

THE LEGAL SITUATION OF MINOR PARENTS IN DETERMINING THE PARENTAGE OF THEIR CHILD AND PLACING IT FOR ADOPTION*

— dr Anna Urbańska-Łukaszewicz

Institute of Law Studies, Polish Academy of Sciences, Poland

ORCID: 0000-0003-0513-2240

e-mail: a.urbanska-lukaszewicz@inp.pan.pl

ABSTRACT

The issue of parentage of minors is one of the contemporary legal challenges. It is very important for society, as reflected in the significant number of minor parents and the media's interest in their functioning. The youngest mothers are girls aged 12.

Minor parents have limited legal capacity, remain under the parental authority of their parents until the age of majority and do not have parental authority over their children. They may only participate in the ongoing care and upbringing of their children, unless the guardianship court decides otherwise due to the child's best interests. For this reason, it is important to determine whether they can submit declarations necessary for the recognition of paternity, participate in court proceedings related to the determination of their child's parentage or consent to the placement of a child for adoption.

KEYWORDS

minor parents, parental responsibility, legal capacity, recognition of a child, judicial determination of paternity, adoption

1. INTRODUCTION

The issue of parenthood of minors is one of today's legal challenges. It has a high public profile in many countries,¹ as evidenced by the significant number of minor parents and by media interest

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1 M Bidzan, *Nastoletnie rodzicielstwo. Perspektywa psychologiczna* [Teenage parenthood: Psychological perspective] (Harmonia Universalis 2013) 18.

in their functioning.² Adolescents around the world are beginning sexual initiation sooner.³ Premature sexual intercourse can in turn lead to unplanned and unwanted pregnancies.⁴

In Poland, the youngest mothers are girls at the age of 12,⁵ and worldwide there have been cases of births by even younger mothers.⁶ There are many more girls who gave birth at the age of 13 or 14: about 50–60 per year. The Polish Demographic Yearbook for 2020 shows that there were 168 children born to girls who were under 15, while 16-year-olds gave birth to 482 children and 17-year-olds delivered 1,054 children. In some cases, a minor mother gave birth to more than one child. On the other hand, 1106 boys under the age of 19 became fathers.⁷ However, these data do not show a complete picture of the scale of underage fatherhood, as the statistics also include fathers who are already of age. It is also unclear whether the information found in the Yearbook includes men who have acknowledged paternity or whose court paternity establishment case was legally concluded, or whether the data is based solely on the claims of mothers.

The legal situation of minor parents includes several aspects, such as determining the parentage of the child (by judicial as well as extrajudicial means), placing the child for adoption, parental authority and ongoing custody of the child. This essay will further elaborate on the issues related to establishing the child's parentage as well as placing the child for adoption.

2. PARENTAL AUTHORITY

Minor parents have limited legal capacity and themselves remain under the parental authority of their parents until they reach the age of majority (Article 92 of the Family and Guardianship Code,⁸ hereinafter referred to as the Family Code). They do not have parental authority over their child (Article 94 § 1 of the Family and Guardianship Code).

A minor girl who has reached the age of 16 and is pregnant or has given birth to a child may be allowed by the guardianship court to marry for important reasons, when the circumstances are such that the marriage will be compatible with the good of the family that has been estab-

2 D Olzen in D Schwab (ed) *Münchener Kommentar zum Bürgerlichen Gesetzbuch* (Verlag C.H. Beck 2017), 892–893.

3 M Andrzejewski, 'Podstawy prawne ochrony macierzyństwa w Polsce. Status prawny małoletnich i nieletnich matek' [Legal grounds for maternity protection in Poland: The legal status of minors and underage mothers], in A Sikora (ed) *Sytuacja prawna, społeczna i wychowawcza nieletnich ciężarnych i nieletnich matek przebywających w placówkach resocjalizacyjnych. Raport z realizacji projektu „Chcę być z Tobą MAMO!”* [The legal, social and educational situation of pregnant minors and underage mothers residing in resocialisation institutions: Report on the implementation of the project "I want to be with you MOM!"], ([Fundacja po Drugie] 2013) 83–84, <<https://podrugie.pl/kopia/wp-content/uploads/2016/09/RAPORT.pdf>> accessed 17 Dec 2022.

4 U Kempieńska, *Małżeństwa młodocianych. Przyczyny i konsekwencje* [Juvenile Marriages: Causes And Consequences] (Wyższa Szkoła Humanistyczno-Ekonomiczna 2005) 52.

5 P Szukalski, 'Urodzenia nastolatki' [Teenage births] (2016) *Demografia i Gerontologia – Biuletyn Informacyjny* 6, 3 <<https://dSPACE.uni.lodz.pl/bitstream/handle/11089/19661/2016-06%20Nastoletnie%20macierzy%5c5%84stwo.pdf?sequence=1&isAllowed=y>> accessed 12 Dec 2022.

