

NATIONAL REPORT: RUSSIA

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A. GENERAL

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

Russian law and legal literature use the concept of parental rights, which includes the rights and duties of the natural and adoptive parents regarding the person and the property of their minor children. To understand the Russian notion of parental responsibilities the following points are essential:

- The concept of parental responsibility is reserved to the rights and duties of the natural and adoptive parents only. The rights and duties of natural or legal persons other than parents, who acquire responsibility over minor children by court or administrative order (full guardians,¹ guardians with limited capacity² and child institutions³) fall outside the concept of parental responsibility.
- Parental responsibility should be executed in the best interests of the child (Art. 65 (1) Russian Family Code⁴).
- Parental responsibility is regarded to be both public and private in nature. The execution of parental rights is considered to be a duty of parents to their children and the society at large.⁵ Not fulfilling these duties leads to the application of sanctions.
- Parental responsibility is a constitutional right. Article 38 (2) of the Constitution of the Russian Federation states the equality of parental rights and duties of both parents. According to Russian law, parents always have joint parental responsibility. This means that parents enjoy a formal equality in their parental rights irrespective of whether they are or have been married, or whether parentage has been established by voluntary recognition of a child or by a court order against the will of the parent (generally the father).
- Parental rights are not at the parent's free disposal. The rights cannot be terminated, restricted or transferred to other persons by the parents alone.
- Parental rights are temporal in nature. They exist as long as the child is under age.⁶ If parents are appointed guardians of their legally

¹ A full guardian is appointed to a child under the age of fourteen if the child is left without parental care. Art. 145 (2) Russian CC.

² A guardian with limited capacity is appointed to a child between the age of fourteen to eighteen if the child is left without parental care. Art. 145 (2) Russian CC.

³ Art. 147 (1) Russian CC.

⁴ Further referred to as Family Code or FC.

⁵ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 196; L. PCHELINTZEVA, *Family Law (Semeinoe pravo)*, Moscow, Norma-Infra M, 1999, p. 298.

⁶ Article 61 (2) FC.

incapacitated children of full age, the parents' rights and duties fall outside the scope of parental responsibility.⁷

2. Explain whether your national concept or concepts encompass:

(a) Care and protection

Parents have the right and are under the duty to care for the health, physical, psychological, spiritual and moral development of their children. (Art. 28 (2) of the Russian Constitution, article 63 (1) Russian Family Code).

Parents have the right and the duty to protect the rights and interests of their children. (Art. 64 (1) Russian Family Code). This duty of protection is seen not as the duty of physical protection of the children, which is regarded to reside under the duty of care, but as the duty of legal protection.⁸

(b) Maintenance of personal relationships

Maintenance of personal relationships is regarded as indispensable to the execution of the parental rights of personally caring for and educating the child. Maintenance of personal relationships is safeguarded by granting the parents the right and the duty⁹ to live together with their children.¹⁰ Article 68 (1) Russian Family Code provides parents the right to reclaim their child from any person who holds the child other than by authorisation of a court order. If the parents are not living together, the right of the non-residential parent to maintain personal relationships with the child is safeguarded by granting that parent the right to maintain contact with the child (Art. 66 (1) Russian Family Code).

(c) Provisions of education

Right and duty to educate their children is regarded as a core element of parental responsibility. This right is laid down in article 28 (2) of the Russian Constitution, and developed in article 63 Russian Family Code.

(d) Legal representation

Parents are the legal representatives of their child by operation of law (Art. 64 (1) Russian Family Code).

(e) Determination of residence

Parents who do not live together are entitled to determine by agreement with whom of them the children shall reside (Art. 65 (3) Russian Family Code). The parents have to make this decision 'according to the best interests the child and taking into consideration his or her wishes' (Art. 65 (2) Russian Family Code).

⁷ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 195.

⁸ A. NETCHAEVA, Commentry to art. 64 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 121.

⁹ Parent(s) are obliged to live with their children if the children are younger than fourteen years of age.

¹⁰ Parents may, however, allow a child under the age of fourteen to live temporarily with the other persons (family, friends) or in an internat.

(f) Administration of property

Parents are entitled to administrate the property of their child in their capacity as the legal representatives of the child. While executing this right the parent has the same rights and responsibilities as the civil law (Art. 37 Russian CC) attributes to a guardian of an legally incapable adult (Art. 60 (3) RUSSIAN FAMILY CODE).

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

Parental responsibility automatically ends in the following circumstances:

- The death of a parent or a child;
- a child reaches the age of eighteen – the age of majority under Russian law (Art. 61 (2) Russian Family Code);
- a child acquires full legal capacity by entering a marriage before the age of majority after being granted dispensation (Art. 61 (2) Russian Family Code, Art. 21 (2) Russian CC¹¹).
- a child acquires full legal capacity by way of emancipation (Art. 61 (2) Russian Family Code, Art. 27 (1) Russian CC). A child who has reached the age of sixteen and has paid employment, or, with consent of his or her parents, is carrying out a business activity, can be emancipated by the Guardianship and Curatorship Department upon consent of his or her parents or guardians, or by a court order of the District Court if the parents or guardians do not give their consent (article 27 (1) Russian CC).

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

The current source of divorce law in the Russian Federation is the Russian Family Code of Russian Federation¹² of 8 December 1995, enacted on 1 March 1996. The most relevant provisions are: Chapter 11 entitled 'Rights of Minor Children', Chapter 12 entitled 'Rights and Duties of the Parents', and article 24.

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

The main peculiarity of the history of the concept of parental responsibility of Russia is that joint parental responsibility, which didn't make an entrance into Western Europe until the 1990s, was introduced in Russian law in 1918.

Before the Revolution of 1917 the concept of parental responsibility was dominated by a patriarchal vision of the family. Minor and adult children of both sexes were under parental power (article 164 (1) *Svod Zakonov Rossiyskoy Imperii*).¹³ Parental

¹¹ Civil Code of the Russian Federation of 1994. *Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1994, No. 32, item 3301. Further referred to as Russian CC. For an English translation see: *21 Review of Central and Eastern European Law*, 1995, No. 3/4, p. 245-430.

¹² *Semeinyi Kodeks Rossiiskoi Federatsii*, *Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1996, No. 1, item 15. For an English translation see: W. BUTLER and J. HENDERSON, *Russian Legal Texts. The Foundation of a Rule-of-Law State and a Market Economy*, Simmons and Hill Publishing Ltd, The Hague, London, Boston, 1998, p. 517- 593.

¹³ *Collection of Statutes of the Russian Empire* where family law was placed together with other acts on civil law in the second part of volume X.

power did not cease to exist but only underwent some *de facto* limitations when adult children married or became employed.¹⁴ Although the law spoke of the parental power of both parents, the mother could not execute parental power as long as the father was still alive and legally capable, as she herself was under the power of her husband.¹⁵ The parental power was not total, but was still very broad. In order to enforce the children's obedience, the parents were empowered to apply 'domestic punishments'¹⁶ and could employ the authority of the State to have their children imprisoned for up to four months without investigation by simply issuing 'Orders of Arbitrary Arrest' (*Lettres de cochet*).¹⁷ However, by the end of the nineteenth century this practice was so at odds with modern ideas concerning personal rights of the children that the magistrates were no longer willing to enforce such requests.¹⁸ The parental power can not be discharged even in case of grave abuse thereof.¹⁹

After the Revolution of 1917 the concept of parental power was entirely revised. The concept of parental power was replaced by the concept of parental rights and duties. The Russian Family Code of 1918²⁰ first introduced one of the core elements of the Russian concept of parental responsibility: joint parental responsibility. The parental rights of both parents became formally equal irrespective of whether they were or had been married, or whether parentage had been established by way of voluntary recognition or by the court against the father's will.²¹ Parental responsibility lasted until boys reached the age of eighteen and girls the age of sixteen.²² Parental responsibility had to be executed exclusively in the best interests of the child,²³ which was interpreted in such a way that the interests and wishes of the parents did not even need to be considered.²⁴ The content of parental responsibility was similar to what it is now, and included the right and duty of care, education, representation, protection and maintenance of the child.²⁵ The

¹⁴ G. SHERSHENEVICH, *Russkoe grazhdanskoe pravo (Russian Civil Law)*, Moscow, Spark, 1995, p. 438.

¹⁵ G. SHERSHENEVICH, *Russkoe grazhdanskoe pravo (Russian Civil Law)*, Moscow, Spark, 1995, p. 437.

¹⁶ Article 165 (1) *Svod Zakonov Rossiyskoy Imperii*.

¹⁷ Article 1592 of the Criminal Code.

¹⁸ I. ZAGOROVSKII, *Handbook of Family Law (Kurs semeinogo prava)*, Moscow, Zerzalo, 2003, p. 243.

¹⁹ I. ZAGOROVSKII, *Handbook of Family Law (Kurs semeinogo prava)*, Moscow, Zerzalo, 2003, p. 249. Deprivation of parental rights were, however, provided for in the Bill of the Guardianship Code, which has not become law. *Ibid*, p. 250.

²⁰ *Kodeks Zakonov ob Aktah Grazhdanskogo Sostoianiia, Brachnom, Semeinom i Opekynskom Prave*, of 22 October 1918, SU RSFSR, 1918, No. 76, item 818, further referred to as FC of 1918.

²¹ D. GENKIN et. al. *History of Soviet Family Law 1917-1947 (Istoria sovetskogo grazhdanskogo prava 1917-1947)*, Moscow, Juridicheskaiia Literatura, 1949, p. 409.

²² A. NETCHAEVA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1998, p. 69.

²³ Article 153 FC of 1918.

²⁴ D. GENKIN et. al. *History of Soviet Family Law 1917-1947 (Istoria sovetskogo grazhdanskogo prava 1917-1947)*, Moscow, Juridicheskaiia Literatura, 1949, p. 444.

