouses.

§ 3. It is not possible to annul a marriage on the grounds of legal incapacitation if the incapacitation has been overcome.

ARTICLE. 12. [PSYCHOLOGICAL ILLNESS]

§ 1. May not enter into marriage a person affected by a mental illness or mental deficiency. However, if the State of health or of the mind of such a person is not marriage or health of future offspring, and if the person has not been incapacitated completely, the Court may allow the marriage.

§ 2. Annulment of marriage due to mental illness or mental deficiency of one of the spouses may demand that each of the spouses.

§ 3. It is not possible to annul a marriage due to the psychological illness of one of the spouses after the illness has ceased.

ARTICLE. 13. [BIGAMY]

§ 1. May not enter into marriage, who already is married.

§ 2. Annulment of marriage due to remain by one of the spouses in a previously concluded marriage can require anyone who has a legal interest.

§ 3. You cannot cancel the marriage due to remain by one of the spouses in a previously concluded marriage, if the previous marriage has terminated or is cancelled, unless the termination of the marriage took place by the death of a person who has entered into a second marriage while remaining in a previously concluded marriage.

ARTICLE. 14. [CONSANGUINITY OR AFFINITY]

§ 1. May not enter into marriage with each other the relatives in the direct line, siblings or relatives in a straight line. However, for important reasons, the Court may allow the marriage between people related by marriage.

§ 2. Annulment of marriage due to the relationship between the spouses may demand that anyone who has a legal interest.

§ 3. Annulment of marriage due to the affinity between the spouses can request each of the spouses.

ARTICLE. 15. [ADOPTION]

§ 1. May not enter into marriage with each other the adopter and the adoptee.

§ 2. Annulment of marriage due to relative adoption between spouses can request each of the spouses.

§ 3. It is not possible to annul a marriage on the grounds of an adoption between the spouses, after the relationship has ended.

ARTICLE. 15¹. [DEFECTIVE DECLARATION]

§ 1. A marriage can be annulled if the statement about joining in marriage or a declaration provided for in article 1 § 2:

- 1) has been lodged by a person who for any reason were able to exclude the conscious expression of will;
- 2) under the influence of an error as to the identity of the other party;
- 3) under the influence of illegal threats of the other party or a third party, unless the circumstances show that the applicant could claim to fear, that he himself or another person in danger serious personal risk.

§ 2. Annulment of marriage due to the circumstances listed in paragraph 1 may require the spouse who made a statement vitiated.

§ 3. You cannot request a marriage after the expiry of six months from the termination of an exemption status conscious expression will, since the error is detected or termination of concerns caused by the threat-and in any case after three years of marriage.

ARTICLE. 16. [DEFECT IN THE POWER OF ATTORNEY]

By proxy the principal may request the annulment of the marriage, if there was no court authorization to make a statement about joining in marriage by proxy, or if the Attorney was invalid or effectively cancelled. However, you cannot therefore claim the annulment of a marriage, if the spouses have common life.

ARTICLE. 17. [ANNULMENT OF MARRIAGE]

Marriage can be annulled only on grounds provided for in the provisions of this section.

ARTICLE. 18. [ADDITIONAL INFORMATION]

You cannot cancel the marriage after its dissolution. However, this does not apply to the cancellation because of the relationship between the spouses, and due to remain by one of the spouses at the time of the marriage in the previously married.

ARTICLE. 19. [CANCELLATION AFTER THE DEATH OF SPOUSE]

§ 1. If one of the spouses brought an action for annulment of a marriage, the marriage may take place even after the death of the other spouse, in whose place in the joins guardian established by the Court.

§ 2. In the event of the death of the spouse who brought an action for annulment, annulment may assert his descendants.

ARTICLE. 20. [MARRIAGE IN BAD FAITH]

§ 1. When giving a marriage annulment, the Court decides whether and which of the parties had contracted the marriage in bad faith.

§ 2. For being in bad faith shall be deemed spouse who at the time of the marriage he knew about the circumstances giving rise to its annulment.

ARTICLE. 21. [THE APPLICATION OF THE PROVISIONS OF THE ACT]

To the effects of marriage in terms of the ratio of the spouses to joint children and property relations between the spouses shall apply accordingly the provisions of divorce, the spouse who has entered into a marriage in bad faith, is treated as a spouse should the distribution of marriage.

ARTICLE. 22. [PROSECUTOR]

An action for a declaration of invalidity and the determination of the existence or non-existence of marriage can bring also the Prosecutor.

DIVISION II. RIGHTS AND OBLIGATIONS OF SPOUSES.

ARTICLE. 23. [THE EQUALITY OF RIGHTS AND OBLIGATIONS]

The spouses have equal rights and obligations in marriage. Are required to cohabitation, mutual assistance and fidelity, and to work together for the good of the family, which by its association was founded.

ARTICLE. 24. [DECISIONS ON FAMILY MATTERS]

Spouses settle together about significant matters of the family; in the absence of agreement, each of them can ask for the decision to the Court.

ARTICLE. 25. [SURNAME OF THE SPOUSES]

§ 1. Named, which each of the spouses will be called after the marriage, he decides his statement made before the head of the registry office. The claim may be filed immediately after the conclusion of the marriage or before it is drawn by the head of the registry office a certificate stating the lack of circumstances excluding marriage.
§ 2. The spouses may carry the common name which is the current name of one of them. Each of the spouses may also keep your current name or connect with him the previous surname of the other spouse. The name of the created from the merger may not consist of more than two units.

§ 3. In the event of failure to claim on the name, each spouse retains its current name.

ARTICLE. 26. (REPEALED)

ARTICLE. 27. [MEETING THE NEEDS OF THE FAMILY]

Both spouses must, each according to their forces and their lucrative opportunities and goods, contribute to meeting the needs of the family, which by its association was founded. The atonement that obligation may consist, in whole or in part, on personal efforts to the education of children and work in the common household.

ARTICLE. 28. [PAYMENT ORDER THE OTHER SPOUSE]

§ 1. If one spouse remaining in the cohabitation does not meet its obligation to contribute to meeting the needs of the family, the Court may order, in order to pay for work or other charges payable ago spouse were in whole or in part, paid into the hands of the other spouse.

§ 2. The warrant referred to in the preceding paragraph shall, despite the cessation of cohabitation after its release. The Court may, however, at the request of any of the spouses this order change or repeal.

ARTICLE. 28¹. [USE OF THE APARTMENT OF ONE OF THE SPOUSES]

If the right to housing is entitled to one spouse, the other spouse is entitled to the use of this housing to meet the needs of the family. This provision shall apply accordingly to household items.

ARTICLE. 29. [MUTUAL REPRESENTATION]

If one of cohabiting spouses experiences a temporary obstacle, the other spouse may act for him/her in ordinary administrative matters, and in particular may collect amounts due without a power of attorney, unless opposed by the spouse experiencing the obstacle. The spouse's opposition is effective towards third parties, if they were aware of it.

ARTICLE. 30. [JOINT AND SEVERAL LIABILITY]

§ 1. Both spouses are jointly and severally responsible for liabilities incurred by one of them, in matters arising from meeting the ordinary needs of the family.

§ 2. For important reasons, the Court may at the request of one of the spouses decide that such obligations is the responsibility of the spouse who enlisted. This provision may be waived in the event of a change in circumstances.

§ 3. Relative to the third joint and several liability is effective, if it was known to them.

DIVISION III. MATRIMONIAL PROPERTY REGIMES.

CHAPTER I. STATUTORY PROPERTY REGIME.

ARTICLE. 31. [COMMONALITY STATUTORY]

§ 1. As soon as the marriage between spouses under the Act the commonality of estate (commonality statutory) including the items property acquired during its duration by both spouses or by one of them (assets). Property items not covered by the joint property regime belong to the personal property of each spouse.

§ 2. To the joint property include, in particular:

- 1) salary and income with another gainful activity of each spouse;
- 2) income from the joint property, as well as the personal property of each spouse;
- 3) collected on the account opened or the staff regulations of the Pension Fund of each spouse;
- 4) the amounts of the contributions on the sub-account, as referred to in article. 40A of the Act of 13 October 1998 on the social insurance system (Journal of laws of 2015 item 121, as amended).

ARTICLE. 32. (REPEALED)

ARTICLE. 33. [PERSONAL PROPERTY]

To the personal property of each spouse are:

- 1) the items property acquired before the creation of the commonality of the statutory;
- 2) items to property acquired by inheritance, or donation, unless the testator or donor is otherwise decided;
- 3) property rights due to the commonality of the total subject to separate provisions;

THE FAMILY AND GUARDIANSHIP CODE

- 4) objects to property used exclusively for meeting the personal needs of one of the spouses;
- 5) rights inalienable, which may have only one person;
- 6) items received in respect of damages for personal injury, or call his health or for compensation for the harm suffered; However, this does not apply to the survivor's pension payable the victim spouse due to total or partial loss of earning capacity or because of the increase in its needs or reduce views, good luck for the future;
- 7) claims for wages or other gainful activity of one of the spouses;
- 8) objects to property obtained for prizes for the personal achievements of one of the spouses;
- 9) copyright and related rights, industrial property rights and other rights of the creator;
- 10) objects to property acquired in exchange for the assets, unless a special law provides otherwise.

ARTICLE. 34. [EXTENSION]

Items of household goods for the use of both spouses are covered by the statutory co-ownership also in the case when they were acquired by inheritance or donation, unless the testator or donor is otherwise decided.

ARTICLE. 34¹. [COMMUNITY THINGS]

Each of the spouses is entitled to co-ownership and things that are part of common property and to use them in so far as this is incompatible with the co-ownership and the use of the goods by the other spouse.

ARTICLE. 35. [THE BAN ON REQUESTS FOR DIVISION OF PROPERTY]

For the duration of the commonality of implied neither spouse may request the division of joint property. There can also dispose of or commit to dispose of participation, that in the event of cessation of the commonality it has him in a joint or individual subjects belonging to the estate.

ARTICLE. 36. [COMMON ASSET MANAGEMENT]

§ 1. Both spouses are required to co-operate in the management of joint property, in particular to share information on the status of joint property, about the management of joint property and the responsibilities involved.

§ 2. Each spouse is free to manage the joint property, unless the following provisions state otherwise. Management covers performing activities relating to items of joint property, including steps to help preserve the property.

§ 3. The items property for the spouse to the profession or gainful activity manages the spouse alone. In the event of a trial, the obstacles the other spouse may make the necessary current.

ARTICLE. 36¹. [THE OPPOSING SPOUSE]

§ 1. A spouse may object to the management of joint property intended by the other spouse, except for everyday matters or matters intended to meet the ordinary needs of the family, or matters undertaken as part of gainful activity.

§ 2. The opposition is effective against a third person, if able to read prior to legal action.

§ 3. Provision of art. 39 shall apply accordingly.

ARTICLE. 37. [SPOUSE'S CONSENT]

§ 1. The consent of the other spouse is required to make:

- 1) legal action leading to the disposal, load, for the acquisition of immovable property or usufruct, as well as leading to donate real estate to use or download the benefits from it;
- 2) legal action leading to the disposal, load, for the acquisition of property rights, the object of which is the building or premises;
- 3) legal action leading to the disposal, load, paid acquisition and lease of a farm or business;
- 4) donations from the joint property, with the exception of small donations customarily accepted.

§ 2. The validity of the contract which has been concluded by one of the spouses without the required consent of the other, depends on the confirmation of the agreement by the other spouse.

§ 3. The other party may designate a spouse whose consent is required, the appropriate term for the confirmation of the agreement; becomes free after the expiration of the statutory period.

