

NATIONAL REPORT: BULGARIA

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A. GENERAL

1. Having regard to the concept of parental responsibilities as defined by the Council of Europe, explain the concept or concepts used in your national legal system.

Bulgarian family law originates from the Roman legal family. It was constructed at the end of the 19th century.¹ A national law making tradition did not exist at that time, since the state was still recovering from 5 centuries of Ottoman occupation. Therefore the lawmakers choose to adopt foreign solutions. The Law of family relations was taken from the French Code Civil via the Italian Civil Code. In 1907 the Bulgarian Act on Persons introduced the concept of 'parental power', however this was abolished by the Bulgarian Persons and Family Act of 1949.

During the years 1944-1989 Bulgarian family law developed under the influence of the relevant Soviet legislation. In the years 1945-1949, new concepts were introduced including 'parental rights and duties'. The Bulgarian Family Code of 1968 substituted this with the concept of 'parental power'. The current Bulgarian Family Code (1985) utilises the concept of 'parental rights and duties'.

The main provision in the Bulgarian Family Code speaks only of parental obligations: 'The parents are obliged to care for their children and to prepare them for socially useful activity' (Art. 68). The Code further stipulates that 'parental rights and obligations are exercised by both parents jointly and separately' (Art. 72). The Bulgarian Constitution of 1991 also speaks of parental rights and obligations: 'Raising and bringing up of children until they are the age of majority is both a right and an obligation of their parents' (Art. 47 § 1).

It has been stated that 'the parental rights and obligations are functions with social importance that are assigned to parents to be exercised exclusively in the interests of children'.² This legal theory underlines the unity of the rights and obligations: 'all parental conduct towards a child has the features of both a parental right and a parental duty. Child support and consent for adoption are the only exceptions; child support is solely a parental obligation, and consent for adoption is only a parental right.' The Bulgarian Family Code uses the term 'care' for children to express the unity between the rights and duties of the parent.

¹ Bulgarian civil law is not codified. Separate pieces of legislation regulate its various branches. Currently, the Bulgarian Contracts and Duties Act, the Bulgarian Civil Registration Act, the Bulgarian Inheritance Act and the Bulgarian Family Code are in effect. The Bulgarian Family Code regulates parent-child relationships, as well as marriage and its dissolution, financial and property issues between spouses, parentage and adoption. Courts apply the law, but do not make law. Supreme courts, in addition to law enforcement, also interpret the statutory provisions, binding courts of lower instances.

² L. NENOVA, *The Bulgarian Family Code and the Family Law Reform*, Sofia, 1971, p. 199.

Family law literature defines the parental functions as 'all the rights and duties for the rearing and upbringing of a child, including care for its property'.³ Both natural and adoptive parents hold parental rights and duties and both exercise them jointly and separately.⁴ In case of conflict between parents, each parent may submit a claim to the court, to decide how to perform parental rights and duties. Parents cannot decline or transfer their parental rights and duties to any third party. The restriction or termination of parental rights may be effected only by court intervention.⁵ Even in such cases no one can become the recipient of such rights and duties (except through adoption). Under certain conditions stipulated by the Bulgarian Family Code, care for the upbringing of the child may be exercised by grandparents or other members of the extended family. However, these persons do not become holders of parental rights and duties.

The Bulgarian Child Protection Act (2000) introduced a new obligation of parents: 'The parents are obliged to bring into effect the measures undertaken under the Act and shall provide assistance towards the implementation of child protection measures' (Art. 8 § 4).

2. Explain whether your national concept or concepts encompass:

The concept of 'parental rights and duties' encompasses all of the types of parental responsibility listed below. The family law legal literature has adopted one general typology of parental rights and duties - 'rights/duties on personal relationships' and 'rights/duties on property of the child'.⁶

(a) Care and protection

This is the main duty of the parents. According to the Art. 47 § 1 Bulgarian Constitution: 'Raising and bringing up of children until their age of majority is both a right and an obligation of their parents and is supported by the State.' The Bulgarian Family Code states: 'The parents are obliged to care for their children and to prepare them for socially useful activity.' (Art. 68 § 1)

The raising of children comprises care for the physical development of the child: life and health, support for development, including both in kind and financial support for the child. 'Care' means mainly all the everyday regular activities of the parents to supervise and raise the child. The content of the supervision should be interpreted according to the age-specific needs of the child. Violation of these obligations where it jeopardizes child's development leads to criminal liability of the parent (Art. 182 § 1 Bulgarian Penal Code).

(b) Maintenance of personal relationships

The Bulgarian Family Code does not explicitly provide for such a right or obligation of the parent, however it could be implied from the obligation of the

³ See: L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 407 *et seq.*; A. STANEVA, *Representative and Custodial Functions of Parents*, Sofia, 1992.

⁴ Art. 72 Bulgarian Family Code reads: 'Parental rights and obligations are exercised by both parents jointly and separately....'

⁵ Art. 47, § 5 of the Constitution (1991) and Art. 74 -76 Bulgarian Family Code (1985).

⁶ See: L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 407.

child to reside with his or her parents (Art. 71 § 1). It may also be stated that the law views maintenance of personal relationships as a prerequisite for the exercise of parental rights and obligations.

In cases of divorce and separation however, a personal relationship between the child and the non-custodial parent should be arranged either via court order⁷ or agreement between parents.⁸

(c) Provision of education

The Bulgarian Family Code does not explicitly impose a parental obligation to provide education. The legal literature however interprets the parental obligation to 'prepare them (children) for socially useful activity' (Art. 68 § 1) as a parental obligation to provide for the education of children.⁹ In addition, the child has a constitutional right to education that is obligatory to the age of 16.¹⁰ It is a parental duty to guarantee the observance of that right by enrolling the child in school, ensuring his or her attendance at school *etc.*¹¹

The regulation of parental support in the Bulgarian Family Code indirectly suggests a parental duty towards the child's education. If the child continues its education beyond the age of majority (18), parents are obliged to support the child.

As for Art. 82 (Amended, SG, No. 11/1992):

(1) The parents are obliged to support their children who are not of full age regardless of whether they are fit for labour or can support themselves from their own properties.

(2) The parents are obliged to support their children who have come of age, if the latter cannot support themselves from their income or use of their properties, when they study at secondary, undergraduate and higher education establishments, for the specified term of education, up to 20 years of age in the case of study at secondary school and up to 25 years of age in the case of study at undergraduate or higher education establishment.

(3) The support under the preceding sub Art. is due provided it does not create undue inconvenience for the parents'.

(d) Legal representation

Children below the age of 14 are minors and have no legal capacity. Therefore their parents (adopters) represent them.¹² Children that have reached the age of 14 have limited capacity and may act on their own with the consent of their parent's or guardian's.¹³ If the adolescent acts without that consent the contract is void.¹⁴

⁷ In cases of divorce based on irretrievable breakdown of the marriage (Art. 106 linked to Art. 99 § 2 Bulgarian Family Code) or in case of parental dispute where parents do not live together (Art. 71 § 2 Bulgarian Family Code).

⁸ In cases of divorce based on mutual consent (Art. 100 Bulgarian Family Code).

⁹ See: L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 413.

¹⁰ Art. 53 Bulgarian Constitution.

¹¹ Art. 47 Bulgarian Public Education Act.

¹² Art. 3 Bulgarian Persons and Family Act.

¹³ Art. 4 § 3 Bulgarian Persons and Family Act.

¹⁴ Art. 27 Bulgarian Contracts and Obligations Act.

A conflict may occur between the interests of children and their parents while their parents are acting as their representatives/guardians.¹⁵ The Bulgarian Family Code does not stipulate for the assignment of a special (*ad hoc*) representative to protect the interests of children in such situations.¹⁶ This may be done only when the conflict occurs in the context of court proceedings.¹⁷ The Bulgarian Child Protection Act envisages that in each court or administrative procedure, the court or the administrative body will either summon the Child Protection Department to prepare a social report concerning the interests of the child or will send a social worker to take part in the proceedings (Art. 15 § 6).

(e) Determination of residence

The child is obliged to reside with its parents until the age of majority. As the Bulgarian Family Code states in Art. 71, place of residence of the children: 'Children who are not yet of full age are obliged to live with their parents unless valid reasons necessitate that they live elsewhere. If the child is at least ten years of age and departs from this obligation, the court of jurisdiction in the parent's residence will order the child to return, if the parents so request, after hearing the child. The order is subject to appeal to the President of the county court, but the appeal does not stop its execution. The order is executed through administrative channels.'

Legal literature justifies this rule in two ways, underlying the interests of children. Firstly, the common residence provides the opportunity for the parents to fulfil their duties of care and upbringing of children. Otherwise the everyday supervision and care would not be possible. Secondly, the existence of a common residence is also ground for the return of their children in cases of unlawful removal.¹⁸ Case law rules that 'children from dissolved marriages should live with the parent assigned with the exercise of parental rights and obligations'.¹⁹ The district court of the parent's residence determines whether to return a child that has been removed from the parent's home. The ground is 'unlawful removal of the child'. This could be either an action of the child or of a third person who removes the child unlawfully from its parent's home.²⁰ In such a situation, the court will issue an order for the return of the child which is enforceable by the police.

An exception is possible if there are well-founded reasons for the child to live elsewhere. The court has the discretion to determine the 'well-founded reasons' in each particular case. Such reasons might be the contracting of a marriage by the child (if the child is at least 16), the child studies in another location, or the child is placed in public care under the Bulgarian Child Protection Act. In these cases the court will not issue an order to return the child.

¹⁵ For instance in claims for affiliation, division or acquisition of property *etc.*

¹⁶ To the contrary the abolished Art. 90 Bulgarian Persons and Family Act had envisaged that special representative for children in cases of conflict of interests.

¹⁷ Art. 16 § 6 Bulgarian Civil Procedure Code.

¹⁸ See: L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 414-415.

¹⁹ Decision of the Supreme Court, 822-1991 (Civil Division).

²⁰ Keeping and not returning a child by a person other than the parent is a crime according to the Bulgarian Penal Code, Art. 185 and 186.

If the parents do not live together and are unable to reach an agreement as to with whom the children will live, the dispute is resolved by the district court of the children's residence. The court will hear the children if they are at least ten years of age. The decision of the court is subject to appeal according to the general rules (Art. 71 § 2). According to case law, this claim belongs to parents not living together and not married. In this situation the court decides not only on the child's residence but also on the exercise of parental rights and contact matters, applying the provision of Art. 106 § 1 Bulgarian Family Code:²¹ parental rights after the divorce: 'With the pronouncement of the divorce the court decrees, *ex officio*, to which spouse the exercise of the parental rights shall be granted, orders measures in connection with the exercise of these rights and also as to the personal relations between the children and the parents, as well as the support of the children'.