6 M Bidzan 28–30.

7 (2020) *Rocznik demograficzny* [Demographic Yearbook], 261, 271 <<https://dane.gov.pl/pl/dataset/718,rocznik-demograficzny-2020/resource/35527/table>> accessed 26 Dec 2022.

8 Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy [Family and Guardianship Code of February 25 1964] [2020] JoL 1359, consolidated text.

lished (Art. 10 § 1 of the Civil Code).⁹ Marriage is an avenue for a woman to come of age sooner and thus gain parental authority. This measure is rightly criticised, as it is one way to obtain parental authority earlier than at the age of eighteen. It should be noted that the mere fact of marriage does not determine a person's maturity or experience in life. Nor does it guarantee the proper exercise of this authority. The attainment of majority will occur regardless of who will be the minor's spouse.¹⁰ A minor father is not entitled to such authority.

It is proposed that the Family and Guardianship Code be supplemented with a provision authorising the guardianship court to grant parental authority to minor parents if they have reached the age of 16 and the evidence gathered, including psychological, social and medical assessments, speaks in favour of their being sufficiently mature to exercise parental authority.¹¹

On the other hand, the minor parents may participate in the day-to-day custody and upbringing of the child, unless the guardianship court decides otherwise for the sake of the child's welfare (Art. 96 § 2 of the Family Code). Day-to-day custody mainly includes meeting the child's daily needs related to nursing, feeding and playing with the newborn.¹² This legal solution should be evaluated favourably, as it allows the minor parents to build a bond with the child and satisfies their sense of closeness. However, minors cannot make any decisions about the child, consent to medical procedures, decide on the child's worldview (e.g., baptism) or represent the child in court.¹³ Parental authority cannot be exercised by anyone other than the parents, so in the event that neither of them is entitled to it, custody is established for the child. This situation arises when both parents are minors, as well as when the mother is a minor and paternity has not been established.

Minor parents also have rights associated with the fact of being parents. These include the right to personal contact with the child. It is not an element of parental authority, but a personal right, so persons who do not have this authority for any reason are also entitled to it (Article 113 of the Civil Code).

9 A Urbańska-Łukaszewicz, 'Sytuacja prawna małoletnich rodziców w zakresie możliwości sprawowania władzy rodzicielskiej' [Legal situation of minor parents in terms of the possibility of exercising parental authority] (2021) *Studia Prawnicze KUL* 87(3), 181–187.

10 M Andrzejewski (2013) 90; M. Andrzejewski, *Relacja rodzice i inne osoby dorosłe a dzieci w świetle nowych przepisów Kodeksu rodzinnego i opiekuńczego i niektórych innych ustaw (wybrane problemy)* [The Relationship Between Parents and Other Adults and Children in View of The New Provisions of The Family and Guardianship Code and Some Other Laws (Selected Problems)] (2014) *AIS* 6, 379–380; M Andrzejewski, 'Prawna ochrona macierzyństwa młodocianych matek' [Legal Protection of Motherhood of Juvenile Mothers] in M Andrzejewski, K Dadańska (eds) *Współczesne problemy Prawa rodzinnego i spadkowego* [Contemporary Problems of Family and Inheritance Law] (Volumina.pl 2014) 23–41; A Urbańska-Łukaszewicz 186.

11 T Sokołowski, *Władza rodzicielska nad dorastającym dzieckiem* [Parental Authority Over an Adolescent Child] (UAM 1987) 129, 149; M Andrzejewski (2013) 90–91; A Urbańska-Łukaszewicz 187.

12 T Sokołowski (1987) 23.

13 More: A Urbańska-Łukaszewicz 189.

3. DETERMINATION OF THE PARENTAGE OF A CHILD OF MINOR PARENTS

3.1. DETERMINATION OF MATERNITY AND ACKNOWLEDGMENT OF PATERNITY

The mother of a child is the woman who gave birth to it (Article 619 of the Civil Code), which means that any minor who gives birth to a child will be its mother. Maternity therefore arises from the moment the child is born.

The situation is different with the establishment of paternity. If a child is born in marriage, it is presumed to be the biological child's of the mother's husband, i.e. of the married parents (Article 62 of the Civil Code). A minor who has reached the age of sixteen may marry the child's father, who is of age, for valid reasons, only with the consent of the court. Then, if the child is born in marriage, the father will be the mother's husband. It should be noted, however, that the mother of the child will become of age at the time of marriage and will also gain parental authority over the child.

For a child born out of wedlock, there are two ways to establish the father: acknowledgment of paternity and judicial determination of paternity (Article 72 of the Civil Code). A minor mother cannot marry a minor father. To determine paternity, it is necessary to use the above options.