§ 4. A unilateral act without the required consent of the other spouse is invalid.

ARTICLE. 38. [PROTECTION OF THIRD PARTIES]

Where, on the basis of a legal action by one spouse without the required consent of the other third party acquires a right or is exempted from the obligation, shall apply accordingly the provisions for the protection of persons who in good faith have made legal action from an unauthorized person to dispose of.

ARTICLE. 39. [AUTHORIZATION OF THE COURT TO MAKE THE STEPS]

If one spouse refuses consent required to make these steps, or if an agreement with him facing hard to overcome obstacles, the other spouse may apply to the Court for permission to carry out activities. The Court shall grant the authorization if the make steps requires good family.

ARTICLE. 40. [DEPRIVATION OF COMMON PROPERTY MANAGEMENT]

With good reason, and at the request of either spouse, the court may deprive the other spouse of independent management of joint property, and may also decide that court permission rather than spousal consent will be needed to carry out the operations listed in Article 37 § 1. These provisions may be repealed in the event of a change in circumstances.

ARTICLE. 41. [JOINT PROPERTY]

§ 1. If the spouse enlisted commitment, with the consent of the other spouse, the creditor may demand satisfaction with the joint property of spouses.

§ 2. If the spouse enlisted commitment without the consent of the other spouse or the obligation of one of the spouses is not a legal act, the creditor may demand satisfaction of the personal property of the debtor, from wages or income received by the debtor from another gainful activity, as well as the benefits derived from the rights referred to in article 33 point 9, and if the claim in connection with the establishment, also of property forming part of the business.

THE FAMILY AND GUARDIANSHIP CODE

§ 3. If the claim was established before the creation of the commonality or applies to personal property of one of the spouses, the creditor may demand satisfaction of the personal property of the debtor, from wages or income received by the debtor from another gainful activity, as well as the benefits derived from the rights referred to in article 33 point 9.

ARTICLE. 42. [EFFECTS OF CESSATION OF COMMONALITY OF PROPERTY]

Creditor spouse may not during the commonality of the statutory demand satisfaction from participation, which in the event of cessation of commonality will ago spouse in a joint or individual subjects belonging to the estate.

ARTICLE. 43. [SHARES IN COMMON]

§ 1. Both spouses have equal shares in the estate.

§ 2. However, for important reasons, each of the spouses may demand, in order to determine the interest in the assets of the joint has occurred, taking into account the extent to which each of them has contributed to the creation of this property. The heirs of the spouse may occur with such a request only if the testator brought an action for annulment of a marriage or divorce or judgment of separation.

§ 3. In assessing the extent to which each spouse contributed to the common property, it shall take into account the personal effort to work with the upbringing of children and in the common household.

ARTICLE. 44. (REPEALED)

ARTICLE. 45. [REIMBURSEMENT OF EXPENSES AND EXPENDITURES]

§ 1. Each spouse should pay expenses and expenditures made from the joint property on his personal assets, with the exception of expenditure and effort necessary for revenue generating property. May request the reimbursement of expenses and expenses which has made from his personal assets to corporate assets. You cannot request a reimbursement of expenses and outlays of used to meet the needs of the family, unless the increased value of the property at the time of cessation of commonality.

§ 2. Reimbursement shall be made by the division of the joint property, however, the Court may order a refund in advance, where this is necessary for the good of the family.

§ 3. The above provisions shall apply accordingly in cases where the debt of one of the spouses was satisfied with the joint property.

ARTICLE. 46. [THE APPLICATION OF SEPARATE PROVISIONS]

In matters not provided for in the preceding articles from the time of cessation of commonality of statutory assets, which was covered, as well as to the division of this property, shall apply accordingly the provisions of commonality of estate succession and inheritance section.

CHAPTER II. CONTRACTUAL PROPERTY REGIMES.
SECTION 1. GENERAL PROVISIONS.

ARTICLE. 47. [MATERIAL AGREEMENT]

§ 1. The spouses may, by the agreement in the form of a notarial commonality statutory extend or restrict either establish a separation of property, or separation of property with the alignment of the possessions gained (property agreement). Such an agreement may precede the conclusion of marriage.

§ 2. Marriage contract may be amended or terminated. In the event of termination during the marriage, arises between the spouses the commonality of the statutory, unless the parties agreed otherwise.

ARTICLE. 47¹. [EFFECTIVENESS AGAINST THIRD PARTIES]

Spouse may be invoked in relation to other people on a contract governed by the marriage, when her conclusion and kind of were those known.

SECTION 2. THE COMMUNITY OF PROPERTY.

ARTICLE. 48. [COMMONALITY OF CONTRACT]

To the established by the commonality of property shall apply accordingly the provisions of commonality of implied, subject to the provisions of this division.

ARTICLE. 49. [THE BOUNDS OF THE CONTRACT]

§ 1. You cannot contract marriage material extend commonality:

- 1) the items property, which enjoy a spouse in respect of inheritance or donations;
- 2) property rights that derive from the commonality of the total subject to separate provisions;
- 3) non-negotiable rights, which may have only one person;
- 4) claims for compensation for personal injury, or call his health, unless they fall to the commonality of the statutory, as well as claims for compensation for the harm suffered;
- 5) unenforceable even claims of remuneration for work or other gainful activity of each spouse.

§ 2. In case of doubt, it is believed that the items used exclusively for meeting the personal needs of one of the spouses were not included in the commonality.

ARTICLE. 50. [THE DEBT OCCURRED BEFORE THE FILE EXTENSION COMMONALITY]

If the claim arose before the extension of commonality, the creditor, the debtor is only one spouse may request a meet with these assets that might belong to the personal property of the debtor, if the commonality of estate has not been extended.

ARTICLE. 50¹. [SHARES THE SPOUSES] in the event of cessation of the commonality, the spouses are equal, unless the marriage contract provides otherwise. This provision does not exclude the application of article 43 § 2 and 3.

SECTION 3. SEPARATE PROPERTY REGIME.

ARTICLE. 51. [THE CONVENTIONAL SEPARATION OF PROPERTY]

If the contractual establishment of material separation, each spouse retains both the property acquired prior to the conclusion of the contract, and property acquired later.

ARTICLE. 51¹. [THE PRINCIPLE OF SELF-MANAGEMENT]

Each spouse manages his assets yourself.

SECTION 4. SEPARATE PROPERTY WITH COMPENSATION FOR POSSESSIONS GAINED.

ARTICLE. 51². [APPLICATION OF POSSESSIONS GAINED]

For material separation with the alignment of possessions gained the provisions of separation of property, subject to the provisions of this section.

ARTICLE. 51³. [ACHIEVEMENTS]

§ 1. The possessions gained each spouse is the increase in the value of its assets after the conclusion of the contract.

§ 2. Unless an agreement on property provides otherwise, the calculation of possessions gained does not take into account property acquired prior to concluding the agreement on property, or that referred to in Article 33, points 2, 5-7 and 9, and any items purchased in exchange for them, but will include the value of:

1) donations made by one of the spouses, excluding donations to common descendants spouses and minor customarily accepted donations to other people;

2) services rendered personally by one of the spouses to the property of the other spouse;

3) effort and expenditure on property one spouse from the property of the other spouse.

§ 3. The possessions gained shall be calculated according to the state of the property at the time of cessation of material separation and at the time of settlement.

ARTICLE. 51⁴. [DEMAND FOR COMPENSATION FOR POSSESSIONS GAINED]

§ 1. After the distribution of property, a spouse whose possessions gained are less than the possessions gained of the other spouse may ask for compensation of possessions gained by payment or transfer of rights.

§ 2. For important reasons, each spouse may demand that the obligation to compensate possessions gained be reduced.

§ 3. If the parties cannot agree on the manner or rate of compensation, the court will decide.

ARTICLE. 51⁵. [IN THE EVENT OF THE DEATH OF A SPOUSE]

§ 1. Upon the death of either spouse, the compensation for possessions gained takes place between the heirs and the remaining spouse.

§ 2. If the deceased had brought an action for a divorce or the annulment of the marriage, or there was a ruling on a separation, the spouse's heirs may demand that the obligation to compensate for possessions gained be reduced.

CHAPTER III. COMPULSORY PROPERTY REGIME.

ARTICLE. 52. [COMPULSORY SEPARATION OF PROPERTY]

§ 1. For important reasons, each of the spouses may demand the establishment of a court resolution.

§ 1a. The establishment by the Court of the separation of property may require also creating one of the spouses, if it is probable that satisfying claims established enforceable involves the division of the joint property of spouses.

§ 2. Separation of property from the date indicated in the judgment, which it lays down. In exceptional cases, the Court may establish a separation of property from the date earlier than the day bringing a court action, and in particular, if the spouses lived in disconnected.

§ 3. The establishment of the separation of property by a court at the request of one of the spouses does not exclude the conclusion by the spouses marriage contract. If the separation of property was established at the request of the creditor, the spouses may conclude an agreement governed by the marriage after division of joint property or after the creditor security or satisfaction of the debt, or three years after the establishment of the separation.

ARTICLE. 53. [INCAPACITATION AND BANKRUPTCY SPOUSE]

§ 1. Separation property arises by operation of law, in the event of incapacity or bankruptcy of one of the spouses.

§ 2. Should the legal incapacity, as well as redemption, complete or repeal the insolvency proceedings, the legal property regime arises between the spouses.

ARTICLE. 54. [SEPARATION]

§ 1. The decision gives rise to a separation between the spouses separate.

§ 2. As soon as the abolition of the separation between the spouses the statutory regime. To request of the spouses the Court to maintain the separation between the spouses.

DIVISION IV. TERMINATION OF MARRIAGE.

ARTICLE. 55. [FOR THE DECEASED]

§ 1. If one of the spouses for the deceased it is presumed that marriage came to an end as soon as that in the judgment of the spouse declared dead has been marked as a moment of his death.

§ 2. If, after recognition of a spouse declared dead the other spouse has entered into a new marriage, the relationship may not be declared invalid on the ground that the spouse declared dead is alive, or that his death occurred in a different time than the moment marked in the decision about the recognition of the deceased. This provi-

THE FAMILY AND GUARDIANSHIP CODE

sion shall not apply if, at the time of the conclusion of the new marriage the parties knew that the spouse declared dead remains alive.

ARTICLE. 56. [THE CONDITIONS FOR DIVORCE]

§ 1. If between the spouses was utter and irretrievable breakdown, each of the spouses may demand that the Court dissolved the marriage by divorce.

§ 2. However, despite the full and sustainable distribution of marriage divorce is not permissible, if as a result of it would suffer the good of common minor children of the spouses or if for other reasons the judgment of divorce would be contrary to the principles of social coexistence.

§ 3. Divorce is not permissible, if requests it spouse exclusively guilty of irretrievable breakdown, unless the other spouse agrees to divorce or that the refusal to consent to a divorce is, in the circumstances, contrary to the principles of social coexistence.

ARTICLE. 57. [THE JUDGMENT OF GUILT]

§ 1. When divorce court decides whether and which of the spouses is to blame the irretrievable breakdown.

§ 2. However, to match demand spouses the Court fails to rule on the wine. In this case, followed by such effects as if none of the spouses does not assume guilt.

ARTICLE. 58. [THE PROVISIONS OF THE JUDGMENT]

§ 1. In the judgment of the Court shall be a divorce court on parental responsibility over the joint minor child of both spouses and parents with the child and decides, how much each of the spouses shall be obliged to bear the cost of the maintenance and upbringing of the child. The Court shall take into account the written agreement of the spouses on how to exercise parental authority and maintaining contact with the child after the divorce, if it is consistent with the best interests of the child. Sibling should educate together, unless the best interests of the child requires a different solution.

