

PARENTAL ABDUCTIONS

BASIC LEGAL INFORMATION

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INTRODUCTION

For many years Foundation ITAKA – Centre for Missing Persons has dealt – in its daily activities – with more and more cases of parental abductions. Having faced changes in social situation, hoping to support parents and families, whose right to contact their child has been violated and above all – taking into consideration the well-being of the child, who is the most defenseless victim of adults' ruthless fight, we have decided to undertake searching activities – also when it is the child's parent or legal guardian who contributes to the disappearance of the child.

This publication aims at describing the phenomenon of parental abductions – both in national and international aspect, placing it in broad legal context, indicating the areas where it merges with the disappearance as well as providing advice and support for parents, whose right to have relations with their child was violated.

The Constitution of the Republic of Poland secures the rights of children and their parents stipulating that *everyone shall respect the freedoms and rights of others* (art. 31), *all persons shall be equal before the law and all persons shall have the right to equal treatment by public authorities* (art. 32), *men and women shall have equal rights in family, political, social and economic life in the Republic of Poland* (art. 33), *the State, in its social and economic policy, shall take into account the good of the family* (art. 71), *the Republic of Poland shall ensure protection of the rights of the child* (art. 72) and that *everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense* (art.72).

The issue of protection of children's rights is also regulated in the Convention on the Rights of the Child adopted by United Nations on 20th November 1989, to which Poland is one of the signatories. By adopting the Convention the signatories undertake the obligation to *respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests* (art.9.3).

We do hope that the matter-of-fact approach to the problem, attempt to find efficient legal solutions and increasing social awareness of the drama of each family in which parental abduction occurred will contribute to limiting the scope of the problem and enabling parents to claim their rights, including the right to exercise care over the child and the child's upbringing with the respect of their dignity and rights.

We would like to clearly state that our involvement in parental abduction cases does not mean we are in favor of either of the parents aiming solely at restoration of the child's right to have contact with both parents.

Legal Team of Foundation ITAKA

NOTE!

The word "parent" should be – for the needs of this publication – referred accordingly to the institution of a legal guardian.

I. PARENTAL ABDUCTION, BEING MISSING, ACTIVITIES OF THE POLICE
A. PARENTAL ABDUCTIONS AND DISAPPEARANCE OF CHILD

Parental abduction is a situation in which one of the parents or guardians without the knowledge and consent of the other one or under the pretext of a short-term stay takes away or keeps a minor permanently, depriving the other parent or guardian of any lawful possibility of maintaining contact with the minor within the scope of their legal rights. ;

Two characteristics of the abovementioned situation seem to be of the greatest importance. First – the fact that the **parent** deprived of the possibility to contact the child very often **does not know where – at the certain moment – their child is**, second – even when they determine the place of their child's residence, they **are still deprived** – partially or totally – of the **possibility to maintain contact** with the child. Such state of affairs very often has the features of a disappearance, which means that the situation of contact deprivation happens simultaneously with the situation in which the child goes missing, very often together with the other parent.

According to the definition from Ordinance no 124 of Chief Police Commanding Officer dated 4th June 2012 regulating police obligations to conduct searches of missing persons – ***disappearance of an individual is the occurrence of an incident which prevents the whereabouts of a natural person to be ascertained and protection of that person's life, well-being or liberty to be provided, which requires the person to be located or assisted;***

The abovementioned definitions indicate that both actual states of affairs (parental abduction and disappearance) **may occur simultaneously or separately:**

- **simultaneously** when one parent, suddenly and without informing the other one, takes away the child to unknown place and retains the child in this place,
- **separately** when one parent takes away the child (without the other parent's consent but to the place which is known to the other parent) depriving the other parent of the

possibility to contact the child – then we can **only** talk about **parental abduction**, disappearance does not occur, or when an adult under whose care the child was placed went missing together with the child as a result of external circumstances (e.g. accident) – then we **face a disappearance** but not parental abduction.

It is worth mentioning that the regulations of Ordinance no 124 narrow the definition of parental abduction to the situation in which neither of parents had their parental authority limited.

B. CATEGORIES OF MISSING PERSONS

Police – depending on actual circumstances – classify the missing person in one of three categories. This classification determines further activities undertaken by the police. It means **that this particular decision (of putting the case in category I, II or III) plays the key role for the scope of further steps** of the police.

For the needs of this brochure we will have a look at the regulations of Ordinance no 124 defining category I and III of missing persons.

Category I of missing persons – as stated in Ordinance no 124 – it is a person who has suddenly left their last place of residence in circumstances which make it reasonable to suspect that an offence has been committed against the life, well-being or liberty of that person, in particular (...) if the person is underage up to 15 years of age and is reported missing for the first time (...)

Category III of missing persons – as stated in Ordinance no 124 – it is a minor who disappeared in result of parental abduction, provided this minor is not classified in category I (on the basis of actual conditions).

Here – it is worth stressing that there are two kinds of circumstances crucial from the perspective of the left behind parent – circumstances of the disappearance, determining whether it should be classified as category I. Regulations clearly indicate that if **life, health or freedom of a minor is at risk** and when **the minor is younger than 15**, such disappearance should be classified as category I. And the assumption that the child is with one of their parents will not always mean that the child's life, well-being or liberty is not at danger.

The abovementioned circumstances play the key role in deciding on further actions. In case of category I of disappearances the scope of activities aiming at determination of the missing person's whereabouts is much broader than in case of a disappearance from category III.

Ordinance no 124 also stipulates that the fact that **an individual is searched for in connection with criminal proceedings cannot become basis for the police to deny acceptance of the report of disappearance of this person.**

Each person who reported disappearance of an individual shall obtain (obligatorily) a **free of charge** written confirmation given out by the police – that they have accepted the report. The police officer who accepted the report of disappearance should inform the person reporting about the closest point of contact to organization providing legal or psychological support to families of missing persons and about the line 116 000 (Hotline for Missing Children and Teenagers operated by Foundation ITAKA – Centre for Missing People).

C. WHO CAN REPORT

The report on a disappearance of an individual should be accepted by the police from any authorized person (i.e. a family member, head of the institution where the missing person was staying, representative of a consular office or any other person who can (1) justify the suspicion that the missing individual is at the threat of a crime committed against their life, health or liberty or (2) clearly indicates the circumstances of the disappearance.

D. REPORTING MISSING PERSON – POLICE PROCEDURES

If – as stated above – parental abduction is characterized by circumstances justifying the report of child’s disappearance to the police, it should be done immediately at the closest police station. The duty officer of a police unit or a nominated police officer - to whom the authorised person reports - is obliged to take the missing person report, which means that there is no need to wait for the police officers responsible directly for searching for missing persons. What is more – actually every police officer on duty, if addressed by the authorised person (e.g. family member) is obliged to accept the missing person report and pass it immediately to the duty officer of the nearest police unit. Whether the police accept the report or not – does not depend on time that has passed but on the conviction of the reporting person. This means that the police officer is obligated to accept the report immediately. No 24 or 48 hours need to pass before you can report your closest one missing! It is not time but certain circumstances which determines if you can declare somebody missing or not.

A report of a missing person as a result of “parental abduction” is taken from the parent reporting the missing child and qualified as category III in the situation when the other parent or legal guardian who has full parental authority without communicating with the parent reporting the missing child, takes a minor without informing that parent of the child’s whereabouts. In the event that (1) it is possible to qualify the missing person as category I or II or in the situation when, (2) the police received an application to

establish the whereabouts of the minor from the competent family court, a missing person report as a result of “parental abduction” is not taken.

E. POLICE PROCEDURES – OBLIGATORY SEARCHING ACTIVITIES*

In the event that a report is taken for a missing person, the police should start searching activities immediately.

In case of a person classified in category III the police should take the following actions:

- notify the appropriate family department of the court of the fact that a search was initiated for a minor as a missing person, when it transpires from the circumstances given by the reporting person that “parental abduction” has taken place;
- inform the reporting person that it is reasonable for them to personally contact the court with an application for the court to indicate further action necessary in the event that the minor is located.

What is important, the operations relating to searching for minors classified as category III are conducted within 30 days of taking a missing person report by police officers attached to the organisational cell responsible for minors of the police unit and then, if the person is still missing, the materials and analysis of the operations performed to date are forwarded to the appropriate organisational cell for conducting searches and the police officers co-operate with that cell in any further operations.