Acknowledgment of paternity is an act of knowledge by both parents who admit that the child is biologically descended from a man who acknowledges his paternity¹⁴ (Article 73 of the Civil Code).¹⁵ Thus, in acknowledging and confirming paternity, it is irrelevant that the minor parents do not have parental authority over the child.¹⁶ In the case of minors, recognition is made by the guardianship court. The child's mother must confirm the child's descent from the man who makes the acknowledgment. She may do so either at the same time as the acknowledgment or within three months of the father's declaration. It is possible to recognise paternity before the birth of a child who is already conceived (Art. 75 § 1 of the Civil Code).

The right to acknowledge paternity is held by minors (father as well as mother) who are at least 16 years of age and when there are no prerequisites for their incapacitation (Art. 77 § 1 and 2 of the Civil Code). They can make the declarations that are required by law only before the guardianship court. The head of the registry office should refuse to accept the declarations (Art. 73 § 3 of the Civil Code). The guardianship court has the ability to verify the claims of minors, for example, by ordering a genetic test.¹⁷ In this way, it can fulfil its duty to determine the existence

14 Explanatory Memorandum to the Amendment of the Family and Guardianship Code, Parliamentary Print No. 629 <<http://orka.sejm.gov.pl/Druki6ka.nsf/0/1E8CDBD5F38B2E25C125746700371126?OpenDocument>> accessed 31 Dec 2022.

15 B Trębska in J Wierciński (ed) *Kodeks rodzinny i opiekuńczy. Komentarz* [Family and Guardianship Code: Commentary] (WKP 2014) 642 ff.

16 Parliamentary Print No. 629.

17 Commentary to Art. 581(4): J Bodio in A. Jakubecki (ed), *Kodeks postępowania cywilnego. Komentarz aktualizowany. T. I. Art. 1–729* [Code of Civil Procedure: Updated Commentary. Vol. I. Articles 1–729] Lex/el 2019. See also the commentary to Art. 581(7): P Pruś in M Manowska (ed), *Kodeks postępowania cywilnego. Komentarz. T. II* [Code

of the prerequisites for the admissibility of the statements necessary for the acknowledgment of paternity.¹⁸ Such scrutiny is necessary due to the immaturity of those who make the statements required for the acknowledgment of paternity. The minor parents themselves participate in the proceedings that affect them and their child. In this regard, despite the lack of parental authority, they also represent the interests of their unborn or newborn child.

The guardianship court, on the other hand, supervises the welfare of the minor (both the parents and their child). It can also take a number of steps *ex officio* relating to the child's legal situation (Art. 570 of the Code of Civil Procedure hereafter referred to as the Code of Civil Procedure¹⁹). If it turns out that the child does not have an appointed guardian, then the court will take proceedings to appoint one. In addition, the court shall also proceed *ex officio* and control the manner in which the guardianship is exercised, demand explanations from the guardian (Art. 165 § 2 of the Civil Procedure Code), monitor the manner in which the parents exercise day-to-day custody of the child, or change the guardian if he or she improperly performs his or her duties (Art. 168 of the Civil Procedure Code).

It is also the role of the guardianship court to determine whether there are grounds for full incapacitation for minors. This is because it is inadmissible to acknowledge paternity when there are prerequisites for total incapacitation of the minor. In such a situation, the guardianship court refuses to accept the statements necessary for the acknowledgment of paternity (Art. 581 of the Code of Civil Procedure). The court may also notify the prosecutor's office of the case if it deems its participation necessary (Art. 59 of the Code of Civil Procedure). The prosecutor, in turn, may initiate proceedings for incapacitation (Art. 7 of the Code of Civil Procedure).

The Code does not mandate that the father's affidavit and the mother's confirmation be made only before the guardianship court, in a situation where only one of the parties has limited legal capacity but has reached the age of 16. There is no contraindication, for example, for an adult father to make a statement before the head of the registry office, and a minor mother to confirm paternity before the court. If this happens, the court should send the information to the registry office.²⁰

To be valid, the acknowledgment of paternity is not conditional on the consent of the child's legal representative or the legal representative of the minor parent²¹. This is because the legal rep-

of Civil Procedure: Commentary. Vol. II] LEX/el. 2020. Authors believes that if the court has doubts about the origin of the child, it should refuse to accept the statements necessary for the acknowledgment of paternity.

18 T Smyczyński, *Prawo rodzinne i opiekuńcze* [Family and Guardianship Law] (C.H. Beck 2018), 227; T Sokołowski, *Prawo rodzinne. Zarys wykładu* [Family Law: Outline of Interpretation] (Ars Boni et Aequi 2010) 127.

19 Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego [Code of Civil Procedure of 17 November 1964] [2021] JoL 1805, consolidated text.