§ 1a. In the absence of the agreement referred to in § 1, the Court, having regard to the right of the child to be brought up by both parents, decides how the joint exercise of parental authority and maintaining contact with the child after the divorce. The Court may entrust the exercise of parental responsibility to one of the parents, limiting the parental authority of the second to specific duties and powers in relation to the person of the child, if the child's welfare that appeals.

§ 1b. To request of the parties, the Court does not rule maintain contact with the child.

§ 2. If the spouses are shared, the Court in the judgment of divorce rules about how to use the apartment for the duration of the common residence in the divorced spouses. In exceptional cases, when one of the spouses to their grossly objectionable conduct prevents the cohabitation, the Court may order his eviction on the request of the other spouse. To request of the parties, the Court may, in the judgment in deciding a divorce order also broken down to live together or to grant a flat one spouse if the other spouse agrees to his leave without providing replacement premises and facilities, if the division or its grant of one of the spouses are possible.

§ 3. At the request of one of the spouses the Court may in the judgment of the Court shall be the divorce divide joint property, if this division does not cause undue delay in the proceedings.

§ 4. Finding shared apartment spouses, the Court shall take into account, first and foremost, the needs of children and spouse, entrusted the exercise of parental responsibility.

ARTICLE. 59. [BACK TO THE PREVIOUS NAME]

Within three months from the time when divorce a spouse divorced, that as a result of marriage changed his previous name, may by a declaration made before the head of the registry office or Consul of return to his/her premarital surname.

ARTICLE. 60. [MAINTENANCE]

§ 1. Divorced spouse, who is not considered a wine fault distribution only, and that is in want, may require the other spouse divorced the provision of means of subsistence in the extent justified needs of the holder and the capabilities of commercial and financial principal.

§ 2. If one of the spouses was considered a wine fault distribution only a divorce entails a significant deterioration of the financial situation of the innocent spouse, the Court at the request of the innocent spouse may order that one spouse exclusively guilty is obliged to contribute to the extent to meet the justified needs of the innocent spouse, even if this was not deprivation.

§ 3. The obligation to provide maintenance to a spouse divorced spouses shall expire in the event of the conclusion by the spouse of the new marriage. However, when the obligation is a spouse divorced, which was not found guilty of irretrievable breakdown, this obligation shall expire with five years of divorce, unless due to exceptional circumstances, the Court, at the request of the holder, will extend the five-year period mentioned.

ARTICLE. 61. [THE APPLICATION OF THE PROVISIONS OF THE ACT]

Subject to the provision of the preceding article, the obligation to provide the means of subsistence by one of the spouses divorced second shall apply accordingly the provisions of the maintenance obligation between relatives.

DIVISION V. SEPARATION.

ARTICLE. 61¹. [CONDITIONS FOR SEPARATION]

§ 1. If between the spouses was a complete breakdown, each of the spouses may demand that the Court ruled legal separation.

§ 2. However, despite the complete decomposition of marriage judgment of separation is not acceptable if the result it would suffer the good of common minor children of the spouses or if for other reasons the judgment of separation would be contrary to the principles of social coexistence.

§ 3. If the spouses do not have common minor children, the Court may order separation based on matching request.

ARTICLE. 61². [THE JUDGMENT OF DIVORCE]

§ 1. If one spouse requires a judgment of separation, and the second divorce and this request is reasonable, the Court shall order a divorce.

§ 2. However, if the decision to divorce is not permissible, and request separation is justified, the Court shall order separation.

ARTICLE. 61³. [JUDGMENT OF SEPARATION]

§ 1. By the judgment of legal separation shall apply the provisions of article 57 and article 58 § 2. When giving a separation based on matching request of the spouses, the Court did not rule on the guilt of the distribution of cohabitation. In this case, followed by such effects as if none of the spouses does not assume guilt.

ARTICLE. 61⁴. [EFFECTS OF SEPARATION]

§ 1. The judgment of legal separation has consequences such as dissolution of marriage by divorce, unless the law provides otherwise.

§ 2. Spouse in a separation may not enter into marriage.

§ 3. If required by the equitable, the spouses in legal separation shall to mutual assistance.

§ 4. The obligation to provide the means of subsistence by one of the spouses in the separation of the second shall apply accordingly the provisions of article 60, with the exception of § 3.

§ 5. Provision of art. 59 shall not apply.

ARTICLE. 61⁵. (REPEALED)

ARTICLE. 61⁶. [THE ABOLITION OF SEPARATION]

§ 1. To match the request of the spouses the Court decides to abolish the separation.

§ 2. As soon as the abolition of the separation cease its effects.

§ 3. By abolishing the separation, the Court shall decide on parental responsibility over the joint minor child of the spouses.

**TITLE II. CONSANGUINITY AND AFFINITY.
DIVISION I. GENERAL PROVISIONS.**

ARTICLE. 61⁷. [RELATIVES IN A STRAIGHT LINE AND LATERAL]

§ 1. Relatives in a straight line are people, one of which is derived from the other. Relatives in the lateral line are people that come from a common ancestor, and are not relatives in a straight line.

§ 2. Degree of kinship is defined according to the number of births, which was kinship.

ARTICLE. 61⁸. [AFFINITY]

§ 1. With the marriage shows the affinity between the spouse and relatives of the other spouse. It takes it despite the termination of the marriage.

§ 2. The line and the degree of affinity is determined by line and degree.

DIVISION IA. PARENTS AND CHILDREN.
CHAPTER I. AFFILIATION OF THE CHILD.
SECTION 1. MATERNITY.

ARTICLE. 61⁹. [THE CHILD'S MOTHER]

The child's mother is a woman who gave birth to them.

ARTICLE. 61¹⁰. [ACTION TO ESTABLISH MATERNITY] § 1. If the child's birth certificate reveals unknown parents, or the maternity of the woman entered on the child's birth certificate is denied, it is possible to demand that maternity be established.

§ 2. Action for the establishment of maternity child brought against the mother, and if the mother is dead – against women laid down by the Court of guardianship.

§ 3. The mother brought a declaratory action of motherhood against a child.

ARTICLE. 61¹¹. [LIMITATION OF LAWSUIT] Mother cannot bring an action for the establishment of maternity benefits when the child age.

ARTICLE. 61¹². [AN ACTION FOR DENIAL OF MOTHERHOOD]

§ 1. If in the Act of birth is inscribed as the mother of a woman who gave birth to a child, you can claim denial of motherhood.

§ 2. An action for denial of maternity child are filed against a woman in the act of birth of the child as his mother, and if the woman is dead – against women laid down by the Court of guardianship.

§ 3. Mother brought an action against a woman in the Act of birth of the child as his mother and child, and if the woman is dead – against a child.

§ 4. The woman in the Act of birth of the child as his mother brought an action against a child.

§ 5. The man whose paternity has been established taking into account maternity women entered in the Act of birth of the child as his mother, brought an action against a child and this woman, and if she is dead – against a child.

ARTICLE. 61¹³. [THE TERM BRING AN ACTION FOR DENIAL OF MOTHERHOOD]

§ 1. The mother or women entered in the Act of birth of the child as his mother may bring an action for denial of maternity benefits within six months from the date of the child's birth.

§ 2. The man whose paternity has been established taking into account maternity women entered in the Act of birth of the child as his mother, may bring an action for denial of maternity benefits within six months from the date on which it learned that a woman in the Act of birth of the child is not the child's mother, but not later than until the child age.

§ 3. The provisions of article 64 and 65 shall apply mutatis mutandis.

ARTICLE. 61¹⁴. [BRING A COURT ACTION BY CHILD]

§ 1. The child may bring an action for denial of maternity benefits within three years of the achievement of the majority.

§ 2. The provisions of article 64 and 65 shall apply mutatis mutandis.

ARTICLE. 61¹⁵. [BRING A COURT ACTION IN THE EVENT OF DEATH OF THE CHILD]

Determination and denial of motherhood is not acceptable after the death of the child. However, in the event of death of the child, that a lawsuit against the action, motherhood can assert his descendants.

ARTICLE. 61¹⁶. [BRING A COURT ACTION BY THE PROSECUTOR]

Declaratory action or a denial of motherhood can bring also the Prosecutor, where this is necessary for the best interests of the child or to protect the public interest; bring an action for denial of motherhood is not acceptable after the death of the child.

SECTION 2. PATERNITY.

ARTICLE. 62. [PRESUMPTION OF ORIGIN OF THE CHILD]

§ 1. If the child is born during the marriage or before the expiry of the three hundred days of the termination of or annulment, it shall be presumed that it comes from her husband's mother. This presumption shall not apply if the child was born after three hundred days of separation.

§ 2. If the child was born before the end of the three hundred days from the termination of or annulment of the marriage, but after the conclusion by a mother second marriage, it shall be presumed that it comes from the second husband. This presumption does not apply if the child is born following a procedure medically assisted procreation, which agreed to the first husband of the mother.

§ 3. The presumption of the above can be overturned only by an action for denial of paternity.

ARTICLE. 63. [AN ACTION FOR DENIAL OF PATERNITY]

Mother's husband may bring an action for denial of paternity within six months from the date on which it learned about the birth of a child by his wife, but not later than until the child age.

ARTICLE. 64. [INCAPACITATION HUSBAND MOTHER]

§ 1. If the mother's husband was completely incapacitated by reason of mental illness or other mental disorders, which fell within the time-limit for bringing an action for denial of paternity, the action may bring his legal representative. The time limit for bringing a court action is in this case six months from the date of the establishment of a legal representative, if the representative has the news of the birth of the child until later-six months from the date on which this message has.

§ 2. If the legal representative of her husband completely incapacitated not brought an action for denial of paternity, the husband may bring an action after the repeal of incapacity. The time limit for bringing a court action is in this case six months from the date of repeal of incapacity, and if the husband has the news of the birth of the child until later-six months from the date on which this message has.

ARTICLE. 65. [MENTAL]

If mother's husband fell on a mental illness or other mental disorders within the period for bringing an action for denial of paternity and despite the existence of grounds for total incapacity was not restricted by limited legal capacity, he may bring an action within six months of the termination of the disease or disorder, and when he took the news of the birth of the child until later-within six months from the date of in which this message has.

ARTICLE. 66. [THE DEFENDANTS IN THE CASE OF DENIAL OF PATERNITY]

Mother's husband should bring an action for denial of paternity against the child and the mother, and if the mother is dead – against a child.

ARTICLE. 67. [DENIAL OF PATERNITY]

Denial of paternity is by demonstrating that the mother's husband is not the father of the child.

ARTICLE. 68. [THE UNACCEPTABILITY OF PATERNITY]

Denial of paternity is not permissible, if the child was born in the aftermath of the procedure, medically assisted procreation, which the mother's husband agreed.

ARTICLE. 69. [BRING A COURT ACTION BY THE MOTHER OF THE CHILD]

§ 1. A mother may bring an action for denial of paternity of her husband within six months from the birth of a child.

§ 2. The mother should bring an action for denial of paternity against her husband and child, and if the husband is dead – against a child.

§ 3. The provisions of article 4. 64 and 65 shall apply mutatis mutandis.

ARTICLE. 70. [POWERS OF THE CHILD]

§ 1. Child after reaching the age of majority may bring an action for denial of paternity of the husband of his mother, but not later than within three years of the achievement of the majority.

§ 2. The child should take legal action against her husband of his mother and the mother, and if the mother is dead against her husband. If the mother's husband is dead, the action should be brought against women laid down by the Court of guardianship.