²⁵ Articles 154-156 FC of 1918.

second Russian Family Code of 1926²⁶ maintained most of the provisions of its precursor. In the following decennia the family law in general and the concept of parental rights in particular experienced the influence of totalitarian ideology. In line with French positivist LÉON DUGUIT's²⁷ theory that 'no one has any other right than the right to always fulfil one's duty',²⁸ parental responsibility was perceived solely as the duty imposed on the parents by the State.²⁹ Consequently, the notion of parental responsibility was transferred into a concept of parental duties. The parents started to be seen 'solely as educators of a child, appointed by operation of law to fulfil this function' as long as the State found them suitable.³⁰

The Russian Family Code of 1969³¹ did away with the excesses of the preceding period. Rights and duties of the parents were given a proper balance again.³² The law no longer required parental responsibility to be executed 'exclusively' in the best interests of the child without any regard of the interests of the parents.

In 1995 the New Russian Family Code was adopted. This Code further shifted the perspective of parental responsibility from the relations between the parents and the State to the relations between parents and children. Before the new Code, minor children were primarily perceived as passive subjects of parental care. The new Code made deliberate efforts to switch from this paternalistic position to the rights-based approach. A new special Chapter 11 dealing with the rights of minor children was incorporated into the code. The new Code bestows on children rights beyond the minimum level provided under the 1989 UN Convention on the Rights of the Child.

The 1995 Code is still based upon the same concept of 'always joint' equal parental responsibility. However, it should be noticed that this concept, revolutionarily when it was first introduced in 1929, no longer seems to be in line with the requirements of our time. According to this concept, parental responsibility is coupled to a link of legal filiation between a parent and child. A legal filiation, with the exception of situations involving donors or a surrogate mother, reflects the biological truth. Coupling parental responsibility to filiation instead of marriage was once very progressive; it facilitated the ultimate equalisation of the rights of the children born in and outside wedlock and the rights of married and unmarried parents. However, the application of this concept in practice has shown that the legislature went too far. The idea that there must be no parental duties without

²⁶ *Kodeks zakonov o brake sem'e i opeke*, 19 November 1926, *SU RSFSR* 1926, No. 82, item 611.

²⁷ The ideas of DUGUIT, although never openly acknowledged by the Soviet legal establishment, had profound influence on legal thinking during the period of totalitarianism.

²⁸ L. DUGUIT, *General Transformations of Civil Law Since the Times of the Code Napoleon (Obsie preobrazovania grazhdanskogo prava so vremen kodeksa Napoleona)* Moscow, 1919, p. 22.

²⁹ D. GENKIN, 'Predmet sovetskogo grazhdanskogo prava', 4 *Sovetskoe gosudarstvo i pravo*, 1939, p. 39.

³⁰ D. GENKIN, et. al. *History of Soviet Family Law 1917-1947 (Istoria sovetskogo grazhdanskogo prava 1917-1947)*, Moscow, Juridicheskaja Literatura, 1949, p. 455.

³¹ *Kodex Zakonov o Brake i Sem'ie RSFSR*, 30 July 1969, *Ved. RSFSR*, 1969, No. 32, item 1086.

³² A. NETCHAEVA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1998, p. 84.

rights has led to the situation where a biological parent (father) whose paternity has been established by court order against his will and who never had any family relationships with either the child or the mother, acquires full parental responsibility. As the law gives the courts no power to distribute parental responsibility between parents, the only remedy against such 'parent' is the discharge of parental responsibility. Such an 'all or nothing approach' leaves almost nothing³³ in between full parental responsibility and no parental responsibility at all. At the same time, linking parental responsibility to filiation precludes attribution of parental responsibility to social parents (mostly step-parents) who have educated the child all through his or her childhood.

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

Although there is no general awareness that the current concept of parental responsibility and the law it is based upon are deficient, there is a lot of discussion regarding particular problems resulting from it (e.g. contact arrangements, abuse of parental rights etc.). These discussions, however, have so far not led to any concrete proposals for reforms.

B. THE CONTENTS OF PARENTAL RESPONSIBILITIES

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

According to Russian law parental responsibility includes the following rights and duties of the parents:

- the right and duty to care for the child (article 28 (2) of the Russian Constitution, article 63 (1) Russian Family Code);
- the right and duty to maintain personal relationships with the child, including the right and the duty to live with the child (on the part of the residential parent) and the right to maintain contact with the child (on the part of the non-residential parent). This right includes the right of the parents to reclaim their child from any person who holds the child by any means other than the authorisation of a court order (article 68 (1) Russian Family Code);
- the right to determine the child's residence;
- the right to receive information relating to the child from every medical or educational institution, administrative authorities and private persons;
- the right to decide upon questions regarding the child, taking into consideration the opinion of the child, including the right:
 - to determine the religious education of the child;
 - to choose the name and the family name of the child (Art. 58 Russian Family Code), and to change the name and the family name of the child under the age of fourteen (Art. 59 Russian Family Code);
 - to decide upon medical treatment of the child;

³³ The only exception is the possibility to restrict parental responsibility or take the child away from the parent(s) if living with such parent(s) is dangerous for the child (art 73 FC).

- to take the child abroad including immigration;
 - to change the nationality of the child;
 - to give consent to the adoption of the child;
 - to give consent to the emancipation or marriage of a minor child
 - etc.
- the right and duty to educate the child personally and, taking the opinion of the child into consideration, to choose the form of education and educational institution (Art. 63 Russian Family Code);
 - the right and the duty to protect the rights and interests of the child (Art. 64 (1) Russian Family Code);
 - the rights and duty to legally represent the child (Art. 64 (1) Russian Family Code);
 - the right to administrate the child's property (Art. 60 (3) Russian Family Code, Art.37 Russian CC);
 - the duty to maintain the child (Art. 80-83 Russian Family Code). The duty of maintenance is perceived in Russia as an element of parental responsibility, however, the duty to maintain the child survives the discharge of parental responsibility (Art. 71 (2) Russian Family Code).

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

(a) Care

Parents have the right and are under the duty to care for the health, physical, psychological, spiritual and moral development of their children. (Art. 28 (2) of the Russian Constitution, article 63 (1) Russian Family Code).

(b) Education

The right and duty to educate their children is regarded as a core element of parental responsibility. It is mentioned by article 28 (2) of the Russian Constitution, and developed in article 63 Russian Family Code. Article 63 (1) Russian Family Code, that because of the public-private nature of this right-duty, parents not only have the right but are also responsible for the education of their children. The same article also provides that the parental right to educate their children has precedence over the educational rights of any other persons. The educational rights of the parents include the right to educate the child personally and to entrust education temporarily to other persons (family member, babysitters etc.) or institutions (kindergarten, etc.).³⁴ While doing this the parents remain fully responsible for the education of the child.³⁵ Parents are also under the duty to ensure that the child receives basic general education (Art. 63 (2) Russian Family Code). Giving regard to the opinion of the child, parents have the right to choose a school and the form of pre-school education (Art. 63 (2) Russian Family Code Art. 52 (1) Russian Law on Education³⁶). Parents also have the right to give children additional education in music, art, sports, crafts, etc. (Art. 40 Russian Law on Education). The right to

³⁴ L. PCHELINTZEVA, *Family Law (Semeinoe pravo)*, Moscow, Norma-Infra M, 1999, p. 303.

³⁵ L. PCHELINTZEVA, *Family Law (Semeinoe pravo)*, Moscow, Norma-Infra M, 1999, p. 303.

³⁶ Federal Law in Education of 1992 *Ved. RF*, 1992, No. 30, item 1797 in the reduction of the Law of 13 January 1996 *Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1996, No. 3, item 150.

educate the child also includes the right to make choices regarding religious education of the child.³⁷

(c) Religious upbringing

Religious upbringing of the child is regarded in Russia as an element of the parental right to educate the child. The law³⁸ provides that the ‘religious education and upbringing of children is carried out by their parents, taking into consideration the right of the child to freedom of conscience and the freedom of choice of religion.’ Therefore parents are obliged to give their child the ability to express his or her opinion on this matter. The general rules (Art. 57 Russian Family Code) regarding the right of the child to express his or her opinion have to be followed. If a child is 10 years old or older, the law (Art.57 Russian Family Code) prescribes that his or her opinion must be ‘considered’.³⁹ If the opinion of such a young child is not followed, the parents must sufficiently explain the grounds thereof. The wishes of a child of ten years or older can only be overruled under special circumstances. According to Art. 57, parents are obliged to listen to such a child and, if they do not agree with his or her view, they have to provide the grounds for their disagreement. In such serious personal matters as religious upbringing the weight of a child’s opinion grows heavier with age. As the parents are given no ability to impose their decisions concerning religious upbringing on a child against her or his wishes, it can be concluded that in practice the child will always have the last word regarding this matter.

If the parents cannot agree on the religious upbringing of the child, there are no special legal provisions offering resolution. Therefore, such disputes have to be dealt with according to the general rules regarding parental disagreements concerning educational matters (Art. 65 (2) Russian Family Code). The choice as to the religious upbringing have to be made by the parents upon their mutual consent. If parents disagree they can lay their dispute before the Guardianship and Curatorship Department. The Department cannot choose a religion for the child; therefore, it is suggested⁴⁰ that the Guardianship and Curatorship Department ask the parents belonging to different religions to provide the child with all possible information about both of them in order to enable the child to make his or her own choice as soon as the child becomes mature enough. The same applies to parental disagreement regarding religious and atheistic upbringing.

(d) Disciplinary measures and corporal punishment

Parents are allowed to apply certain disciplinary measures in order to enforce desirable behaviour from the child. The law does not specify the measures that can be employed.⁴¹ However, these measures must not include treatment denigrating, cruel, offensive, humiliating to human dignity, insult or exploitation of the child (Art. 65 (1) Russian Family Code). Cruel treatment of the child, in general, and physical and mental violence in particular, can lead to the limitation or discharge of

³⁷ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 207.