** In this brochure we describe only these actions which should be taken by the police in case the minor is classified in category III. The list of actions obligatory for category I of missing persons is indicated in the last part of the brochure – where the regulations of the two first parts of Ordinance no 124 are quoted.*

F. CLOSING OF SEARCH BY POLICE

The police will finish searching for a missing person if one of the circumstances indicated in the ordinance occurs. It seems that in case of parental abduction the following ones are of special importance:

- the missing person or their body has been located, where locating the person means making direct personal contact with that person by a police officer or an officer from another agency and in the event of locating the missing person abroad, making direct personal contact with that person by an employee of the competent diplomatic representative body of the Republic of Poland or obtaining from foreign authorities information about locating the person; (it shall be stressed that establishing a phone contact between the police officer and the parent abductor who claims that “the child is all right” under no circumstances may become a reason for refusal of acceptance or decision to finish the search!)
- the whereabouts of the missing person have been ascertained;

- the missing person has returned to their address of residence.

All the above mentioned means that – if a child is reported missing and all the evidence leads to the conclusion that they are staying with the other parent in unknown place and the police establishes direct contact with the parent abductor and the child or finds out about the whereabouts of the child or if the child returns to their address of residence – all the activities of the police connected to the disappearance will be finished. While the last of the three reasons – returning to the address of residence – gives hope for restoring regular contacts of the child with both parents, the two first ones in practice often mean that contacts of the child with both parents remain difficult or impossible and the parent whose rights are violated cannot count on the support of the police.

Due to such legal and practical situation we will have a deeper look into other legal instruments (i.e. criminal offence from art. 211 of the Penal Code, **national order for return of child**, 1980 Hague Convention) connected with infringement of this basic right of both parents to maintain undisturbed contacts with their child.

G. FAILURES IN POLICE PROCEEDINGS

In case the person who reports the disappearance claims that the police act negligently, they have a number of administrative tools at their disposal to pursue their rights.

If you believe that the police officer to whom you report a missing person does not fulfill their duties, you may contact their superior officer, the head of the police unit or the head of regional police headquarters. In any case Foundation ITAKA offers its legal & psychological support if you decide to take such measures.

One of formal instruments of the protection of citizen's rights is **complaint against police**.

How, when and to whom it may be filed is stipulated in the *Regulation of the Council of Ministers of January 1st, 2002 concerning acceptance and examination of complaints and petitions* as well as certain regulations of the Code of Administrative Proceedings.

Complaints and petitions may be submitted by mail, fax and electronic mail as well as orally - for the protocol. It should contain the name and surname of the complaining person and their address. It is also worth obtaining written confirmation that the complaint has been submitted.

The complaint may concern improper way of fulfilling duties by state organs and their employees, negligence, infringement of law or interest of the complaining person, protraction of the proceedings, callousness and undue formality during the proceedings involving those institutions and their employees.

Generally each complaint should be investigated within a month from the date of its submission to the proper institution/organ.

H. REPORTING DISAPPEARANCE TO FOUNDATION ITAKA – CENTRE FOR MISSING PEOPLE AND SCOPE OF SUPPORT PROVIDED BY ITAKA

Foundation ITAKA provides 24/7 support for the individuals who faced the problem of disappearance – including parents whose children have been abducted.

In case of parental abductions Foundation ITAKA offers:

- Searching support
- Legal support
- Psychological support for parents and guardians
- Mediation

You may contact us via free of charge number **116 000 – Hotline for Missing Children and Teenagers**.

If you want to report a person missing with Foundation ITAKA – call us, send us mail or electronic mail with:

- (1) filled and signed form (Missing Person Report in PDF) available on our website www.zaginieni.pl (if you are an English speaking person – contact us via email biuro@zaginieni.pl and we will send you the proper language version of the report to be filled in),
- (2) copy or scan of a police confirmation of taking a missing person report,
- (3) up-to-date photo of the missing – copy or scan

Our team of psychologists, lawyers and mediators is available for parents who do not know where and in what circumstances their child left the place of residence.

As a rule – **Foundation ITAKA finishes all the searching activities on conditions indicated under letter D** (in compliance with police procedures).

II. ABDUCTION – CRIME DESCRIBED IN ART. 211 OF POLISH PENAL CODE, JUDICATURE AND DOCTRINE REGARDING ART. 211 OF POLISH PENAL CODE, PARENTAL ABDUCTION IN OTHER EUROPEAN COUNTRIES

A. PENAL CODE – CRIMINAL OFFENCE FROM ART.211

The experience of Foundation ITAKA connected with more and more cases of parental abductions reported to the organization every day shows that sometimes the abduction of a minor by either of their parents may have features of the criminal offence from art. 211 of the Penal Code.

This regulation states that everyone who – against the will of the person appointed to provide guardianship or supervision – abducts or detains a minor person under 15 years of age or a person who is inept due to their mental or physical condition, shall be subject to imprisonment for up to 3 years.

The offence may be committed through two kinds of action: abduction or retention and it must be stressed that art. 211 concerns the situation in which parent's (the person entitled to provide guardianship or supervision) but not minor's rights are infringed by the abductor. This means that minor's rights do not have to be violated in order to classify some act as an offence. Moreover it is possible to exclude the unlawfulness of such action under certain circumstances – if it is an act of low or insignificant social harm (e.g. when the father – executing his right to contact the child – retains them for a bit longer time than it was agreed with the mother).

The decision if – in certain circumstance – the criminal offence from art. 211 was committed will (in Polish doctrine and judicature) strongly base on the scope of rights of the parents, which will be described in further part of this brochure.

The criminal offence from art. 211 is prosecuted ex officio, which means that the police or prosecutor – having received reliable information justifying the acceptance of crime report – start the investigation. It is worth stressing that during the court proceedings the victim (wronged party) may become the party to the proceedings if they decide to join the proceedings in the role of the auxiliary prosecutor. (From the translator - *In order to support his or her rights in the judicial proceedings, the victim may assume the role of auxiliary prosecutor Articles 53 – 58 of the Code of Criminal Procedure, alongside the public prosecutor - accessory auxiliary prosecutor*). This role will allow the victim to participate in the trial to much greater extent than if they only acted in the role of the wronged party. If the victim wishes to become such a part, they should make the official declaration of joining the proceedings and the will to become active in it alongside the prosecutor.

In case the police/prosecutor refuse to start the investigation or if the investigation is closed, the left behind parent has the right to file a complaint against the refusal – to the court competent to adjudicate in this matter. The court may either overrule the decision of the prosecutor or sustain it. If the court overrules the decision of the prosecutor refusing to start the investigation or the decision to close the investigation, it indicates the reasons for overruling and – if necessary – the circumstances which should be checked and explained as well as actions which should be taken. These indications are binding for the prosecutor but the court may not force the prosecutor to file charges against the offender.

If the prosecutor does not find evidence strong enough to file charges, they issue a decision closing the investigation or refusing to start the investigation. In such case the victim is entitled to file

charges on their own (without prosecutor's participation). This should be done in writing and signed by an attorney.

B. JUDICATURE AND DOCTRINE CONCERNING ART. 211 OF PENAL CODE

As it has already been mentioned – the scope of rights of the parent concerning the child seems to determine the verdict if in a given case a criminal offence was committed or not.

The analyzed decisions of the Supreme Court seem to point out clearly that – although it is not directly stated in the regulation itself – only the parent whose parental authority has been limited, suspended or who has been deprived of it may become the offender in regard to the criminal offence from art. 211. The position of the doctrine indicates clearly that if such act is done by either of the parents with full parental authority – it may not be considered as a crime.

Due to the fact that the decision about the child's place of residence – as it is a decision about one of the "important matters" – should be taken as a result of the agreement between the parents and not the arbitrary decision of one of them¹, the interpretation of art. 211 of penal code seems too narrow.

It is even more difficult to understand the position of Polish judicature and doctrine when you consider the fact that it has not changed in a significant way for more than 40 years, while social and economic conditions in Poland (including the family situation and the freedom of movement) have changed dramatically. It is difficult to find a logical justification for the fact that the police and prosecutors refuse to help and the decisions of courts happen to be unfavorable for the left behind parent in the situation when they are deprived of their basic parental right and the child sustains mental injuries being deprived of the possibility to contact both of its parents.

C. PARENTAL ABDUCTION IN OTHER EUROPEAN STATES

Having analyzed the regulations concerning the issue of parental abductions in other European countries – we have found out that in some of them abduction or retention of the child by one parent – against the will of the other one – is a criminal offence. This means that regardless of the scope of parental authority – one parent may not willfully decide about the child's place of residents, and if they do so, this will be penalized by state regulations. However, there are also legal systems where, as in Poland, such deed is not considered to be a criminal offence if both parents have full parental authority.

III. PARENTAL ABDUCTIONS AND CIVIL LAW INSTRUMENTS

¹ As indicated in art. 97 of Polish Family and Guardianship Code: *1. If both parents have parental authority, each of them has the right and obligation to exercise this authority. 2. On important matters the parents of the child decide together and if they may not reach the agreement, the guardianship (family) court will decide.*

The code does not indicate what exactly "important matters" mean, however the practice shows that these are inter alia: place of residence, education and health issues.