(f) Administration of property

Parents, in their capacity as representatives or guardians, may perform two types of actions in relation to the property of the child. Firstly, ordinary administration or management of property, either by one parent or jointly by both of them. This follows *per argumentum a contrario* from the provision of Art. 73 § 2 Bulgarian Family Code: 'The expropriation of real property and chattels, with the exception of fruits and perishables, the encumbering thereof with liabilities and in general the undertaking of acts of disposition, related to the property of minors, are allowed, with the permission of the district court, at the place of residence only in case of necessity or where this is in their obvious interests.'

The Bulgarian Family Code does not define the concept of 'ordinary administration or management'. The Supreme Court has defined it as actions that do not expropriate the property but maintain it and make use of it.²² It is in the court's discretion to decide the meaning on a case-by-case basis.

Secondly, transactions with the child's property only after the court's permission. According to the abovementioned decision of the Supreme Court, 'transaction' comprises actions that change the right to property – it is transferred, limited, or ceased. The court would grant this permission only if it is 'of necessity or where this is in the obvious interests' of the child. A transaction undertaken without court's permission is void.²³

The Bulgarian Family Code prohibits some type of actions with the child's property. According to Art. 73 § 3: 'The donation, waiver of rights, lending and guaranteeing the debts of third persons by pledge, mortgage or endorsement, effected by children not yet of full age are null and void. This does not apply to the transactions executed by married minors to whom only the limitation of Art. 12, § 3 is relevant'.²⁴ These actions are not allowed even with the permission of the court because they are considered not to be in the child's interests. Any such transaction is void. A dissent to the theory suggests that circumstances of the case might

²¹ Decision of the Supreme Court, 1218-1999 (Civil Division).

²² Decision of the Supreme Court, 91-1974.

²³ Art. 27 Bulgarian Contracts and Obligations Act.

²⁴ Real property is the only property which they are not allowed to transfer.

compel such transactions in order to protect the best interests of the child (for example the child's education or payment for health intervention).²⁵

3. In what circumstances (e.g. child reaching majority or marrying) do parental responsibilities automatically come to an end?

The parental rights and duties automatically come to an end in the following circumstances:

- Children attain the age of majority at 18 years. According to the Bulgarian Persons and Family Act: 'At the age of 18 persons obtain full age and capacity to acquire rights and to take obligations' (Art. 2), and to the Bulgarian Child Protection Act 'a child is every person under 18 years of age' (Art. 2).
- In contracting of marriage by the child, which by exception is allowed at the age of 16.²⁶
- In cases of death of the child or of the parent.

4. What is the current source of law for parental responsibilities?

The Bulgarian Family Code passed in 1985.

5. Give a brief history of the main developments of the law concerning parental responsibilities.

Since 1944 the legal framework of parent-children relationships has been changed three times, but in general the spirit of the major principles and norms adopted is preserved in the current Bulgarian Family Code (1985). The Bulgarian Child Protection Act which regulates issues such as public care for children, intervention in the family and provision of community based services for families and children,²⁷ was adopted in 2000.

In deciding custody and contact matters the Bulgarian Family Code stipulates the court shall consider 'the interests of the children'.²⁸ However, the interests of children have never been identified by law as 'a paramount'²⁹ or 'a primary consideration'³⁰ in the decisions affecting them. Relevant provisions have even undergone regressive development; one of the very few changes in the family law since mid-forties of the last century, when surprisingly, after a period of complete negligence, the legislation established for children the most favoured status in the

²⁵ See A. STANEVA, *Representative and Custodial Functions of Parents*.

²⁶ Art. 12 § 3 reads that 'With the contraction of marriage a minor becomes competent but can dispose of real estate only with the permission of the District court at the place of its residence.'

²⁷ See more about the Act in: V. TODOROVA, 'The Bulgarian Child Protection Act: The Start of the Child Welfare Reform?', in: A. BAINHAM (ed.), *International Survey of Family Law*, Bristol: Jordans, 2002, p. 91.

²⁸ Art. 106 § 2 Bulgarian Family Code.

²⁹ See Art. 1b Bulgarian Children Act 1989.

³⁰ See Art. 3 § 1 of the UN Convention on the Rights of the Child, ratified by Bulgaria in 1991.

family law.³¹ Since then the tendency is shifting from the rights of children to the expansion and strengthening of parental rights. This is evident both in the development of divorce regulations and in the serial revisions of the legislation regarding parent-children relationships. The interests of children are allocated a more modest position and emphasis is shifted to rights of the parents.

For instance, according to Art. 45, § 1 Bulgarian Marriage Ordinance Act (1945), '... the court shall consider exclusively the interest of children irrespective of the spouses' fault for the divorce'. In the later Bulgarian Persons and the Family Act (1949) the word 'exclusively' is substituted by 'only' (Art. 54). The attribute 'exclusive' is disposed of completely in this rule of the current Family Code, which refers only to the: '...assessment of all circumstances with regard to the interests of the children'.

Another illustration is found in the Bulgarian Persons and the Family Act saying that: 'during the marriage, parental rights and duties shall be exercised by both parents and only in the interest of children (Art. 85)'. Subsequent legislation has abandoned this stipulation.

At the end of the 1950s and the beginning of the 1960s, the focus was shifted to the rights of parents and away from their duties. Gradually the emphasis evolved to cover the autonomy of the parents and the family. A concept was established that parental rights have a standing equivalent to that of parental obligations. Child rearing satisfies parent's personal interests, therefore parental rights need to be protected against the illegal interference by third parties.³² Thus, the intervention in parent-child relationships remained rather theoretical until very recently. This was also due to the lack of 'child abuse' discourse. The Bulgarian Child Protection Act and the articulation of the 'child abuse' phenomenon created the environment necessary for public debate on the issues of 'parental rights' and state intervention.

6. Are there any recent proposals for reform in this area?

No, there are not. There was a new Draft Bulgarian Family Code which was debated by the previous Parliament (1997-2001).

B. THE CONTENTS OF PARENTAL RESPONSIBILITIES

7. Describe what the contents of parental responsibilities are according to your national law including case law.

³¹ Pieces of legislation such as the Bulgarian Persons Act (1907) where children were regarded as parents' property have been taken into account as have the Acts of 1889 and 1940 regulating illegitimacy.

³² According to T. TZANKOVA, *Commentary on the Legal Regulation of Parents-Children Relations in the Draft Family Code, Socialist Law*, 1984, p. 11: 'the rearing and upbringing of children is not merely an obligation of the parents. It is their major right... The parents exercise this right in the interest of children, but also in their own interest... The law does not allow the illegitimate interference in parental rights ...'. In the same sense, H. GEORGIEV, I. PALAZOV, P. BESHKOV and T. DAMYANOV, *Family Code - Commentary*, 1975, p. 307.

Neither the Bulgarian Family Code nor legal literature provide a list of rights or duties of the parents. Some general provisions in the Bulgarian Constitution and in the Bulgarian Family Code entrust the parents with the care and upbringing of children. Some pieces of legislation, such as the Bulgarian Public Education Act and Bulgarian Law on Health, contain separate duties or rights. For example those connected with the education of children or consent for medical treatment of the child. The family law doctrine has adopted one general typology of parental rights and duties – ‘rights on personal relationships’ and rights/duties on property of the child.³³

8. What is the position taken in your national law with respect to:

(a) Care

The main provision in the Chapter ‘parent-child relationships’ of the Bulgarian Family Code entrusts the parents with the obligation to care for their children: ‘Parents are obliged to care for their children and to prepare them for socially useful activity’ (Art. 68 § 1). A similar provision exists in the Constitution: ‘Raising and bringing up of children until their age of majority is both a right and an obligation of their parents’ (Art. 47 § 1).

The content of the concept of ‘care’ comprises the care for the physical upbringing of the child and his or her support as well as the care for intellectual and moral development of the child. The following components of ‘care’ are enlisted in the legislation and in the case law:

- Child’s identity – naming the child on the birth certificate (Art. 12 Bulgarian Civil Registration Act). In disputes among parents, the Registrar takes one of the names chosen by the parents. Parents assist the child in obtaining a passport.
- Rights protection.
- Constant supervision of the child. The Bulgarian Child Protection Act stipulates a parent shall not allow a child out of the home without supervision after ten o’clock in the evening. (Art. 8 § 3).
- School attendance.
- Health care.
- Assuring a home (see Supreme Court Decision 5/1976).
- Care for the personal hygiene and clothes (see Supreme Court Decisions 5/1976, 1686/1977).
- Child support.
- Property.

(b) Education

Parents are obliged to educate the child until the child is 16 years old (Art. 53 § 2 Bulgarian Constitution). Parents are liable under administrative law if they do not ensure the child’s attendance in school (Art. 47 Bulgarian Public Education Act). As legal representatives, parents choose the school and type of education (Art. 9 Bulgarian Public Education Act). After the age of 14 children may exercise this right on their own.

³³ See: L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 407.

(c) Religious upbringing

Parents are expected to bring up the child and teach it values. The Bulgarian Law of Religious Beliefs (2002): 'parents and legal guardians have the right to bring up their children according to their own religious beliefs' (Art. 6 § 2). The Bulgarian Child Protection Act however provides for nuances in this rule based on the capacity of children to decide for themselves. According to the Art. 14 'Protection of Religious Beliefs - (1) The attitude of children below 14 years of age towards religion shall be guided by their parents or legal guardians; while those of children between 14 and 18 shall be decided by common consent between them and their parents or their guardians. (2) Where such consent can not be reached, the underage person may refer, through the bodies pursuant to this Act, to the District Court to settle the dispute.'

The protection of children involves a prohibition against 'forcible involvement in political, religious and trade union activities' (Art. 11 § 4). Religious denominations or institutions may only involve minors in their activities with the consent of their parents. Children above this age may only be involved if there is no explicit disagreement from their parents (Art. 7 § 5 Bulgarian Law of Religious Beliefs).

(d) Disciplinary measures and corporal punishment

Legislation does not explicitly ban the corporal punishment of children. The Bulgarian Child Protection Act however provides protection of the child against disciplinary measures that might be harmful and undermining its dignity. Art. 11 § 2 reads that: 'Every child has a right to protection against all methods of upbringing that undermine its dignity; against physical, psychological or other types of violence; against all forms of influence which go against its interests.' In addition, the Act stipulates that: 'A child at risk' is a child: 'b) who has become the victim of abuse, violence, exploitation or any other inhuman or degrading treatment or punishment either in or out of his or her family' (Additional provision No. 5).

(e) Medical treatment

The new Bulgarian Law on Health (in force from January 2005) stipulates for 'informed consent of the patient' for any medical operation (Art. 87). If a child above 14 is concerned, its consent, together with the consent of the parent or guardian, is necessary. If the child is below 14, only the parent provides consent. Prior to giving their consent, both the child and the parent should be duly informed by the medical doctor (Art. 88). In cases where the life of the patient is jeopardised and it is impossible to obtain the informed consent of the parent in time, medical treatment may be performed without consent (Art. 89). The child, as well as its parent, may refuse any treatment at any time with written consent except in cases where the child's life is at stake or where the medical doctor could act on his or her own to save the life (Art. 90). Medical treatment against the will of the patient is possible only if permitted by law (Art. 91).

