

# NATIONAL LEGISLATION: RUSSIA

## FAMILY CODE OF THE RUSSIAN FEDERATION<sup>1</sup>

English translation by M. Antokolskaia

### *Chapter 4. Termination of Marriage*

#### **Article 24. Questions to be settled by court in a divorce order**

1. In the judicial divorce proceedings, the spouse may subject for judicial scrutiny their agreement concerning the residence of the minor children, the methods of provision of child maintenance, and (or) the maintenance on behalf of a spouse lacking essential means and the capability to work because of a disability; or the division of matrimonial property.

2. If no agreement regarding the matters specified in the point 1 of this Article has been reached by the spouses, or the court has established that the agreement violates the interests of the children or of one of the spouses, the court shall:

- determine with whom of the parents minor children shall reside after divorce;
- determine by which parent and in which amount the child maintenance shall be paid;
- upon request the spouses (or one of them) divide the common property of the spouses;
- upon request of a spouse entitled for receiving maintenance from the other spouse, determine the amount of the maintenance.

### *Chapter 11. Rights of Minor Children*

#### **Article 57. Right of a child to express its opinion**

1. A child has a right to express its opinion with regard to any family decision which affects the child's interests; a child also has a right to be heard in any judicial or administrative proceedings. The opinion of the child, which has reached the age of ten, must be considered, except for the cases when such opinion is against the interests of the child. In the cases specified by this Code (articles 59, 72, 132, 134, 136, 143, 154) the decisions by the Guardianship and Curatorship Department or by the court cannot be taken without consent of the child, which has reached the age of ten.

#### **Article 60. Patrimonial rights of the child**

---

<sup>1</sup> Adopted on 8 December 1995, in force since 1 March 1996 *Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1996, No. 1, item 15.

1. A child has a right to receive maintenance from its parents and other family members according to the procedures and in the amounts determined by the section V of this Code.

2. The maintenance payments, pensions and social benefits paid to a child, are administered by its parents (or persons substituting them) and used for maintaining, nurturing and educating the child.

Upon request of the parent, who is obliged to pay child maintenance, the court can order transferring 50% of maintenance sum to the child's bank account.

3. A child is the legal owner of its incomes, assets received as a gift or by way of inheritance, and any other property acquired with the child's means.

The capacity of the child to administer its property is determined by the articles 26 and 28 of the Civil Code of the Russian Federation.

The administration of the child's property by the child's parents is governed by the rules of civil law regulating the administration by a guardian of the property owned by a person placed under guardianship (article 37 of the Civil Code of the Russian Federation).

4. A child has no right of ownership to the assets of its parents; the parents have no right of ownership to the assets of the child. Children and parent living together have, with each other consent, a right to possess and to enjoy the property of each other.

5. If parents and children acquire a right of joint property, their right to possess, use and administer such property is governed by civil law.

## *Chapter 11. Rights and Duties of Parents*

### **Article 61. Equality of parental rights and duties**

1. Parents enjoy equal rights and are under equal duties regarding their children (parental rights).

Parental rights, provided for in this Chapter, come to an end when the children reach the age of eighteen years (age of majority), as well as when minor children enter into marriage, and in the other cases, when the law provides that the children acquire full legal capacity before the age of majority.

### **Article 62. Rights of the minor parents**

1. Minor parents have the right to live together with their children and to participate in their education.

2. If a child is born from unmarried minor parents, or maternity and (or) paternity of a minor parent has been established, they are entitled to independently exercise their parental rights as soon as they have reached the age of sixteen. Before the minor parents have reached the age of sixteen, the child can be appointed a guardian, which

educates the child together with the minor parents. Disagreements between the child's guardian and the minor parents can be resolved by the Guardianship and Curatorship Department.

3. Minor parents have the right to acknowledge and contest their parentage according to the general rules governing these issues, a minor parents, who has reached the age of fourteen could independently lodge a paternity suit before the court on behalf of their children.