20 Art. 4 of Ustawa z dnia 28 listopada 2014 r. – Prawo o aktach stanu cywilnego [Law on Civil Status Records of 28 November 2014] [2022] JoL 1681, consolidated text, Courts shall provide civil registry offices with copies of final judgments that form the basis for the issuance of a civil status record or affect the content or validity of a civil status record, together with a note of the date on which these judgments became final, within 7 days of the date on which the judgment became final. Cf commentary to Art. 77(6): G Jędrejek, *Kodeks rodzinny i opiekuńczy. Komentarz aktualizowany* [Family and Guardianship Code: Updated Commentary] LEX/el. 2019.

21 Prior to the 2009 amendments to the Family and Guardianship Code, if the mother did not have parental authority, the consent of the child's legal representative was needed instead of her consent (Article 77 in the wording before the amendment). The child's father who has limited legal capacity could acknowledge the child before and after

representatives of the minor parents could refuse to grant consent to the acknowledgment in order to postpone their own alimony obligation to their grandchild. In addition, acknowledgment of paternity and its confirmation is a statement of knowledge, so the statements must be made by those who have knowledge of the child's origin, namely the child's parents.²² It is therefore an acknowledgment of a specific fact.

Therefore, minors who have reached the age of 16 participate in the paternity acknowledgment proceedings and make their own decisions on the matter. The minor's guardian is not competent to make statements on their behalf. The guardianship court oversees whether the declarations are made correctly, and thus whether the principle of the child's welfare is enforced.

If at least one of the parents is under the age of 16, the acknowledgment of paternity cannot take place at all (Art. 73 of the Civil Code). This is because the minor mother, the minor father and the child's legal representative cannot acknowledge paternity or express confirmation of this acknowledgment. In such cases, the only way to establish the origin of the child is through judicial determination of paternity. Doubts on this issue will be described below.

It is also not possible to acknowledge paternity when one of the parents has died or there are difficulties in communicating with him or her. This is because the child's legal representative cannot give the consent that is necessary for recognition. This measure is consistent with acknowledgment of paternity being qualified as an act of knowledge by both parents confirming that the child is born of them. Thus, the declaration of a parent cannot be made by another person.²³

In order to recognise paternity, it is necessary to achieve sufficient intellectual and social maturity to understand the meaning of this legal institution with significant legal consequences. It was deemed that reaching the age of 16 is an appropriate limit, since such young parents have had limited legal capacity for three years and have acquired enough experience in using it to be able to make such important decisions as acknowledging paternity.²⁴ It was stressed that "those who already have a child are capable of making a prudent decision regarding the acknowledgment of paternity of their child, as long as their developmental stage, or mental health, does not deviate so much from the norm that total incapacitation could be justified".²⁵ This allows minors to bear responsibility for their actions, even though life experience shows that the appearance of a child in their lives is a matter of chance, an ill-considered decision rather than a planned, rational action. The age limit of 16 is systemically consistent with the age limit for a woman to obtain

his birth. His legal situation does not change with the birth of the child. However, for this recognition to be valid, the consent of his legal representative was needed. Such a solution was detrimental to minor mothers, and furthermore violated the principle of parental equality by allowing the minor father to recognise the child, and depriving the minor mother of the opportunity to consent to this recognition after the child's birth. Thus, the legislature decided to change and de lege lata the situation of the minor mother and the minor father is no different. T Sokołowski, 'Sytuacja prawna małoletniej matki przed urodzeniem dziecka' [The Legal Situation of the Minor Mother Before the Birth of the Child] (1995) REPiS 3, 5.

22 J Ignaczewski, *Pochodzenie dziecka i władza rodzicielska po nowelizacji. Art. 61⁹–113⁶ KRO* [The Origin of the Child and Parental Authority After the Amendment of Art. 61⁹–113⁶ of the Family And Guardianship Code] (C.H. Beck 2009) 94.

23 B. Trębska 652.

24 Parliamentary Print No. 629.

25 Ibid.

court permission to marry, and with the amended provisions of the Code of Civil Procedure on granting minor parents procedural capacity in proceedings for judicial determination of paternity.²⁶ If it turns out that the man is not the child's father, both he and the mother may file an action to determine the invalidity of the acknowledgment within a year from the date on which they learned that the child did not come from this man (Art. 78 and 79 of the Civil Procedure Code).²⁷ In the case of acknowledgment of paternity before the birth of a child who has already been conceived, the time limit cannot begin to run before the birth of the child. Minor parents have the procedural capacity to bring such an action (Art. 453¹ of the Civil Procedure Code). As regards cases to establish or deny the origin of a child and to establish the ineffectiveness of an acknowledgment of paternity, the mother and father of a child also have procedural capacity even if they are limited in their legal capacity, if they have reached the age of 16.

In summary, minors who have reached the age of 16 participate independently in proceedings to establish paternity. Although they do not have parental authority, they are entitled to make the necessary statements when there are no grounds for their incapacitation. These are submitted to the guardianship court, as only it has the ability to verify the claims of minors. As for minors who have not reached the age of 16, the acknowledgment of paternity cannot take place. It is necessary to bring an action for judicial determination of paternity.