Theoretically, if the parents are not available or refuse to give consent, the case may be brought to the court in order to terminate the parental rights. A guardian who will consent for the medical treatment should then be assigned to the child. This takes a long time and puts the child at risk. There is no case law on this matter.

(f) Legal representation

Parents are the representatives of their minor children who have not yet reached the age of 14. Children who are between 14 and 18 years old act with the consent of their parents. According to the Art. 73 Bulgarian Family Code, representation and guardian assistance: - (1) 'Each parent is entitled to solely represent his or her minor children, and to give consent only for the legal acts in the interests of his or her adolescent children.' This is applicable not only when dealing with the child's property, but to all legal actions related to the child; legal representation before the court, giving a name, consent for treatment, choice for school *etc.*

9. What is the position taken in respect of the child's right to be heard with regard to the issues mentioned under Q 8 ((a)-(f)). What relevance is given to the age and maturity of the child?

There is no special legislative text obliging the parents to consult their children in making decisions affecting their lives. However, the law authorises the child to take independent action with legal consequences, and also to be heard in legal and administrative proceedings.

According to Art. 15 Bulgarian Child Protection Act, participation in procedures: '(1) All cases of administrative or judicial proceedings affecting the rights and interests of a child should provide for an obligatory hearing of the child, provided he or she has reached the age of 10, unless it proves harmful to its interests. (2) In cases where the child has not reached the age of 10, it may be given a hearing depending on the level of its development. The decision to hear the child shall be substantiated.'

The regulation creates an imperative general rule for the hearing of children between the ages of 10 and 18. The court or administrative authority should file the hearing through a special order and then express its impressions of the hearing in the reasoning of its decision. The only exception possible is where the hearing would harm the interests of the child. The assessment in this respect shall be made by the court or administrative authority and shall be expressed in a hearing. The law provides only for the personal and direct contact of the child with the hearing authority. This contact may not be substituted by 'conveying the viewpoint of the child' through a third person. If a child has not reached the age of 10, the court or administrative authority shall hear the child with a substantiated decision, depending on the degree of development of the child. The court is vested with the right to make the necessary assessment.

Before the child is given a hearing, the court or the administrative body shall:

1. provide the child with the necessary information which would help it to form its opinion;
2. inform the child about the possible consequences of its opinion, as well as about all the decisions made by the judicial or administrative body (Art. 15 § 3). The hearing and the consultation of a child shall by all means take place in appropriate surroundings and in the presence of a social worker or another appropriate specialist (Art. 15 § 4).

For instance, the child can be provided a hearing in determining the protection measures under the Bulgarian Child Protection Act (placement in public care and termination of this placement), in the administration of parental rights in the case of divorce, in the case of disputes over parental rights and the place of residence of the child, in the case of restricting or terminating parental rights, in the appointment of a custodian or a guardian, in adoption cases, or in the case of a permission of disposing with property, treatment, etc. The legal meaning of the hearing is to consult and inform the respective authority about the opinion of the child when the authority makes a decision on any issue affecting a right of the child or a legally protected interest of the child.

The Bulgarian Child Protection Act stipulates two separate public rights of the child connected with the above right. The child has the right to information and consultation: 'Every child has a right to be informed and consulted by the child protection body even without the knowledge thereof of its parents or of the persons who take care of its rearing and upbringing, should that be deemed necessary in view of protecting its interests in the best possible way and in the situation where informing the said persons might harm the child's interests.' (Art. 13 Bulgarian Child Protection Act). The child also has a right to freedom of expression: 'Every child has a right to freely express his or her opinion on all issues affecting its interests. The child may seek the assistance of the bodies and persons, to whom its protection pursuant to this Act has been assigned' (Art. 12 Bulgarian Child Protection Act).

Attaining the age of 14 considerably broadens the legal capacity of children to take actions with legal consequences, irrespective of the will of their parents or custodians: They can conclude common legal transactions for meeting their current needs, and also dispose of what they have earned with their own labour (Art. 4 § 2 Bulgarian Act on the Persons and the Family).

They can instigate their legal proceedings in person where legal labour relations are involved or where the disputed matter stems from transactions under Art. 4 Bulgarian Act on the Persons and the Family (Art. 16 § 3 Bulgarian CCP). Children over 14 can instigate their legal proceedings in person, but only with the consent of their parents or custodians (Art. 16 § 2 Bulgarian CCP), however they can instigate matrimonial claims on their own (Art. 258 Bulgarian CCP). The consent of the parents or guardians is not required where a 16-year old person wishes to get married (Art. 12 Bulgarian Family Code).

For more serious transactions and medical interventions, the consent of both the child and of the parents or custodians is required. Children determine their religious convictions in accord with their parents (Art. 14 Bulgarian Child Protection Act). According to the Bulgarian Act on Public Education, they can choose the type of school and tuition. They give their consent for adoption (Art. 54 § 1 Bulgarian Family Code).

Legislation does not contain a general provision for solving the conflict between the child and the parents if they hold differing views regarding the above matters. The only express wording in this respect is related to religious conviction (Art. 14 § 2 Bulgarian Child Protection Act): 'Where such consent can not be reached, the

underage person may refer through the bodies pursuant to this Act to the district court to settle the dispute.' No obstacles exist that for any matter of dispute, the child would address the 'bodies and persons, to whom its protection pursuant to this Act has been assigned', which are the State Agency for Child Protection and the Child Protection Departments in the municipalities. The latter can be consulted to resolve the dispute or could instigate proceedings at court if the child is at risk or for the purpose of restricting parental rights (Art. 21 § 1 § 14 Bulgarian Child Protection Act). The Child Protection Department, however, may not substitute the missing parental consent. The child must be assigned to a guardian/custodian if parents have had their parental rights waived and they should provide the missing consent.

10. Do(es) the holder(s) of parental responsibilities has(have) the right to administer the child's property?

Yes.

11. If yes, explain the content of this right.

Being the legal representatives or guardians of their children, the parents, jointly or separately, are entitled to administer the child's property. This option stems from the argument contrary to Art. 73 § 2 Bulgarian Family Code: 'The disposal of real property and chattels, with the exception of fruits and perishables, the encumbering thereof with liabilities and in general the undertaking any transactions related to the property of minors, are allowed with the permission of the district court in the place of residence only in case of necessity or where this is in the child's obvious interests.' Any other actions with the child's property are considered to be actions of administration/management of the property.

The Bulgarian Family Code does not contain any definition of the concept of 'common management'. Any actions on such grounds shall stem either from the interpretation of the above text or from the judicial practice. The Supreme Court deems common management actions to be those actions in which the property is not disposed, but preserved, maintained and used.³⁴ The assessment regarding the type of action shall be provided for each particular case.

12. Are there restrictions with respect to:

(a) Certain goods and/or values (inherited property, gift...)

Yes, there are. The restriction does not apply to the type of rights, but to the type of actions regarding the property of the child. Parents are not entitled to commit actions to the child's property, that change the character of the property right,³⁵ such as transferring, restricting, transforming, terminating, or relating to money withdrawals from the bank accounts of the child. Such action is only possible following permission from the district court for each separate transaction (Art. 73 § 2 Bulgarian Family Code). The court shall issue its permission only where such action is of necessity to the child or where this is in the child's obvious interests.

³⁴ Decision of the Supreme Court, 91-1974.

³⁵ Decision of the Supreme Court, 91-1974.

The court makes this assessment in each particular case where such permission is applied for and provisions are made for reviews during judicial holidays too.³⁶ The Bulgarian Child Protection Act stipulates that the court may request the opinion of the Child Protection Department (Art. 15 § 6), or, if the disposition is carried without the permission of the court, it shall be voidable.³⁷

(b) Salary of the child

Yes, according to Art. 4 § 2 Bulgarian Act on the Persons and the Family, children shall have the ability to dispose of what they earn from their own labour.

(c) Certain transactions?

Certain actions with the property of children are forbidden by the Bulgarian Family Code. According to Art. 73, § 3: 'The donation, waiver of rights, lending and guaranteeing the debts of third persons by pledge, mortgage or endorsement, effected by children not yet of full age are null and void. This does not apply to the transactions executed by married minors to whom only the limitation of Art. 12 para. 3 is relevant'. Art. 12 § 3 reads: 'With the contraction of marriage a minor becomes competent but can only dispose of real estate with the permission of the district court in the place of the child's residence.'

13. Are there special rules protecting children from indebtedness caused by the holder(s) of parental responsibilities?

No, there are not.

14. Do the contents of parental responsibilities differ according to the holder(s) of parental responsibilities (e.g. married, unmarried, parents not living together, stepparents, foster parents or other persons). If so, describe in some detail how it differs.

Parental rights and obligations pertain to the parents irrespective of their marital status, if the origin of the child is established with regard to such parent(s) in the manner set forth by the Bulgarian Family Code.

As regards the regulation of relations between unmarried parents, no specific provisions exist in the Bulgarian Family Code, especially when such parents do not live together. The Code states that: 'Where the parents do not live together and are unable to reach an agreement as to with whom the children will live, the dispute is resolved by the district court at the place of residence of the children, after the court has heard the children, if they are ten years of age or older. The decision of the court is subject to appeal according to the general rules.' (Art. 71 § 2.) Theoretically, such a claim may be used both by parents who live separately, both married and unmarried.³⁸ According to judicial practice, however, such claims are filed by parents who have not been married, but live separately.³⁹ In contrast with divorce, in cases of separation the court can only determine the residence of the child with

³⁶ According to Art. 192 § 2 § 4 Bulgarian Law on the Judicial Authority.

³⁷ Art. 27 Bulgarian Act on Obligations and Contracts.

³⁸ L. NENOVA, *Family Law of the Republic of Bulgaria*, p. 424-425.

³⁹ Decisions of the Supreme Court (Civil Division) No. 261-1974, 1781-1978, 1218-1999, etc.

one of the parents if the parents cannot reach an agreement. This is admitted to be an indirect approach to matters of custody and contact, but the scope is not as broad as in divorce proceedings.⁴⁰ The major difference is that the court can make no pronouncement *ex officio* on parental rights regime if it is not addressed in a dispute over the residence of the child.

Step-parents, foster parents or other persons such as guardians or custodians do not hold parental rights. They only exercise factual care in the raising and the upbringing of the child. According to Art. 68 § 2, 'the stepfather and the stepmother are obliged to assist the parent in the discharge of his or her duties.' The Bulgarian Child Protection Act stipulates that 'The spouses or the person of the foster family do not bear the parental rights and responsibilities' (Art. 31 § 2).

C. ATTRIBUTION OF PARENTAL RESPONSIBILITIES

I. Married Parents

15. Who has parental responsibilities when the parents are:

(a) Married at the time of the child's birth

Art. 32 § 1 Bulgarian Family Code stipulates: 'the husband of the mother is deemed to be the father of the child who has been born during the marriage or before the elapsing of three hundred days from its dissolution.' The mother is the woman who gives birth to the child (Art. 31 § 1 Bulgarian Family Code).