In the previous part of the brochure we have presented issues connected with parental abductions, which may be reported by the left behind parents directly to law enforcement institutions (police, prosecutor). There are also many other solutions – based mainly on civil law regulations (family and guardianship) – which allow the left behind parent to undertake more actions aiming at the regulation of the child’s legal status and – as a consequence – restoring regular contacts with the child.

These solutions are presented below. They are preceded with explanation of certain notions from family and guardianship regulations, whose understanding will enhance more efficient use of the available law instruments.

A. EXERCISING CARE – INSTITUTIONS OF LAW

The following institutions of law are connected with exercising care over the child in Polish regulations:

- parental authority and contacts with the child,
and its substitutes:
- guardianship (Polish: opieka),
- custody (Polish: kuratela) – usually of transitional nature,
- supervision (Polish: nadzór).

In practice we will mostly face situations in which care of the child is exercised through execution of parental authority, however sometimes it will be exercised through guardianship or supervision.

All the above mentioned issues lead to the conclusion that left behind parents who want to regain their child abducted by the other parent should know and understand their rights regarding the relation with their child, so that they are able to execute them and demand their protection by the authorities.

1. Parental authority

Parental authority – according to regulations of the Family and Guardianship Code – includes certain rights and duties of parents regarding their child, which aims at exercising care over the person and the property of the child, as required for the welfare of the child and the social interest.

The child remains under the parental authority of their parents until reaching the age of majority. This authority applies to both parents. In principle – in case of the mother it starts under the law on the day the child is born, in case of the father it depends if the child was born during the marriage or not.

If – according to art. 62 § 1 of the Family and Guardianship Code – the child was born during the marriage or within three hundred days from its termination or invalidation it is presumed that it is

the child of the mother's husband. However, this presumption does not apply if the child was born more than three hundred days after the separation was adjudicated.

In such situation the father also gains parental authority with the child's birth. However, if the child was born more than three hundred days after the separation was adjudicated, this assumption does not apply.

If the child is born out of wedlock the parental authority of the father starts when he recognizes his paternity or with the judicial determination of paternity.

This classic model of parental authority – exercised by both parents – may be modified due to different life situations and circumstances or legal actions.

Parental authority may:

- be executed by one parent, while the other parent is totally deprived of it;
- be executed by one parent, while the other parent's parental authority is limited and the scope of limitation is always determined by the court;
- be executed by neither of the parents or be limited for both of them;
- be suspended (the suspension may relate to one or both parents) if it cannot be exercised properly due to temporary reasons – until these reasons are eliminated;

Parental authority may also be restored by the court if the grounds for which the parents were deprived of it cease.

What may be the source of the above mentioned modifications of parental authority?

- divorce or separation verdict, in which the family court determines the scope of parental authority which may be exercised by the each parent – parties to the divorce or separation proceedings;
- court verdict concerning solely the scope of parental authority for both parents;
- court verdict concerning determination of paternity/maternity, in which the court also determines the scope of parental authority for both parents;
- minority or legal incapacitation of the parent, whose parental authority is suspended until the time this parent comes of age (at the age of 18) or the incapacitation verdict is reversed, then this parent gains their parental authority under law;
- court verdict restoring parental authority of one or both parents;
- legal recognition of the child.

Contacts

The legal situation of parents may also be determined by their right to contact the child. The scope and frequency of contacts does not depend solely on the scope of parental authority exercised by the parent because parents (even deprived of parental authority or with suspended parental authority) have the right and obligation to exercise contacts with the child within the limits indicated by family court.

This means that the notions “parental authority” and “contacts with the child” have different meanings and may not be used interchangeably.

It is also possible that the parent who has no parental authority is also legally deprived of the right to contact the child – usually because of a serious and real danger they generate to the child.

2. Guardianship (Pol: opieka)

If neither of the parents has parental authority or if the parents are unknown, the court will appoint guardianship for the child.

Parental authority may not be exercised due to the following, exemplary situations:

- death of both parents;
- lack of full legal capacity of the parents, e.g. when they are under age or incapacitated;
- deprivation or suspension of parents’ parental authority – resulting from different reasons;
- the father is not granted parental authority in the court verdict determining paternity and at the same time the mother has no parental authority.

The guardian – according to art. 155 of the Family and Guardianship Code – has the custody of the person and the property of the child remaining under their care and is subject to supervision of the family court. If the guardian faces temporary obstacles in exercising care, the family court may appoint the custodian.

Appointing guardians:

The family court establishes the guardianship ex officio. It is also possible to inform the court about the circumstances justifying appropriate court’s intervention.

If someone is actually carrying out duties in relation to the person and the property of the child, and their legal situation is not regulated, they should ask the family court to regulate it. Otherwise such person may risk being accused of abduction or retention of the child. The competent court is the family court of the place of residence and if it is not known – place of stay of the person subject to the proceedings.

3. Supervision

Another legal institution which may be applied in relation to the child in certain circumstances is supervision.

Supervision is exercised through placing the minor in care/ educational/ upbringing facility.

The guardian and the supervisor have similar functions in relation to the child under their care/supervision to the parent exercising full parental authority.

B. RECOVERY OF ABDUCTED CHILD – LEGAL INSTRUMENTS

No parent should (with their improper behavior) hinder or prevent the other parent from exercising their rights and duties in relation to their child, regardless of the scope of their parental authority.

As stated in art. 98 of the Family and Guardianship Code – the parents are statutory representatives of the child under their parental authority. Each of them – unless taking decisions on important matters – may act independently (except for minor exclusions) while representing the child at certain legal actions. If both parents have parental authority, each of them has the right and obligation to exercise that authority.

However, on important matters the parents – even if live separately – decide together and if the agreement is impossible to reach, the family court takes the decision.

Of course in order to have the possibility to take common decisions, parents need to possess certain scope of rights derived from exercising full parental authority. However, even parents whose parental authority has been limited by the court will be entitled to decide about important matters of the child – in accordance with the scope of the limitation.

What does the term „important matters of the child” mean?

The scope of important matters of the child is not described in the Family and Guardianship Code. It is, however, specified in many decisions issued by the Supreme Court, which creates an open catalogue with two basic sorts of matters:

- important due to their general nature, which are always significant for the child, such as: temporary care of the child, decision on health issues – including medical operation, providing the child with proper living conditions and taking a decision of the child’s temporary or permanent stay abroad (this is a matter of great importance in relation to the problem of parental abduction), decisions concerning holidays or place of residence;

- important due to their significance in certain case.

If one of the parents wants to take a decision regarding important matters of the child (exercising full parental authority or parental authority limited to decide on important matters of the child – which

should always be verified on the basis of the court verdict), this decision should be consulted with the other parent exercising full parental authority or parental authority limited to decide on important matters of the child. However, if this parent cannot reach an agreement with the other parent, they should file a motion to the competent family court at the place of residence or stay of the child – to take the decision (if they do not want to risk being accused of parental authority abuse). The decision is taken after allowing the child to state their opinion as long as the mental development, state of health or maturity of the child permits this. Usually the court will also listen to the arguments of both parents.

Taking into consideration all the above mentioned rules – all longer trips of the child (including travels abroad), even on holiday, as being one of the important matters of the child, need to be consulted and agreed by both parents exercising full parental authority limited to decide on important matters of the child.

In case one of the parents takes this kind of decision independently, the other one – with full parental authority or parental authority limited to decide on important matters of the child – may take appropriate legal steps to recover the child, especially when the child's place of residence was secured with them or with both parents living in the same place. The left behind parent may also limit these steps to demanding execution of their rights, i.e. right to contact the child or decide about the important matters of the child, which in given circumstances is impossible due to the fact that the child is physically missing.

If the left behind parent is totally deprived of their parental authority and the right to contact the child, they have no right at all to restore their relations with the child, at least until they regain some of the rights.

1. National order for return of child (Pol: Nakaz wydania dziecka)

If one of the parents decides to abduct or retain the child – the other parent with full parental authority or parental authority limited to decide on important matters of the child – has the right in any case to ask the family court (of the place of residence or stay of the child) to issue the order for return of their child.

If the place of residence of the child is unknown, the court may launch the inquiry aiming at finding the child's place of residence by asking the police to take the necessary steps (the police will issue national search warrant). However, if divorce, separation or marriage annulment proceedings have started or if court proceedings concerning parental authority have begun, the motion should be filed to the court conducting these proceedings.