3.2. JUDICIAL DETERMINATION OF PATERNITY

The second way to establish the origin of a child is judicial determination of paternity, which is the result of a dispute between the mother and the alleged father²⁸ or the consequence of the inability of the minor mother or father to make the statement necessary for the acknowledgment of paternity, for example, in a situation where the parents are under 16, one of them is dead or they have difficulties in reaching an agreement. Although, this is a procedural proceeding, there does not always have to be two parties representing the positions in dispute.

An action for judicial determination of paternity can be brought by the child, the mother, the alleged father and the prosecutor (Article 84 of the Civil Code).²⁹

A decision on judicial establishment of paternity cannot be made only on the basis of acknowledgment of the claim or admission of facts.³⁰ Also, an out-of-court settlement in which the parties would determine who is the father of the child cannot have legal effect and does not create a presumption of paternity.³¹ For young people without life experience and for their child, it is safest to provide special judicial review, which is made possible by an evidentiary hearing.

26 J. Ignaczewski 94.

27 B Trew in J Wierciński (ed) 654–660.

28 T Smyczyński 237.

29 J Haberkow, T Sokołowski in H Dolecki, T Sokołowski (eds) *Kodeks rodzinny i opiekuńczy. Komentarz* [Family and Guardianship Code: Commentary] (WKP 2013) 612.

30 K Piasecki in J Pietrzykowski (ed) *Kodeks rodzinny i opiekuńczy z komentarzem* [Family and Guardianship Code with Commentary] (C.H. Beck 1990) 594; K Pietrzykowski in K. Pietrzykowski (ed), *Kodeks rodzinny i opiekuńczy. Komentarz* [Family and Guardianship Code: Commentary] (C.H. Beck 2015) 572.

31 Z Krzemiński, *Alimenty i ojostwo. Praktyczny komentarz. Orzecznictwo. Piśmiennictwo. Wzory pism* [Aliments and paternity: Practical commentary. Case law. References. Model letters] (Kantor Zakamycze 2006) 50.

The question that needs to be answered is whether the minor parents are competent to sue for judicial determination of paternity on their own. A party involved in a lawsuit should have judicial capacity and procedural capacity. Judicial capacity is vested in every person regardless of age. Litigation capacity is the ability to perform procedural acts with legal effect. The prerequisite for this capacity in natural persons is legal capacity. An individual has procedural capacity in all matters only if he or she has full legal capacity. Such capacity is acquired upon coming of age (Art. 11 of the Civil Code).³² This means that an individual has procedural capacity to the extent that he or she is equipped with legal capacity.³³ Therefore, a person with limited legal capacity has procedural capacity in matters arising from legal actions that he or she can independently perform in accordance with the Civil Code, and a person without legal capacity does not have procedural capacity at all (Article 65 § 2 of the Civil Code). In other cases, his or her legal representative must act on his or her behalf.

The Code of Civil Procedure grants procedural capacity in cases to establish or deny the parentage of a child and to declare the ineffectiveness of an acknowledgment of paternity to the child's mother and father also when they have limited legal capacity, if they have reached the age of 16 (Article 4531 of the Code of Civil Procedure). The argument in favour of such a measure is the availability of certain biological evidence such as genetic code testing that excludes the risk of prejudice to the interests of those who want to claim the establishment or denial of the origin of a child from them.³⁴ This solution makes it possible to establish the origin of the child, especially when the other parent does not want to make the appropriate statement necessary for the acknowledgment of paternity.

With regard to parents who are under 16 years of age, the predominant view is that the current legislation does not grant them procedural capacity in cases of state rights.³⁵ They cannot independently bring an action for judicial determination of paternity. It has been discussed in the literature whether the entitlement to bring this action is not a corollary of granting minor parents, regardless of their age, the legal opportunity to participate in the day-to-day custody of the child. However, it has been found that an action to establish marital status goes beyond day-to-day custody.³⁶ If this is the case, in accordance with Article 66 of the Code of Civil Procedure, minors in this action must be represented by a legal representative. The situation is similar for those parents who do not have legal capacity at all. On their behalf, an action to establish paternity can be brought by a legal representative.³⁷

32 P Nazaruk in J Ciszewski, P Nazaruk (eds), *Kodeks cywilny. Komentarz* [Civil Code: Commentary] LEX/el 2019.

33 Commentary to Art. 11(3); S Kalus, in M Fras, M Haddas (eds), *Kodeks cywilny. Komentarz. Tom I. Część ogólna (art. 1–125)* [Civil Code: Commentary. Volume I. General Part (Articles 1–125)] LEX/el 2018.