(b) Not married at that time but marry later

The later marriage does not establish the fatherhood of the child. The parental responsibilities stem from the legally established affiliation of the child. The origin of the mother is determined by birth. The same applies also in cases where the genetic material (*i.e.* egg) belongs to another woman (Art. 31 § 1 Bulgarian Family Code). The fatherhood of the child born out of the marriage cannot be established by presumption. Instead, there are two other options. The first one is given to the father – he may recognise the child before the civil registry officer.⁴¹ The other option establishes the fatherhood by means of judicial decision. Only the mother and the child may claim fatherhood before the court. According to the Art. 41 Bulgarian Family Code: 'The origin from the father may be established by an action brought by the child up to the elapsing of three years from becoming of full age, and by the mother within three years from the date of birth of the child. Where the action is brought by the child the mother is summoned as a party to the lawsuit.' In cases establishing extra-marital parentage the court makes the custody arrangements. It orders the custody of children (meaning the factual exercise of the

⁴⁰ Judicial theory and practice admit that by issuing the residence order, the regime of parental rights is solved automatically, despite the absence of explicit regulation. See Cases 261-1974 (Civil Division); 669-1992 (Civil Division); 1218-1999 (Civil Division). Also, an analogy is admissible with divorce arrangements, without the effect of the *ex officio* principle Cases 1781-1978 (Civil Division) and 606-1982 (Civil Division). However, it is admitted that regarding the current situation there is a lack of power for the court to make the full arrangements. See L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, and T. TZANKOVA, *Factual Spouse Cohabitation*, Sofia, Feneya 2000, p. 134-6.

⁴¹ Art. 35 *et seq.* Bulgarian Family Code.

parental rights and duties), contact issues and their support *ex officio* (Art. 42 and 106 Bulgarian Family Code).

16. How, if at all, is the attribution of parental responsibilities affected by:

(a) Divorce

Divorce does not affect the legal attribution of the parental rights and duties but does affect their factual exercise, which concentrates in the parent with whom the child resides.⁴² The other parent is entitled to contact with the child.

In cases of divorce due to marital breakdown based on fault,⁴³ the court settles all matters regarding the former spouses' relations with their children. In the dissolution of marriages where there are minor children, the court, irrespective of whether the interested party files a claim to this end or not, orders the custody of children (meaning the factual exercise of the parental rights and duties), contact issues and child support as well as the use of the matrimonial home *ex officio* (Art 106 § 1 and 107 Bulgarian Family Code).

PARENTAL RIGHTS AFTER THE DIVORCE

Art. 106

With the declaration of the divorce the court orders *ex officio* custody of children, contact measures between the children and the parents, and the support of the children.

The court determines child custody after scrutinising all circumstances in relation to the child's interests. The custody cannot be granted to the spouse who was found guilty in the divorce procedure if this may have negative effect for the rearing and upbringing of the children.

The court hears the parents and the children if they are fourteen years of age or older. Where the court finds it appropriate it can hear the children who are ten years of age or older, and also close relatives and friends of the family. As an exception, where the interests of children require it, the court may decree that the children would live with their grandfather, grandmother or somebody else, with the consent of the latter, or at a social institution.

When a change in the circumstances occurs the court may, at the petition of one of the parents or *ex officio*, change the previously decreed measures and decree new ones. In cases of divorce by mutual consent or divorce granted on a marital breakdown where the spouses file a request of non-pronouncement for fault, the spouses settle the post-divorce arrangements, including the exercise of the parental rights and duties, through an agreement. The court approves the agreement if it corresponds to the interests of the children.⁴⁴

The court or the agreement should, as a post-divorce arrangement, appoint one of the parents to exercise the parental rights and duties thus also settling the residence

⁴² L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 624-630.

⁴³ Art. 99 § 2 Bulgarian Family Code.

⁴⁴ Art. 99 § 3 and Art. 100 § 2 Bulgarian Family Code.

of the child with that parent. Measures of personal contact and support are ordered or arranged for the other parent.⁴⁵ The arguments on which the regulation is based are the possible practical difficulties generated by the joint custody following the divorce or the separation and the incompatibility of this situation with the interests of children.⁴⁶

Granting the custody means granting the practical day-to-day exercise of parental rights.⁴⁷ It is assumed that the duties continue to be fulfilled by both parents.⁴⁸ For instance the non-custodial parent still owes duties of support, care and supervision during times of contact with the child.⁴⁹ According to theory and judicial practice, the parent in question also preserves the full range of parental rights (the custody). What he or she loses is the opportunity to exercise them in practice.⁵⁰ Practically, by granting the custody to one of the parents, the other loses any capacity not only for factual actions (due to their separate residence), but also for legal actions. This follows from the interpretation suggested by the Supreme Court. According to the court the 'exercise of parental rights' means: 'the daily exercise of parental rights regarding the protection, defence and representation of children'.⁵¹ Therefore, the non-custodial parent cannot act as a legal representative of the child and that capacity remains solely with the custodial parent.⁵²

Only the exercise of some rights is preserved for the non-custodial parent, which protect his or her interest rather than the interest of the child: to give consent for adoption, to agree both for a change in the name of the child and for taking the child out of the country.⁵³ Non-custodial parents also retain another important right: to petition the court for revision of parental custody regime if the circumstances have changed.⁵⁴ Another important right of the non-custodial parent is to maintain contact with the child.

In spite of this regulation and practice, the view has been expressed that it is not impossible for the custody to be granted to both parents jointly where the interests

⁴⁵ Art. 106 § 1 Bulgarian Family Code.

⁴⁶ L. NENOVA, *Family Law of the People's Republic of Bulgaria*, Sofia, 1977, p. 322. This principle was upheld in 1994: L. NENOVA, *Family Law of the People's Republic of Bulgaria*, Sofia, 1994, p. 637. Judicial practice maintained the same view in Decision of the Supreme Court, 1-1974, § 1. V.N. MLADENOV and P. BRATANOVA, *Family Code: Text, judicial practice, etc*, 1996.

⁴⁷ The meaning of the phrase 'parental rights' in Bulgarian legislation corresponds to the interpretation of Jonathan HERRING when he discusses the option that the parent might have rights not in his or her capacity of a human being but because he or she is a parent. In J. HERRING, *Family Law* 2001, Longman, p. 325.

⁴⁸ See HR. GEORGIEV, I. PALAZOV, P. BESHKOV and T. DAMYANOV, *Family Code. Commentary*, Sofia, 1975, p. 203. In the same sense, L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 638.

⁴⁹ L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 639.

⁵⁰ A. STANEVA, *Representative and Custodial Functions of Parents*, Sofia, 1992, p. 31.

⁵¹ See Decision of the Supreme Court, 1-1974.

⁵² A. STANEVA, *Representative and Custodial Functions of Parents*, Sofia 1992, p. 32-33. Also the Supreme Court substantiation in Decision of the Supreme Court, 1-1974.

⁵³ Art. 54 § 1 Bulgarian Family Code; Art. 45 of the Identification Documents Act.

⁵⁴ Art. 106 § 5 Bulgarian Family Code.

of the child so require.⁵⁵ This is an isolated statement and no serious discussion has taken place so far in Bulgaria on the issue of joint custody after divorce. Moreover the idea may not be confirmed by the interpretation of the law. It clearly states that: '...the court rules to which spouse the custody shall be granted, orders the measures regarding the ... contact between parents and children'.⁵⁶ No case law is known where a joint custody has been granted. To the contrary, the entire practice of the Supreme Court confirms the principle of the sole custody after divorce. In fact the theory tries to claim against the factual dissolution of parentage following the divorce that contrasts the equality of parents' principle articulated explicitly in the law. This discourse distracts attention from the real problems following the divorce. They are connected with the status of non-custodial parent and his or her relations with the child. In reality, the status of that parent depends not on his or her legal position, which is very unclear, but on the factual relations with the custodial parent. If they are bad, as it is in the majority of cases especially in fault divorces, that a parent actually loses the custody of the child. Regardless of the theoretical attempts to provide reasons to the contrary, the current legislation does not provide an opportunity for the non-custodial parent to preserve not only his or her legal but factual position in relation to the child. Lawyers and legal commentators refuse to admit that the law shows a limited capacity even to ensure the contact rights of non-custodial parent and the child.

(b) Legal separation

Bulgarian family law does not provide for a legal separation between spouses.

(c) Annulment of the marriage

Art. 98 Bulgarian Family Code entitled 'consequences arising from the annulment of marriage' stipulates that - 'the rules regarding the consequences of the dissolution of marriage through divorce in connection with the personal property and property relations between the spouses, as well as those about the relations between them and the children are also applicable to the annulment of marriage. The bad faith by annulment of marriage has the same meaning as the guilt by divorce. The children who have been conceived or born during the annulled marriage are deemed as born in wedlock and for them the presumption for fatherhood, under Art. 32, is also applicable.'

(d) Factual separation

The situation is more or less the same in cases of separation between cohabiting (or married) parents where the court grants only the residence of the child. According to Art. 71 § 2: 'Where the parents do not live together and are unable to reach an agreement as to with whom of them the children will live, the dispute is resolved by the district court of the children's residence, after the court has heard the children, if they are ten years of age or older. The decision of the court is subject to appeal according to the general rules.' In cases of separation, the court may only determine the residence of the child with one of the parents if they cannot reach an agreement.

⁵⁵ L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1977, p. 322.

⁵⁶ Art. 106 Bulgarian Family Code.

17. To what extent, if at all, are the parents free to agree upon the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage? If they are, are these agreements subject to scrutiny by a competent authority.

In principle the agreement on parental responsibilities is considered by the law as the best solution in cases of separation or divorce. Nevertheless this principle may be applied according to the situation of divorce/annulment of the marriage combined with some intervention by the court.

Divorce by mutual consent is predetermined by an agreement reached and drawn in advance by the spouses as regards all consequences of divorce. As stated in Art. 101 § 1 Bulgarian Family Code: ' In a divorce by mutual consent the spouses have to set forth their settlement as to the child custody, contact with children and the support of the children, and also their property relations, the use of the matrimonial home, the maintenance between them, and the family name. The settlement is ratified by the court after it is satisfied that the interests of the children have been protected.' The court only confirms the agreement after examining 'whether the interests of children are protected'. The court may not on its own motion provide a substitute for a missing agreement similar to that which settles the relations set forth under Art. 101 § 1. The court may only approve the agreement or give the spouses a deadline to improve it in accordance with the requirements of the law.⁵⁷

The court scrutinises the agreement in two ways: completeness (does it cover all issues provided for by the law?) and adequacy as to the interests of children. The court does not examine the interests of the spouses, but the agreement must be compliant with the provisions of law and ethics. Where an agreement does not meet one of the above requirements, the court sends it back to the spouses to correct its deficiencies: 'Where the settlement is not complete or the interests of the children are not well protected the court sets a term during which these defects should be eliminated. Where, within the set term, the defects are not eliminated the divorce petition is dismissed.' (Art. 101 § 2 Bulgarian Family Code).