³⁸ Article 5 (5) Federal Law On the Freedom of Conscience and Religious Organisations.

³⁹ See also: *Commentary on the Family Code of the Russian Federation*, I.M. KUZNETZOVA (ed.), Jurist, Moscow, 2000, p. 199-201.

⁴⁰ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 207-208.

⁴¹ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 206-107.

parental responsibility (Art. 73 and 69 Russian Family Code). Statutory law, therefore, totally excludes any possibility of the application of corporal punishment. However, in practice, giving a child an incidental smack almost never leads to serious consequences for the parents, and the child normally does not complain.

(e) Medical treatment

Parent(s) are entitled to make decisions regarding the medical treatment of a child younger than fifteen. A child older than fifteen is entitled to decide for him or herself.⁴²

The parent(s) of a child younger than fifteen have the following rights regarding medical treatment:

- to receive medical information concerning the child's health (Art. 31 Russian Law on Health Protection);
- to give an informed consent to medical treatment of the child (Art. 31 Russian Law on Health Protection);
- to refuse medical treatment of the child. However, if such refusal places the child's life in danger, a medical institution can ask the court to overrule the decision of the parent(s) (Art. 33 Russian Law on Health Protection). It was rightly alleged that giving parents such a broad discretionary power regarding refuse of treatment is contrary to the best interests of a child.⁴³ It was therefore suggested that the law should provide a possibility to overrule the decision of the parents in every case when refusal of medical treatment can cause serious harm to a child's health;⁴⁴
- to give consent to application of new medicines and techniques not yet recommended for general application, if the child's life is in danger and no other way of treatment is available (Art. 43 Russian Law on Health Protection);
- to protect the interests of the child under psychiatric treatment (Art. 7 Russian Law on Psychiatric Aid⁴⁵);
- to request the placement or to consent to the placement of the child into the psychiatric clinic (Art. 28 (4) Russian Law on Psychiatric Aid).

(f) Legal representation

Parents are the legal representatives of the child by operation of law (Art. 64 (1) Russian Family Code). They are entitled to represent their children in relation to any natural and legal person and in court procedures without a special authorisation (Art. 64 (1) Russian Family Code). The position of legal representatives gives the parents the right to administrate child's property (Art. 60

⁴² The Federal Law on Health Protection of 22 June 1993 (*Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1993, No. 33, item 318) grants a child older than fifteen the right to receive all medical information directly (art. 31) and to give informed consent to medical treatment to refuse of such treatment (art. 24 (5)).

⁴³ M. MALEINA, *Man and Medicine in Contemporary Law (Chelovek I medicina v sovremennom prave)*, Moscow, BEC, 1995, p. 71.

⁴⁴ M. MALEINA, *Man and Medicine in Contemporary Law (Chelovek I medicina v sovremennom prave)*, Moscow, BEC, 1995, p. 71.

⁴⁵ Law of 2 July 1992. *Ved. RF*, 1992, No. 33, item 1913.

(3) RUSSIAN FAMILY CODE), to perform civil transactions on behalf of a child younger than fourteen (Art. 28 (1) Russian CC), and to give consent to performance of transactions that a child from fourteen to eighteen cannot perform without parental consent (Art. 26 (1) Russian CC). In case of conflicts between the interests of the parent and that of the child, the Guardianship and Curatorship Department will appoint a special representative for the child (Art. 64 (1) Russian Family Code). A conflict between the interests of the parent(s) and the child is presumed if the parent(s) represent the child in relation to her- or himself. In the latter case the child also needs to be represented by a special representative.⁴⁶

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?

Russian legislation follows the UN Convention by granting the child the right to express its opinion, irrespective of the child's age. Therefore, a Russian child has the right to express his or her opinion with regard to any decision made by his or her parents which effects the child's interests as soon as the child is able to formulate such an opinion. The age of the child is only relevant when it comes to evaluating his or her opinion. Article 12 of the UN Convention urges consideration of a child's opinion in light of the child's ability to formulate it. The Russian Supreme Court, in its Directive No. 10 of 27 May 1998, also obliged judges to investigate whether a child has been unduly influenced by the litigating parties, whether the child is aware of his or her interests, and on what grounds the child has reached his or her opinion.⁴⁷

Opinion of a child under the age of ten. A child that has not reached the age of ten must generally be given the opportunity to be heard; however, the parents are not obliged to follow the child's opinion and provide reasons why they had not followed child's opinion (Art. 57 Russian Family Code). In practice, the wishes of a child under ten years of age are not really taken very seriously.

Opinion of a child of ten years or older. Article 57 of the Russian Family Code provides that if a child is 10 years old or older, its opinion must be 'considered'.⁴⁸ If the child's opinion is not followed, the parents who disregard its opinion must sufficiently explain the grounds therefore. The wishes of a child of ten years or older can only be overruled under special circumstances. According to Art. 57, the parents are obliged to hear such a child and, if they do not agree with his or her view, they have to provide the grounds for their disagreement. Theoretically this means that if a child older than ten year of age has not being given the possibility to express his or her opinion or the parent(s) disregarded this opinion without motivation, the decision of the parent(s) can be subjected to administrative (by the Guardianship and Curatorship Department) or judicial revision. As not hearing a

⁴⁶ See: M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 209-110.

⁴⁷ Item 20 of the Directive of the Supreme Court of the Russian Federation of 27 May 1998 No. 10 'On the Application of the Legislation by Dissolving Cases Relating to the Education and Care for Children', *Bulleten' verhovnogo suda RF*, 1998, No 7.

⁴⁸ See also: *Commentary on the Family Code of the Russian Federation*, I.M. KUZNETZOVA (ed.), Jurist, Moscow, 2000, p. 199-201.

child or not considering its opinion properly can be regarded as an abuse of parental rights the child can initiate such revision her or himself by invoking protection against abuse of parental rights granted to him or her by article 56 (2) Russian Family Code. According to this provision a child of any age can complain to and seek protection from the Department of Guardianship and Curatorship upon his or her own initiative. From the age of fourteen, a child is allowed to instigate proceedings against her or his parents directly before the court (Art. 56(2) Russian Family Code). This remains, however, largely only the law in the books as in practice children almost never complain about not being heard or not being taken seriously.

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

Article 60 (4) of the Russian Family Code states that property of the parents and their children remains separate and that children and parents acquire no right to the property of each other.

Parent(s) are entitled to administrate the property of the child as the legal representative(s) of the child.

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

While executing the right to administrate the child's property parent(s) have the same rights and responsibilities as the civil law (Art. 37 Russian CC) attributes to a guardian of an legally incapable adult (Art. 60 (3) RUSSIAN FAMILY CODE).

The content of the parental right to administrate the property of the child varies according to the child's age.⁴⁹ Children under the age of fourteen are legally incapable, so all acts of administration of property have to be performed by their parents (Art. 28 (1) Russian CC). Children from fourteen to eighteen are partially legally capable and can without parental consent, among others, dispose of their salary, study grants and other incomes, open bank accounts and administrate them (Art. 28 (2) Russian CC). For all other transactions children from fourteen to eighteen need the written consent of their parent(s) (Art. 28 (1) Russian CC).

The parental right of administration of the child's property is generally restricted by the obligation to acquire prior authorization from the Guardianship and Curatorship Department for concluding or giving consent to conclusion of almost all transactions beyond the disposition of a child's income aimed to provide for the daily needs of the child (Art. 37 (1) Russian CC).

12. Are there restrictions with respect to:

(a) Restrictions with respect to certain goods and/or values (inherited property, gift...)

Parent(s) need prior authorization from the Guardianship and Curatorship Department in order to enter into transactions on behalf of a child under the age of

⁴⁹ L. PCHELINTZEVA, *Family Law (Semeinoe pravo)*, Norma-Infra M, Moscow, 1999, p. 292.

fourteen or to give consent to a transaction of the child from fourteen to eighteen with regard to a dwelling owned or co-owned by the child (Art. 37 (2) Russian CC).

Upon the claim of a parent who is paying maintenance to the child, a court can order the transfer of 50% of such maintenance to the child's bank account (Art. 60 (2) Russian Family Code). This measure is mainly taken if there is a danger of misadministration of the maintenance payments on the part of the child's residential parent. Money accumulated in the child's account is then meant to be administrated by both parents jointly.

(b) Restrictions with respect of salary of the child

As children from fourteen to eighteen are entitled to dispose of their salary without parental consent (Art. 26 (2) Russian CC), parents normally do not have the right to administrate a child's salary.

However, upon the request of his or her parents, a court can restrict or withdraw the right of the child to administrate his or her salary, if there are sufficient grounds for application of such measure (Art. 28 (4) Russian CC). Sufficient grounds are mainly established when the child profligates his or her salary or uses it to his or her detriment by purchasing alcoholic drinks, drugs or gambling. In such cases the court can order that the child can dispose of his or her salary only with preceding parental consent.

(c) Restrictions with respect of certain transactions

According to article 37 (2) of the Civil Code parent(s) need prior authorization of the Guardianship and Curatorship Department in order to conclude on behalf of the child under the age of fourteen; or to give the child from fourteen to eighteen a consent to conclude the following transactions:

- alienation of the child's property, including exchange; donation, renting out, or lending out without consideration, mortgage of child's property or giving it as security;
- other transactions entailing a waiver of patrimonial rights belonging to the child including division of the child's property, or separation of a share thereof;
- other transactions which diminish the child's property, except for transactions made in order to provide for daily needs of the child (like food, clothing, education or holidays);
- transactions with themselves except for donating a property to the child or lending the property to the child without consideration.

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

No.