34 Parliamentary Print No. 629.

35 T Sokołowski (1987) 61; Z. Krzemiński, *Postępowanie odrębne w sprawach ze stosunków między rodzicami a dziećmi* [Separate Proceedings in Cases Involving Relations Between Parents and Children] (Wydawnictwo Prawnicze 1978) 22–23; Z. Krzemiński, *Legitymacja czynna w procesie o ustalenie ojcostwa* [Right of Action in a Suit to Establish Paternity] (1966) *Palestra* 10, 36–37; K Piasecki in J Pietrzykowski (ed) (1990) 591–592; H Haak, *Pochodzenie dziecka. Komentarz* [Origin of the Child: Commentary] (TNOiK 1997) 140; P Grzegorzczuk in T Ereciński (ed) *Kodeks postępowania cywilnego. Komentarz. Tom I. Postępowanie rozpoznawcze* [Code of Civil Procedure: Commentary. Volume I. Exploratory proceedings] LEX/el 2016 – commentary to Art. 65(7).

36 T Smoczyński 257.

37 Ibid 242; Z Krzemiński (1978) 22–23. The author describes the legal situation of a woman who is completely incapacitated, which is the same as that of a person who has not reached the age of 13.

The child also has the legal standing to file an action for judicial determination of paternity. If the child does not have legal capacity, the mother or father will bring the action on their behalf. If the parents also lack full legal capacity, they do not have parental authority, then they cannot perform the action in question on behalf of their child. In such a case, guardianship is established for the child and a guardian is appointed. The guardian, as the child's legal representative, may bring an action on behalf of the child for judicial determination of paternity (Article 155 § 2 of the Civil Code in conjunction with Article 98 § 1 of the Civil Code). However, they should obtain permission from the guardianship court in all major cases involving the ward (Article 156 of the Civil Code).³⁸

In cases of judicial determination of paternity, minor parents who have reached the age of sixteen participate in court proceedings on determination of parentage. Although they do not have parental authority, they have the competence to bring an action. A minor child also has the possibility to participate in these proceedings if he or she is represented by a legal guardian. The court, on the other hand, verifies that the child's welfare is not violated.

4. ADOPTION OF A NEWBORN CHILD

When the parents of a child and their legal representatives do not feel ready to take on the responsibility of raising the child, they may consider placing it for adoption.

Adoption is carried out by court decision, after meeting the prerequisites required by law. These include the consent of the adopted child, the child's parents (unless they have been deprived of parental authority or are unknown or communication with them runs into insurmountable obstacles), and the child's guardian (Articles 119–120 of the Family Code³⁹). Six weeks after the birth of the child, the parents may consent to adoption (Article 1192 of the Civil Code). They must do so in person.⁴⁰ This deadline was set to protect parents from making hasty decisions about adopting a child. Consent given earlier, e.g. during pregnancy, is ineffective.⁴¹

Among the many issues related to adoption from the point of view of the subject of the study, attention should be paid to the contentious issue of whether consent to adoption depends on the exercise of parental authority,⁴² and thus whether minor parents have the right in question. According to some scholars who advocate the doctrine, the right to consent is not an element of parental authority, although it is related to it, since parents deprived of authority do not express it.⁴³ On the other hand, if the authority has been suspended, limited by the court, or is not available due to minor age, then consent to adoption is required. According to the doctrine,

38 H Haak 139.

39 H Dolecki in H. Dolecki, T Sokołowski (eds) 838–846.

40 Order of the PSC III CR 144/64 [1965] OSNCP 6, 105.

41 H. Dolecki in H Dolecki, T Sokołowski (eds) 845.

42 The following scholars have advocated that the right to consent is not linked to parental authority: T Sokołowski 177; E Holewińska-Łapińska, 'Przysposobienie' [Adoption], in T Smoczyński (ed) *Prawo rodzinne i opiekuńcze* [Family and Guardianship Law] (C.H. Beck 2011) 489-750; cf. E Budna, *W sprawie charakteru prawnego zgody rodziców na przysposobienie anonimowe dziecka* [On The Legal Nature Of Parental Consent To Anonymous Adoption Of A Child] (1996) PS 3, 37 ff.

43 T Smoczyński 307.

consent is a personal right of parents,⁴⁴ so the right to express it is given to persons with limited legal capacity (Article 119 § 2 of the Civil Code). Also, the view has been expressed in case law that “the circumstance that the mother of the child is limited in legal capacity does not affect the legal effectiveness of her statement of consent to the adoption of the child.”⁴⁵ The Supreme Court noted that a literal interpretation of this provision suggests that the legislature makes no distinction between parents with full legal capacity and those limited in such capacity. Nor was the effectiveness of the consent of a parent with limited legal capacity made dependent on the consent of his or her legal representative. If it had been the intention of the lawmakers to make the effectiveness of consent to adoption conditional on the legal representative, they would have regulated this issue precisely, for example, as they did earlier with regard to the acknowledgment of paternity by a father with limited legal capacity.⁴⁶ They did not do so, and there is no basis for assuming that this is the result of an oversight that created a gap in the law. In the ruling in question, the Supreme Court also considered whether the obligation of the legal representative to give consent derives from the general provisions of the Civil Code on legal actions (Articles 17 and 19 of the Civil Code). However, it stated that these provisions apply to binding and dispositive actions, and such is not the nature of a statement on consent to the adoption of a child. Making a declaration is a personal act, so it can also be made independently by a parent with limited legal capacity. Particular attention is paid to the requirement to obtain the consent of the parents, not the legal representatives of the child.⁴⁷