In the case of divorce due to marital breakdown where the spouses file a request of non-pronouncement on fault, they are required to furnish an agreement on all matters regarding relations between themselves and between them and their children after the divorce: 'The court does not pronounce itself as to the fault for the breakdown of the marriage where the spouses request this and submit to the court their agreement regarding the custody of children, the contact and the support of the children, and also about their property relations, the use of the matrimonial home, the maintenance between them and the family name' (Art. 99 § 3 Bulgarian Family Code). The contents of such an agreement overlap in full with its counterpart agreement in the case of divorce by mutual consent.

⁵⁷ L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 583 and A. STANEVA, *Representative and Custodial Functions of Parents*, Sofia, 1992, p. 529.

Though legislation has articulated no express provisions in this respect, both judicial practice and theory admit that the matrimonial court holds the same powers in assessing the agreement as it does in divorce by mutual consent. Bearing in mind that the agreement settles all consequences of divorce, it must guarantee the interests of children, be complete and not contradictory to law. Agreements, which do not meet these requirements, are returned to the parties for the purpose of removing any identified deficiencies.

The Supreme Court has stated that 'the court, as by law provided, has no authority to transform the agreement or substitute it by any terms of its own, it may only instruct the parties as to the removal of deficiencies.....'.⁵⁸ Thereafter, the court grants a decision by which it dissolves the marriage and reproduces the agreement on the consequences of divorce.

These rules also apply to the annulment of marriage.

18. May the competent authority attribute joint parental responsibilities to the parents of the child even against the wish of both parents/ one of the parents? To what extent, if at all, should the competent authority take account of a parent's violent behaviour towards the other parent?

No, it may not. The Bulgarian Family Code provides for the attribution of sole custody – one of the parents exercises parental responsibilities and lives with the child. For the other parent, contact should be arranged.

The Bulgarian Family Code requires that in deciding custody issues, the court must review the circumstances with regard to the interests of children. The law does not describe the exact content of children's interests and the manner in which they will be identified in the particular case. These issues have been left to the court discretion to interpret.⁵⁹ The leading Supreme Court case in this area dates back to 1974.⁶⁰ In this case the court makes the following interpretation of the concept of 'the interests of children': 'the need for the correct rearing and upbringing, the establishment of working habits and discipline, preparation for labour in the interest of the public, including material interests: housing, handling of their property, where the aim is for the child to become a harmoniously developed person and a good citizen.'

The court further states that 'the interests of the child' are not the only criterion for the eligibility of the parent and that the best safeguard to the interests of children has to be exercised in view of 'harmonising their personal interests with those of the family and society'. However, the manner of attaining this harmonisation is not clear, and no regard is given to the potential supremacy of other interests over those of the child.⁶¹

⁵⁸ Decision of the Supreme Court, 60-1987.

⁵⁹ See also J. EEKELAAR, *Regulating Divorce*, 1991, p. 123.

⁶⁰ See Decision of the Supreme Court, 1-1974 and also Cases 3350-1978, 2792-1980.

⁶¹ See criticism of this view in V. TODOROVA, *The Decision on Communication No.27496/95 before the Commission Human Rights in Strasbourg – MM v. Bulgaria and the questions raised for Bulgarian family law*. Human Rights, issue 1/1999, Appendix – p. 28-29.

The decision cited also offers a list of major circumstances, which need to be examined in determining the interests of children. These are: (1) the capacity of the parents to bring up their children, (2) care and attitude of the parents to children, (3) affection of the children for their parents, (4) sex and age of the child, (5) support by third parties, (6) social environment, (7) housing and other living conditions, and (8) the fault in divorce'. The violent behaviour of the parent towards the other parent is not among these circumstances, but it could be part of the fault in divorce situation if examined.

19. Provide statistical information on the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage.

The statistical information suggests that the share of children from divorced families is:⁶²

1970	1980	1990 - 2000
2% (1 child out of every 50 children)	3.5-4% (1 child out of every 30 children)	6.5% (one child out of every 15 children)

The census of 2001 reveals that there are 144,870 lone parent families in Bulgaria (from the total of 2,392,000), which is 12.4% from the total number of families. The ratio between mother-headed and father-headed families is 4.5:1, respectively, or 84% of lone parent families are headed by the mother and 16% by the father. Irrespective of the fact that judicial termination of the marriage is only one of the reasons for the existence of single-parent families, this proportion also applies in determining which parent will exercise parental rights and obligations before the court; in most of the cases the mother is the preferred parent.⁶³

In fact, the instruction given by the Supreme Court in its leading decision No. 1 of 1974 in making custody arrangements is to examine the qualities of the parents and their environment, but not so much the specific interests of the child. The only indicators for the needs of the particular child mentioned in the instructing decision are 'the sex and the age' of the child and 'his or her attitude to one or the other parent'. Thereupon, that decision delineates specific needs for some children, such as girls, especially during puberty or pre-puberty and small children (babies and very young children) and children with disabilities. The mother is identified as the parent more suitable to satisfy their needs, and so will be regarded as the preferable parent.⁶⁴ The recommendation to courts is that: 'the mother is more eligible to rear and bring up children of the female sex and equally, to rear and raise boys'. Following these instructions, in 90% of the cases, courts prefer the mother as the custodial parent, with the father being granted contact with the child.

⁶² M. BELCHEVA, *Condition, tendencies and problems of birth rate in the Republic of Bulgaria*, National Statistical Institute, 2003, p. 67.

⁶³ M. BELCHEVA, *Condition, tendencies and problems of birth rate in the Republic of Bulgaria*, National Statistical Institute, 2003, p. 87-88.

⁶⁴ Also according to J. EEKELAAR, *Regulating Divorce*, 1991, p. 124.

No discontent has been registered with fathers regarding this practice of the court so far.

II. Unmarried parents

20. Who has parental responsibilities when the parents are not married?

See Q 15(a) and (b).

21. Does it make a difference if the parents have formalised their mutual relationship in some way (registered partnership, civil union, pacte civil de solidarité...).

Bulgarian legislation does not regulate non-marital relationships.

22. Under what condition, if at all, can

(a) The unmarried mother obtain parental responsibilities

See Q 15(a).

(b) The unmarried father obtain parental responsibilities

He can recognise the child. As the Bulgarian Family Code stipulates:

PARENTAGE

Art. 35. Each parent may establish parentage with his or her child. It is also possible to establish parentage with conceived children, as well as deceased children who have left descendants.

FORM OF PARENTAGE

Art. 36. (1) Parentage is established personally with a written declaration submitted to the Civil Registrar or by a declaration with the signature attested by the notary public, filed with the officer for civil status. The declaration may be forwarded through the manager of the establishment where the child has been born.

(2) (New - SG, No. 63 of 2003) The Civil Registrar shall notify the other parent of the establishment of parentage, if he or she is known, the child, if having reached full age, and the Social Assistance Directorate within 7 days from carrying the action.

PROTESTING PARENTAGE ESTABLISHED BY THE OTHER PARENT AND THE CHILD

Art. 37. (1) (Rev. - SG, no. 63 of 2003). The parent or the child may protest the establishment of parentage with a request in writing to the Civil Registrar within three months of the notification. Where parentage is not protested it shall be entered on the birth certificate.

(2) When parentage is protested, the person that has declared it may, within a three-month term of the receipt of notification file a claim for the establishment of origin.

(3) Where, as of the time of the establishment of parentage, the child has not attained the age of majority, he or she may protest such an action within three years of attaining the age of majority or from becoming aware of such an establishment of parentage, if he or she has become aware of it at a later time. If the

claim is respected, the establishment of parentage shall be deleted from the birth certificate with the respective note in the certificate.

If the fatherhood has been established in the above way the father acquires parental responsibilities.

23. How, if at all, is the attribution of parental responsibilities affected by the ending of the unmarried parents' relationship?

The separation of the unmarried couple does not affect the attribution of parental responsibilities.⁶⁵ See Q 14.

24. May the competent authority attribute joint parental responsibilities to the parents also against the wish of both parents/ one of the parents? To what extent, if at all, may the competent authority take into account a parent's violent behaviour towards the other parent?

No it may not. It is not possible even when based on the wish of both parents. See Q 18.

25. To what extent, if at all, are unmarried parents free to agree upon the attribution of parental responsibilities after the ending of their relationship?

They are free to agree on the attribution of parental responsibilities after the ending of their relationship. The agreement is a purely private matter since neither scrutiny nor any registration or approval of the agreement are envisaged by law.

26. Provide statistical information available regarding the attribution of parental responsibilities for unmarried parents.

There is no information available on this matter.

III. Other persons

27. Under what conditions, if at all, can the partner of a parent holding parental responsibilities obtain parental responsibilities, when, he/she is:

(a) Married to that parent:

There are two possibilities. If the child has established parentage to only one parent, the partner of the parent may either recognise the child or adopt it. Where a child has an established origin with regard to a second parent, the only alternative for the partner is adoption. For this purpose, the consent of the second parent is

⁶⁵ Judicial theory and practice admit that by issuing the residence order, the regime of parental rights is solved automatically, despite the absence of explicit regulation. See Cases 261-1974 (Civil Division); 669-1992 (Civil Division); 1218-1999 (Civil Division). Also, an analogy is admissible with divorce arrangements, without the effect of the *ex officio* principle - Cases 1781-1978-I (Civil Division), 606-1982-II (Civil Division). However, it is admitted that, regarding the current situation, there is a lack of power for the court to make the full arrangements. See L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia 1994, p. 424-5 and T. TZANKOVA, *Factual Spouse Cohabitation*, Sofia, Feneya, 2000, p. 134-6.

required. As the Bulgarian Family Code states: Adoption by the spouse of the parent: 'By an adoption under the provisions of Art. 61 and Art. 62 of a child by the spouse of the parent the rights and obligations between this parent and his or her relatives on one hand, and the adopted and his or her descendants on the other hand, are preserved' (Art. 63).

(b) Living with that parent in a formalised relationship (registered partnership, civil union, *pacte civil de solidarité*...):

No such regulation exists in Bulgaria.

(c) or living with that parent in a non formalised relationship?

The only possibility is if the child does not have an established parentage to other parent. In this case the partner may recognise the child.

28. Does it make any difference if the partner of the parent holding parental responsibilities is of the same sex?

There is neither legislation nor practice on same sex couples in Bulgaria.

29. How, if at all, is the attribution of parental responsibilities in the partner affected by the ending of his or her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q 28.

Within the relationships described in Q27, the parentage established by recognition or by adoption remains after the separation of the couple. The adoption could be challenged if there are additional grounds, '... a serious offence committed by one of the parties or in the presence of other circumstances which deeply upset the relations between the adoptive parent and the adopted person' (Art. 64 § 1 § 2 and 3 Bulgarian Family Code).