§ 3. The provisions of article 4. 64 and 65 shall apply mutatis mutandis.

ARTICLE. 71. [DEATH OF THE CHILD]

Denying paternity is not possible after the death of the child.

ART. 72. [RECOGNIZING THE CHILD]

§ 1. If there is no presumption that the father of the child is the husband of his mother, or when the presumption has been rebutted, paternity may be effected either by the recognition of paternity, or by a decision of the Court.

§ 2. Recognition of paternity may not take place if the lawsuit is pending a determination of paternity.

ARTICLE. 73. [SPECIFIC WAYS OF LEGITIMATION]

§ 1. Recognition of paternity when the man, from which the child derives, declares before the head of the registry office, that he is the father of the child, and the child's mother confirms at once or within three months from the date of the man's claims, that the child's father is the man.

§ 2. The head of the registry office explained to people who wish to make statements necessary to acknowledge the paternity of the provisions governing the obligations and rights arising from the recognition of provisions, named the child and the difference between the recognition of paternity and paternity.

§ 3. The head of the registry office refuses to accept the claims required for the recognition of paternity, if recognition is unacceptable or if you become aware of doubt as to the origin of the child.

§ 4. Recognition of paternity may also be made before a court guardianship, and abroad well before the Polish Consul or person designated to perform the functions of Consul, if recognition applies to the child whose both parents or one of them are Polish citizens. The provisions of § 1-3 shall apply mutatis mutandis.

ARTICLE. 74. [PLACING ON RECORD THE DECLARATION NECESSARY FOR RECOGNITION OF PATERNITY]

§ 1. If there is any danger directly threatening the life of the child's mother or the biological father, the declaration necessary to recognize paternity may be recorded by a notary or submitted to the records of the head of a municipality (town mayor or president of a city), head of a district, marshal of the wojewod, or the secretary of the district or municipality. The provisions of Article 73 § 1-3 apply accordingly.

§ 2. The record is signed by the person who took the declaration, and the person who made it, unless they are unable to sign it. The record should state the reason why a signature was not given.

§ 3. A record containing a declaration required to establish paternity should be immediately forwarded to the relevant registry office in order for the child's birth certificate to be drawn up.

ARTICLE. 75. [THE RECOGNITION OF PATERNITY BEFORE THE BIRTH OF A CHILD CONCEIVED]

§ 1. You can recognize paternity prior to birth a child already conceived.

§ 2. If the child was born after the conclusion of the marriage by her mother with another man than this, that he considered fatherhood, the provision of art. 62 do not apply.

ARTICLE. 75¹. [RECOGNITION OF THE PATERNITY OF A CHILD BORN FOLLOWING THE PROCEDURE, MEDICALLY ASSISTED PROCREATION]

§ 1. Recognition of paternity is followed by the date of birth of a child, even if before moving into the body women of reproductive cells from an anonymous donor or embryo formed from germ cells derived from an anonymous donor or the organ donation of the embryo man declares before the head of the registry office, that will be the father of the child, which was born in the aftermath of the procedure medically assisted procreation using these cells, or that of the embryo and this woman will confirm at the same time or within three months from the date of the man's claim that the father of the child will be the man.

§ 2. The statements are effective, if the child was born in the aftermath of the procedure, medically assisted procreation, referred to in paragraph 1, within two years from the date of submission of the claim by a man.

§ 3. If the child was born after the conclusion of the marriage by her mother with another man than this, that he considered fatherhood, the provision of art. 62 do not apply.

§ 4. The provisions of article 4. 73 section 1 and 4, and article. 74 shall not apply.

ARTICLE. 76. [LIMITATION OF RECOGNITION OF PATERNITY]

§ 1. Recognition of fatherhood cannot be reused once the child age.

§ 2. If the child died before reaching the age of majority, recognition of paternity might occur within six months from the date on which a man comprising a statement of recognition of the learned of the death of a baby, but not later than the day on which the child would reach the age of majority.

ARTICLE. 77. [PERMISSION TO MAKE A STATEMENT ABOUT THE RECOGNITION OF PATERNITY]

§ 1. Statement of the need for recognition of paternity may make a person who graduated from sixteen years and there are no grounds for its total incapacitation.

§ 2. The person referred to in § 1, if you do not have full legal capacity, may make a statement necessary to recognize paternity only before the Court of guardianship.

ARTICLE. 78. [A DECLARATORY ACTION THE ANNULMENT OF RECOGNITION OF PATERNITY]

§ 1. A man who acknowledged paternity, may bring an action to establish the ineffectiveness of recognition within six months from the date on which it learned that the child does not come from him. In the event of recognition of paternity before the birth of a child already conceived the term may not start before the birth of a child.
§ 2. The provisions of article 4. 64 and 65 shall apply mutatis mutandis.

ARTICLE. 79. [THE APPLICATION OF THE PROVISIONS TO THE MOTHER CONFIRMING PATERNITY]

Provisions to establish the ineffective recognition of paternity shall apply accordingly to the child's mother, who confirmed the paternity.

ARTICLE. 80. [AN ACTION AFTER REACHING THE AGE OF THE CHILD] when the child age a declaratory action the annulment of recognition of paternity may not be brought by the mother of the child, or by a man who found fatherhood.

ARTICLE. 81. [REQUEST FOR FINDINGS OF THE INEFFECTIVE RECOGNITION OF PATERNITY]

§ 1. The child may require the determination of the ineffective recognition of paternity, if that man is his father.

§ 2. With the request that the child may experience after reaching the age of majority, but not later than within three years of its achievements.

§ 3. The provisions of article 4. 64 and 65 shall apply mutatis mutandis.

ARTICLE. 81¹. [DETERMINATION OF THE INEFFICIENCY OF THE RECOGNITION OF PATERNITY]

Where the recognition of paternity occurred pursuant to art. 75¹, determine the ineffectiveness of the ineffective recognition of paternity is acceptable only if the child was born in the following procedure, medically assisted procreation, referred to in article 75¹ § 1.

ARTICLE. 82. [A DECLARATORY ACTION THE ANNULMENT OF RECOGNITION]

§ 1. A man who acknowledged paternity, brought a declaratory action the annulment of recognition against a child and the mother, and if the mother is dead – against a child.

§ 2. The mother brought a declaratory action the annulment of the ineffective recognition of paternity against a child and a man who acknowledged paternity, and if this man is dead – against a child.

§ 3. Child brought a declaratory action the annulment of the ineffective recognition of paternity against the man who took the paternity and against the mother, and when the mother is dead – only against this man. If this man is dead, the action should be brought against women laid down by the Court of guardianship.

ARTICLE. 83. [THE RECOGNITION OF PATERNITY AFTER THE DEATH OF THE CHILD]

§ 1. After the death of the child to determine the ineffectiveness of the ineffective recognition of paternity is not acceptable.

§ 2. If the recognition of paternity occurred after the death of the child, shall apply accordingly the provisions of article 82 § 1 and 2, and the action should be brought not later than the day on which the child would reach the age of majority, against women laid down by the Court of guardianship in place of the child.

ARTICLE. 84. [JUDICIAL DETERMINATION OF PATERNITY]

§ 1. Legal paternity can request a child, his mother and alleged father of the child. However, mother or alleged father may not occur with such a request after the death of the child or when no majority.

§ 2. Child or mother brought an action for paternity against the alleged father, and when this is dead – against women laid down by the Court of guardianship.

§ 3. The alleged father of the child's paternity action brought against a child and his mother, and when the mother is dead – against a child.

§ 4. In the event of death of the child, which was the reason for determination of paternity, the findings may enforce its descendants.

ARTICLE. 85. [PRESUMPTION OF PATERNITY]

§ 1. It is presumed that the father of the child is the one who communed with the child's mother not formerly than in the 300, and not later than one hundred and 181 before the birth of a child, or the one who was the donor reproductive cells in the case of a child born as a result of partner donation in a procedure medically assisted procreation.

§ 2. The fact that the mother in this period, was intimate also with another man, can be the basis to rebut the presumption only if the circumstances show that the paternity of another man is more likely to occur.

ARTICLE. 86. [BRING A COURT ACTION BY THE PROSECUTOR]

An action for establishment or denial of paternity and to establish the ineffectiveness of the ineffective recognition of paternity may bring also the Prosecutor, where this is necessary for the best interests of the child or to protect the public interest; bring an action for denial of paternity and to establish the ineffectiveness of the ineffective recognition of paternity is not acceptable after the death of the child. If the recognition of paternity occurred after the death of the child, the public prosecutor may bring an action to establish the ineffectiveness.

CHAPTER II. RELATIONS BETWEEN PARENTS AND CHILDREN.
SECTION 1. GENERAL PROVISIONS.

ARTICLE. 87. [DUTY OF PARENTS AND CHILDREN]

Parents and children are required to respect and support.

ARTICLE. 88. [DECLARATION ON THE SURNAME OF THE CHILD]

§ 1. Child, for which there is a presumption that comes from her husband's mother, bears the name of which is the name of both spouses. If the spouses have different surnames, the child bears the surname indicated in their matching statements. The spouses may indicate the surname of one of them or the name of the created by the combination of the names of the mother with the name of the father of the child.

§ 2. A statement on the surname of the child shall be submitted at the same time with claims about names that will wear. If the spouses do not have compatible representations on the surname of the child, it is called a name consisting of the names of the mother and the attached to it the name of the father.

§ 3. For making the birth first child spouses may submit before the head of the registry office compatible statement of change indicated by them baby names or the declaration referred to in paragraph 1, if the child's name is not indicated by them.

§ 4. The provisions of § 1-3 shall apply accordingly to the surname of the child, whose parents have entered into marriage after the birth of the child. To change the surname of the child, whose parents have entered into marriage after a child of thirteen, that its approval is required.

ARTICLE. 89. [CHILD'S NAME]

§ 1. If paternity has been established by the recognition, the child bears the name indicated in the supported claims parents, submitted at the same time claims to recognition of paternity. Parents may indicate the surname of one of them or the name of the created by the combination of the names of the mother with the name of the father of the child. If the parents do not have compatible representations on the surname of the child, it is called a name consisting of the names of the mother and the attached to it the name of the father. To change the surname of the child, which, at the time of recognition of the already completed thirteen years, needed his consent.

§ 2. In the event of legal paternity, the Court gives the child's name in a judgment fixing the fatherhood, by applying the provisions of paragraph 1. If a child under thirteen years old, to the change of name is needed his consent.

§ 3. If paternity has not been established, the child bears the mother's surname.

§ 4. A child of unknown parents name gives the Court of guardians.

THE FAMILY AND GUARDIANSHIP CODE

ARTICLE. 89¹. [THE NAMES OF THE CHILDREN FROM THESE SAME PARENTS]

Children from these same parents bear the same name, subject to the provisions of that to change the surname of the child require his consent.

ARTICLE. 90. [GIVING THE CHILD THE NAMES OF THE HUSBAND'S MOTHER]

§ 1. If a minor child has entered into marriage with a man who is not the father of this child, the spouses may submit before the head of the registry office or in front of the consul of consistent statements that the baby will bore the same name, which in accordance with article § 88 is called their common child. To change the surname of the child, that the age of thirteen years, needed his consent.

§ 2. Giving the child the names referred to in paragraph 1 is not admissible if it bears the father's name or the name created on the basis of the consistent claims the child's parents by the combination of the names of the mother with the name of the father of the child.

§ 3. The provisions of § 1 and 2 shall apply accordingly when the father of a minor child has entered into a marriage with a woman who is not the mother of this child.