Transactions concluded by the parent(s) without prior authorization of Guardianship and Curatorship Department can be declared void by a court order according to the general rules of Civil Law.

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.

The contents of parental responsibilities are the same irrespective of whether the parents are or have been married or have never been married; or live or have lived together.

In Russia the concept of parental rights is reserved to the rights and duties of natural and adoptive parents only.⁵⁰ Stepparents, foster parents and other persons are not regarded under Russian law as bearers of parental responsibility. They acquire legal rights and duties regarding a child only through their appointment as full guardians or guardians with limited capacity. The legal position of such persons is generally modelled upon parental responsibility; they enjoy lesser rights, and are under lesser duties.⁵¹

C. ATTRIBUTION OF PARENTAL RESPONSIBILITIES

I. Married parents

15. Who has parental responsibilities when the parents are:

(a) Parents are married at the time of the child's birth

According to Russian law parental responsibility is coupled to the legal filial link between the child and the parent, not the marriage between the parents.

If parents are married at the time of birth of a child, they both acquire parental responsibility by virtue of a presumption of paternity of the husband of the mother of the child (Art. 48 (1) Russian Family Code).

(b) Parents are not married at that time but marry later

Subsequent marriage of the parents has no influence on their parental responsibility. Russian law bears no trace of legitimisation by subsequent marriage. If the father of the child has recognised the child or his paternity has been established by a court order, he acquires full parental responsibility and shares joint parental responsibility with mother. These acts can take place before or after the marriage of the parents. If those acts did not take place, the marriage of the parents can not substitute them.

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

(a) Divorce

Divorce has no formal affect on parental responsibility. Parents always retain joint responsibility after divorce. Their parental rights and duties remain formally equal. However, the Russian experience of almost eighty years teaches that when joint parental responsibility is always the case (Art. 61 (1) Russian Family Code), the post-divorce problems shift from the issue of attribution of parental responsibility to the that of determination of the child's residence and the participation of the non-residential parent in the upbringing of the child.

⁵⁰ L. MIKHEEVA, *Full and Limited Guardianship (Opeka i Popечitel'stvo)*, Moscow, Paleotip, 2002, p. 81.

⁵¹ L. MIKHEEVA, *Full and Limited Guardianship (Opeka i Popечitel'stvo)*, Moscow, Paleotip, 2002, p. 81.

(b) Legal separation

The institution of legal separation does not exist under Russian law.

(c) Annulment of the marriage

The annulment of a marriage has no influence on the rights and duties of the parents regarding their children (Art. 30 (3) Russian Family Code).

(d) Factual separation

Factual separation, like divorce, has no formal affect on parental responsibility. Similar to the situation after divorce, the main problems after the separation of the parents relate to the child's residence and contact arrangements.

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.

After the divorce or annulment⁵² of their parents, children always formally remain under the joint parental responsibility of both parents. This means that the parental responsibility of divorced spouses, at least on paper, remains equal. However, in reality the parent with whom the children reside after the divorce exercises parental rights almost alone. Therefore the contested issue concerning children in the divorce or annulment procedure is not about parental responsibility but about child's residence.

Parents are free to make agreements about the child's residence after a divorce or annulment of the marriage (Art. 24 (1) Russian Family Code); even if the parents of the child, due to whatever reason, are not living together (Art. 65 (3) Russian Family Code). If the child's residence is being determined other than in the framework of a divorce or annulment procedure, there is no obligatory judicial scrutiny of parental arrangements. Only if parents fail to reach such agreement must the issue be brought before the court (Art. 65 (2, 3) Russian Family Code).

Agreements made by parents during a divorce or annulment proceeding regarding a child's residence are subject to judicial scrutiny. The judge is entitled to set aside the parental agreement if it is not in the best interests of the child or one of the spouses (Art. 24 (2) Russian Family Code). The spouses are strongly encouraged to make an agreement which will be accepted by the judge without alteration, because then they can be sure a divorce order will be granted after one month (Art. 23 (2)) without any further problems and costs. According to Article 65(2), which provides a general guidance for taking decisional in respect of the child, the parents should decide on the child's residence 'according to the child's best interests and taking into consideration the child's wishes'. If the agreement has been not approved by the judge or if the parents fail to reach agreement, then a rather complicated procedure with the participation of the Guardianship and Curatorship Department is commenced in order to enable the court to determine the child's residence. The duty of the court is to find out which of the parents can provide for a more

⁵² The institution of legal separation does not exist under Russian law.

favourable condition for the upbringing of the child.⁵³ When deciding the child's residence, the judge takes into consideration '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 existing between each of the parents and the child, the possibility of creating for the child conditions for nurturing and development (nature of activity, work regime of parents, material and family status of the parents and others)'.⁵⁴ The judge's most important source of information concerning such matters is a report by the Department of Guardianship and Curatorship.⁵⁵ The inspector of the Department of Guardianship and Curatorship makes inquiries as to the above criteria, questioning and conversing with the child and, if necessary, also with the child's relatives and teachers. In difficult cases an expert psychologist may become involved. On the basis of this information the Department of Guardianship and Curatorship draws up its advice for the judge. The judge, of course, is not bound by this advice, but he or she has to provide the due grounds if he or she reaches a different decision. In reality if parents have reached agreement about child's residence, the judge almost never subjects it to deep scrutiny.

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?

A judge has no competence to decide upon attribution of parental responsibility, as parents always have joint parental responsibility by operation of law.

The only way to end joint parental responsibility is to discharge the parental responsibility of one or both parents who are found guilty of serious misconduct against the child (Art. 69 Russian Family Code). As an intentional crime against the health or life of the other parent constitutes a ground for discharge of parental responsibility (Art. 69), such measure can be applied when one of the parents has been convicted by the criminal court for violence towards the other parent.

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

Parental responsibility is always attributed to both parents.

The child's residence after divorce is, in more than 90% of all cases, attributed to the mother.⁵⁶

II. Unmarried parents

⁵³ Item 5 of the Directive of the Supreme Court of the Russian Federation of 27 May 1998 No. 10 'On the Application of the Legislation by Dissolving Cases Relating to the Education and Care for Children', *Bulleten' verhovnogo suda RF*, 1998, No 7.

⁵⁴ Article. 65(3) FC.

⁵⁵ Article 78 FC.

⁵⁶ A. PANASIUK, 'Komu peredať na vospitanie rebenka?', *Rossiyskaia Justitzia*, 1996, No 9, p. 53-54.

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

According to Russian law, parental responsibility is coupled to legal filiation between a child and parent rather than on marriage between the parents. The only difference if the parents are not married is that a father and child cannot acquire legal parentage, and therefore parental responsibility, by virtue of a presumption of paternity by being the husband of the mother of the child (Art. 48 (1) Russian Family Code).

Thus, parental responsibility for a child of unmarried parents belongs to:

- a legal mother of child (a woman who has given birth to the child (Art. 48 (1) Russian Family Code) solely, if the legal parentage of the father has not been established;
- to the legal mother and the legal father jointly, if the father has recognised the child (Art. 48 (3) Russian Family Code) or paternity of the reluctant father has been established by a court order (Art. 49); or
- to the legal father of the child solely, if he has recognised the child (Art. 48 (3) Russian Family Code) or his paternity has been established by the court order against his will (Art. 49), if the mother of the child is unknown, has died, or has been declared by a court to have disappeared.

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*...).

No.

22. Under what condition, if at all, can

(a) The unmarried mother

A mother, irrespective marital status, always acquires parental responsibility by the fact of giving birth to the child.

(b) The unmarried father

An unmarried father acquires parental responsibility if he has recognised the child (Art. 48 (3) Russian Family Code) or his paternity has been established by court order against his will (Art. 49)

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

Ending of the unmarried parents' relationship has no effect on joint parental responsibility of both parents.

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?

A judge has no competence to decide upon attribution of parental responsibility, as parents always have joint parental responsibility by operation of law.

The only way to end joint parental responsibility is to discharge the parental responsibility of one or both parents who are found guilty of serious misconduct against the child (Art. 69 Russian Family Code). As an intentional crime against the health or life of the other parent constitutes a ground for discharge of parental responsibility (Art. 69), such measure can be applied when one of the parents has been convicted by the criminal court for violence towards the other parent.

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?

Unmarried parents, as with married ones, cannot decide to attribute parental responsibility to only one of them, as joint parental responsibility always survives the breakdown of their relationships.

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

Parental responsibility is always attributed to both parents.
No information is available regarding attribution of child's residence.

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:

Russian law couples parental responsibility to a legal filial link, not social parentage. Therefore the rights of the spouse or the partner of the child's parent who participates in the education of child are not legally protected. It has been noticed⁵⁷ that by leaving a person who has had close family links with the child without legal protection, Russian law disregards the right to protection of family life safeguarded by article 8 of the European Convention on Human Rights and Fundamental Freedoms.

(a) A person married to a parent of a child

A person married to the parent of the child can only obtain parental responsibility by through adoption.

(b) A person living with a parent of a child in a formalised relationship (registered partnership, civil union, *pacte civil de solidarité*...)

Russian law does not provide for formalised relationships for persons living together without marriage.

(c) a person living with the parent of a child in a non formalised relationship

A person living with the parent of the child in a non formalised relationship can only obtain parental responsibility by through adoption.

⁵⁷ By M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 192.

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

A partner of the child's parent can never obtain parental responsibility other than through adoption. Russian law contains no formal obstacles for a same-sex partner of a child's parent to adopt the child.⁵⁸ However, such adoption is unlikely to be allowed. The law grants a court broad discretionary power to decide whether or not adoption is in the best interests of the child and, particularly, whether or not such adoption would be favourable for the physical, psychological, spiritual and moral development of a child (Art. 124 (1) and 125 Russian Family Code). There is little doubt that, considering the current low level of acceptance of same-sex relationships in Russia, the court would most likely deem upbringing in a same-sex union as being not in the best interests of the child.⁵⁹

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

It has no influence at all.