30. To what extent, if at all, is the parent holding parental responsibilities and his or her partner free to agree upon the attribution of parental responsibilities after the ending of his or her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q 28.

The common rules apply if the child has established parentage towards both partners. The separation calls for arrangements on custody/residence and contact. If the partner of the parent does not have established parentage towards the child, the separation does not create any additional rights for the partner. The holder of parental responsibilities remains the parent of the child. The parent can not transfer any parental responsibility to his or her former partner.

31. Under what conditions, if at all, can other persons not being a parent or a partner of a parent holding parental responsibilities, obtain parental responsibilities (e.g. members of the child's family, close friends, foster parent...)? Specify, where such other persons may obtain parental

responsibilities, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.

There are no such conditions. Adoption and the establishment of parentage are the only options for persons who are not biological parents to obtain parental responsibility. Other persons such as members of the child's family, close friends or foster parent cannot obtain parental responsibility. They can only exercise parental rights and duties if the child has been placed with them by a court, but they do not become holders of parental responsibilities. Bulgarian family law regards the relatives of the child has already having a legal relation to him or her and there is no need to substitute it by parental responsibilities. There are two possibilities for a child to be placed under the care of relatives (members of his or her family) - in private and public law.

The Bulgarian Family Code states that in cases of divorce: 'Where the interests of children require it, as an exception, the court may place them with their grandparents, other relatives or close friends, with the consent of the latter, or at a specialized social institution' (Art. 106 § 4). Neither of these persons becomes a holder of parental responsibilities.

Providing public care for the child, he or she may be placed outside the family of origin. The Bulgarian Child Protection Act lays down: Placement out of the family 'The placement of a child with a family of relatives or friends, as well as placement of a child to be reared by a foster family or a specialised institution shall be done by the court. Until the court comes out with a ruling, the social assistance directorate at the current address of the child shall provide for a temporary placement by administrative order' (Art. 26 § 1). Art. 31 § 2 of the same Act explicitly states that foster parents do not obtain parental responsibilities.

32. Under what conditions, if at all, can a public body obtain parental responsibilities? Specify, where it is so obtained, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.

There is not such an option under the Bulgarian legislation.

33. To whom are the parental responsibilities attributed in the case of:

(a) The death of a parent holding parental responsibilities:

Where there is another parent, the parental rights and responsibilities are passed over solely to him or her. In case both parents are deceased, no other person may be attributed with parental rights, except through the adoption of the child.

(b) The death of both parents of whom at least one was holding parental responsibilities at the time of the death?

If both parents have died or the child is being raised by a single parent, no opportunity exists for the parental rights to pass over to another person, except through the adoption of the child.

34. To what extent, if at all, may the holder(s) of parental responsibilities appoint a new holder(s) upon his or her/their death? If such an appointment is permitted, must it take place in a special form, e.g. will?

There is no such legal option. Parental rights may not be transferred from the parents to any other persons even in the case of death. In the case of death, a parent may only express his or her wish, without legal effect, as to which person is to be appointed guardian or custodian of the child and with whom the child should be placed for upbringing and education. No special form is required for this action (which is of no legal significance) although it may be part of the will. The wish of the parent may be taken into consideration by the Guardianship authority or by the Child Protection Department.

D. THE EXERCISE OF PARENTAL RESPONSIBILITIES

I. Interests of the child

35. In exercising parental responsibilities, how are the interests of the child defined in your national legal system?

The Bulgarian Family Code does not explicitly define the link between the exercise of parental responsibilities and the interests of children. See Q 7f.

II. Joint parental responsibilities

36. If parental responsibilities are held jointly by two or more persons, are they held equally?

Yes. Holders of parental responsibilities are both parents if known and alive. As Art. 72 Bulgarian Family Code states: 'Both parents exercise parental rights and obligations jointly and separately'.

37. If parental responsibilities holders cannot agree on an issue, how is the dispute resolved? For example does the holder of parental responsibilities have the authority to act alone? In this respect is a distinction made between important decisions and decisions of a daily nature? Does it make any difference if the child is only living with one of the holders of the parental responsibilities?

Any parent has the authority to act alone even when the decision could be an important one *e.g.* consent for medical treatment and issuing of a passport of the child. This is explicitly set out concerning the representation of the child. As Art. 73 § 1 Bulgarian Family Code stipulates 'Each one of the parents is entitled to solely represent his or her minor children, and to give consent for the legal acts of his or her minor children only in their interest.' There are two exceptions to this rule. The adoption of the child requires the consent of both parents (Art. 54 § 1 § 2 Bulgarian Family Code). In this case neither parent can act alone. The second exception is the removal of the child from the jurisdiction – both parents must agree on the issuing of a passport for the child and agree to the child leaving the country (Art. 76 § 9 Bulgarian Act on Identity Documents).

If the other parent disagrees or parental responsibilities holders cannot agree on an issue they may bring the dispute (including the one on issuing a passport) to the court: '.... the dispute is resolved by the District court after hearing the parents, and where necessary also the child. The decision may be appealed according to the general rules' (Art. 72 Bulgarian Family Code).

Administrative solutions for dispute resolution are envisaged for specific disagreements e.g. if parents cannot agree on the name of the child, the civil registrar could select one of the names suggested by the parents (Art. 12 § 2 Bulgarian Civil Registration Act). Disputing parents could also seek assistance to resolve the conflict from the Child Protection Department (Art. 23 § 4 Bulgarian Child Protection Act).

38. If holders of parental responsibilities cannot agree on an issue, can they apply to a competent authority to resolve their dispute? If applicable, specify whether this authority's competence is limited to certain issues e.g. residence or contact.

If the holders of parental responsibilities cannot agree on an issue, they can apply to the district court to resolve their dispute. The competence of the court under this Art. 72 is not limited to certain issues. The court is competent to resolve any dispute over parental rights and obligations brought before it.

39. To what extent, if at all, may a holder of parental responsibilities act alone if there is more than one holder of parental responsibilities?

As Art. 72 Bulgarian Family Code states: 'Both parents exercise parental rights and obligations jointly and separately'. In the exceptional cases of adoption and removal from the jurisdiction, the parent that has not consented could claim termination of adoption or ban the child from leaving the country.

40. Under what circumstances, if at all, may the competent authority permit the residence of the child to be changed within the same country and/or abroad (so called relocation) without the consent of one of the holders of parental responsibilities?

If parents do not live together (unmarried and not living together, living together but separated, married but separated) the court, based on the application of either parent, will decide on the residence of the child (Art. 71 § 2 Bulgarian Family Code). As stated above, the decision on the residence affects the exercise of parental rights, the resident parent will be exercising parental responsibilities. There is no special regulation on giving a permit from the non-resident parent in order for the residence of the child to be changed.

If a parent wants to relocate the child, he or she must have the consent of the other parent. Both parents must apply for issuing a passport for the child (Art. 45 Bulgarian Act on Identity Documents). If the parent has not given written consent for the child to leave the country, the border police may stop the child from passing the border (Art. 76 § 9 of the Act on Bulgarian Identity Documents). If the relocation of the child is disputed any parent may make a claim before the court

(Art. 72 Bulgarian Family Code). The court order may replace the missing consent of the parent.

41. Under what conditions, if at all, may the competent authority decree that the child should, on an alternating basis, reside with both holders of parental responsibilities (e.g. every other month with mother/father)?

It is not possible under the legislation in force.

III. Sole parental responsibilities

42. Does a parent with sole parental responsibilities have full authority to act alone, or does he/she have a duty to consult:

(a) The other parent

This is possible only if one of the parents has been deprived of parental rights. In this situation the other parent as a single holder of parental responsibilities may act without consulting or notifying the other parent. The only exception is in the case of adoption of the child – the parent deprived of parental rights shall provide an opinion for the adoption of the child.

(b) Other persons, bodies or competent authorities

No. That parent should not consult anybody.

E. CONTACT

43. Having regard to the definition by the Council of Europe (see above), explain the concepts of contact used in your national legal system.

The Bulgarian Family Code uses the term ‘personal relations’ rather than ‘contact’. ‘Personal relations’ means ‘the relations between the child and the parent who does not live with the child’.⁶⁶ The law does not establish forms of personal relations thus leaving this to the discretion of the court. As for case law – ‘... the ways and the forms of personal relations could be various. Seeing the child and taking the child are inseparable parts of maintaining personal relations.’⁶⁷ Courts are instructed to provide a sufficiently detailed description of terms/conditions so as to avoid conflicts and disputes between the parents. Court practice has adopted various forms of contact: personal, through letters and postcards, by phone. Since the adoption of the Bulgarian Child Protection Act, contact under the supervision of a social worker has been possible.

⁶⁶ See L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia 1994, p. 640.

⁶⁷ Decision of the Supreme Court, (Civil Division) 1-1974, § 4 § 2.

44. To what extent, if at all, does the child have a right of contact with:

(a) A parent holding parental responsibilities but not living with the child.

It is difficult to discuss the personal right of the child to contact a parent given the lack of any explicit rights of children in relation to parents, except for the right to support as provided by the Bulgarian Family Code. On the other hand, it is admitted that the child has an indisputable interest in the contact with the non-custodial parent. In spite of the lack of regulation, theory and judicial practice have always placed an emphasis on the interests of the child in contact with the parent. The interests of the child matter not only in the arrangement of contact, but also in the substantiation of its rejection: '...the interests of the child have priority to those of its parents', and where these interests so require, contact will not be adjudicated other than in the order of exception.⁶⁸ During the 1950s and the 1960s, the court ruled both in favour of the contact with both parents as they were deemed 'necessary for the strengthening of the relations between themselves, and the nourishment of the love and respect needed',⁶⁹ and for the denial of contact between the child and its parent, where there was risk that the parent would harm the child.⁷⁰ At the end of the 1970s, the court even started to state: 'contact is the right of the child to communicate with the other parent... and it satisfies the child's need to communicate with both parents'.⁷¹

(b) A parent not holding parental responsibilities

At this stage, two hypotheses must be discussed: when a person has no parental rights and obligations because no origin has been established in relation to him or her and when a parent has been deprived of parental rights and obligations.

De facto family relations are not recognised as a basis for contact arrangements. A person claiming to be a parent but without established parentage can not claim for contact with the child. When a parent has been deprived of parental rights, the court, at its own discretion, may rule on measures for personal relations between that parent and the child. As the Art. 76 Bulgarian Family Code sets forth: 'In all cases of restriction or depriving of parental rights the court also decrees the measures for the personal relations between the parents and the children.' In this case, according to legal theory the court is entitled to rule against contact if it is not in the interests of the child.⁷²

(c) Persons other than parents (e.g. grandparents, stepparents, siblings etc...)?

⁶⁸ L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 641.

⁶⁹ See Decision of the Supreme Court, 2021-1960.