In case the motion is allowed by the court and the claim accepted, the court adjudges that the child should be returned and in the decision determines the term until which the child has to return to the other parent. Such decision is valid (executable) at the moment of its announcement during the trial.

If the indicated term has passed and the child is not returned, the left behind parent may ask the court again for support during the collection of the child, which starts the second stage (called execution phase) of procedure aiming at the return of the child. In that case the court will appoint a family court enforcement officer the forced collection/return of the child. Such family court enforcement officer is obliged to collect the child from any person with whom the child is staying.

The family court enforcement officer appointed by the court is obliged to:

- inform the left behind parent about the date of collection;
- if necessary, ask public institutions for support (police, social care center);
- draw up a written report on the undertaken actions.

If the family court enforcement officer faces obstacles preventing the collection of the child (e.g. when the child is hidden), the family court enforcement officer should inform prosecutor about them. The prosecutor may initiate criminal proceedings in relations to the criminal offence from art. 232 of the Penal Code (*Whoever, by using violence or an illegal threat influences the official functions of a court of justice shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years*).

If the undertaken actions are ineffective, the family court enforcement officer files a motion to the family court to issue a warrant for compulsory appearance of the obliged person. This person shall make a statement concerning the place of residence of the child. Further execution may be conducted again on the basis of the same order of return of the child, if the obliged person did not return the child within three months.

2. Court order on place of residence

The parent who has been illegally deprived of contacts with the child may file a motion to the court of the place of residence or stay of the child – to establish the place of residence of the child with them, unless there were no previous court verdicts on divorce or separation, in which the place of residence of the child had already been decided.

Such action may also have a preventive character – especially when the child lives with one of the parents who does not respect the right of the other parent to participate in taking decisions on important matters of the child. Such situation may lead to abduction of the child by the parent with whom the child is staying.

If you decide to file a motion in order to secure the place of residence of the child with you, consider also filing a motion to secure the place of residence of the child with you for the time of the proceedings.

4. Execution of contacts

If the parent who has the right to contact their child was deprived of that right, they may demand execution of the contacts through court proceedings.

The following decision of the Supreme court states:

Parents have the right to contact their children directly, which is their personal right independent from the scope of their parental authority. Parents are entitled to exercise it even if their parental authority is limited, suspended or if they are deprived of it (Supreme Court in resolution of 26/09/1983, III CZP46/83, OSNCP 1984, no 4, pos.49).

Preventing parents from exercising the right to contact their child infringes upon the interest of the minor and may become a reason for a change of a binding and valid court verdict regulating the issues of parental authority in the given case (Supreme Court in resolution of 30/08/1977, III CRN 204/77).

Written petition filed in the competent court – district or regional (depending on the circumstances) – should, apart from being formally valid, indicate clearly how and when the contacts are supposed to be exercised (e.g. every third weekend of each month, from 6 pm Friday until 6 pm Sunday, without the participation of the other parent).

5. Deprivation or limitation of parental authority

According to art. 111 of the Family and Guardianship Code, if parental authority cannot be performed due to a permanent obstacle, or if the parents abuse their parental authority or seriously neglect their obligations towards the child, the family court may deprive them of their parental authority. The deprivation may also be ordered only in relation to one of the parents.

Abduction or retention of the child by one of the parents, without the will and consent of the other parent entitled to decide on important matters of the child is an example of a drastic abuse of parental authority. Such deed entitles the left behind parent, who was deprived of contact with their child, to petition for limiting or depriving the other parent of their parental authority.

Such interpretation may be found in the decision of the Supreme Court of 7/08/1982, VIKZP 18/82, OSNPG 1982, no 10, pos. 137: if one of the parents having full parental authority takes away the child abroad and this retention is permanent, depriving the child of its natural environment and the possibility to contact the other parent, such action may become the basis for a decision issued by a family court to limit the parental authority of the parent abductor or even deprive them of parental authority.

The case concerning deprivation/limitation of parental authority is examined through non-litigious proceedings. Such case may be initiated by one of the parents or ex officio. The court competent to decide in such case is (parental authority case) family court of the place of residence or the place of stay of the person in relation to whom the procedure has been started. If it is impossible to determine both the places, the competent court is District Court for the capital city of Warsaw.

C. PREVENTIVE MEASURES – APPROVAL FOR ISSUANCE OF PASSPORT TO MINOR

If one of the parents predicts that the other parent is planning to leave the country with their child, if the child needs a passport and there is a risk of child abduction, it can be prevented by taking appropriate legal measures.

It relates mainly to situations in which both parents have full parental authority or one of them has it limited to decide on important matters of the child. Then both of them will have to give their consent for passport issuance.

If one of the parents feels anxious about the way the passport of the child will be used, they have right not to give their consent for issuance of the passport. In such case the other parent may petition to the competent family court to decide on that matter.

If the other parent is deprived of parental authority or their parental authority is limited and they do not have the right to decide on matters concerning passport issuance, then the other parent – with full parental authority – will decide on their own about passport issuance.

IV. INTERNATIONAL PARENTAL ABDUCTIONS

A. EUROPEAN ARREST WARRANT

European Arrest Warrant is a legal instrument valid throughout all member states of the European Union (EU). Once issued, it requires another member state to arrest and transfer a criminal suspect or sentenced person to the issuing state so that the person can be put on trial or complete a detention period. An EAW can only be issued for the purposes of conducting a criminal prosecution (not merely an investigation), or enforcing a custodial sentence.[1] It can only be issued for offences carrying a maximum penalty of 12 months or more. Where sentence has already been passed an EAW can only be issued if the prison term to be enforced is at least four months long.²

For the parent of abducted child this tool may be of importance in the following circumstances:

- European Arrest Warrant may be issued in relations to the criminal offence from art.211 of the Penal Code, if the offender (the other parent) has been legally sentenced for that crime to at least 4 months of imprisonment and escaped with the child to another EU member state,
- European Arrest Warrant may be issued in relation to the criminal offence from art. 211 of the Penal Code, if criminal proceedings against the offender (parent abductor) have been started and the charges have been laid on them but they have escaped to another EU state before the trial began.
- European Arrest Warrant may be issued in relation to the criminal offence different than the one from art. 211 of the Penal Code if certain formal prerequisites are fulfilled, which for the

² From: http://en.wikipedia.org/wiki/European_Arrest_Warrant

left behind parent means that the parent abductor is also wanted because they are charged with another criminal offence subject to the penalty of up to 3 years of imprisonment, in certain circumstances European Arrest Warrant may be issued.

In practice application of European Arrest Warrant is quicker than regular extradition proceedings. The member states of the European Union cannot refuse to extradite their citizen to another member state for the trial. Extradition on the basis of EAW should be executed within three months or 90 days from the date the arrest was made.

Double criminalization is not necessary (certain activity does not have to be a criminal offence in both member states – the one, where it was performed and the one, from which the person is to be extradited) to have EWA issued in case of 32 crimes, among which there are:

- terrorism,
- human trafficking,
- child pornography and exploitation,
- illegal arms trafficking,
- corruption and fraud,

if in the state issuing EWA they are subject to minimum 3 years of imprisonment. In case of other categories of crimes the rule of double criminalization will still be valid.

If EWA concerns a person who is not a Polish citizen, the circumstance that certain act is not a criminal offence on the ground of Polish regulations does not prevent the possibility to execute the warrant as long as it is related to a criminal offence subject to 3 years in the state issuing the warrant.

B. HAGUE CONVENTION

Convention on the Civil Aspects of International Child Abduction signed in the Hague on 25th October 1980 is the main legal instrument regulating the issue of parental abductions or retention of children in other countries. It is supposed to protect children from harmful effects of such actions and ensure prompt return of children who have been abducted from their country of habitual residence or wrongfully retained in a contracting state not their country of habitual residence. Its main goal is not to decide with whom and on what conditions the child should stay but to restore the previous state which was disturbed by the abduction or retention.

1. Scope of application

The regulations of 1980 Hague Convention may be applied only in case of international abductions or retentions. If the child was abducted or retained within the boundaries of the same state, the Hague Convention will not apply.

The document was signed by 84 countries (full updated list of member states may be found on the following website: http://www.hcch.net/index_en.php?act=conventions.status&cid=24) and its regulations may be applied only when – directly before the abduction or retention – the child had its place of habitual residence in one of the states signatories. In practice it means that the convention may only be applied when both countries – the one of habitual residence directly before the abduction and the one to which the child was abducted or in which it is retained – have signed it.

The regulations of the convention may also be applied when the child was illegally abducted to or retained in a third country (not a signatory) for a short time and then brought to another state – party to the convention.

The competent authorities (deciding on the request for return) are the organs of the state where the child is currently staying.

