

The Problem of Legal Regulation of Joint Physical Custody: The Polish Perspective

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Abstract : The main purpose of the work is to present the results of the studies regarding joint physical custody in the Polish legal system. The issues addressed fit into the ongoing process of modernising family law regulations and their adaptation to changing social reality in Poland. The Polish legislator now faces a dilemma: whether to introduce into Polish law a developed substantive or procedural regulation of joint physical custody and then whether it should be considered a legal presumption. Joint physical custody after divorce or separation is theoretically possible in Poland. It can either follow from the court's independent proposal based on the assessment of the circumstances or from the parenting plan submitted by parents wishing to jointly retain full parental authority. However, joint physical custody does not result directly from the Polish Family and Guardianship Code. Therefore, there is real legal uncertainty in this matter, which leads to different treatment of citizens by the public authorities and courts. Another problem is that joint physical custody is misunderstood by the Polish courts. The main thesis of the work is that joint physical custody does not only mean the system of symmetrical child care (50/50), and the possibility to award joint physical custody will require the courts to carefully weigh the pros and cons of such an arrangement in each individual case.

Keywords : joint physical custody, shared parenting, divorce, separation, parental authority

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