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

A parent holding parental responsibilities and his or her partner cannot decide upon the attribution of parental responsibility to one of them. If the partner has adopted the child, joint parental responsibility always survives the breakdown of their relationships. If the partner has not adopted the child, he or she has no rights at all.

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.

A person other than the parent or the partner of the parent of the child can only obtain parental responsibility through adoption. In case of an adoption by one person, one parent of the child can retain parental responsibility (Art. 137 (3))

⁵⁸ N. ALEKSEEV, *Gay-Marriage: A XXIst Century Puzzle. Family status of same-sex couples in International, National and Local Law*, (Gey-brak. Semeinii status odnopolikh par v mezhdynarodnom, natsional'nom i mestnom prave), Moscow, BECK, 2002, 388.

⁵⁹ A similar pessimistic prediction was made by N. Alekseev regarding the prospect of same-sex partners to be appointed as guardians or foster parents. N. Alekseev, *Legal Regulation of the Status of Sequel Minorities. Russia in the light of the perceives of the International organisation and national legislation of the foreign countries (Pravovoe regulirovanie polozhenia seksual'nikh men'shinstv. Rossia v svete praktiki mezhdynarodnikx oporganizai i natsional'nogo zakonodatel'stva stran mipa)*, BECK, Moscow, 2002, p. 219.

Russian Family Code). In case of an adoption by a married couple, legal relationships between the child and his or her parents cease to exist (Art. 137 (2) Russian Family Code).

Adoption is possible when the child is left without parental care. Adoption is allowed only upon consent of the parents (Art. 129 Russian Family Code), except for the following cases:

- when the parent(s) are unknown;
- when the parent(s) has been declared by court to have disappeared;
- when the parent(s) has been declared by court legally incapable;
- when the parent(s) has been discharged of parental rights;
- when the parent(s), for reasons considered insufficient by the court, have not lived with their child for six or more months and neglect their duty to educate and maintain the child (Art.130 Russian Family Code).

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.

A public body can never obtain parental responsibility under Russian law. It can only fulfil the functions of child's guardian (147 (1) Russian Family Code).

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

(a) In case of the death of a parent holding parental responsibilities

In case of the death of the parent holding parental responsibilities, parental responsibility rests upon the other parent alone, if her or she has not been discharged of parental responsibility by a court order.

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

If both parents of the child have died:

- the child can be placed for adoption; the adoptive parent(s) will obtain parental responsibility over the child (Art. 124 (1) and 137 (1) Russian Family Code);
- the Department of Guardianship and Curatorship can appoint a guardian for the child (Art. 145 Russian Family Code and Art. 35 Russian CC). Rights and duties of the guardians, although modelled upon parental responsibility, are of more limited nature and fall outside the concept of parental responsibility.⁶⁰
- The child can be placed with foster parents (Art. 151 Russian Family Code). Rights and duties of the foster parents also fall outside the concept of parental responsibility.

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

⁶⁰ L. MIKHEEVA, *Full and Limited Guardianship (Opeka i Popечitel'stvo)*, Moscow, Paleotip, 2002, p. 81.

A holder of parental responsibility cannot appoint a new holder of parental responsibility in case of her or his death. However, the wish of the parent is always respected in appointing a guardian.

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?

Article 65 (1) Russian Family Code states that ‘execution of parental responsibility should not contravene the interests of the child’ and that ‘safeguarding of the child’s interests should be the parent’s paramount consideration’.

Unlike the family codes of 1918 and 1926, current legislation no longer speaks of execution of parental responsibility ‘exclusively’ in the best interests of the child. This transformation has been interpreted in the sense that the current law presupposes finding a balance between the interest of the child and the interests of his or her parents. Only in cases when the conflicts between the interests of the child and his or her parent(s) are so serious that no compromise can be found, should priority be given to the interest of a child.⁶¹

The law does not specify the best interests of the child. Article 65 (1), however, identifies a number of patterns of parental behaviour that are always presumed to contravene the best interests of the child. Thus, execution of parental responsibility may not harm physical or psychological health of the child or be detrimental to the child’s moral development. Methods of education should exclude treatment that is denigrating, cruel, offensive or humiliating to human dignity, nor insulting or exploitative to the child (Art. 65 (1) Russian Family Code).

Determination of what is in the best interests of the child is normally reserved to the parent(s). If the parents can not agree or there is an indication that their decisions are against the best interests of the child, the best interests of the child can be delineated by the Department of Guardianship and Curatorship or by a court. A child of any age is given the possibility to express his or her opinion concerning what he or she considers as his or her best interests (Art. 57 Russian Family Code). However, the child’s subjective vision of his or her best interests does not always coincide with what is objectively in the best interests of that child. Therefore the parents and the authorities are allowed not to follow the child’s opinion if they come to a conclusion that the child is not able to reasonably assess his or her best interest. If a child is under the age of ten, the parents or authorities do not need to note why they depart from the child’s opinion. If a child is older than ten, the law prescribes that his or her opinion should be considered and followed, unless it is not in the child’s best interests (Art. 57 Russian Family Code). This requirement

⁶¹ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 195-196.

imposes on the parents and the authorities the duty to prove due motivation, whether they have considered child's best interests in their decision.⁶²

Execution of parental responsibility against the best interests of the child can lead to restriction or discharge of parental responsibility (Art. 65 (1), Art. 69 and 73 Russian Family Code), and/or administrative and criminal⁶³ responsibility of the parents.

II. Joint parental responsibilities

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

Two persons (under Russian law, this can only be two natural or adoptive parents) holding joint parental responsibility hold it equally (Art. 38 (2) Russian Constitution, Art. 61(1) Russian Family Code).

There are, however, the following exceptions to this rule:

if one of the parents of the child is under age and the parents are not married, the minor parent does not acquire full legal capacity. Family law, however, grants a minor unmarried parent who has reached the age of sixteen full parental responsibility (Art. 62 (2)). This leads to an inconsistency: this person is regarded by civil law as just partially legally capable and is him- or herself under guardianship and not allowed to perform certain legal acts without consent of his or her parents or guardians.⁶⁴ Therefore it is difficult to imagine that a minor parent can enter into transactions on behalf of the child that he or she is not allowed to enter on behalf of him- or herself.⁶⁵ If the minor unmarried parent is under the age of sixteen, the child must be appointed a guardian until the minor parent reaches the age of sixteen (Art. 62 (2) Russian Family Code). The child's guardian raises the child with the minor parent and represents the child as his or her legal representative. A minor parent under the age of sixteen has the right to live with the child and to participate in the child's upbringing. Disagreements between the child's guardian and the minor parent are resolved by the Department of Guardianship and Curatorship (Art. 62 (2) Russian Family Code). The law allows but does not require appointing a guardian to a child whose parent is under the age of sixteen.⁶⁶ If the child has a second legal parent of full age that has good contact with the minor parent, the appointment of a guardian can be superfluous. In this situation, the child would be educated by the two parents formally holding joint

⁶² L. PCHELINTZEVA, *Commentary on the Family Code of Russian Federation*, Moscow, Norma, 1998, p. 215-217.

⁶³ Article 156, introduced in the Criminal Code of The Russian Federation in 1997, provides for criminal punishment for parents who neglect or abuse their parental rights if parental misconduct was involved cruelty towards the child.

⁶⁴ Children from fourteen to eighteen years of age are partially legally capable and can, without parental consent, dispose of their salary, study grants and other incomes, open bank accounts and administrate them (art. 28 (2) Russian CC). For all other transactions, children from fourteen to eighteen years of age need the written consent of their parents or guardians (art. 28 (1) Russian CC).

⁶⁵ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 205-206.

⁶⁶ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 204.

parental responsibility, while the right and duties of one of them would be restricted due to his or her age.

The court can declare one of the parents legally incapable because he or she cannot understand and direct the significance of his or her acts due to a mental disorder (Art. 29 Russian CC). Such a parent will be appointed a guardian. The court can also restrict the legal capacity of a parent if he or she gravely detriments his or her family's financial wellbeing due to alcohol or drug abuse. In both cases the parent does not automatically lose parental responsibility. However, restriction of legal capacity precludes the execution of some parental rights (e.g. representation of the child or administration of child's property), because those acts require full legal capacity. If living with a parent addicted to drugs or alcohol is dangerous for the child, a court can restrict the parent's parental responsibility and take his or her child away (Art. 73 Russian Family Code).

If one of the holders of parental responsibility lives apart from the child, his or her rights remain formally equal, save for a few exceptions.⁶⁷

However, this is mainly just the law on the books. In reality, the parent with whom the children resides exercises parental rights almost alone. Russian law prescribes that the judge must treat both parents equally in respect to the options for the child's residence after divorce; however, in more than 90% of all cases the child is placed with his or her mother after divorce.⁶⁸ In practice, a parent (mostly a father) who is not living with a child can hardly exercise most of his educational rights because he does not have daily contact with the child.

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?

If the holders of parental responsibility cannot agree on a certain issue they can bring their dispute before the Department of Guardianship and Curatorship or before the court (Art. 65 (2) Russian Family Code). The law makes no difference between important decisions and the decisions of a daily nature. In practice, each parent is generally allowed to make decisions of a daily nature alone; the silent consent of other parent is presumed.⁶⁹ However, the other parent always has the

⁶⁷ One of these exceptions is that the name or family name of the child who lives with both parents can only be changed upon their mutual consent (art. 59 (1) FC), while a name or family name of the child who is living with only one of the parents can be changed without the consent of the parent living apart from the child. The Department of Guardianship and Curatorship is only obliged to consider the opinion of the non-residential parent when contemplating a decision concerning the change of the child's name (art. 59 (2) FC).