The literature points out that the right to consent to adoption ceases with the termination of parental authority. This right exists prior to the emergence of authority, that is, it exists for the minor mother and minor father, who has been legally established, but does not exist when the parents have been deprived of parental authority.⁴⁸

This means that the minor parents have the independent authority to give the consent necessary for the adoption of the child, and this right does not depend on the exercise of parental authority. Statutory representatives cannot challenge the minor parents’ consent or refusal to give it. Nor can they substitute for the minor parent as a participant in the proceedings, as he or she has procedural capacity in this regard.⁴⁹

The right to consent does not extend to parents who have no legal capacity at all. This follows *a contrario* from Art. 119 § 2 of the Civil Code.⁵⁰

In addition, the literature expresses the view that “the law regulates typical relations, and parenthood before the age of 13 in Poland does is not such a relation.”⁵¹

Thus, any minor mother who has limited legal capacity has the right to consent to the adoption

44 Ibid; cf. J Panowicz-Lipska, ‘Przysposobienie, zagadnienia wybrane’ [Adoption: Selected Issues] in T Smyczyński (ed), *Rodzina w świetle prawa i polityki społecznej* [Family in View of Law and Social Policy] (CPBP 1990), 65–66. The author classifies consent as a legal-family action.

45 Decision of the PSC III CZP 159/94 (1995) OSN 3, 53.

46 Art. 74 PCC as it stood before 2008.

47 E Holewińska-Łapińska 518; R. Zegadło in J Wierciński (ed) 831–832.

48 T Sokołowski 177.

49 R Zegadło in J Wierciński (ed) 831–832.

50 K Pietrzykowski in K Pietrzykowski (ed) (2015) 731.

51 E Holewińska-Łapińska 519–520.

of a child. She becomes a mother from the moment the child is born (Article 619 of the Civil Code). In contrast, for the father to have the right in question, paternity must be established. The consent of the parents is not required for adoption if they are unknown. Thus, such a situation occurs, for example, if the child's descent from a man has not been established.⁵²

However, even if the minor parents consent to the adoption, the court must determine whether they are not acting under pressure from the people around them or due to helplessness.⁵³ This is because a statement of intent, such as consent, must be made freely and knowingly (Art. 82 of the Civil Code).

In exceptional cases, when the absence of consent is manifestly contrary to the welfare of the child, the consent of parents with limited legal capacity may be disregarded (Art. 119 § 2 of the Civil Code). As a justification for this solution, it is pointed out that minor parents do not have parental authority, and even with gross negligence towards the child, they cannot be deprived of this authority.⁵⁴ This regulation applies when both parents have limited legal capacity. If one parent has full legal capacity then he or she is entitled to parental authority (Art. 94 § 1 of the Civil Code), so Art. 119 § 2 of the Civil Code will not apply.⁵⁵

In order to decree adoption despite the lack of consent of parents whose legal capacity is limited, three conditions must be met concurrently.

The first is the occurrence of special circumstances justifying the ruling of adoption despite the lack of parental consent. These may include cases in which, if a parent had parental authority, he or she could be deprived of it, such as when he or she grossly neglects the child, uses violence against him or her, abandons him or her, etc.

The second premise is the refusal to consent to the adoption. It occurs when the parents expressly state before the court that they do not consent to the adoption, but also when they do not appear at the hearing and do not take a stand.⁵⁶ It is important to note that the situations in which adoption can be pronounced without parental consent are exceptional.⁵⁷ Cases in which a parent refuses to consent to the adoption should be approached with the utmost caution, because, although they are unable to perform their duties to the child due to their minority, they love the child and do not want to lose it.⁵⁸ The court should examine what the mother's real intentions are and whether she is acting under pressure from those around her.⁵⁹

The third premise is that the refusal to consent to adoption is clearly contrary to the welfare of the child. That is, under the given circumstances, there is no doubt that the refusal harms the interests of the child.⁶⁰ One example is a situation in which the parents abuse alcohol or drugs and do not want to give up stimulants.

52 H Dolecki in H Dolecki, T Sokołowski (ed) 840.

53 R Zegadło in J. Wierciński (ed) 830.

54 H. Ciepla in K Piasecki (ed), *Kodeks rodzinny i opiekuńczy z komentarzem* [Family and Guardianship Code with Commentary] (LexisNexis 2011) 869.