### **Article 63. Rights and duties of the parents to nurture and educate the children**

1. Parents have the right and are under the duty to educate their children.

Parents are responsible for the education and development of their children. They have to take care for the health, physical, psychics and morel development of their children.

The right of the parents to educate their children has precedence over the educational rights of any other persons.

2. Parents are obliged to ensure receiving by the children basic general education.

Parents have the right, taking into consideration the opinion of a child, to choose the school and the forms of pre-school education.

### **Article 64. Rights and duties of the parents to protect rights and interests of the children**

1. Protection of the rights and interests of the children is the responsibility of their parents.

Parents are the legal representatives of their children by operation of law and are entitled to protect their rights without special authorisation in the relations with any natural or legal persons, and before the court.

2. Parents are not allowed to represent their children, in cases when the Guardianship and Curatorship Department established contradictions between the interests of the parents and the interests of the children. In cases of such contradictions the Guardianship and Curatorship Department appoints the child a special representative.

### **Article 65. Execution of parental rights**

1. Parental rights may not be executed against the interests of the children. Ensuring the interests of the children shall be the subject of the paramount concern of the parents.

Execution of parental responsibility may not harm physical or psychic health of the child or detriment child's moral development. Educative measures may not include denigrating, cruel, offensive, or humiliating to human dignity treatment, insult or exploitation of the child.

Parents executing their parental rights in contradiction with the rights and the interests of their children shall be prosecuted according to the law.

2. Parents decide by their mutual consent and taking into consideration the opinion of the child upon all matters relating to the nurture and the education of the children. In case of disagreement the parents (one of them) can ask the Guardianship and Curatorship Department or a court to resolve their dispute.

3. If parents are not living together, the residence of the children can be determined by parental agreement.

If there is no agreement, the court resolves the parental dispute taking into consideration the interests of the children and their opinion. Thereby the court takes into account the attachment of the child to each of the parents, brothers and sisters; the age of the child, the moral and other personal qualities of the parents, relations of the child with each of the parents, the parents' ability to create conditions for nurturing and development of the child (occupation, working regime of the parents, financial and family status of the parents etc.).

#### **Article 66. Execution of parental right by the parents living apart from the child**

1. The parent living apart from the child has the right to maintain contact with the child, to participate in child's nurture and in taking decisions in respect of the child's education.

The parent with whom the child is living must not create obstacles to the contact between the child and the other parent, unless such contact is detrimental to physical or psychic health of the child or its moral development.

2. The parents can conclude in writing an agreement regarding the way of the execution of the parental rights by the parent living apart from the child.

If the parents are not able to reach an agreement, the parents (one of them) can ask the court to resolve the dispute. The Guardianship and Curatorship Department must participate in the proceedings.

3. If the decision of the court is disobeyed, the enforcement measures of civil procedural law are applicable to disobeying parent. If the parent persistently deliberately disobeys the court order, the judge, upon the request of the parent living apart from the child and taking into consideration the opinion of the child, can order a transfer of the child's residence to the other parent if such transformation is not against the interests of the child.

4. The parent living apart from the child has the right to receive information concerning the child from any educational, medical, social welfare and other similar institutions. Such information can be refused only in case of danger to the child life and health from the part of the parent. Refusal of information can be contested in court.

**Article 67. The right of a grandmother, a grandfather, brothers, sisters and other relative to maintain contact with the child**

1. Grandparents, brothers, sisters and other relatives have the right to maintain contact with the child.
2. If the parents (one of them) refuse the close relatives the contact with child, the Guardianship and Curatorship Department can oblige the parents (one of them) not to create obstacles to such contact.
3. If the parents (one of them) do not obey the decision of the Guardianship and Curatorship Department, the close relatives or the Guardianship and Curatorship Department can request the court to remove obstacles to the contacts with the child. The court decides taking into consideration the interests of the child and its opinion. If the decision of the court is disobeyed, the enforcement measures of civil procedural law are applicable to disobeying parent.