ARTICLE. 90¹. [THE COMPOSITION OF BABY NAMES FROM A COMBINATION OF THE NAMES OF THE FATHER AND MOTHER]

Child's name created by combining the names of the mother with the name of the father of the child or by a combination of the names of one of the parents with the name of his spouse, from whom the child does not come, may not consist of more than two members; in the surname of the child includes the first names of members subject to combined, unless as a result of the merger would be a name, whose members are the same.

ARTICLE. 91. [OBLIGATIONS OF THE CHILD]

§ 1. A child who has income from own work, should contribute to cover the costs of maintenance of the family, if lives with parents.

§ 2. A child who is dependent on parents and lives with them, is required to assist them in the communal farm.

SECTION 2. PARENTAL AUTHORITY.

ARTICLE. 92. [TERM]

Child stays up until the age of majority under parental authority.

ARTICLE. 93. [SUBJECTS]

§ 1. Both parents have parental responsibility.

§ 2. Where this is necessary for the best interests of the child, the Court in its judgment fixing the parentage may decide to suspend, reduce or deprivation of parental authority of one or both parents. The provisions of article 107 and article. 109-111 shall apply mutatis mutandis.

ARTICLE. 94. [DURATION OF PARENTAL AUTHORITY TO ONE OF THE PARENTS]

§ 1. If one of the parents is dead or does not have full legal capacity, parental responsibility are entitled to the other parent. The same applies if one of the parents has been deprived of parental authority or if his parental hung. § 2. (repealed)

§ 3. If one of the parents does not have parental responsibility or if the parents are unknown, for child care.

ARTICLE. 95. [CONTENT]

§ 1. Parental responsibility shall include, in particular, the duty and the right of parents to exercise custody of the person and property of the child and for the child's upbringing, with respect for his dignity and rights.

§ 2. Dependent child under parental authority should parents of obedience, and in cases in which can independently make decisions and make representations will, should listen to the opinions and recommendations of parents made for his sake.

§ 3. Parental responsibility should be carried out as required in the best interests of the child and the public interest.

§ 4. Parents before taking decisions in important matters relating to the person or property of the child should be heard, if mental development, health, and degree of maturity of the child so permits, and take into account as far as possible its reasonable wishes.

ARTICLE. 96. [THE CHILD'S UPBRINGING]

§ 1. Parents are raising a child under their parental authority and direct it. Must take care of the physical and spiritual development of the child and to prepare them adequately to work for the good of society up to his talents.

§ 2. Parents who do not have full legal capacity to participate in the celebration of the current custody of the person of a child and his upbringing, unless the Court of guardians due to the welfare of the child decides otherwise.

ARTICLE. 96¹. [THE PROHIBITION OF CORPORAL PUNISHMENT]

To persons exercising parental responsibility and exercising the care or custody of a minor is prohibited the use of corporal punishment.

ARTICLE. 97. [RESPONSIBILITIES OF PARENTS]

§ 1. If both parents have parental responsibility, each of them is obliged and entitled to its execution.

§ 2. However, important matters of the child the parents settle together; in the absence of agreement between them Court guardianship.

ARTICLE. 98. [REPRESENTATION OF THE CHILD]

§ 1. Parents are the legal representatives of the child under their parental authority. If the child remains under parental authority of both parents, each of them may act alone as the legal representative of the child.

§ 2. However, neither parent may represent the child:

- 1) in legal acts between dependent children under their parental authority;
- 2) at legal actions between the child and one of the parents, or their spouse, unless the legal action consists in

the free acquisition of an object by the child, or concerning means of the child's upkeep owed by one parent to the child.

§ 3. The provisions of the preceding paragraph shall apply accordingly to proceedings before the Court or other authority of the State.

ARTICLE. 99. [ESTABLISHING A CUSTODIAN]

If neither parent may represent the child under parental authority, represents them curator established by the Court of guardianship.

ARTICLE. 100. [HELP THE AUTHORITIES OF THE MEMBER STATE]

§ 1. The Court of guardians and other public authorities are obliged to provide assistance to the parents, if it is needed for the proper exercise of parental responsibility. In particular, each of the parents may apply to the Court of guardianship to pick up the child from the person is not entitled, and also apply to the Court of guardianship or another competent public authority to provide child care.

§ 2. In the cases referred to in § 1, the Court of guardians or other public authorities shall notify the organizational unit, foster families and foster care system, within the meaning of the provisions of the promotion of the family and custody system, of the need to grant the family a child appropriate assistance. The competent organizational unit of foster families and foster care system is bound to inform the Court about the types of aid and its results.

ARTICLE. 101. [MANAGING THE CHILD'S PROPERTY]

§ 1. The parents must exercise due diligence in managing the property of the child under their parental authority.

§ 2. Management exercised by the parents does not include the child's earnings or items given to the child to use free of charge.

§ 3. The parents cannot, without the authorization of the guardianship court, perform any acts exceeding the scope of ordinary management, and cannot consent to the child performing such acts.

ARTICLE. 102. [EXCEPTIONS]

Under a donation agreement or in a will it is possible to establish that items donated or inherited by a child are not covered by the management exercised by the parents. If the donor or testator has not indicated a trustee, the management will be exercised by a custodian appointed by the Guardianship court.

ARTICLE. 103. [USE OF THE INCOME OF THE CHILD]

Pure income from property of the child should be mainly rotated the maintenance and upbringing of the child and his siblings, which rears together with it, the excess on other legitimate needs of the family.

ARTICLE. 104. [THE INVENTORY OF THE PROPERTY OF A CHILD]

§ 1. The Court of guardianship may order the parents to have drawn up the inventory of the property of the child and presented it to the Court and notify the Court of changes in major State of the property, in particular the child's acquisition of assets of substantial value.

§ 2. The Court of guardians may in justified cases, to determine the value of the regulations on movable tangible property, money and securities, which the child or parents can make each year without the permission of the guardianship court, subject to article 103.

ARTICLE. 105. [EFFECTS OF CEASING MANAGEMENT]

After the management ceases, the parents must return to the child, or his/her legal representative, the child's property they have been managing. At the request of the child or his/her legal representative, made within a year of ceasing the management, the parents must submit an account from the management. This request may not include income from property received while exercising parental authority.

ARTICLE. 106. [CHANGE DIVORCE]

Where this is necessary for the best interests of the child, the guardianship court may change the decision on parental responsibility and how its implementation contained in the judgment of the Court shall be divorce, legal separation or marriage annulment, or fixing the parentage.

ARTICLE. 107. [TO ENTRUST THE PARENTAL AUTHORITY TO ONE OF THE PARENTS]

§ 1. If both parents have parental authority living in disconnected, the Court of guardians may due to the welfare of the child specify how its execution and maintain contact with the child. The Court leaves the parental authority to both parents, if presented in accordance with the best interests of the child a written agreement on the manner of the exercise of parental responsibility, and maintaining contact with the child. Sibling should educate together, unless the best interests of the child requires a different solution.

§ 2. In the absence of the agreement referred to in § 1, the Court, having regard to the right of the child to be brought up by both parents, decides how the joint exercise of parental authority and maintaining contact with the child. The Court may entrust the exercise of parental responsibility to one of the parents, limiting the parental authority of the second to specific duties and powers in relation to the person of the child, if the child's welfare that appeals.

§ 3. To request of the parties, the Court does not rule maintain contact with the child.

ARTICLE. 108. [CHILD OF INCAPACITATION COMPLETELY]

Parents exercising parental authority over a completely incapacitated child are subject to the same restrictions as a guardian.

ARTICLE. 109. [ORDINANCE IN ORDER TO PROTECT THE BEST INTERESTS OF THE CHILD]

§ 1. If the best interests of the child is endangered, the Court of guardians will issue the appropriate orders.

§ 2. The Court of guardians may, in particular:

- 1) compel the parents and the minor to a specific procedure, and in particular to work with families, the implementation of other forms of work with the family, refer the minor to support daily, referred to in the rules about supporting the system of foster care and family or refer parents to the facility or specialist involved in family therapy, counseling or other family assistance with an indication of the way the performance audit issued orders;
- 2) determine what actions may not be made by the parents without the permission of the Court, or give parents other restrictions, which is subject to the guardian;

THE FAMILY AND GUARDIANSHIP CODE

- 3) submit to the exercise of parental responsibility to the supervision of the probation officer;
- 4) refer the minor to an organization or institution appointed to apprenticeships or to another facility who has partial custody of children;
- 5) order the placement of a minor in foster care, the child's family home or institutional care foster home or entrust temporarily acting as a foster family spouses or a person which does not satisfy the conditions for foster families, in terms of training necessary for specified in the rules about supporting the system of foster care and family or order the placement of a minor in educational establishment, in protective plant-care or in medical rehabilitation.

§ 3. The Court of guardians may also entrust the management of the estate of the minor set up for this purpose, the curator.

§ 4. In the case referred to in § 2 point 5, as well as in case of the application of the other measures referred to in the rules about supporting the family and the system of custody, guardianship shall notify the decision the correct organizational unit, foster families and foster care system, which provides a family of the minor appropriate assistance and consists of family Court, within the time specified by the Court, reports on the situation of the family and assistance , including work with the family, and also works with a probation officer.

ARTICLE. 110. [SUSPENSION OF PARENTAL AUTHORITY]

§ 1. In the event of a transient obstacles in the exercise of parental guardianship may order its suspension.

§ 2. The suspension will be lifted when his cause will fall off.

ARTICLE. 111. [DEPRIVATION OF PARENTAL AUTHORITY]

§ 1. If the parental responsibility cannot be performed due to permanent obstacle or if the parents abuse parental authority or flagrant neglect their duties in relation to the guardianship of the child, the Court will deprive parents of parental authority. Deprivation of parental authority can be ordered also in relation to one of the parents.

§ 1a. The Court may deprive the parents of parental authority, if the assistance is not the reasons the application of article 109 § 2, point 5, and in particular when parents permanently have no interest in the child.

§ 2. In the event of cessation of the cause, which was the basis for deprivation of parental authority, guardianship, the Court may restore parental responsibility.

ARTICLE. 112. [THE JUDGMENT OF DEPRIVATION OR SUSPENSION OF PARENTAL AUTHORITY] Deprivation of parental authority or its suspension may be granted in the judgment of the Court shall be a divorce, legal separation or marriage annulment.

A BRANCH OF THE 2A
FOSTER CARE

ARTICLE. 112¹. [ENTITY RESPONSIBLE FOR EXECUTING THE CURRENT CUSTODY OF CHILDREN PLACED IN FOSTER CARE]

§ 1. The duty and the right execution of the current custody: 1) placed in custody, upbringing and represent in these matters and, in particular, in the investigation of the benefits intended to meet his needs, belong to a foster family, the family of the child or the marshaling facility nursing educational, regional educational service-therapeutic or intervention centre;

2) without the care and education of parents in the educational establishment, in protective plant-care or in medical rehabilitation, education and representation in these matters and, in particular, in the investigation of the benefits intended to meet his needs, belong to the educational establishment, respectively, marshaling, nourishing and protective plant-care or rehabilitation facility.

Other obligations and rights arising from parental responsibility belongs to parents of a child.

§ 2. Provision in § 1 shall not apply if the Court of guardians decided otherwise.

ARTICLE. 112². [A REFERENCE TO THE PROVISIONS OF THE PROMOTION OF THE FAMILY AND FOSTER CARE SYSTEM]

the Organization, functioning and financing of foster families, family children's homes, nursing-educational, regional nursing and intervention centers and the rules for determining age children placed in these institutions and centers shall be governed by the provisions of the promotion of the family and custody.