2. Request for return of child

The request for return may be filed if:

- the child has not attained the age of 16 years,
- the child has been abducted to or retained in a contracting state,
- the child was a habitual resident of a contracting state at the time of abduction,
- abduction or retention infringes the custody right and the applicant was executing that right at the moment of abduction or retention.

Basic notions

Wrongful removal – taking the child from the territory of one state – party to the convention to the territory of another state – party to the convention without the consent of the person possessing custody rights.

Wrongful retention – situation when the child is staying for some time at the territory of another country which does not infringe custody rights and then is retained there and does not come back to the state of habitual residence after the period stipulated in an agreement or court verdict.

The place of habitual residence

Deciding on the place of habitual residence requires taking into consideration different premises.

- undertaking all factual activities in one place

The notion of “habitual residence” is related to a state in which a person undertakes all their factual activities in one place. Children share the place of habitual residence with the person having parental authority.

If parents split and one of them has a new place of habitual residence, then – until the decision on custody right is taken – the place of habitual residence remains unchanged (it is the place of the last common habitual residence).

- element of time

International interpretation of the regulations suggest that the place becomes a place of habitual residence after 6 months of staying there. However, the assessment may vary depending on specific circumstances in a given case.

- element of will

It is not clear what elements of will may be taken into consideration in case of the interpretation of 1980 Hague Convention. The following may be of help while determining the issue: period of staying in one place, settlement of the family in one place, the place where the child goes to school or kindergarten, the level of integration with the local environment.

Supreme Court in resolution of 26th September 2000 (I CKN 776/00, OSNC 2001, No. 3, pos. 38) pointed out that “the place of habitual residence is designated by facts indicating that the child has been staying at this place for a long time and in a stable manner, in this place all the needs of the child are fulfilled, independently from the intention of the persons with custody rights to reside in that place”.

Return of child

The removal or the retention of a child is to be considered wrongful.

According to art. 3 of 1980 Hague Convention the removal or the retention of a child is to be considered wrongful if:

- it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

This regulation aims at facilitating the procedure concerning the return of the child and additional control of the decision declaring wrongfulness of the removal or retention could cause delays.

According to art. 14 of 180 Convention - in ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Terms – commencement of the proceedings

The judicial or administrative authorities of contracting states shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay.

Where a child has been wrongfully removed or retained at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

3. Hague Convention and Rights of Custody

According to art. 16 of 1980 Hague Convention – after receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

4. Procedure

The request for return of the child shall contain:

- information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

- where available, the date of birth of the child;
- the grounds on which the applicant's claim for return of the child is based;
- all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The Hague Convention provides a form for the request (attached to the convention) but it is not necessary to use this exact form. In Poland the form is available on the website of the Ministry of Justice – Polish Central Authority.

The convention states that any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

Where to submit the request?

The request for return may be submitted through the Central Authority of the state where the child's place of habitual residence or directly to the Central Authority of the state addressed. In Poland – the Ministry of Justice is the competent institution.

Obligations upon Central Authorities and further procedure

The Hague Convention stipulates certain obligations of Central Authorities of contracting states, which conditions effective realization of the regulations. Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their respective states to secure the prompt return of children and to achieve the other objects of the convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

- to discover the whereabouts of a child who has been wrongfully removed or retained;
- to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- to exchange, where desirable, information relating to the social background of the child;
- to provide information of a general character as to the law of their State in connection with the application of the Convention;
- to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

- where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

According to art.10 of the convention the Central Authority of the state where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child. The request for return of the child is examined by the court of the addressed state (to which the child has been removed or retained). The judicial or administrative authorities of contracting states shall act expeditiously in proceedings for the return of children.

1980 Hague Convention vs. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

Council Regulation (EC) No 2201/2003 has priority over the Hague Convention and supplements its regulations, however it may only be applied if both the states (the one with the place of habitual residence of the child and the one to which the child has been removed) are member states of the EU.

In case of wrongful removal or retention of the child, the courts of the member state where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another member state.

The procedure based on the regulation differs from the proceedings based on the convention. The court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention (there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation) if it is established that adequate arrangements have been made to secure the protection of the child after their return. If the court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the member state where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

Moreover it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to their age or degree of maturity. The

court also cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

The court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

Request for return

Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

REQUESTING CENTRAL REQUESTED AUTHORITY

AUTHORITY

OR APPLICANT

.....
.....

*1.Concerns the following child:.....who
will..... attain the age of 16 on.....

**2.Concerns the following child:.....who
will..... attain the age of 16 on.....

NOTE: The following particulars should be completed insofar as possible.

I – IDENTITY OF THE CHILD / CHILDREN AND ITS PARENTS

***1. Child**

name and first names.....

date and place of birth.....

habitual residence before removal or retention.....

passport or identity card. No, if any.....

description and photo, if possible (see annexes).....

****2. Child**

name and first names.....

date and place of birth.....

habitual residence before removal or retention.....

passport or identity card. No, if any.....

description and photo, if possible (see annexes).....

1. Parents

3.1 Mother:

name and first names.....

date and place of birth.....

nationality.....

occupation.....

habitual residence.....

passport or identity card No, if any

3.2. Father: name and first names.....

date and place of birth.....

nationality.....

occupation.....

habitual residence.....

passport or identity card No, if any

3.3. Date and place of marriage.....

II – REQUESTING INDIVIDUAL OR INSTITUTION (who actually exercised custody

before the removal or retention)

3. name and first names.....

nationality of individual applicant.....

occupation of individual applicant.....

address.....

passport or identity card No, if any

relation to the child.....

name and address of legal adviser, if any.....

III – PLACE WHERE THE CHILD IS THOUGHT TO BE

4.1. Information concerning the person alleged to have removed or retained the child

name and first names.....

date and place of birth, if known.....

nationality, if known.....

occupation.....

last known address.....

passport or identity card No, if any

description and photo, if possible (see annexes)

4.2. Address of the child.....

.....

.....

4.3. Other persons who might be able to supply additional information relating to the

whereabouts of the child.....

IV – TIME, PLACE, DATE AND CIRCUMSTANCES OF THE WRONGFUL

REMOVAL OR RETENTION

.....

V – FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

.....

VI – CIVIL PROCEEDINGS IN PROGRESS

.....
VII – CHILD IS TO BE RETURNED TO:

a name and first names.....

date and place of birth.....

address.....

telephone number.....

b proposed arrangements for return of the child.....
.....

VIII – OTHER REMARKS
.....

IX – LIST OF DOCUMENTS ATTACHED
.....

Date.....

Place.....

Signature and/or stamp of the requesting Central Authority or applicant

From: <http://bip.ms.gov.pl/pl/ministerstwo/wspolpraca-miedzynarodowa/konwencja-haska-dot-uprowadzenia-dziecka/>

ORDINANCE NO. 124

OF THE CHIEF POLICE COMMANDING OFFICER

Dated 4 June 2012

On conducting a search for a missing person by the Police and required action in the event of finding an unidentified person or locating an unidentified human body and human remains

On the basis of Article 7 (1) (2) of the Police Act dated 6 April 1990 (OJ 2011 No. 287, Item 1687, No. 217 Item 1280 and No. 230 Item 1371) orders the following.

SECTION 1.

GENERAL PROVISIONS

1. The Ordinance, from hereon called “the ordinance” determines the methods and forms of executing tasks by the Police in relation to conducting a search for a missing person and action to be taken in the event that a person of unconfirmed identity or human remains are located.
2. (1). The terms used within the ordinance have the following meaning:
 - 1) Missing person – the occurrence of an incident which prevents the whereabouts of a natural person to be ascertained and protection of that person’s life, well-being or liberty to be provided, which requires the person to be located or assisted;
 - 2) Missing person category I - a person who has suddenly left their last place of residence in circumstances which make it reasonable to suspect that an offence has been committed against the life, well-being or liberty of that person, in particular:
 - a) Indicating a real possibility that the person has committed suicide,
 - b) If the person is underage up to 15 years of age and is reported missing for the first time,
 - c) If it is a person which for reasons due to age, illness, mental impairment or other mental disorder is unable to manage her behavior or requires care or assistance from others;
 - 3) A missing persons category II – a person who has left her last place of residence in circumstances which do not justify an immediate requirement to protect her life, well-being or liberty or provide assistance, in particular, when:
 - a) There are no grounds listed in points 2 and 4;
 - b) The missing person demonstrated earlier disappointment with her own situation in life or the intention to change it, taking her personal belongings with her,