**Article 68. Protection of parental rights**

1. Parents have the right to exclaim the child from any parson who holds such child other than by the authorisation of law or of the court order. In case of a dispute the parents can apply to the court for protection of their rights. The court can refuse the request of the parents if it establishes that returning the child to the parents is against the child's best interests.
2. If the court establishes that neither the parents nor the person holding the child are able to ensure proper education and development of the child the court can place the child under the custody of the Guardianship and Curatorship Department.

**Article 69. Discharge of parental rights**

The parents (one of them) can be discharged of parental rights if they:

- neglect their parental duties, in particular, gravely neglect their duty to provide maintenance for the child;
- refuse without serious reasons to take their children from a maternity hospital (department), another medical, educational, social welfare or other similar institution;
- abuse their parental rights;
- treat the children cruelly, including physical or mental violence, and attempts on sexual abuse of the child;
- are chronically addicted to drugs or alcohol;
- committed an intentional crime against the health or life of their children or anther spouse.

## **Article 70. Procedure for discharge of parental rights**

1. Discharge of parental right is the competence of the court.

The cases regarding the discharge of parental right can be initiated by an application of one of the parents (persons substituting the parents), a public prosecutor, other authorities and institution charged with the protection of the minors (the Guardianship and Curatorship Department, the Commission of Minors Affairs of the Home Office, institutions for orphan-children and children without parental care, etc).

2. A public prosecutor and the Curatorship Department must participate in the hearing of the cases regarding the discharge of parental right.

3. In the proceedings regarding the discharge of parental right the court decides upon the payment of the child maintenance by the parents (one of them) discharged of parental right.

4. If in the proceedings regarding the discharge of parental the court finds that the behaviours of the parents (one of them) could be qualified as a felony under criminal law, its must inform a criminal public prosecutor.

5. Within three days after the decision regarding the discharge of parental rights has become final, the court is obliged to send the copy of this decision to the Department of Registration of Civil Acts at the place of the child's residence.

## **Article 71. Consequences of the discharge of parental rights**

1. The parents discharged of parental rights loose all rights connected to filliation links with the child in respect of the child regarding to whom their parental rights have been discharged, including the right to receive maintenance from that child (article 87 of this Code), and the right to the privileges and the state benefits provided for the persons with children.

2. The discharge of parental rights does not relieve the parents from the duty to provide maintenance for their children.

3. The court decides on the possibility for the child to keep living together with the parents (one of them) discharged of parental right according to the provisions of the housing law.

4. The child in respect of whom the parents (one of them) have been discharged of the parental rights retains its right to own or to use the dwelling, and the patrimonial rights, connected to the filliation with the parents and other relatives including the right to inherit after them.

5. In case of the discharge of parental right, the adoption of the child is allowed not earlier than after six month since the court order regarding the discharge of parental right has been passed.

### **Article 72. Restoration of parental rights**

1. The parents (one of them) can be restored in their parental right if they have changed their behaviour, way of life and (or) attitude towards the education of the child.

2. The court can restore parental rights of the parents upon their request. A public prosecutor and the Curatorship Department must participate in the hearing of the cases regarding the discharge of parental rights.

3. In the procedure regarding the request of the parents (one of them) to restore their parental rights, the parents can also request that the child should be returned to them (one of them).

4. Taking into consideration the opinion of the child, the court is entitled to refuse the request of the parents (one of them) to restore their parental rights, if such restoration is not in the best interests of the child.

Restoration of the parental right in respects of the child older than ten years is not possible without the child's consent.

Restoration of parental rights is not allowed if the child had been adopted and the adoption has not been terminated.

### **Article 73. Restriction of parental rights**

1. The court can, taking into consideration the interests of the child, order to take the child away from the parents (one of them) without discharging the parents of the parental rights (restriction of parental rights).

2. Restriction of parental rights is permitted if remaining with the parents (one of them) is dangerous for the child due to the circumstances which are beyond the control of the parents (one of them) (mental illness or another chronic disease, circumstances of extreme gravity, etc.).