ARTICLE. 112³. [CONDITIONS OF PLACEMENT OF THE CHILD IN FOSTER CARE]

§ 1. Placement of a child in foster care can only occur when the previously used other measures provided for in article. 109 § 2 paragraph 1 – 4 and forms of assistance to the parents of the child, referred to in the rules about supporting the system of foster care and family, have not led to the removal of emergency the best interests of the child, unless the need to promptly provide the child custody alternative derives from the serious threat the best interests of the child, in particular the threat to his life or health.

§ 2. Placement of a child in foster care against the will of the parents only due to poverty is not acceptable.

ARTICLE. 112⁴. [THE PERIOD FOR WHICH THE CHILD IS PLACED IN FOSTER CARE]

Child is placed in foster care until the existence of the conditions for his return to the family or put it in the adoptee family.

ARTICLE. 112⁵ [ENTITIES AUTHORIZED TO EXERCISE CUSTODY FOSTER]

§ 1. The Court may entrust the exercise of custody foster spouses or unmarried finds out who are introductory or siblings of the child. Exercise of custody substitute the Court may also entrust the spouses or unmarried finds out who are not descendants or siblings of the child, if these persons have been entered in the register of persons qualified to act as a professional foster family, non-professional foster family, family home of the child or the fullness of already feature professional fos-

THE FAMILY AND GUARDIANSHIP CODE

ter family or non-professional foster family and leading family-run children's home.

§ 2. If this is justified by the best interests of the child the Court may temporarily, for no longer than 6 months, entrusted with the exercise of the functions of foster family spouses or unmarried finds out who are not ascendants or siblings of the child, which does not satisfy the condition of training necessary for the specified in the rules about supporting the system of foster care and family concerning foster families.

ARTICLE. 112⁶ [ENTITIES AUTHORIZED TO EXERCISE CUSTODY OVER THE CHILD REPLACEMENT WITH A DECISION ON DISABILITY]

Surrogate Custody over a child with a disability ruling or judgment of moderate or severe disabilities is entrusted primarily to foster care.

ARTICLE. 112⁷ [PLACEMENT OF A CHILD IN INSTITUTIONAL CARE FOSTER]

§ 1. The Court places the child in institutional custody, if there is no possibility of the placement of the child in foster care or for other important reasons this is not reasonable.

§ 2. As far as possible, the Court places the child in foster care in the County of the child's place of residence.

ARTICLE. 112⁸. [PLACE SIBLINGS IN THE INSTITUTIONAL CUSTODY FOSTER]

Siblings should be placed in the same foster home, child, educational facility or regional educational institution of educational-therapeutic, unless this would be contrary to the best interests of the child.

SECTION 3. CONTACT WITH A CHILD.

ARTICLE. 113. [CONTACT CHILD]

§ 1. Regardless of the parental responsibility parents and their children have the right and duty to maintain contact with each other.

§ 2. Contacts with the child shall include, in particular, being with child (visits, meetings, taking the child outside of his place of permanent residence) and direct communication, maintaining correspondence, use of other means of distance communication, including electronic means of communication.

ARTICLE. 113¹. [SPECIFY HOW TO MAINTAIN CONTACT WITH THE CHILD]

§ 1. If the child is residing permanently in one of the parents, how to maintain contact with the child by the other parents together determine, guided by the best interests of the child and taking into account the reasonable wishes; in the absence of agreement, court guardianship.

§ 2. The provisions of paragraph 1 shall apply mutatis mutandis, if the child is not present in any of the parents, custody of it is exercised by the guardian or when it was placed in custody.

ARTICLE. 113². [RESTRICTION TO MAINTAIN CONTACT WITH THE CHILD]

§ 1. Where this is necessary for the best interests of the child, the Court of guardians will limit contacts the parents with the child.

§ 2. The Court of guardians may, in particular:

- 1) prohibit the meet with the child;
- 2) prohibit the taking of the child outside of his place of permanent residence;
- 3) allow to meet with the child only in the presence of the other parent or guardian, probation officer or other person designated by the Court;
- 4) restrict contacts to specific ways to communicate at a distance;
- 5) prohibit the distance communication.

ARTICLE. 113³. [MAINTENANCE OF LEGAL RESTRICTIONS TO MAINTAIN CONTACT WITH THE CHILD]

If maintaining contact parents with a child seriously threatens the well-being of the child or violates the Court prohibit their maintenance.

ARTICLE. 113⁴. [RESPONSIBILITIES OF PARENTS APPOINTED BY THE FAMILY COURT]

The Court of guardians, ruling on the contacts with the child, may require the parents to a specific procedure, in particular to direct their homes or family therapy professionals, advice or providing other family assistance with an indication of the way the performance audit issued orders.

ARTICLE. 113⁵. [CHANGE RESOLUTION ON CHILDREN]

The Court of guardians could change the decision on the contacts, if required by the best interests of the child.

ARTICLE. 113⁶. [THE APPLICATION OF THE PROVISIONS TO PEOPLE TAKING TEMPORARY CUSTODY]

The provisions of this section shall apply accordingly to the contacts, siblings, grandparents, kin in the direct line, as well as other people, if they have custody for a longer period of time.

DIVISION II. ADOPTION.

ART. 114. [ADOPTION OF THE MINOR]

§ 1. Assimilate can be minor, only for its good.

§ 2. Being a requirement should be fulfilled at the date of the application for adoption.

ARTICLE. 114¹. [CONDITIONS FOR ADOPTION]

§ 1. Assimilate can a person with full legal capacity, if her personal qualifications justify the belief that he will duly by the obligations adoptive parent and has the opinion of qualification and certificate of completion of training organized by the adoption centre, referred to in the rules about supporting the system of foster care and family, unless this obligation does not apply to it.

§ 2. Between the adopter and adoptee should be the appropriate age difference.

ARTICLE. 114². [RELOCATION]

§ 1. Adoption resulting in the adoptee changing his/her current place of residence in the Republic of Poland to reside in another state, can take place if this is the only way to ensure the adoptee has an appropriate substitute family environment.

§ 2. The provision of § 1 will not apply if there is a relationship of consanguinity or affinity between the adopter and the adoptee, or if the adopter already has already adopted a brother or sister of the adoptee.

ARTICLE. 115. [JOINT ADOPTION]

§ 1. Only spouses can jointly adopt.

§ 2. An adoption has the effect of a joint adoption also when the person adopted by one of the spouses is then adopted by the other spouse.

§ 3. The guardianship court may rule that the adopter's application for adoption has the effect of a joint adoption if the adopter was married to a person who had adopted the child, and the marriage was terminated due to the death of the spouse who had performed the adoption.

ARTICLE. 116. [ADOPTION BY ONE SPOUSE]

Adoption by one of the spouses may not take place without the consent of the other spouse, unless this does not have legal capacity, or that the agreement with him facing hard to overcome obstacles.

ARTICLE. 117. [COURT]

§ 1. Adoption follows the guardianship court's ruling made at the motion of the adopter.

§ 2. The ruling cannot be issued after the death of the adopter or the person who was supposed to be adopted.

§ 3. After the death of the adopter, an adoption ruling may be issued in exceptional cases, if the adoption was requested by both spouses, one of whom died after the proceedings were initiated, and a second request for joint adoption by the spouses was sustained, or where the adoptee was cared for by the applicants, or only the deceased applicant, for a long time before the proceedings were commenced, and between the remaining parties there is a bond as between parents and a child.

§ 4. A custodian takes the place of the deceased in proceedings before the guardianship court.

§ 5. An adoption, as referred to in § 3, has the same effect as a ruling given before the death of a spouse.

ARTICLE. 117¹ [RE ADOPTION]

Adoption does not preclude the adoption again after the death of the adoptive parent.

ARTICLE. 118. [THE CHILD'S CONSENT]

§ 1. A child who has reached the age of thirteen must give his/her consent before being adopted.

§ 2. The guardianship court should hear an adoptee who has not reached the age of thirteen to decide whether he/she can understand the significance of adoption.

§ 3. The guardianship court may, in exceptional situations, rule on adoption without requiring the consent of the adoptee or without a hearing, if he/she is not capable of giving consent or where the evaluation of the relationship between the adopter and the adoptee shows that he/she considered to be a child of the adopter, and requiring consent or a hearing would be contrary to the adoptee's welfare.

ARTICLE. 119. [PARENTAL CONSENT]

§ 1. The adoptee's parents must consent to the adoption, unless they have been deprived of parental authority or are unknown, or there are significant obstacles to reaching an agreement with them.

§ 2. The guardianship court may, in special circumstances, rule on adoption despite the lack of consent from parents with limited legal capacity, if the refusal to consent to adoption is manifestly contrary to the welfare of the child.

ARTICLE. 119¹. [CONDITIONS FOR COMPLETE ADOPTIONS]

§ 1. Parents may consent before the guardianship court to the adoption of their child in the future without indicating the adopter. This consent may be revoked by a declaration made before the guardianship court, but not after the case for adoption is opened.

§ 2. The provision on adoption with the consent of the parents without indicating the adopter will apply accordingly if one parent has expressed such consent and the consent of the other is not required for adoption. This provision does not apply if there are significant obstacles to reaching an agreement.

§ 3. The provision on adoption with the consent of their parents without indicating the adopter will apply accordingly when the adoptee's parents are unknown or dead, if the guardianship court decides in its ruling on adoption.

ARTICLE. 119^{1A}. [IDENTIFICATION OF THE PERSON OF THE ADOPTIVE PARENT FOR PARENTS]

Parents can care proceedings indicate the person of the adoptive parent, which can only be a relative of the parents of the child with the consent of that person made before that Court. A person may also be indicated the spouse of one of the parents.

ARTICLE. 119². [TIME LIMIT FOR CONSENT]

Parental consent to adoption of the child may not be given earlier than six weeks after the birth of a child.

ARTICLE. 120. [A GUARDIAN'S CONSENT]

If the child remains under the care of, the adoption consent is needed. However, the Court of guardians may, due to special circumstances, rule adoption even despite the absence of the consent of the guardian, where this is necessary for the best interests of the child.

ARTICLE. 120¹. [PERSONAL CONTACT]

§ 1. Before ruling on the adoption, the guardianship court may establish the manner and period of personal contact between the adopter and adoptee.

THE FAMILY AND GUARDIANSHIP CODE

§ 2. When establishing contact in the form of care over the child, the provisions concerning foster families will apply accordingly, except that all of the adoptee's living expenses will be covered by the adopter.

§ 3. If, however, the adoption leads to the adoptee changing residence in the Polish Republic to reside in another country, the adoption can be ruled on by the guardianship court after a certain period of personal contact between the adopter and the adoptee in the adoptee's current place of residence, or in another place in the Polish Republic.

§ 4. In exercising supervision over the course of contact between the adopter and the adoptee, the guardianship court may be assisted by an adoption-care centre or auxiliary body in matters of welfare.

ARTICLE. 121. [FULL ADOPTION]

§ 1. Through adoption, the relationship between the adopter and adoptee is the same as between parents and children.

§ 2. The adoptee acquires the rights and obligations of kinship in relation to the relatives of the adopter.

§ 3. The adoptee loses the rights and obligations arising from his/her relations with relatives, and his/her relatives lose their rights and obligations in relation to him/her.

§ 4. The effects of the adoption extend to the descendants of the adoptee.

ARTICLE. 121¹ [ADOPTION OF A STEPCHILD]

§ 1. The provision of Article 121 § 3 will not apply towards a spouse whose child was adopted by the other spouse, or against relatives of the spouse, including the case of an adoption after the termination of marriage through the death of the spouse.