55 Commentary to Art. 77(6): G Jędrejek.

56 H Ciepla in K. Piasecki (ed) 870.

57 Commentary to Art. 77(6): G Jędrejek; R Zegadło in J Wierciński (ed) 830.

58 E Holewińska-Łapińska 526.

59 R Łukasiewicz, *Dobro dziecka a interesy innych podmiotów w polskiej regulacji prawnej przysposobienia* [The Welfare of the Child Versus the Interests of Other Parties in the Polish Legal Regulation of Adoption] (WKP 2019) 105.

60 H Dolecki in H Dolecki, T Sokołowski (eds) 841; H Ciepla in K Piasecki (ed) 870.

Full adoption cannot be pronounced without the consent of the minor parents.⁶¹ When it occurs, the consent of one of the parents may be omitted only if their consent is not necessary for the adoption (Article 1191 of the Civil Code). These are those cases where the parents have been deprived of parental authority or are unknown or communication with them faces insurmountable obstacles (Article 119 § 1 of the Civil Code).

If the child's parents are minors, then guardianship is established for the child.⁶² In such a situation, the consent of the guardian is also required for adoption (Article 120 of the Civil Code). It is required even if the child's parents, due to their minority, are entitled to consent to the adoption. If this is the case, the power to consent exists simultaneously on the part of the guardian and the minor parent.⁶³ The guardian's stance in the adoption case is a more important matter within the meaning of Article 156 of the Civil Code, but the guardian does not need to obtain permission from the guardianship court to give or withhold consent, as the court reviewing the adoption case sufficiently protects the interests of the child.⁶⁴

However, the guardianship court may, in view of special circumstances, decree adoption even in the absence of the guardian's consent, if the welfare of the child requires it, such as when, due to age or health, the guardian will not be able to provide adequate living conditions for the child.⁶⁵

In summary, parental consent is required for the adoption of a newborn child. The power to give it is vested in minor parents who have limited legal capacity. Exceptionally, the court may decree full and partial adoption despite the lack of parental consent, when there are special circumstances in a particular situation and the refusal to consent to adoption is manifestly contrary to the welfare of the child. Full adoption cannot be pronounced without the consent of the minor parents. The consent of the child's guardian is also necessary for adoption.

CONCLUSION

The mother of the child is the woman who gave birth to the child, which means that any minor who gives birth to a child will be its mother. A minor who is pregnant may marry a man of full age for valid reasons with the permission of the court. Then, she becomes of age and if the child is born in marriage, the mother's husband will be its father. For a child out of wedlock, there are two ways to determine the father: acknowledgment of paternity and judicial determination of paternity. The right to acknowledge paternity is held by minors (father as well as mother) who are at least 16 years old and when there are no grounds for their incapacitation. They can only make statements before the guardianship court. The guardianship court has the ability to verify the parents' statements. It also verifies whether the prerequisites for the admissibility of the declarations necessary for the acknowledgment of paternity are met, as it has the duty to thoroughly investigate the case. The

61 T Sokołowski in H Dolecki, T Sokołowski (eds) 843.

62 R Zegadło in J Wierciński (ed) 838; J Gajda, *Tajemnica przysposobienia i jej ochrona w polskim prawie cywilnym* [The Confidentiality and Protection of Adoption in Polish Civil Law] (WSPiA 2012) 118.

63 E Holewińska-Łapińska 526.

64 R Zegadło in J Wierciński (ed) 838.

65 H Dolecki in H Dolecki, T Sokołowski (eds) 845–846.

effectiveness of the acknowledgment of paternity was not made conditional on the consent of the child's legal representative or the legal representative of the minor parent.

If the parents or only one of them is under the age of 16, the acknowledgment of paternity cannot take place at all (Article 73 of the Civil Code). In such cases, the only way to determine the origin of the child is through judicial establishment of paternity.

The Code of Civil Procedure grants procedural capacity in cases to establish or deny the origin of a child and to determine the ineffectiveness of an acknowledgment of paternity to the child's mother and father also if they have limited legal capacity, if they are at least 16 years old. If the parents are younger, then they are not competent to act independently in the proceedings.

Parental consent is required for the adoption of a newborn child. Consent to adoption is a personal right of the parents, so the right to give consent is given to persons with limited legal capacity. The right to consent does not apply to parents with no legal capacity at all.

Any minor mother who has limited legal capacity has the right to consent to the adoption of a child. She becomes a mother from the moment the child is born. In contrast, for the father to be entitled to this right, paternity must be established. In exceptional cases, the consent of parents with limited legal capacity can be omitted.

The discussion in this article shows that the Family and Guardianship Code has tried to balance both the protection of the rights of minor parents and their child. Although minor parents do not have parental authority over their child, they have been granted the right to make the statements necessary from the determination of parentage and adoption.

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