Restriction of parental rights is also possible if leaving the child with the parents (one of them) is dangerous for the child due to the parents' behaviour; however, there are no sufficient grounds yet for discharge of parental rights. If the parents (one of them) do not change their behaviour within six months, the Guardianship and Curatorship Department must apply to court for discharge of parental responsibility at the end of the six-month period. If the interests of the child so require, the Department could apply for discharge of parental responsibility before this term has lapsed.

3. The proceedings of the restriction of parental right can be initiated by an application of the close relatives of the child, other authorities and institution changed with the protection of the minors (sub. 1 article 70 of this Code), pre-school

educational institutions, general educational institutions, other institution and a public prosecutor.

4. A public prosecutor and the Guardianship and Curatorship Department must participate in the hearing of the cases regarding the restriction of parental right.

5. In the proceedings regarding restriction of parental rights the court decides upon the payment of child maintenance by the parents (one of them).

6. Within three days after the decision regarding the restriction of parental rights has become final, the court is obliged to send the copy of this decision to the Department of Registration of Civil Acts at the place of the child's residence.

#### **Article 74. Consequences of restriction of parental right**

1. The parents restricted in their parental rights lose the right to educate the child personally and the right to the privileges and the state benefits provided for the persons with children.

2. The restricting of parental rights does not relieve the parents from the duty to provide maintenance for their children.

3. The child in respect of whom the parents (one of them) have been discharged of the parental rights retains its right to own or to use the dwelling, and the patrimonial rights, connected to the filiation with the parents and other relatives including the right to inherit after them.

4. If both parents of the child are restricted in their parental right the child shall be placed under the care of the Guardianship and Curatorship Department.

#### **Article 75. Contacts of the child with parents whose parental right have been restricted**

Parents, whose parental right have been restricted, may be allowed to have contacts with the child, if such contacts are not detrimental for the child. Contacts of the parents with the child are possible upon the permission of the Guardianship and Curatorship Department, another parent, the guardian, the foster parents of the child or the administration of the institution where the child resides.

#### **Article 76. Removal of the restriction of parental rights**

1. In case of cessation of the circumstances on the ground of which the parental rights of the parents (one of them) have been restricted, the court could, upon the request of the parents (one of them), pass a decision to return the child to the parents (one of them) and to remove of the restrictions of parental rights, provided in the article 74 of this Code.

2. Taking into consideration the opinion of the child, the court is entitled to refuse the request of the parents (one of them) to return the child to them, if such return is not in the best interests of the child.

**Article 77. Taking the child away in case of direct danger to child's health or life**

1. In case of direct danger to the child's health or life the Guardianship and Curatorship Department is entitled to take the child away immediately from the parents (one of them) or other persons who are taking care of the child.

2. In case of such taking the child away the Guardianship and Curatorship Department must without delay inform the public prosecutor, ensure provisional care for the child, and within seven days after making an administrative order on taking the child away apply to the court for the discharge or restriction of the parental rights.

**Article 78. Participation of the Guardianship and Curatorship Department in hearing the cases regarding education of the children**

1. The Guardianship and Curatorship Department must take part in the court proceedings regarding education of the children irrespective of who has initiated such proceeding.

2. The Guardianship and Curatorship Department is charged with the investigation of the conditions of life of the child and with the examination of the suitability of persons who wish to become the educators of the child. The report of the enquiry must be presented to the court.

**Article 79. Execution of the decisions regarding the education of the children.**

1. The decisions regarding the education of the children are executed according to the rules of the civil procedure law.

The measures of the civil procedure law are applicable to the parent (or other persons under which care the child has been placed) who obstructs the execution of the court decision.

2. Enforcement of the decisions entailing taking the child away from one person and placing it with another person (persons) must be conducted with participation of the Guardianship and Curatorship Department, the persons (person) with whom the child has to be placed and, if necessary, the police officer.

If the enforcement of the court decision entailing transfer of the child is not possible without harm to the child's interest, the court can order to provisionally place the child in an educational, medical, or social welfare institution or on another similar institution.