§ 2. Where a spouse has adopted a child of his/her spouse after the death of the other parent of the adoptee, the provision of Article 121 § 3 will not apply towards the relatives of the deceased, if stated in the guardianship court's ruling.

ARTICLE. 122. [NAME OF THE ADOPTED]

§ 1. The adoptee receives the surname of the adopter, and if the adoption is executed by spouses together, or if one spouse has adopted a child of the other spouse - then the surname that children born of this marriage have or had.

§ 2. At the request of the person being adopted, and with the consent of the adopter, the guardianship court's ruling on adoption provides that the adopted person will bear the surname composed of its current surname and the surname of the adopter. If the adopter or the adoptee has a multi-element surname, the guardianship court decides which elements of the surnames will make up the adoptee's surname. This provision does not apply in the case of drawing up a new birth certificate for the adoptee, entering the adopters as the parents.

§ 3. At the request of the adopter, the guardianship court's ruling on adoption may decide to change the name or names of the adoptee. If the adoptee has reached thirteen years of age, this can only take place with the adoptee's consent. The provision of Article 118 § 2 will apply accordingly.

ARTICLE. 123. [EFFECTS OF ADOPTION]

§ 1. By adoption shall terminate the existing parental or care for the adopted child.
§ 2. If one of the spouses has prepared a child of the other spouse, parental responsibility are entitled to both spouses jointly.

ARTICLE. 124. [LIMITATION OF THE EFFECTS OF ADOPTION]

§ 1. At the request of the adoptive parent and with the consent of the persons whose consent to adoption, the Court of guardians ruled that the effects of adoption to rely only on the formation of the relationship between the adopter and the adopted child. However, and in this case the effects of the adoption of the descendants of the adopted.

§ 2. It is not permitted to limit the effects of the adoption if the parents of the adopted expressed before the Court of guardians consent to adoption of the child, without identifying the person of the adoptive parent.

§ 3. At the request of the adoptive parent and with the consent of the persons whose consent to adoption, guardianship may during the period being the adopted change adoption granted pursuant to section 1 on the adoption, the effects of which are subject to the provisions of art. 121 – 123.

ARTICLE. 124¹. [EFFECTS OF PARENTAL CONSENT FOR ADOPTION]

In the case of the parents of the adopted expressed before the Court of guardians consent to his adoption without indication of the person of the adoptive parent, it is not permitted to determine the origin of the adopted by the recognition of paternity, judicial determination or denial of his origin, determine the ineffectiveness of recognition of paternity.

ARTICLE. 125. [CONDITIONS FOR TERMINATION OF ADOPTION]

§ 1. For important reasons both the adoptee and the adoptive parent may request termination of the adoption by the Court. Termination of the adoption is not acceptable if the result it would suffer the welfare of the minor child. Declaring the termination of adoption, the Court may, where appropriate, to maintain in force the resulting maintenance obligations.

§ 2. After the death of the adopted or adoptive parent termination of adoption is not permitted, unless they died following the initiation of the action for termination of adoption. In the case of this in place of the adoptive parent in the process joins guardian established by the Court.

ARTICLE. 1251 [INADMISSIBILITY SOLUTION ADOPTION]

§ 1. Is not an acceptable solution adoption, on which the parents of the adopted expressed before the Court of guardianship consent without giving people the adoptive parent.

§ 2. Such adoption shall not prevent the adoption again for the life of the adoptive parent.

ARTICLE. 126. [EFFECT OF TERMINATION OF ADOPTION]

§ 1. Upon the termination of adoption cease its effects. If the solution occurred after the death of the adoptive parent, it is believed that the effects of adoption ceased upon his death.

THE FAMILY AND GUARDIANSHIP CODE

§ 2. The adoptee retains the name acquired by adoption, and received in connection with the development name or names. However, for important reasons, the Court, at the request of the adopted or the adoptive parent may in the judgment of termination of adoption provide that the adoptee is back to the names that he wore before the judgment of adoption. At the request of the adopted Court about its return to the previously worn the name or names.

ARTICLE. 127. [POWERS OF ATTORNEY]

An action for dissolution of adoption can bring also the Prosecutor.

DIVISION III. MAINTENANCE OBLIGATION.

ART. 128. [CONCEPT; MAINTENANCE OF RELATIVES]

The obligation to provide the means of subsistence, and, where necessary, measures of education (maintenance) shall be debited to the relatives in the direct line or siblings.

ARTICLE. 129. [SEQUENCE]

§ 1. The obligation to pay maintenance charges descendants before initial and preliminary before the siblings; If there are several descendants or ascendants-charge closer degree before proceeding further.

§ 2. Relatives in the same degree shall be debited to the maintenance obligation in parts corresponding to their commercial capabilities and interests.

ARTICLE. 130. [PRIORITY MAINTENANCE SPOUSE]

The obligation of one spouse to provide means of support the other spouse after the termination or cancellation of the marriage or after separation judgment ahead of the maintenance obligation of relatives of a spouse.

ARTICLE. 131. [MAINTENANCE OBLIGATION IN RELATION TO THE ADOPTED]

§ 1. If the effects of the adoption are only of the relationship between the adopter and adoptee, the maintenance obligation in relation to the adopted shall be debited to the adoptive parent before initial and siblings adopted, and the maintenance obligation with respect to the preliminary and siblings shall be debited to the adopted only in the last place.

§ 2. If one of the spouses has prepared a child of the other spouse, adoption does not affect the maintenance obligation between the adopted child and the other spouse and his relatives.

ARTICLE. 132. [MAINTENANCE TO FURTHER DEGREES]

Principal maintenance obligation subsequently arises only when there is no person liable in the proximal sequence or when the person is not able to satisfy his obligation or when getting away from her at the time needed by authorized means of subsistence is impossible or connected with excessive difficulties.

ARTICLE. 133. [OBLIGATION RELATIVE TO THE CHILD]

§ 1. Parents must to maintenance with respect to a child who is not yet able to maintain himself/herself, unless the income of the child's property is sufficient to cover the cost of its maintenance and education.

§ 2. In addition to the above, an accident shall be entitled to maintenance if the only one who is in deprivation.

§ 3. Parents can waive the maintenance terms of an adult child, if they are combined with excessive harm to them or if the child does not endeavor to obtain possible support.

ARTICLE. 134. [SIBLINGS]

In relation to siblings may waive the obligation of maintenance, if they are combined with excessive harm to him or his immediate family.

ARTICLE. 135. [THE SCOPE AND SUBJECT]

§ 1. The scope of maintenance depends on the justified needs of the holder, and from commercial and financial capabilities of the principal.

§ 2. The execution of the maintenance obligation in relation to a child who is not yet able to maintain itself or to a disabled person may rely wholly or partly on personal efforts to the maintenance or upbringing of the proprietor; in this case, the maintenance of the remaining required is implemented, in whole or in part, the cost of maintenance or upbringing of the entitled party.

§ 3. Social assistance benefits or the maintenance fund, referred to in the Act of 7 September 2007 for persons entitled to maintenance (Journal of laws of 2015.859, with amended) repayable by liable for maintenance and provide for foster family do not affect the scope of the obligation to pay maintenance.

ARTICLE. 136. [VOLUNTARY CURTAILMENT OF PROPERTY]

If, within the last three years before the judicial investigation of maintenance, a person who has already been to these benefits shall, without a valid reason has relinquished property law or otherwise committed to its loss or if surrendered employment or changed them on less profitable, no account shall be taken of the following, hence the change in determining the scope of the maintenance.

ARTICLE. 137. [LIMITATION]

§ 1. Claims for maintenance shall lapse at the end of the three years.

§ 2. If the entitled person has outstanding needs from before instituting maintenance proceedings, the court will grant an award of an appropriate amount of money. In justified cases, the court may divide the awarded benefit into installments.

ARTICLE. 138. [CHANGE RELATIONS]

If you change the relationship, you can request to change the decision or agreement on the obligation to pay maintenance.

ARTICLE. 139. [EXPIRY]

Maintenance obligation does not pass to the heirs of the debtor.

ARTICLE. 140. [RECOURSE]

§ 1. A person who provides another means of subsistence or education without being required to do so or as required for the reason that for the duration of the maintenance from the person liable in the closer or the same order would be authorized or connected with excessive difficulties, you may request a refund from the person who should have these benefits.

§ 2. The claim as provided for in the preceding paragraph are subject over three years.

ARTICLE. 141. [CLAIMS FROM THE MOTHER OF AN ILLEGITIMATE CHILD]

§ 1. Father who is not married to the mother is obliged to contribute in a size corresponding to circumstances to cover expenses related to pregnancy and childbirth and the cost of three-month maintenance of the mother during childbirth. For important reasons a mother may request the participation of the father in the costs of their maintenance for longer than three months. If as a result of pregnancy or childbirth, the mother has suffered other necessary expenses or specific property, it may require that the father covered the relevant part of these expenses or losses. The claims above have also to the mother when the child was born dead.

§ 2. The claim of the mother provided for in the preceding paragraph shall lapse at the end of three years from the date of delivery.

ARTICLE. 142. [ESTABLISH PATERNITY]

If paternity of a man who is not her husband's mother has been validated, the mother may request that this man even before the birth of a baby he laid out an appropriate amount of money for the costs of maintaining the mother for three months during the period of labor and the cost of maintenance of the child for the first three months after birth. Date and method of payment of this sum specifies the Court.

ARTICLE. 143. [NO PATERNITY]

If the paternity of a man who is not her husband's mother, has not been established, both the child and the mother can assert claims to property related to fatherhood only simultaneously with the investigation of paternity. This does not apply to claims of the mother when the child was born dead.

ARTICLE. 144. [MAINTENANCE OF THE CHILD AND THE STEPFATHER]

§ 1. The child may claim maintenance from the husband of his mother, not his father, if this corresponds to the rules of social conduct. Such a child may do likewise in relation to the wife of his father, not his mother.

§ 2. The husband of the child's mother, not his father, may require the child maintenance payments, if contributing to the education and maintenance of the child, and request its corresponds to the rules of social conduct. Such likewise the wife of father of the child, not the child's mother.

§ 3. To the benefits provided for in the preceding paragraphs shall apply accordingly the provisions of the maintenance obligation between relatives.

ARTICLE. 144¹ [AVOIDING THE MAINTENANCE OBLIGATION]

The obliged person may avoid complying with the maintenance obligation towards the entitled person, if the demand for maintenance is contrary to the principles of social coexistence. This requirement does not apply to parents in relation to their child who is a minor.

TITLE III. CARE AND GUARDIANSHIP.

DIVISION I. CARE OF A MINOR.

CHAPTER I. ESTABLISHING CARE.

ARTICLE. 145. [THE ESTABLISHMENT OF CARE]

- § 1. Care for a minor shall be in the cases provided for in title II of this code.
§ 2. Care establishes the Court of guardians, since only has the message that there is legal after reason.

ARTICLE. 146. [CARING]

Care is exercised by the guardian. Joint exercise of custody of the child, the Court may entrust only to spouses.

ARTICLE. 147. [ORDER OF THE COURT]

If the welfare of the remaining under the supervision of, the Court of guardians it seems necessary in order to protect his person or property up to the time of entry for care by a guardian; in particular the Court of guardians may lay down in order to do this, the curator.

ARTICLE. 148. [THE GUARDIAN OF A MINOR]

- § 1. It cannot be established by the guardian a person who does not have full legal capacity or has been deprived of public rights.
§ 1a. The guardian of a minor may not be established also a person who has been deprived of parental authority or convicted of an offence against sexual freedom or social morality or for an intentional crime of violence against a person or a crime committed to the detriment of a minor or in co-operation with it, or the person in respect of whom the Court stated the prohibition of activities related to bringing up, treatment, education of minors or caring for them, or the obligation to refrain from being in certain environments or places , a prohibition on contact with specific persons or ban on leaving a specific place of residence without the consent of the Court.
§ 2. It cannot be established by the guardian, in relation to whom there is a probability that fails to duly comply with the obligations of a guardian.