⁷⁰ See Decision of the Supreme Court, 189-1959: - the father is in prison and suffers from a nervous disorder; and Case 3314-1959: the father has abandoned the pregnant mother and has not seen the child for 10 years. Contact is rejected where the behaviour of the parent jeopardises the personal integrity, the upbringing or the health of the child, Case 758-1973 (Civil Division).

⁷¹ Case 3717-1979 (Civil Division).

⁷² L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 641.

The right of grandparents to contact with the child is comparatively new for Bulgarian family law, irrespective that the Supreme Court announced its recognition of this right as early as 1957 (Decision 47/1957). The Bulgarian Family Code of 1985 created the provision of Art. 70 § 2, according to which: 'The grandfather and grandmother are entitled to personal relations with their grandchildren who are minor. Where there are obstacles in the way of maintaining personal relations, the district court at the place of residence of the grandchildren, will, at the request of the grandfather or the grandmother, decree measures for personal relations with their grandchildren, except where this is not in the interests of the children.'

This right may only be brought through a judicial claim procedure if the contacts are being hampered. The competent court is the District Court at the permanent residence of the grandchildren. The contact is ruled by the court in a manner similar to the contact with the non-resident parent in a divorce. The court may refuse to arrange the contact if this is in the interest of the child.

No legal regulation exists for stepparents, nor may the court review the matter. The right to contact between siblings is realised by their placement together after the divorce. The Supreme Court generally requires all children to be placed with the same parent. Separate placement of the children is admissible only by exception, where required by overriding circumstances which affect the children's interests. These may be: a big difference in their age, lack of mutual interests and affiliation, long-lasting separate life, or hatred of one of the parents. If separation of the children is needed, the court has to settle the contacts in such a manner that the children meet when parents contact each other.⁷³

45. Is the right to have contact referred to in Q 43 also a right and/or a duty of the parent or the other persons concerned?

Irrespective of the lack of an explicitly articulated right, the right to contact is agreed to be a subjective right of the parent that is part of parental rights and duties. It is accepted that the parent is entitled to a claim for contact and that it cannot, in general, be rejected. The theory also argues that, although contact is also an obligation of the parent, it cannot be enforced. The non-performance of this obligation, however, may result in the deprivation of parental rights.⁷⁴

The first legal regulation of Bulgarian family law on the right to personal contact was connected to the first regulation of divorce by the Bulgarian Marriage Ordinance Act (1945). It said that the non-custodial parent 'is entitled to maintain appropriate personal relations with them (the children)'.⁷⁵ In 1949 a more neutral wording still in use today, replaced the 'right's' language: the court orders 'measures regarding the personal relations between children and parents'.⁷⁶

⁷³ Cases 1-1974, 1601-1972, 535-1977, 3980-1981.

⁷⁴ In this sense, a parent deprived of their parental rights does not hold an autonomous subjective right to contact. See L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 641.

⁷⁵ Art. 45 § 2.

⁷⁶ See Art. 54 of the Act on the Persons and the Family (1949), Art. 29 Bulgarian Family Code (1968) and Art. 106 Bulgarian Family Code (1985).

Family law theory emphasises the importance of the interests of both parties (the parent and the child) in the adjudication of personal contact: 'the contact, on one hand, provides the parent with an opportunity to satisfy his or her parental feeling, ... but it is mostly necessary for children, who experience the need to communicate with their parents'.⁷⁷ In this context, irrespective of the premise that the right to contact pertains to the parent, because of the prioritisation of the child's interests the court may decide not to arrange measures for personal relations, if the interests of the child require it.

46. To what extent, if at all, are the parents free to make contact arrangements? If they can, are these arrangements subject to scrutiny by a competent authority?

The parents are free to make contact arrangements to the extent that they are free to make parental responsibilities agreements. If parents are not married and do not live together they are free to arrange both the residence of the child and contact. The same applies to a married couple that decides to live apart. The freedom to decide on contact is limited only in cases of divorce. See Q 17.

47. Can a competent authority exclude, limit or subject to conditions, the exercise of contact? If so, which criteria are decisive?

Yes, the court may exclude, limit or subject to conditions the exercise of contact on the basis of two criteria: interests of the child or conduct of the parent that is not living with the child.

There are two main arguments for revision of the measures related to the behaviour of the child: (a) where the child does not have an opportunity for the forcible enforcement of the contact order, and (b) change in circumstances connected with the contact arrangements. Thus, for instance, the definite refusal of a 'grown-up child not having reached full age' to fulfil the contact order, constitutes grounds for its revision'.⁷⁸ However, where there is proof that such attitude is instilled by the other parent's manipulation of the child, it will not constitute grounds for the revision of measures. Where there is a failure to enforce the contact order for reasons such as delay, incapacity to perform due to change in circumstances or in the interests of the child, the order may be revised. In all cases, however, the claim can only be enforced successfully if the change of circumstances definitely affects the interests of children, i.e. a change in circumstance does not automatically substantiate a change of measures, but there must also be an assessment from the perspective of the situation of the child.⁷⁹ Deterioration in the child's health may also constitute grounds for the revision of contact measures.⁸⁰

⁷⁷ See L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1977 and 1994, p. 324 and p. 640.

⁷⁸ Cases 473-1980; 2774-1980.

⁷⁹ Cases 1571-71, 721-1974, 80-1978, 2929-1982, 1287-1983, 809-1983, etc. V.N. MLADENOV and P. BRATANOVA, *Family Code: Text, judicial practice etc*, 1996, p. 342-3.

⁸⁰ Case 75-1970.

The conduct of the parent fulfilling the measure of contact is also important. The court may limit the contact where 'the parent's behaviour jeopardizes the personality, upbringing or health of the child'.⁸¹ Unfortunately, the court very rarely assesses the interests of a child in contact where the parents are in conflict or in situations where a parent is a perpetrator of violence.

The conduct of the parent who lives with the child may also constitute a ground for revisions of the contact order. This applies when the custodial parent obviously impedes the contact between the child and the other parent or instils the child with an attitude adverse to the other parent. With the first hypothesis, the possible change is aimed at limiting contact, in terms both of regularity and duration, or even termination. In the second hypothesis, a change of measures can be undertaken, i.e. a change of the custodial/resident parent. The court has established that one parent's manipulation of the child against the other constitutes grounds for the revision of the measures in favour of the aggrieved parent.⁸² The conduct of that parent however is also important: if he or she provokes fear in or manipulation of the child, no grounds will exist for the revision of measures.⁸³

48. What if any, are the consequences on parental responsibilities, if a holder of parental responsibilities with whom the child is living, disregards the child's right to contact with:

(a) A parent

The fulfilment of the contact regime is one of the points of conflict between parents. For the aim of preventing conflict, the court has always emphasised that additional obligations arise for the parent with whom the child is living: to observe correct contact with the other parent, not to manipulate the attitude of children against him/her and not to infringe upon his or her reputation.⁸⁴ The parent obstructing the establishment of contact bears criminal liability⁸⁵ and also risks the enforcement of measures for the limitation or termination of parental rights,⁸⁶ or the revision of the court orders regarding parental rights. The latter practice is of highest incidence.

(b) Other persons?

If the parent, with whom the child lives, impedes contact with the grandparents, the latter are entitled to request the court to arrange contact with the child (Art. 70 § 2 Bulgarian Family Code). Such a regime can only be ruled inasmuch as it corresponds to the interests of the child. If the parent deters the fulfilment of the court decision, the only unfavourable legal consequence is the penal liability for the non-performance of a court decision.

⁸¹ Case 758-1973, 1915-1970.

⁸² Case 2130-71, SCCD- 1-1974, Case 2464-71, Case 1248-1982, Case 261-1984.

⁸³ Cases 1212-1980 and 2774-1980-II (Civil Division).

⁸⁴ Supreme Court (Civil Division) Decision 1/1974. Current judicial practice also emphasises the obligation of the custodial parent to ensure contact with the other parent (Case 2416-1981 (Civil Division), including through a motivating influence over the child (Cases 313-1982 (Civil Division), 1713-1982 (Civil Division)).

⁸⁵ According to Art. 270 Bulgarian Criminal Code.

⁸⁶ According to Art. 74 and 75 Bulgarian Family Code.

F. DELEGATION OF PARENTAL RESPONSIBILITIES

49. To what extent, if at all, may the holder(s) of parental responsibilities delegate its exercise?

The Bulgarian Family Code does not provide for such an option.

50. To what extent, if at all, may a person not holding parental responsibilities apply to a competent authority for a delegation of parental responsibilities?

The delegation of parental responsibilities is not allowed under the Bulgarian Family Code.

G. DISCHARGE OF PARENTAL RESPONSIBILITIES

51. Under what circumstances, if at all, should the competent authorities in your legal system discharge the holder(s) of his or her/their parental responsibilities for reasons such as maltreatment, negligence or abuse of the child, mental illness of the holder of parental responsibilities, etc.? To what extent, if at all, should the competent authority take into account a parent's violent behaviour towards the other parent?

The Bulgarian Family Code provides for two types of discharge of parental responsibilities: restriction and deprivation. The grounds for this are two types of parental behaviour, which affect the interests of children. The first is the faulty behaviour of the parent: '...where the behaviour of the parent jeopardises the personality, upbringing, health or property of the child' (Art. 74 § 1). The second is non-faulty behaviour, which, however, creates risk for the child: '...where the parent, due to long physical or mental illness, or to prolonged absence or other objective reasons is unable to exercise his or her parental rights' (Art. 74 § 2). Under such assumptions the court 'decrees appropriate measures in the interests of the child and where necessary places the child in a suitable place'. The restriction of parental rights constitutes a temporary seizure of some parental authorities in the interests of the child.

Art. 75 Bulgarian Family Code states: 'The parent may be deprived of parental rights: (1) In exceptionally severe cases under the Art. 74; (2) Where, without a valid reason, he or she consistently does not care for the child and does not support it; (3) Where he or she has placed the child for rearing at a specialised institution and has not taken the child back within six months.'

It is evident from these texts that the restriction or deprivation of parental rights and obligations is based on the parent's behaviour towards the child and not on the behaviour of one parent towards the other. Although there is no explicit legislation, in general, the violence of one parent against the other may jeopardise the personality and the development of the child, and therefore provides grounds for the restriction or deprivation of parental rights. Court practice assumes that a measure of restricting parental rights is the removal of a parent from the family

home. Usually in cases of domestic violence, the restriction of parental rights justifies a placement of the child outside the family.

A Bill on Protection against Domestic Violence has been, since 2003, pending a second reading in Parliament. It provides for the removal of the violent parent (partner) from the household, thus ensuring the rights and safety of the child. Removal under that law would not constitute a separate ground for restriction of parental rights but could definitely be brought under the circumstances of the Art. 74 § 1 Bulgarian Family Code.

52. Who, in the circumstances referred to in Q 51, has the right or the duty to request the discharge of parental responsibilities?