⁶⁸ A. PANASIUK, 'Komu peredať na vospitanie rebenka?', *Rossiyskaia Justitziia*, 1996, No 9, p. 53-54.

⁶⁹ A. NETCHAEVA, Commentry to art. 65 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 224.

right to contest or block a decision that was made without his or her consent. The law makes no distinction whether the parents live together with the child or apart. However, in practice a parent who lives with the child normally makes all decisions of a daily nature alone.

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 responsibility cannot agree on a certain issue they can bring their dispute before either the Department of Guardianship and Curatorship or before the court (Art. 65 (2) Russian Family Code).

The competence of the Department of Guardianship and Curatorship is not limited to certain kinds of disagreements between the parents. However, unimportant disputes regarding the issues of daily routine fall outside the scope of legal regulation and are deemed to be resolved by the parents themselves.⁷⁰ The law explicitly mentions that the Department is competent to resolve parental disputes regarding choosing a child's name and family name (Art. 58 (4) Russian Family Code). The parents are also free to put before the Department of Guardianship and Curatorship a disagreement of purely pedagogical or ethical nature,⁷¹ like religious upbringing or choice of a school. The main objective of the Department is to discover and explain to the parents which decision is in the best interests of the child. If necessary the Department can invite an expert in pedagogy or child psychology for consultation.⁷² In case of purely pedagogical and ethical disagreements the Department gives the parents instructions and recommendations which are not legally enforceable.⁷³

The competence of the court is limited to adjudication of a dispute regarding child's residence (Art. 65 (3) Russian Family Code) and the execution of parental rights by the parent living apart from the child (Art. 66(2) Russian Family Code).

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?

A holder of parental responsibility is generally allowed to act alone in all cases if the law does not require an explicit consent of the other parent. When a holder of parental responsibility acts alone there is a reversible presumption of consent of the other holder.⁷⁴ The explicit consent of the other parent is required to:

⁷⁰ L. PCHELINTZEVA, *Commentary on the Family Code of Russian Federation*, Moscow, Norma, 1998, p. 248.

⁷¹ L. PCHELINTZEVA, *Commentary on the Family Code of Russian Federation*, Moscow, Norma, 1998, p. 248.

⁷² A. NETCHAEVA, *Commentary to art. 65 FC in: I. KUZNETZOVA (ed.), Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 225.

⁷³ L. PCHELINTZEVA, *Commentary on the Family Code of Russian Federation*, Moscow, Norma, 1998, p. 248.

⁷⁴ A. A. NETCHAEVA, *Commentary to art. 65 FC in: I. KUZNETZOVA (ed.), Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 224.

- take the child abroad,⁷⁵ including immigrating with the child,
- change the child's name or family name,⁷⁶
- change the child's nationality,⁷⁷
- allow the adoption of the child⁷⁸

etc.

Considering that joint parental responsibility is always the case under Russian law, granting a parent (almost always a father) whose paternity has been established against his will such a wide scope of rights sometimes proves to lead to considerable problems. Such a parent usually does not have an effective bond with the child and is rather reluctant to fulfil his parental responsibilities. In the best case, this parent does nothing. In the worst case the parent uses every opportunity to abuse the right to refuse consent as a revenge for instigating a paternity suit against him.⁷⁹

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?

The law does not contain any definition of the child's residence; legal literature interprets the term 'residence' as living together with one of the parents whenever she or he decides to set up home.⁸⁰ If the child's residence is determined by a court order, the term residence is understood in this sense. This interpretation gives a parent the possibility to move with the child not only within one city or area but all over the country without consent of the other parent and without asking for alteration of a court order. Considering the size of the Russian Federation the decision of a parent with whom the child resides to move far away from the place where the other parent lives can effectively deprive the child and the other parent from the possibility to maintain regular contacts. At the moment the law provides no remedy for this situation. The other parent can always ask the court to transfer the child's residence to him or her, but in order to make this claim successful he or she needs to provide evidence that the transfer of residence would be more

⁷⁵ Article 21 Federal Law On Departure from and Entrance of the Russian Federation of 22 August 1996, *Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1996, No. 34, item 4029.

⁷⁶ Article 59 (1) FC. The consent of the parent who lives apart from the child is not required. The Department of Guardianship and Curatorship is only obliged to consider his or her opinion when changing the child's name (art. 59 (2) FC).

⁷⁷ Article 25 Federal Law on Nationality of Russian Federation of 19 April 2002.

⁷⁸ Adoption is only allowed with the consent of both parents (art. 129 FC) unless the parents are unknown or have been declared by a court to have disappeared, to be incapable, to have been discharged of parental rights, or, due to reasons considered by a court not serious, have not been living with the child for six or more months and neglect their duty to educate and maintain a child (art 130 FC).

⁷⁹ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 198.

⁸⁰ This conclusion can be derived from: A. NETCHAEVA, Commentary to art. 65 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 225; L. PCHELINTZEVA, Commentary on the Family Code of Russian Federation, Moscow, Norma, 1998, p. 251.

beneficial to the child than remaining with the other parent.⁸¹ This proves rather difficult, considering the fact that a court has already once evaluated which parent better fits the residential interests of the child. The non-residential parent cannot prohibit the residential parent from moving the child's residence within the country.

If the residence of the child has been determined by an agreement between the parents (Art. 24 (1) en 65 (3) Russian Family Code), the parents are free to stipulate in their agreement that the child should reside with one of them in a certain place and that the residence cannot be changed without the consent of the non-residential parent. However, the enforceability of this will always depend on judicial scrutiny. In such scrutiny the court should take into consideration not only the best interests of the child but also the interests of the parents (Art. 24 (2) Russian Family Code). However, the outcome of such scrutiny would most likely be the same as it was when the residence was determined by a court order.

If the parent, with whom the child resides wishes to establish himself or herself abroad, the explicit consent of the non-residential parent is required.⁸² If the consent is refused, the residential parent can ask the court to decide the issue.⁸³ This court should decide giving paramount consideration to the best interests of the child and at the same time taking into account the interests of both parents.

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 customary in Russia for a child's residence to alternate after divorce. Post-divorce arrangements mostly provide for the child to reside with the mother, with the father granted a limited possibility to visit the child and/or to have the child with him for short periods of time during weekends and summer holidays. This practice is based on the dominant opinion that 'a child of any age needs a single stable educational patron, and should live according to familiar rules and in a trusted environment.'⁸⁴

⁸¹ According to article 65 (3) FC, the judge's decision must consider the opinion of the child and 'tak[e] 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 existing between each of the parents and the child, the possibility of creating for the child conditions for nurturing and development (nature of activity, work regime of parents, material and family status of the parents and others)'.

⁸² Article 21 Federal Law On Departure from and Entrance of the Russian Federation of 22 August 1996.

⁸³ Article 21 Federal Law On Departure from and Entrance of the Russian Federation of 22 August 1996.

⁸⁴ A. NETCHAEVA, Commentary to art. 66 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 228.

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

Provided that Russian law always attributes joint parental responsibility to both parents, a parent can have sole parental responsibility only if:

- the other parent has died;
- the parentage of the other parent has never been established;
- the other parent is declared by court to have disappeared;
- the other parental is discharged of the parental responsibility

In all those cases there is no other *de facto* or *de jure* parent to consult.

While executing his or her right to administrate a child's property a parent with sole parental responsibility needs the consent of the Department of Guardianship and Curatorship for entering certain transactions; on the same basis as when parents with joint parental responsibility administrate their child's property (Art. 37 (2) of the Civil Code).⁸⁵

(b) Other persons, bodies or competent authorities

If one of the parents of the child is under age and the parents are not married, the minor parent does not acquire full legal capacity. Family law, however, grants a minor unmarried parent who has reached the age of sixteen full parental responsibility (Art. 62 (2)). This leads to an inconsistency: this person is regarded by civil law as just partially legally capable and is him- or herself under guardianship and not allowed to perform certain legal acts without consent of his or her parents or guardians.⁸⁶ Therefore it is difficult to imagine that a minor parent can enter into transactions on behalf of the child that he or she is not allowed to enter on behalf of him- or herself. If the minor unmarried parent is under the age of sixteen, the child must be appointed a guardian until the minor parent reaches the age of sixteen (Art. 62 (2) Russian Family Code). The child's guardian raises the child with the minor parent and represents the child as his or her legal representative. A minor parent under the age of sixteen has the right to live with the child and to participate in the child's upbringing. A minor parent cannot make decisions concerning the child without consulting the child's guardian. Disagreements between the child's guardian and the minor parent are resolved by the Department of Guardianship and Curatorship (Art. 62 (2) Russian Family Code). The law allows but does not require appointing a guardian to a child whose parent is under the age of sixteen. If the child has a second legal parent of full age that has good contact with the minor parent, the appointment of a guardian can be superfluous. In this situation, the child would be educated by the two parents formally holding joint parental responsibility, while the right and duties of one of them would be restricted due to his or her age.

The court can declare one of the parents legally incapable because he or she cannot understand and direct the significance of his or her acts due to a mental disorder

⁸⁵ See answer to the question 12 (c).

⁸⁶ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 205-206.

(Art. 29 Russian CC). Such a parent will be appointed a guardian. The court can also restrict the legal capacity of a parent if he or she gravely detriments his or her family's financial wellbeing due to alcohol or drug abuse. Such a parent is also appointed a guardian, with a more limited capacity. In both cases the parent does not automatically lose parental responsibility. However, restriction of legal capacity precludes the execution of some parental rights (e.g. representation of the child or administration of child's property), because those acts require full legal capacity. Thus the child will have his or her own guardian appointed (Art. 71 (5) and 74 (4) Russian Family Code). A parent who is declared legally incapable or whose legal capacity is restricted cannot make decisions concerning the child without consulting the child's guardian. The guardian would involve the parent in the child's education and raising as far as such involvement is in the best interests of the child. The law does not provide for the resolution of disagreements between the child's guardian and such a parent; however, the rule on resolution of the disputes between the child's guardian and the minor parent of the child (Art. 62 (2) Russian Family Code) can be applied by analogy.