ARTICLE. 149. [GUARDIAN] § 1. When the sake of welfare under the care of not ago prevent minor guardian should be established first of all the person named by the father or mother, if they were not deprived of parental authority.
§ 2. If a guardian has not been established by a person referred to in paragraph pre-

THE FAMILY AND GUARDIANSHIP CODE

ceding, the guardian should be established out of relatives or other persons close under the care either of his parents.

§ 3. In the absence of such persons the Court of guardians asks for an indication of the person to whom the child care could be entrusted to the competent organizational unit of social assistance or social organization, to which the rights of minors, and if the remainder under the care of a resident in a nursing education or other similar institution, reformatory or in a shelter for minors, the Court may apply to the facility or to the plant or animal shelters.

§ 4. If necessary, the establishment of a care for the minor in custody, the court entrusts the care, mainly:

- 1) in the case of the placement of the child in a foster family – parents,
- 2) in the case of the placement of the child in the family house of the child – to lead the House,
- 3) in the case of the placement of the child in the facility nursing education family-type-people leading this base,
- 4) in the case of the placement of the child in the facility nursing education, therapeutic intervention, or regional educational institution-therapeutic-for persons close to the child – within 7 days from when the provisions on deprivation of parental authority.

§ 5. In the case referred to in article 119¹ § 1, shall not apply the provisions of § 1, 2 and 4, paragraph 4.

ARTICLE. 150. (REPEALED)

ARTICLE. 151. [ESTABLISHMENT OF ONE GUARDIAN FOR SEVERAL PERSONS]

The Court of guardians may establish one guardian for several people, if there is no conflict between their interests. Care of the siblings should as far as possible, be entrusted to one person.

ARTICLE. 152. [OBLIGATION TO CARE]

Each, whom the Court of guardians will establish the guardian is obliged to care. For important reasons, the Court of guardians can exempt from this obligation.

ARTICLE. 153. [COVER CARE]

Coverage of care shall be effected by the deposit pledge before the Court of guardianship. A guardian should cover his duties immediately.

CHAPTER II. EXERCISING CARE.

ARTICLE. 154. [THE DUTIES OF GUARDIAN]

The guardian is obliged to perform his activities with due diligence, as required under the good care of and public interest.

ARTICLE. 155. [SUPERVISION OF THE COURT]

§ 1. The guardian has custody of person and property under the care of; is subject to the supervision of the Court of guardianship.

§ 2. To custody shall apply accordingly the provisions on parental responsibility with the behavior of the following rules.

ARTICLE. 156. [AUTHORIZATION OF THE COURT]

Guardian should obtain permission of the Court of guardianship in all major matters that apply to the person or property of a minor.

ARTICLE. 157. [CURATOR]

If the guardian is transient obstacles in the exercise of custody, guardianship may be laid down by the guardian.

ARTICLE. 158. [INFORM THE PARENTS ABOUT IMPORTANT MATTERS RELATING TO THE MINOR'S]

Decisions in major cases that apply to the person or property of a minor guardian should inform his parents who participate in the celebration of the current custody of the person of a child and his upbringing.

ARTICLE. 159. [DISABLE SQUAD]

§ 1. A guardian cannot represent the people under his care:

- 1) in legal acts between these persons;
- 2) in legal action between one of those people and the guardian or his/her spouse, descendants, ascendants or

siblings, unless the action is to act free of charge for the dependent.

§ 2. The above provisions shall apply accordingly to proceedings before the Court or other authority of the State.

ARTICLE. 160. [TO DRAW UP AN INVENTORY OF THE ESTATE]

§ 1. Immediately after taking care of the guardian is obliged to draw up the inventory of the estate of person not taken care of and present it to the family Court. The above provision shall apply accordingly in the event of a subsequent acquisition of the defendant taken care of.

§ 2. The Court of guardians may release a guardian from the obligation to draw up the inventory, if such property is negligible.

ARTICLE. 161. [VALUABLES]

§ 1. The Court of guardians may require the guardian to the judicial Deposit valuables, securities and other documents belonging to the remaining taken care of. These items cannot be received without the authorization of the Court of guardianship.

§ 2. Cash under the care of, if it is not needed to meet its legitimate needs, should be made by the guardian in a banking institution. The guardian can make cash with the authorization of the guardianship court only positioned.

ARTICLE. 162. [REMUNERATION OF THE GUARDIAN]

§ 1. The Court of guardians will grant Supervisor for care at the request of appropriate remuneration periodic or one-time salary on termination of care or release him from it.

THE FAMILY AND GUARDIANSHIP CODE

§ 2. Remuneration shall not be granted if the effort of a guardian is negligible or when care is related to the performance of functions of foster family or meets the rules of social conduct.

§ 3. Remuneration coincides with the income or assets of the person for whom custody has been established and, if that person does not have the appropriate income or assets, salary is paid from public funds on the basis of the provisions on social assistance.

ARTICLE. 163. [PAYBACK]

§ 1. The guardian may request under the care of the return and expenses related to care giving. Of this title shall apply accordingly the provisions of the order.

§ 2. These claims barred over three years from termination of custody or release.

§ 3. Provision of art. 162 § 3 shall apply mutatis mutandis.

ARTICLE. 164. [DAMAGES]

Claim of person not under the care of the damages caused to the improper exercise of care are subject over three years from termination of custody or release.

CHAPTER III. SUPERVISION OVER THE EXERCISE OF CARE.

ARTICLE. 165. [RULES OF SUPERVISION OF THE CARE GIVING]

§ 1. The Court of guardians perform supervision of care giving, and to keep up with the activities of the guardian and giving him instructions and commands.

§ 2. The Court of guardians may request from the guardian clarification on any matter belonging to the care and presentation of documents relating to its exercise.

ARTICLE. 166. [PART GUARDIAN]

§ 1. The guardian is obliged, within the periods marked by the Court of guardians, not less frequently than every year, that Court reports on people under the care of and bills from its property.

§ 2. If the income from these assets does not exceed the likely cost of maintenance and upbringing of the person

under care, the guardianship court may release the guardian from the obligation to provide more detailed accounts of the management; in this case, the guardian submits a general report on the administration of the property.

ARTICLE. 167. [EXAMINATION OF THE REPORTS AND ACCOUNTS OF THE GUARDIAN]

§ 1. The Court of guardians shall examine the reports and accounts of the guardian in terms of meaningful and accounting, manages, if necessary, their amendment and supplement and decides whether and to what extent the Bills approved.

§ 2. The approval of accounts by the guardianship court does not exclude the liability of the guardian for any injury caused by the improper management of assets.

ARTICLE. 168. [IMPROPER CARE]

If the guardian does not duly care, guardianship will issue the appropriate orders.

CHAPTER IV. DISMISSAL OF THE GUARDIAN AND CESSATION OF CARE.

ARTICLE. 169. [RELEASE CARE]

§ 1. For important reasons, the Court of guardians may request a guardian release it with care.

§ 2. The Court of guardians shall indemnify a guardian, if due to obstacles of fact or legal guardian is unable to exercise care or permitted acts or omissions that violate the good under care.

§ 3. If the Court of guardians not decided to otherwise, the guardian is obliged to lead still urgent matters related to care until her embrace by the new guardian.

ARTICLE. 170. [TERMINATION OF CARE UNDER THE LAW]

When the minor reaches the age of majority or when restored will be over it parental care ceases under the law.

ARTICLE. 171. [CONTINUATION OF CASEWORK]

If, at the end of exercising care, it is not possible to immediately transfer the management of the property to the person under care, or to his/her legal representative or heirs, then the guardian is required to continue to carry out urgent matters related to property management, unless the guardianship court decides otherwise.

ARTICLE. 172. [FINAL ACCOUNT]

§ 1. Upon the dismissal of the guardian or upon the guardian ceasing to provide care, the guardian is required to submit the final accounts for property management within three months.

§ 2. The provisions on annual accounts apply accordingly to the final accounts.

ARTICLE. 173. [EXEMPTION FROM THE OBLIGATION TO]

The Court of guardians may release a guardian from the obligation to submit the final account.

ARTICLE. 174. [PUTTING ASSETS]

Immediately after his release or after termination of care guardian is obliged to give to the person who remained in the care of, or her representative and counsel or the heirs of a managed property by that person.

DIVISION II. GUARDIANSHIP OVER A COMPLETELY LEGALLY INCAPACITATED PERSON.

ARTICLE. 175. [INCAPACITATED COMPLETELY]

The provisions concerning care over minors apply as appropriate to care over a completely legally incapacitated person, subject to the provisions below.

ARTICLE. 176. [GUARDIAN]

Where it is not contrary to the interests of the person under care, the established guardian of a completely legally incapacitated person should be his/her spouse, and in the absence of a spouse - his/her father or mother.

ARTICLE. 177. [TERMINATION OF CARE]

Care over a completely legally incapacitated person ceases by operation of law if the legal incapacitation is repealed, or if the complete legal incapacitation is amended to partial legal incapacitation.

DIVISION III. GUARDIANSHIP

ART. 178. [GUARDIANSHIP]

§ 1. The trustee shall be in the cases provided for by law.

§ 2. In terms of unregulated by the provisions which provide for the establishment of guardianship, shall apply accordingly to guardianship of welfare provisions without prejudice to the following.

ARTICLE. 179. [REMUNERATION FOR THE EXERCISE OF GUARDIANSHIP]

§ 1. A State authority, which has established a guardian, will grant him his request appropriate remuneration for the exercise of guardianship. Remuneration coincides with the income or assets of the person for whom the guardian is established and, if that person does not have the appropriate income or assets, remuneration covers the one who requested the establishment of a guardian.

§ 2. Remuneration shall not be granted if the amount of work the curator is negligible, and the exercise of guardianship meets the rules of social conduct.

ARTICLE. 180. [SET ASIDE THE GUARDIANSHIP]

§ 1. Subject to the exceptions in the Act, the State authority, which has established a guardian, will repeal the tutor, when you come off its objective.

§ 2. If the guardian has been established to attend to individual cases, guardianship shall cease as soon as the completion of this case.

ARTICLE. 181. [TERMINATION OF GUARDIANSHIP]

§ 1. The custodian of a partially incapacitated person is appointed to represent it and manage its assets only if the guardianship court so decides.

§ 2. Should the incapacitation guardianship is terminated by operation of law.

ARTICLE. 182. [TO APPOINT A GUARDIAN FOR A CHILD CONCEIVED]

A custodian may be appointed for an unborn child, if it is necessary to protect the child's future rights. The custodianship ceases as soon as the child is born.

ARTICLE. 183. [TO APPOINT A GUARDIAN FOR A DISABLED PERSON]

§ 1. A disabled person is appointed a custodian if he/she needs assistance to carry out any issues or matters of a particular type, or to settle a particular case. The scope of duties of the custodian is established by the guardianship court.

§ 2. The tutor shall be repealed at the request of a disabled person, for which it was established.

ARTICLE. 184. [TO APPOINT A GUARDIAN FOR THE PERSON NOT PRESENT] § 1. For the protection of the rights of the person who due to absence may not lead their cases and there is no representative, the curator. The same applies if the delegate is absent cannot perform its activities or when they perform unduly.

§ 2. A guardian should first of all try to get to determine the place of residence of a person absent and inform it about the State of its affairs.