As Art. 74 Bulgarian Family Code stipulates, these are: the district court *ex officio*, the other parent or the public prosecutor. The Child Protection Act also authorizes the Child Protection Department of the Municipal Social Assistance Directorate to bring claims to the court for restriction or deprivation of parental rights in the interests of the child. The same body may also enter as a party into court proceedings that have been already commenced (Art. 21 § 14 Bulgarian Child Protection Act).

53. To what extent, if at all, are rights of contact permitted between the child and the previous holder of parental responsibilities after the latter has been discharged of his or her parental responsibilities?

Art. 76 Bulgarian Family Code stipulates that in all cases of restriction or deprivation of parental rights the court shall also arrange the personal relations between the parents and the children. The legal theory suggests that it is for the court to decide whether to arrange a contact between the child and a parent with discharged parental rights, depending on the interests of the child. However, the deciding factor here is not to the right of contact of the parent, but of an assessment of the court, which is governed by the interests of the child/children.⁸⁷ According to Art. 77, the contact arrangements may be changed or modified.

54. To what extent, if at all, can the previous holder(s) of parental responsibilities, who has been discharged of his or her parental responsibilities, regain them?

As Art. 77 Bulgarian Family Code stipulates, with a change of circumstances the court may alter the measures decreed under Art.s 74, 75 and 76 (restriction and termination of parental rights or contact arrangements). The parent may request the court to restore his or her parental rights where the grounds of deprivation no longer exist.

The main ground for regaining the parental responsibilities is the expiry of the substantiation for their discharge. Such restoration is always made through a court decision. Only the discharged parent is entitled to request the restoration of his or her rights.

⁸⁷ L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 443.

H. PROCEDURAL ISSUES

55. Who is the competent authority to decide disputes concerning parental responsibilities, questions of residence of the child or contact? Who is the competent authority to carry out an investigation relating to the circumstances of the child in a dispute on parental responsibility, residence or contact?

The competent authority to decide these matters is the District Court, which is the court of first instance. The competent District Court is the one where the current residence of the child is, in cases of residence; or where the parent resides in cases of restriction or termination of parental rights and contact with the child (Art. 71 § 2, 74, 75 Bulgarian Family Code).

The Bulgarian Child Protection Act imposes an obligation of the Child Protection Department of the Social Assistance Directorate to investigate the circumstances of the child. The law requires that in each case 'the court ... shall notify the Social Assistance Directorate at the current address of the child. The Social Assistance Directorate shall send a representative of its own to the case, who shall express a viewpoint, and if it becomes impossible, he/she shall present a report. (Art. 15 § 6). The parents or the person who takes care of the child shall have access to the report prior to its submission to the requiring body (Art. 21 § 15).

In cases of restriction and deprivation of parental responsibilities it is still possible for the court and the prosecutor to undertake their own investigation (Art. 74-75 Bulgarian Family Code). This possibility however is rather theoretical due to the new professional bodies that have appeared under the Child Protection Act from 2001 onwards; namely the Child Protection Departments mandated with drafting social reports on the child and his or her family situation.

56. Under what conditions, if any, may a legally effective decision or agreement on parental responsibilities, the child's residence or contact, be reviewed by a competent authority? Is it, e.g., required that the circumstances have changed after the decision or agreement was made and/or that a certain period of time has time has passed since the decision or agreement?

The court decision or the agreement on parental responsibilities, child's residence or contact may only be reviewed on the ground of change in the circumstances: 'Actions on the exercise of parental rights and on the support of children after the divorce by mutual consent are admissible where a change in the circumstances has occurred.' (Art. 101 § 3 Bulgarian Family Code). 'When a change in the circumstances occurs (after the divorce due to a marital breakdown) the court may, at the petition of one of the parents or ex officio, change the previously decreed measures and order new ones.' (Art. 106 § 5 Bulgarian Family Code).

57. What alternative disputes solving mechanisms, if any, e.g. mediation or counselling, are offered in your legal system? Are such mechanisms also available at the stage of enforcement of a decision/agreement concerning parental responsibilities, the child's residence or contact?

The Child Protection Act provides for the opportunity of counselling of parents in disputes over parental responsibilities; as Art. 23 § 6 stipulates, the Child Protection Department should '...conduct social work to facilitate child-parent relations and to support resolving of conflicts and crises. Assistance, support and services in a family environment shall be rendered by the Social Assistance Directorate [actually by its Child Protection Department] upon the request of parents, or persons entrusted with parental functions, of the child, as well as by discretion of the Social Assistance Directorate.' (Art. 24 § 1). These are the only alternative mechanisms for resolving of disputes among parents. A Bill on Mediation has been pending in the Parliament from the beginning of this year.

58. To what extent, if at all, is an order or an agreement on parental responsibilities, the child's residence or contact enforceable and in practice enforced? Describe the system of enforcement followed in your national legal system. Under what conditions, if at all, may enforcement be refused?

The law provides neither for an enforcement mechanism nor for an enforcement authority of the contact order/agreement.⁸⁸ Where there is no voluntary observation of the contact order the enforcement of the order or the agreement is possible through a Judge Executive, who organises the 'factual transfer of the child'.⁸⁹ The participation of that judge, however, cannot always be effective, due to the sensitive nature of the actions. The Supreme Court underlines that the child is not simply a commodity to be transferred. If the parent does not observe the order, the Judge Executive can ask for assistance by the Guardianship authority, by the police inspector or by the Child Protection Department,⁹⁰ but only where other means have proved of no effect or 'the interests of the child require immediate enforcement'. The instructions of the Supreme Court are that consideration must be made of 'the specific circumstances, the age, the affiliation and the condition of the child, not allowing for psychological stress.' The Bulgarian Civil Procedure Code provides that a parent who impedes the enforcement may be fined (Art. 421 and 422). Such a parent is also criminally liable⁹¹ and risks either restriction, deprivation of parental rights or change in the custody and contact arrangements in favour of the other parent. The obstruction of enforcement of a court order is considered to be a change in the circumstances that justifies a change in the custody and contact arrangements.

The enforcement may be refused in exceptional circumstances, 'for reasons such as delay to enforce the contact order, incapacity to perform due to change in circumstances or in the interests of the child'.⁹² In such cases the order may be revised. Revision of the measures is recommendable especially where the child does not give an opportunity for the forcible enforcement of the decision. Thus, for

⁸⁸ L. NENOVA, *Family Law of the Republic of Bulgaria*, Sofia, 1994, p. 652.

⁸⁹ See Supreme Court Procedural Rules - 4 1962, V.N. MLADENOV and P. BRATANOVA, *Family Code: Text, judicial practice etc*, 1996, p. 328-9.

⁹⁰ After the coming into effect Bulgarian Child Protection Act, Art. 21.

⁹¹ Art. 270 Bulgarian Penal Code.

⁹² See Supreme Court Procedural Rules - 4/6 1962, V.N. MLADENOV and P. BRATANOVA, *Family Code: Text, judicial practice etc*, 1996, p. 328-9.

instance, the definite refusal of a 'grown-up child not having reached full age' to fulfil the contact order, constitutes grounds for its revision'.⁹³

59. To what extent, if at all, are children heard when a competent authority decides upon parental responsibilities, the child's residence or contact, e.g., upon a dispute, when scrutinizing an agreement, when appointing or discharging holder(s) of parental responsibilities, upon enforcement of a decision or agreement?

The Bulgarian Child Protection Act introduced a general rule for participation of the child in judicial and administrative procedures. Art. 15 says: (1) All cases of administrative or judicial proceedings affecting the rights and interests of a child shall provide for an obligatory hearing of the child, provided it has reached the age of 10, unless that proves harmful to the child's interests. (2) In cases where the child has not reached the age of 10, it may be given a hearing depending on the level of the child's maturity. The decision to hear the child shall be substantiated.'

More specifically, the Bulgarian Family Code provides for hearing the child in cases of divorce where the issue of parental responsibilities is decided (Art. 106 § 3): 'The court hears the parents and the children, if they are at least fourteen years of age. Where the court finds it appropriate it can hear from the children who are ten years of age, and also from close relatives and friends of the family.'

The court should also hear the child when deciding on the residence of the child where parents live apart (Art. 71 § 2). 'Where the parents do not live together and are unable to reach an agreement as to with whom of them the children will live, the dispute is resolved by the District Court at the place of residence of the children, after the court has heard them where they have completed ten years of age.'

The Bulgarian Family Code does not provide for an opportunity the child to be heard in two cases: an agreement on parental responsibilities and a contact regime in divorce based on mutual consent and in procedures for discharge of parental responsibilities. However, the general rule of the Child Protection Act (Art. 15) could be applied also in these cases.

60. How will the child be heard (e.g. directly by the competent authority, a specially appointed expert or social worker)?

The child should be heard directly by the court but in the presence of social worker. As the Child Protection Act stipulates in Art. 15:

- '(3) Before the child is given a hearing, the court or the administrative body shall:
- (1) provide the child with the necessary information, which would help him or her form his or her opinion;
 - (2) inform the child about the possible consequences of his or her desire, of the opinion supported by him or her, as well as about all the decisions made by the judicial or administrative body.

⁹³ Case 473-1980 (Civil Division).

(4) The hearing and the consultation of a child shall by all means take place in appropriate surroundings and in the presence of a social worker or another appropriate specialist.'

61. How, if at all, is the child legally represented in disputes concerning:

(a) Parental responsibilities

No participation of a representative of the child is provided for in the proceedings with regard to parental rights (after the divorce, in the case of parent's separation, *etc.*). The child is not a party of the proceedings in such cases. It can only be given a hearing so that the court would be familiarised with the child's opinion if the requirements of Art. 15 of the Child Protection Act are involved. In Art. 15, § 7 of the Bulgarian Child Protection Act there is a provision that the Social Assistance Directorate may represent the child in cases provided for by law, however, no legislative act has yet provided for this type of opportunity.

(b) The child's residence

The child is not a party to the process. It can only be given a hearing so that the court will be familiarised with their opinion if the requirements of Art. 15 of the Child Protection Act are involved.

(c) Contact

The child is not a party to the process. It can only be given a hearing so that the court will be familiarised with their opinion if the requirements of Art. 15 of the Child Protection Act are involved.

62. What relevance is given in your national legal system to the age and maturity of the child in respect of Q 59-61?

The participation of the child in judicial proceedings depends on the age of the child. A child aged 10 is regarded as having attained sufficient maturity child to appear in court and to express its opinion. The only exception is if the interests of the child would be harmed. The court has the discretion to decide if the child's participation would harm it. Art. 15 § 1 stipulates that 'all cases of administrative or judicial proceedings affecting the rights and interests of a child should provide for an obligatory hearing of the child, provided it has reached the age of 10, unless that proves harmful to the child's interests'.

A child younger than 10 could also participate in the court hearings but only after an assessment of its level of maturity. The court decides on the hearing of a child under 10: '(2) In cases where the child has not reached the age of 10, the child may be given a hearing depending on the level of its development. The decision to hear the child shall be substantiated ' (Art. 16 § 5 § 2).