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 concept of contact encompasses the mutual rights of the child, and the parent who is living apart from the child and the other relatives of the child to maintain personal relationships with each other.

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

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

A child has the right to maintain contact with his or her parents, irrespective whether they live with the child (Art. 55 (1) Russian Family Code).

A child has the right but no duty to maintain contact with his or her parents. This means that the child can refuse to have contact with one his or her parents.⁸⁷ The contact rights of the parent can not be enforced against the will of the child. On the other hand, the child can independently enforce his or her right to contact even against the will of one of his or her conflicting parents. Therefore, a child of any age can use his or her right to complain to the Guardianship and Curatorship Department (Art. 56 (2) Russian Family Code) or insist on being heard during the process of making contact arrangements (Art. 57 Russian Family Code). A child of fourteen years or older can also independently apply to court (Art. 56 (2) Russian Family Code).

⁸⁷ The Russian Supreme Court in its Directive No. 10 of 27 May 1998 has, however, urged the judges to investigate whether the decision of the child has been unduly influenced by one of the parents. Item 20 of the Directive of the Supreme Court of the Russian Federation of 27 May 1998 No. 10 'On the Application of the Legislation by Dissolving Cases Relating to the Education and Care for Children', *Bulleten' verhovnogo suda RF*, 1998, No 7.

(b) A parent not holding parental responsibilities

A parent always holds parental responsibility unless his or her responsibility has been discharged. Parent(s) discharged of parental responsibility lose their right to maintain contact with the child (Art. 71 (1) Russian Family Code). On the contrary the child retains the right to maintain contact with such parent; however, he or she can no longer demand time and attention from the parent(s), as they are no longer under a legal duty to maintain personal relationships with the child.⁸⁸

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

A child has the right to maintain contact with his or her grandparents, brothers, sisters and other relatives (Art. 55 (1) Russian Family Code). A child can enforce this right independently and even against the will of his parent(s). Therefore a child of any age can use his or her right to complain to the Guardianship and Curatorship Department (Art. 56 (2) Russian Family Code), or insist on being heard regarding the process of making contact arrangements (Art. 57 Russian Family Code). A child of fourteen or older can also independently apply to court (Art. 56 (2) Russian Family Code). The child has no duty to maintain contact with his or her relatives, therefore their contact rights cannot be enforced against child's will.

The law speaks only of the right to maintain contact with relatives and not with other persons with whose child may have had family life (e.g. step-parents, foster parents). It has been suggested that such a limitation contravenes the rights of the child and those persons to the protection of family life, safeguarded by Article 8 of the European Convention on Human Right and Fundamental Freedoms.⁸⁹

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

Parents who live apart from their child have the right and duty to maintain contact with the child. (Art. 66 Russian Family Code). The right of the parent to maintain contact with the child includes the opportunity to spend time with the child, to execute his or her right to the education of the child and to participate in decisions on the child's education.

The right of a parent who lives apart from the child to maintain contact with the child is reinforced by the right to receive information concerning the child from every educational, medical, social or related institution (Art. 66 (4) Russian Family Code).

Grandparents, brothers, sisters and other relatives also have the right to maintain contact with the child (Art. 67 Russian Family Code). The right of the relatives is mainly restricted to the possibility to see the child. Relatives other than the parents have no duty to maintain contact with the child.

⁸⁸ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 219.

⁸⁹ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Jurist, Moscow, 1999, p. 192.

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?

Parents are free to make a contact agreement (Art. 66 (2) Russian Family Code). The agreement must be in writing. The arrangements are not subject to scrutiny by a competent authority. The law does not explicitly state what happens if one of the parents violates a contact agreement. According to an influential opinion, such agreements are not legally enforceable, their violation 'cause no legal consequences',⁹⁰ and the agreement is no more than 'a piece of evidence'.⁹¹ This point of view, however, seems to be controversial. Treating contact agreements as not legally binding would mean that if one parent applies to court regarding the agreement's violation, the court would automatically set the agreement aside and decide upon contract arrangements as if no agreement has been made. Comparison of contact agreements with other agreements relating to children allows for the conclusion that this is definitely not the case. Even in cases where parental agreements are made in the framework of divorce procedure and are subject to obligatory judicial scrutiny, such as those regarding child maintenance or residence (Art. 24 (2) Russian Family Code), the court's starting point is to approve the parental agreement. Only if the agreement is against the interests of the child or one of the parents can it be set aside by the court. It is rather illogical to suggest that when the law does not prescribe obligatory judicial scrutiny to contact arrangements, the court is supposed to disregard the agreement without even investigating the possibility of its approval. Thus, if a contact agreement is violated by one of the parents, he or she can ask the court to approve and enforce the agreement. By doing this the court can scrutinise the agreement and refuse its enforcement only in case of violation of the interests of the child or one of the parents.

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

There is no specific legal provision empowering a competent authority to exclude or limit the exercise of contact, or to subject it to certain conditions. However, the law gives the parent who lives with the child the ability to refuse another parent contact with the child if 'such contact causes physical or psychological harm to the child or is detrimental to child's moral development' (Art. 66 (1) Russian Family Code). The parent living apart from the child who does not agree with the refusal of contact upon this ground can bring the case to the court. The court is then entitled to scrutinise whether the invocation of the aforementioned provision has been justified. If the court finds that the contact can indeed constitute a danger for physical or psychological health of the child, or to its moral development, it can exclude or limit the contact, or subject the contact to certain conditions. The

⁹⁰ A. A. NETCHAEVA, Commentary to art. 66 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 230.

⁹¹ A. NETCHAEVA, Commentary to art. 66 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 230.

Supreme Court has urged the courts to understand that every case of refusal or limitation of contact needs serious motivation.⁹²

Article 66 (1) has been designated as a measure to protect a child against serious danger, such as incest, influence of criminal parents, parents addicted to drugs or alcohol, etc. However, in practice it often is misused by a parent, mostly a mother, in order to put an end to the father's personal relationship with the child. If such a mother is well-advised and persuasive enough she can always collect sufficient evidence that the child 'gets a cold every time it goes out with the father', 'sleeps badly' or 'is distressed' after meeting with the father. She then has a good chance to win the case. This situation has given rise to grievance on the part of the fathers, who justly feel themselves to be *de facto* excluded from exercising their parental rights.⁹³ The statistical evidence shows that only 33% of divorced fathers often see their children, while 17% of children of divorced parents actually lose all contact with their father.⁹⁴

The right of the parent(s) to maintain contact with the child can be effected by the decision of a court to restrict their parental rights and to take the child away from them according to article 75 Russian Family Code. The contacts between the child and the parent whose parental responsibility has been restricted are conditioned upon the permission of the Guardianship and Curatorship Department, another parent, guardian, foster parents of the child or the administration of the institution for children without parental care (Art. 75 Russian Family Code). The contacts can be allowed only if they do not negatively influence the child (Art. 75 Russian Family Code).

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

If a residential parent disregards the contact arrangements, the non-residential parent can ask the court to approve and enforce the agreement by the court order. The court has discretion to refuse its enforcement in case of violation of the interests of the child.

If the parents were not able to agree on contact arrangements, the arrangements can be made by the court upon the advice of the Guardianship and Curatorship Department (Art. 66 (2) Russian Family Code).

If a residential parent does not obey the contact arrangements laid down in the court order, the enforcement measures of civil procedural are applicable. A court bailiff in charge of the order's execution can impose a fine on a disobedient parent

⁹² Item 8 of the Directive of the Supreme Court of the Russian Federation of 27 May 1998 No. 10 'On the Application of the Legislation by Dissolving Cases Relating to the Education and Care for Children', *Bulleten' verhovnogo suda RF*, 1998, No 7.

⁹³ Such fathers have established an association called 'Fathers and Children' which is actively campaigning for 'fathers' rights'. See the site of the association: <http://www.orc.ru/otcydeti/jurists>.

⁹⁴ *Demoscope weekly*, N 09-10, 26 February – 11 March 2001.

of up to two-hundred times the minimum wage.⁹⁵ After a fine is paid the bailiff sets up a new term for complying with the court order.⁹⁶ If the parent disobeys again, the fine can be doubled. As the law does not limit the number of times the fine can be increased,⁹⁷ in principle the disobeying parent can be financially ruined.

No physical force can be used against the child in order to facilitate contact between the parent and the child.

If the parent persistently deliberately disobeys the court order, the judge, 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 best interests of the child (Art. 66 (3) Russian Family Code). This measure is not usually applied, but the mere threat of its application can compel most uncompromising parents to respect the right of the child to maintain contact with another parent.⁹⁸

F. DELEGATION OF PARENTAL RESPONSIBILITIES

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

There are no specific legal provisions on delegation of parental responsibility. However, the right to delegate parental responsibility has been derived from the right of the parents to educate their children. According to this interpretation, the educational rights of the parents include the right to educate the child personally and to entrust the education temporarily to the other persons (family member, babysitters) or institutions (kindergarten, etc.).⁹⁹ While delegating their educational responsibilities, the parents remain primarily responsible for the education of the child.¹⁰⁰

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?

A parent not holding parental responsibility has no possibility to apply for its delegation.

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/her/their parental

⁹⁵ Article 83 (1) Federal Law On Execution Proceedings of 21 July 1997, *Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1997, No. 30, item 3591.

⁹⁶ A. NETCHAEVA, Commentary to art. 79 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 278.

⁹⁷ A. NETCHAEVA, Commentary to art. 79 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 278.