- c) The missing person left her last place of residence of her own free will;
- 4) A missing person category III:
 - a) A person under the age of 18 (a minor) who has gone missing as a result of another instance of running away from the family home, children's home or care establishment or another similar type of establishment where that person was placed by order of a court and the person was not in custody, unless there are grounds described within point 2,
 - b) A person aged 18 years or over who in relation to being constrained in a psychiatric hospital, social services home, community center for people with special needs by an authorized authority, went absent without leave from that place of residence, unless there grounds described within point 2 apply,
 - c) An missing minor in relation to a "parental kidnapping" unless the grounds described within point 2 apply, taking into account the conditions for taking the report relating to such a person as indicated in 3(3);
- 5) Parental kidnapping – is a situation in which one of the parents or guardians with full parental responsibility without the knowledge and consent of the other one under the pretext of a short-term stay takes away or keeps a minor permanently, depriving the other parent of guardian with full parental responsibility of any lawful possibility of maintaining contact with the minor;
- 6) A person of unconfirmed identity, from hereon called "unidentified person" – a person whose personal details are unknown, incomplete, unreliable or, in particular, when
 - a) It is a result of a medical condition which prevents that person from making independent decisions,
 - b) The person conceals their identity in a situation which is significant in the legal sense;
- 7) Unidentified dead body and human remains, from hereon called "unidentified body" – the body of a deceased person found in a state or circumstances which prevent its identification, including human body parts dismembered and separate from the entire body if possible to take biological samples for genetic testing; still-born babies do not constitute unidentified bodies;
- 8) The place of going missing – the last place where the missing person was staying before going missing which is confirmed by reliable information;
- 9) Registered address – the address where the person was registered on a permanent or temporary basis; [Translator note: in Poland, it is required to "register" your home address with the authorities]
- 10) Home address – the place where the person was staying before going missing;

- 11) Sets of fingerprints and files of photographs of the front and profile of the face – files of fingerprints and files of album cards maintained according to the rules described within the regulations on acquiring, processing and using information by the Police and methods of setting up and maintaining files with such information;
- 12) An authorized person – a person which reported the Police of the person going missing, that is:
 - a) A member of the family, legal guardian or statutory representative of the missing person,
 - b) The manager of an institution in which the missing person or unidentified person was staying and/or receiving treatment or care;
 - c) The representative of the relevant consular office if the missing person is a foreign national,
 - d) Another person which gives reason to believe that an offence has been committed against the life, well-being or liberty of the missing person or indicates unequivocally the circumstances in which the person went missing in their report;
- 13) DNA database – a database which contains information on the results of analysis of deoxyribonucleic acid, from hereon called a DNA database, maintained according to the principles described in ordinance No. 1565 of the Chief Police Commanding Officer dated 29 December 2005 on performing tasks by police officers related to managing a database containing information on the results of analysis of deoxyribonucleic acid (OJ KGP 2006 No. 1, Item 2);
- 14) Registration and verification in the police records – operations performed in the mode and on the principles described in the regulations relating to the maintaining and functioning of the National Police Information System (Polish: Krajowy System Informacyjny Policji) and the methods and forms of processing system information obtained by the Police in this system;
- 15) Police records – a collection of central files of information collectively called the National Police Information System (Polish: Krajowy System Informacyjny Policji) (KSIP);
- 16) INTERPOL – International Organization of Criminal Police INTERPOL;
- 17) The relevant KGP (KGP = Main Police Headquarters) bureau designated for co-ordination of international searches – an organizational cell of the Main Police Headquarters appointed for performing the tasks of the National INTERPOL Bureau and SIRENE Bureau;
- 18) The relevant KGP bureau for coordination of the international exchange of information – an organizational cell of the Main Police Headquarters appointed for performing the tasks of the National INTERPOL Bureau in the area of coordination and conducting international exchange of information of a criminal nature;

19) Liaison officers/contact officers – contact officers for the international exchange of criminal information appointed in the provincial police stations (of the metropolitan) Police;

20) Police unit – an organizational Police unit as mentioned in provision 2, point 1 of ordinance No. 1041 of the Chief Commanding Police Officer dated 28 September 2007 on the detailed principles of organization and scope of operation of police headquarters, police stations and other organizational units of the Police (OJ KGP No. 18, Item 135 as amended).

2. Whenever the provincial Police commanding officers or provincial Police headquarters are mentioned within an ordinance and municipal/powiat commanding officers or powiat/municipal police stations are mentioned within the ordinance, this should be taken to mean the Metropolitan Commanding Officer or the Metropolitan Police Headquarters and the District Police commanding officer or District Police headquarters, respectively.

SECTION II.

SEARCHING FOR A MISSING PERSON

Chapter 1

Taking a missing person report

3. 1. The police commence the search for a missing person immediately after taking a missing person report. The missing person report, a template of which can be found in Appendix 1 to the ordinance, is taken from an authorized person directly after obtaining this information. In the event of obtaining information of a missing person by telephone, email or post, the informant should be contacted immediately in order to follow up with taking a report of a missing person.

2. A report of a missing person classified as category III, a template of which can be found in Appendix 2 to the ordinance is taken directly from the authorized person. In the event that a report from an authorized person is taken by telephone, email or post, an official note which contains the information listed in Appendix 2 should be made. The note alone does not constitute grounds for registering a person classified as category III as missing.

3. A report of a missing person as a result of so-called “parental kidnapping” is taken from the parent reporting the missing child and qualifies as category III in a situation when the other parent or legal guardian who has full parental responsibility without communicating with the parent reporting the missing child, takes a minor without advising that parent of the child’s whereabouts. In the event that it is possible to qualify the missing person as category I or II or in a situation when, the Police received an application to establish the whereabouts of the minor from the competent family court, a missing person report as a result of a “parental kidnapping” is not taken.

4. No report is taken if the person is missing for five years or more.

5. The duty officer of a Police unit or a nominated police officer to whom the authorized person reports is obliged to take the missing person report.

6. Each police officer on duty other than listed in paragraph 5, to whom an authorized person reports, is obliged to:

- 1) Take a missing person report from the authorized person;
- 2) Immediately forward the report of a missing person to the duty officer of the nearest Police unit and commence the required operations described by him;
- 3) Make an official note based on the actions taken and forward it to the duty officer of the Police unit mentioned in point 2.

7. If, from the content of the missing person report taken, it transpires that there is a realistic possibility of quickly locating the missing person, especially a minor or a vulnerable person who requires care, or if there is any concern of a direct threat to the life, well-being or liberty of this person – the duty officer of the Police unit mentioned in (5) or in (6) point 2, manages and supervises the search operations for the purpose of finding the person within the scope required.

4. (1). When taking a report of a missing person the following should be established in particular:

- 1) Full personal details of the missing person;
- 2) A description of their physical appearance including any distinguishing marks;
- 3) A description of the clothing including any marks or special features of any of its elements;
- 4) Their blood group;
- 5) A description of the items in their possession at the time they went missing including a mobile telephone number of the missing person;
- 6) The place and circumstances in which they went missing;
- 7) Information on the status of health of the missing person, including any details relating to physical or mental disabilities, addictions and the nature of habits and tendencies including suicide attempts and other risks to their own safety and that of others;
- 8) The type, duration and effects of previous disappearances;
- 9) The probable cause for going missing in the context of a family or work situation, any conflicts, verbal statements, letters left behind;
- 10) The addresses of people and institutions where the missing person may have gone;

- 11) The type and scope of search operations carried out to date by the family, friends or other agencies fighting crime;
 - 12) Information regarding the legal guardian of the missing person, in particular, their contact details;
 - 13) If possible, information concerning the person authorized to collect the missing person, if required;
 - 14) The names of any internet social networking accounts which the missing person had.
2. The report of a missing person should have an up to date photograph of the missing person attached, forwarded by the reporting person, where possible.
 3. If the contents of the missing person report made justifies the suspicion that an offence has been committed, the operations described within the criminal procedure regulations commenced, regardless of other undertakings described within the ordinance.
 4. The person taking the missing person report is obliged to immediately check the person in the appropriate available applications of the National Police Information System (KSIP) available through the Police Search System SPP and should the missing person be recorded as missing in another Police unit area, the report is not taken.
 5. The operations of the police office mentioned in paragraph 4 are limited to making a note which contains the information forwarded by the informant which should then be sent to the Police unit which has earlier recorded this person as missing.
 6. Determining that the missing person is sought in relation to on-going criminal proceedings does not justify failing to take a missing person report in relation to that person.
 7. If, from the contents of the missing person report taken it transpires that the person went missing in relation to an aircraft or sea vessel disaster or another specific natural disaster incident, the search and identification operations are conducted within a scope described by the leader of the operational group appointed in relation to this incident.
 8. If it transpires from the contents of the missing person report or checks made that this is another report of a person who is 18 or over and is not incapacitated, after the person when they went missing previously did not consent to have their whereabouts disclosed to an authorized person by making a written statement, or the person's whereabouts is known to the reporting person and the information given does not indicate any new circumstances which would make it reasonable to suspect that an offence has been committed against the life, well-being or liberty of the missing person or her going missing, the only operations carried out are essential checks which are then documented in the form of an official note without registering the person as missing in the police records.

9. The person taking the missing person report should inform the informant of the nearest known center or contact details for an organization which offers legal or psychological assistance to the families of missing persons, and in the event of a missing person who is a minor, of a 24-hour free helpline 116 000.

5. (1). After taking a missing person report, the duty officer of the Police unit or a nominated police officer immediately registers this report and the missing person in the police records and makes an official note which contains additional arrangements and information acquired when taking the missing person report.

(2). The duty officer of the Police unit registering the missing person in the police records, in the case of qualifying this person as category I, immediately sends the official note mentioned in (1) to the relevant cell for conducting search and identification operations in the Criminal Bureau of the Police Headquarters and the headquarters of the provincial Police and headquarters of the powiat/municipal Police with local jurisdiction in relation to the place of residence of the missing person.

6. The record of a missing person in the police records is automatically copied to the Schengen Information System (SIS).

7. The category into which the missing person falls is specified by the police officer making the missing person report following an analysis and assessment of facts and circumstances given therein, any doubts in this area are decided by the manager of the Police unit where the missing person report was taken.

8. An authorized person which makes a missing person report is given confirmation in writing that the missing person report was made, in accordance with the template given in Appendix 3 to the ordinance.

Chapter 2

The method and scope of search operations for a missing person

9. 1. In the event that a report is taken for a missing person classified as category I, the following should be performed immediately:

1) Register the report of a missing person and missing person record in accordance with provision 5;

2) Commence operations described within provision 3 (7) and provision 5, including organizing and conducting a land search of the area where the person stayed last, using as far as means allow the resources of other Police units including: technical resources, police dogs and also other agencies who tackle crime. During the search of particular elements of a building or rooms, the objective

should be to locate places where the missing person may have hidden, cannot get out of or where her body may be found;

- 3) Make detailed enquiries with persons who were the last to have contact with the missing person;
 - 4) Check hospitals, accident and emergency wards and/or emergency children's shelters and children's homes, homeless shelters, sobering-up stations, legal isolation or social services establishments in the area where the person went missing or which covers their address;
 - 5) Check the whereabouts of the missing person in order to locate, secure and record evidence which may then drive the search operations for identification purposes including fingerprints, samples of handwriting and personal items from which biological material may be acquired for DNA analysis, and these operations should be recorded in the form of an official note;
 - 6) As far as possible secure and analyze any CCTV recordings in the area where the person went missing and places of last sightings of the missing person;
 - 7) Check whether any unidentified persons or unidentified bodies have been found in the area where the person went missing which match the description of the missing person;
 - 8) Obtain a recent and clear photograph of the missing person and enter it onto the police system;
 - 9) Record any items and documents which the missing person had with them or had in their possession in the KSIP database under the category "Item" (Polish: RZECZ), describing the reason for recording as "OF INTEREST" (Polish: W ZAINTERESOWANIU).
 - 10) After obtaining consent from the authorized person to make a missing person report publish the information about the missing person including a photograph on the internet portal of the Main Police Headquarters;
 - 11) After obtaining the consent of an authorized person, arrange the search for the missing person to be published in the mass media;
 - 12) Commission the marking of the genetic code of biological material originating from the missing person and/or persons related to her in order to compare it with the profiles recorded in the DNA database within 90 days from taking the missing person report;
 - 13) Commence operations appropriate to the situation based on rules described in other regulations;
- (2). In the event of taking a missing person report of a person classified as category II:

- 1) Make a record of the missing person report and register the missing person in accordance with provision 5;
 - 2) Obtain a photograph of the missing person and enter it onto the police system;
 - 3) After obtaining consent from the person authorized to make a missing person report, publish the information relating to the missing person together with her photograph on the Main Police Headquarters' Internet portal;
 - 4) Commission the marking of the genetic code of biological material originating from the missing person and/or persons related to her in order to compare it with the profiles recorded in the DNA database within 180 days from taking the missing person report;
 - 5) Commence the operations described within point 3 (7) if justified by the contents of the missing report taken;
- (3) In the event of taking a missing person report of a person classified as category III, you should:
- 1) Immediately commence the operations described within point 3(7) if justified by the contents of the missing person report taken;
 - 2) Record the missing person report and the missing person in accordance with provision 5;
 - 3) Obtain information which allows the appropriate action to be taken in relation to searching and issue instructions regarding further action in the event the person is located and enter these instructions into the police system;
 - 4) Notify the appropriate family department of the court of the disappearance of the minor as a result of running away from the family home, children's home, care home or other type of placement where the person was staying by order of the court and was not in custody;
 - 5) Notify the appropriate family department of the court of a search having been initiated for a minor as a missing person, when it transpires from the circumstances given by the reporting person that a so-called "parental kidnapping" has taken place and inform the reporting person that it is reasonable for them to personally contact the court with an application for the court to indicate future action necessary in the event that the minor is located.
10. The police officer conducting the search for a missing person, classified as category I, independent of the operations described within point 9 (1) should also take into account the requirement to:
- 1) Take part in the operations mentioned in Point 3(7) ordered by the duty officer of the Police unit;

- 2) Take part in investigative operations and enquiries conducted in the mode described in Article 308 of the Code of Criminal Procedure (Polish: Kodeks Postępowania Karnego) in relation to a missing person;
 - 3) Check the information given by the authorized person in the missing person report;
 - 4) Acquire where reasonable, a list of telephone calls of the missing person and check the list to assess its suitability for the search operations;
 - 5) Determine the legal and actual family situation of the minor or incapacitated missing person;
 - 6) Review the case files of on-going cases against or with the participation of the missing person in order to determine any witnesses, places and other circumstances which may give leads for the search being conducted;
 - 7) Conduct a land search of places other than the last whereabouts of the missing person in order to determine whether there are any witnesses or other facts or evidence which may facilitate locating the missing person;
 - 8) Taking part in operational and identification operations in the missing person's community/environment.
- (2). The police officer conducting the search for a missing person, classified as category II, regardless of the operations described in provision 9 (2), should also take into consideration the requirement to commence operations listed in 9(1) and 10 (1).
- (3). The operations relating to searching to missing persons classified as category III are conducted within 30 days of taking a missing person report and then continued as a search for a category II missing person.
- (4) The operations relating to searching to missing persons who are minors classified as category III are conducted within 30 days of taking a missing person report by police officers attached to the organizational cell responsible for minors of the Police unit and then, if the person is still missing, the materials and analysis of the operations performed to date are forwarded to the appropriate organizational cell for conducting searches and the police officers co-operate with that cell in any further operations.
- (5) The operations relating to searching for missing persons regarding minors classified under category I or II are performed by the competent organizational cells for conducting searches in the Police unit with the participation of the organizational cell responsible for minors attached to the Police unit which is conducting the search.
- (6) In the event that it is ascertained that the same minor has gone missing again or going missing is a result of running away from the family home, children's home, care establishment or

other similar type of establishment where the minor was placed by the Court and was not in custody, an official memo should be created and forwarded to the family department of the competent court.

11. (1) The Police unit with local jurisdiction for conducting a search for a missing person is the Police unit with territorial jurisdiction of the area where the person went missing and provision 4(4) is applied accordingly.

(2). If the place where the person went missing cannot be ascertained whether at home or abroad, the Police with local jurisdiction is the Police unit which has territorial competence of the area where the last known address of the missing person was situated.

(3). If taking a missing person report takes place after a significant amount of time has passed since the person went missing, which prevents the precise allocation of the local jurisdiction of the Police unit, the search is conducted by the Police unit with jurisdiction local to the last home address of the missing person.

(4). If during the search operations it turns out that the Police unit where the missing person report was taken does not have local jurisdiction to conduct the search, the documentation relating to the operations performed to date is immediately forwarded to the competent Police unit, at the same time the criminal investigation departments of provincial Police headquarters for both Police units are informed by letter in which the grounds for this decision are named.

(5) The manager of the Police unit which has received the case documentation decides whether matter should be conducted by that unit. In the event of any doubts relating to the local jurisdiction for conducting searches, any disputes are resolved by the Chiefs of the Criminal Investigation departments of the provincial Police headquarters with jurisdiction for both Police units, in the event of any further discrepancies, the final decision on this matter is made by the cell competent to conduct searches and identification of persons attached to the Criminal Investigation Bureau of the Main Police Headquarters.

(6). The unit which took the missing person report and registered the person's details in the police records is obliged to continue with the search operations in accordance with the missing person qualification until such time that the matter is transferred to another Police unit.

(7) The Police unit which in accordance with local jurisdiction has taken over the search for a missing person, after analyzing the matter is able to change the category of the missing person described by the Police unit which took the missing person report.

12. (1). The manager of the Police unit with local jurisdiction for conducting search operations commissions the police officer of the organizational unit of the criminal investigation service to conduct the search or nominates that police officer from the organizational unit by applying regulation 10 (4).

(2). The police officer conducting the search operations is obliged to maintain essential contact with the authorized person including giving that person lawful information regarding the status and course of the search, if this information is not subject to any non-disclosure clauses.

Chapter 3

Searching for persons abroad and searching for foreign nationals

13. (1) Searches for Republic of Poland nationals abroad are coordinated by the bureau of the Main Police Headquarters appropriate for the coordination of international searches.

(2). The police officer conducting the search for a missing person applies to the cell mentioned in (1) via a contact officer with the application to initiate a search abroad in the event that:

- 1) The person going missing is related to travelling to a state outside of the Schengen Area;
- 2) During search operations, reliable information has been obtained which indicates that the missing person is staying abroad in a country which is outside the Schengen Area.

(3). A template for the application for commencing a search for a person abroad is given in Appendix 4 to the ordinance

(4). The police officer in charge of the search for a missing person forwards information to the cell mentioned in (1) via a contact officer in order for it to be forwarded to the Schengen state in the event that:

- 1) The person going missing is related to travelling to a state covered by the Schengen Agreement;
- 2) During search operations, reliable information is obtained to indicate that the missing person is staying within a state which belongs to the Schengen Area.

(5). In the event that a person classified as category I is missing, the Police unit in charge of the matter forwards the application directly to the bureau of the Main Police Headquarters appropriate for coordinating international searches and notifies the contact officer at the same time, if the grounds resulting from (2) and (4) apply.

(6). In the event that the grounds indicating a threat to life, health or liberty of the missing person cease to apply, further exchange of information is achieved via a contact officer.

7. In the event that the missing person is located within the Republic of Poland, the Police unit which applies for searching for a missing person abroad, has a duty to immediately notify the cell mentioned in (1) in order to cancel the search.

14. (1). Accepting applications from judicial bodies of other states, for initiating search for a missing foreign national falls within the competence of the Main Police Headquarters bureau competent for coordination of international searches.

(2). Making a record in the police records system of the application mentioned in (1) is the responsibility of the Main Police Headquarters bureau competent for co-ordination of international searches.

(3). The Main Police Headquarters Bureau competent for co-ordinating international searches may commission each Police unit performing specific search operations within the operational area of that unit.

(4). The Police unit which located the foreign national, ascertained his whereabouts, located his body or closed the search operations mentioned in (3), should immediately notify the Main Police Headquarters competent to co-ordinate international searches.

15. (1). Searching for a foreign national reported missing in the Republic of Poland is conducted on the basis of the ordinance regulations.

(2). Regulations of the local jurisdiction of the Police unit described within Point 11 are applied respectively.

(3). The police officer taking the report of a missing foreign national in the event that the person authorised to make a missing person report is unable to indicate the last whereabouts of the foreign national within the Republic of Poland or present any evidence to indicate that the person went missing in the Republic of Poland. or in the case that it is ascertained that the missing person is already recorded in the Schengen Information System (SIS), does not record the missing person in the police system but only performs operations to make essential checks which are justified by circumstances contained within the missing person report and then notifies in writing the bureau of the Main Police Headquarters of this fact competent to co-ordinate international searches.

Chapter 4.

Documenting search operations.

16.(1) The form and scope of documenting search operations is dependent on the category of the missing person.

(2). The documents gathered in the course of the search operations are placed in a search folder.

(3). Maintaining a search folder for the missing person by a nominated police officer is mandatory only in the event that the missing person is classified as category I or category II.

(4). Search folders are set up after registering the missing person in the police records.

(5). A search folder should contain the following:

- 1) Official supervision card;
- 2) Missing person report;
- 3) Confirmation of making a record in the police records system of a missing person report;
- 4) A plan of search actions/operations, updated systematically but no less than every 3 months;
- 5) Documents from the performed search operations.

(6). Documents from the search operations performed are gathered in chronological order in accordance with the regulations in force which apply to administrative and office work.

(7). Documentation on the search operations performed by the Police unit on matters of searching for missing persons classified as category III are included in one collective file of search operations maintained in the organizational units of the Police performing those operations.

17. (1) If the search for a missing person classified as category II is not completed within a year from the date of initiating the search and following the end of each subsequent year, the police officer in charge of the search makes a detailed analysis and assessment of the search operations performed together with conclusions and a plan for future action.

(2). The analysis and assessment performed in the matter of search operations together with the conclusions and plan for a further search is sent by the police officer mentioned in (1) to the Criminal Investigation Department of the provincial Police with local jurisdiction for the search area.

(3). In the event of searching for a missing person classified as category I, the analysis and assessment performed in the matter of search operations together with the conclusions and plan of a further search, is forwarded by the police officer mentioned in (1) to the Criminal Investigation Department of provincial police headquarters competent to the search area following three months from the date the search was commenced for the first year and then after the end of each subsequent year.

(4). The Criminal Investigation Department of the provincial Police headquarters with local jurisdiction of the search area after receiving documentation mentioned in (2) and (3) performs its analysis and assessment of the leads adopted and the correctness of search operations performed by subordinate Police units and makes a decision concerning further searches including the efficacy of placing the matter under special supervision or taking over to conduct a further search.

(5). Within the functional supervision, the competent cell for running the search and identification of persons of the Criminal Bureau of the Main Police Headquarters may oblige the competent Police unit to forward information on the course of operations performed in the matter of search for a missing person which is of interest to her.

(6). The Police unit mentioned in (5) has a duty to immediately and systematically forward the information it has to the Criminal Bureau of the Main Police Headquarters (Biuro Kryminalne Komendy Głównej Policji).

Chapter 5.

Closing the search for a missing person

18. (1). Closing the search for a missing person takes place when:

- 1) The missing person or her body has been located, where locating the person means making direct personal contact with that person by a police officer or an officer from another agency and in the event of locating the missing person abroad, making direct personal contact with that person by an employee of the competent diplomatic representative body of the Republic of Poland or obtaining from foreign authorities information about locating the person;
- 2) The whereabouts of the missing person have been ascertained;
- 3) The missing person has returned to their address;
- 4) A located missing person of 18 or over who is not incapacitated fails to give their consent to disclose their whereabouts to the authorized person by making a written declaration in the format of the template found in Appendix 5 to the Ordinance, whilst a refusal to make such a declaration is documented in an official note.
- 5) The authorized person which reported the person going missing has cancelled the search because they have made contact with the missing person and in relation to confirmation that there are no grounds for the search for the missing person to be continued in order to locate them or offer them assistance;
- 6) A court has certified the death or a court has adjudicated the missing person as deceased;
- 7) At least 25 years have passed since closing search operations and archiving the search folder, including removal of information relating to the missing person from police records.

(2). After closing the search for a missing person, the documentation from the operations or search folder is archived based on rules described within separate regulations.

(3). The closing of the search for a missing person in relation to the existence of grounds described within (1) points 1 - 6 does not cause the details of the missing person to be removed from the police records system.

(4) The rules relating to and the mode of removal of details relating to a missing person from police records, in the event that a search for a missing person is closed, in relation to grounds described within (1) points 1 -6 are regulated by provisions relating to the maintaining and functioning of the

National Police Information System (KSIP) and methods and forms of processing information obtained by the Police within this system;

19.(1). Search operations for a missing person are closed and any materials obtained in the course of the search archived according to rules described within separate provisions in the event that:

- 1) 10 years have passed since a report was taken of a missing person aged 18 or over;
- 2) 5 years have passed since the date the person went missing and the person at the time of taking the missing person report was 70 years old;
- 3) 10 years have passed since the date when the missing person would have turned 18 years of age or more.

(2). Closing the search operations for a missing person in cases described in (1) does not cause details of the missing person to be removed from police records.

(3). Before closing the search operations for a missing person which aim to locate a minor, age progression of the missing person should be performed and a photograph depicting the person as they are likely to look now entered into the police system.

(4). Before closing the search operations for a missing person which aim to locate a person of 18 years or over, age progression of the missing person should be performed and a photograph depicting the person as they are likely to look now entered into the police system, should the police officer closing the search operations for a missing person deem it reasonable to perform an age progression.

(5). The police officer's decision to close the search operation for a missing person and archive the materials needs to be approved by the Chief of the Criminal Investigation Department of the provincial Police headquarters with local jurisdiction for the search area

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