⁹⁸ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 202.

⁹⁹ L. PCHELINTZEVA, *Family Law (Semeinoe pravo)*, Moscow, Norma-Infra M, 1999, p. 303.

¹⁰⁰ L. PCHELINTZEVA, *Family Law (Semeinoe pravo)*, Moscow, Norma-Infra M, 1999, p. 303.

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?

Article 69-72 of the Russian Family Code entitle the court to discharge the parent(s) of parental responsibility. This article is only applicable to legal, not adoptive, parents. Adoption can be terminated in a similar fashion, but according to different provisions (Art. 140-143 Russian Family Code). Discharge of parental responsibility is a sanction which is only applicable if the parent(s) have been proven guilty of certain kinds of misconduct. If the parent(s) have perpetrated misconduct without being guilty due, for instance, to a mental illness; discharge of parental responsibility cannot be applied.¹⁰¹ In such cases, if the behaviour of a parent(s) is dangerous for the children, parental responsibility can be restricted by court order and the children can be taken away according to article 73 of the Russian Family Code. Other than discharge of parental responsibility, termination of adoption is also possible if the adoptive parent(s) have misbehaved against the children without being guilty.¹⁰² Discharge of parental responsibility under Russian law is thus not only a measure of child protection but also a sanction for culpable behaviour of the parents, and is strongly modelled upon criminal sanctions. Therefore, it has been suggested that this measure be transferred into the criminal code in order to enable parents to enjoy all the rights and safeguards granted by criminal law to persons under suspicion of wrongdoing (presumption of innocence, etc.).¹⁰³

Discharge of parental responsibility is applicable in the following cases, exhaustively listed in article 69 Russian Family Code:

- Parent(s) in neglect of their parental duties, in particular, those who gravely neglect their duty to provide maintenance for a child. Such neglect can be established if parents leave a young child without supervision and care, creating a dangerous situation for the child. Not providing a child with food, clothing, housing and other necessities of life is another example of such neglect. Systematic non-payment of maintenance, agreed between the parents or determined by the court order, is also deemed sufficient for the discharge of parental rights upon this ground.
- Parent(s) who refuse, without serious reasons, to take their children from a maternity hospital or other medical, educational, social protection or other institution. As parents are under the duty to live with their children, a refusal to take the child from one of these institutions is interpreted as a special case of neglect of parental duties. Such a refusal most often implies *de facto* rejection of parental responsibility on the part of the parent(s).

It is important to bear in mind that parents under Russian law are not allowed to ask authorities to discharge them of parental responsibility.¹⁰⁴ Thus, the only way for parents to get rid of parental responsibility is to

¹⁰¹ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 211-212.

¹⁰² I. KUZNETZOVA, Commentary to art. 141 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 400.

¹⁰³ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 218-219.

¹⁰⁴ For a critical account thereof see: M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 197.

perform a misconduct which leads to the discharge of parental rights. This is why the law regards a simple refusal to take a child from the aforementioned institutions as a special ground for discharge of parental responsibility, without indirectly encouraging them to commit more serious offences against their children in order to be released from them. However, courts have been urged to carefully investigate whether or not a temporary reluctance to take a child from an institution resulted from financial, health-related or other serious problems. Special caution is recommended regarding unemployed or homeless parents, asylum seekers, refugees and unmarried minor mothers.¹⁰⁵

- Parent(s) who abuse their parental right. Abuse of parental rights can take the form of keeping a child away from school; involving a child in criminal activity, prostitution, drug and alcohol abuse; forcing a child into a sect dangerous for the child's physical and mental health; exploitation of a child, exposing the child to sexual abuse, etc. An extreme case of improper use of a child's maintenance, pension or property can also be qualified as an abuse of parental rights.
- Parent(s) who treat their child cruelly, including physical and mental violence, and sexual abuse of the child.
- Parent(s) who are chronically addicted to drugs or alcohol. This ground is applied only when the intensity of addiction is such that parent(s) are no longer capable to take care for and educate the child.
- Parent(s) who committed an intentional crime against the health or life of their children or another spouse. For application of this ground the parent must have been convicted by a criminal court. A victim of the crime can be the child in question, his or her (step)brothers and (step) sisters, or a (step)parent.

If the parent(s) have performed one or more of the acts listed in article 66 Russian Family Code (most often abuse or neglect or parental responsibility, acts of cruelty, crimes against the child of the (step)parent) without fault due to a mental illness, discharge of parental rights cannot be applied. In this case the court can restrict the parental rights of the parent(s) and take the child away from them (Art. 73 (2) Russian Family Code). Parental right can also be restricted if the presence of the child with the parent(s) is dangerous because of the parent(s)' mental or physical illness, or material conditions (Art. 73 (2) Russian Family Code), for instance, if the parent is homeless and has no income. Restriction of parental rights can also be applied as the first stage of discharge of parental responsibility. This can be the case if the behaviours of the parent(s) meet the requirements for discharge of parental responsibility but there is a hope that the parent(s) would improve their behaviour (for instance an addicted parent has consented to treatment). If the situation does not improve within six months, the Guardianship and Curatorship Department must apply to the court for discharge of parental responsibility (Art. 73 (2) Russian Family Code). If the interests of the child so require, the Department can move up the application for the discharge of parental responsibility.

¹⁰⁵ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 213.

Grounds for the termination of adoption listed in article 141 (1) Russian Family Code are mostly the same as for the discharge of parental responsibility, namely if the adoptive parent(s):

- neglect their parental duties,
- abuse their parental right,
- treat their child cruelly, or
- are chronically addicted to drugs or alcohol.

On the top of that, article 141 (2) allows the court ‘to terminate adoption upon other grounds considered to be in the best interests of the child and the child’s opinion.’ Under this open norm fall the grounds for discharge of parental responsibility not listed in article 141 (1), for instance, an adoptive parent committing by an intentional crime against the health or life of their children or the other spouse. However, there is a clear difference between the expositive list of the fault grounds that can lead to discharge of parental responsibility of the parents and the open list of the grounds for termination of adoption. Unlike parental responsibility, adoption can be terminated in case of the incapacity of the adoptive parent(s) to fulfil their parental duties without fault, for instance due to a serious illness.¹⁰⁶ Adoption can also be terminated when personal relationships between the child and the adoptive parent(s) grows so bad that the continuation of the adoptive relationship is not in the best interests of the child.¹⁰⁷

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

The right to initiate the procedure of discharge of parental responsibility belongs, according to Article 70 (1) Russian Family Code, to the following persons and institutions:

- a child of fourteen years and older (Art. 56 (2) Russian Family Code),¹⁰⁸
- another parent, adoptive parent or guardian of the child,
- a public prosecutor,
- the Guardianship and Curatorship Department,
- other authorities and institutions charged with child protection: e.g. a local Commission of Minors Affairs of the Home Office, institutions for children without parental care, etc.

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/her parental responsibilities?

Parent(s) discharged of parental responsibility lose all their rights¹⁰⁹ regarding the child, including the right of contact (Art. 71 (1) Russian Family Code). The child, on

¹⁰⁶ I. KUZNETZOVA, Commentary to art. 141 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 401

¹⁰⁷ I. KUZNETZOVA, Commentary to art. 141 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 401

¹⁰⁸ A child of fourteen or older is not mentioned in article 70 (1) FC as being among the persons entitled to initiate the process of discharge of parental responsibility. However, such right is given to a child by article 56 (2) FC, which grants a child fourteen or older a general right to independently apply to court for protection of his or her rights.

the contrary, retains the right to maintain contact with such parent(s); however, he or she can no longer demand time and attention from the parent(s) as they are no longer under duty to maintain personal relationships with a child.¹¹⁰

If parental rights have been restricted and the child has been taken away from the parents, such parent(s) can be allowed to maintain contact with the child only if it does not influence child negatively (Art. 75 Russian Family Code). Such contacts can be allowed by the Guardianship and Curatorship Department, another parent, the guardian, the foster parents of the child or the administration of the institution for children without parental care (Art. 75 Russian Family Code).

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

The restoration of parental responsibility is possible by a court order, upon an application of the parent(s) whose parental responsibility has been discharged. The ground for the restoration is a definitive change of behaviour, way of life and (or) attitude towards the education of the child on the part of the parents (Art. 72 (1) Russian Family Code). The parent(s) can simultaneously request that the child should be returned to them (Art. 72 (3) Russian Family Code). The public prosecutor and the Guardianship and Curatorship Department participate in the proceeding in order to safeguard the interests of the child (Art. 72 (2) Russian Family Code).

Even if the court finds that the behaviour of the parents has definitely changed, it can refuse to restore parental responsibility if such restoration is not in the best interests of the child (Art. 72 (4) Russian Family Code). This can be the case if the child is still traumatised by the previous behaviour of the parent(s), is happy in the new family, etc. A child older than ten has an absolute veto regarding the restoration of parental responsibility (Art. 72 (4) Russian Family Code). In order to safeguard the stability of the child's upbringing, the law prohibits restoration of parental responsibility if a child is adopted and the adoption has not been terminated (Art. 72 (4) Russian Family Code).

Restoration of parental responsibility leads to a restoration of all rights and duties attributed to the parents.

It should be noticed that restoration of parental responsibility is a rather exceptional event.

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

¹⁰⁹ Only the duty to pay a child's maintenance and the right of the child to inherit from his or her parents survive the discharge of parental rights (art. 71 (2 and 4) FC).

¹¹⁰ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 219.

circumstances of the child in a dispute on parental responsibility, residence or contact?

The authority competent to resolve disputes concerning discharge, restriction and restoration, of parental responsibility (attribution thereof is not possible under Russian law as parents always have joint parental responsibility); residence and contact is the court.

Russia does not have specialist courts for juvenile or family matters. All aforementioned cases are dealt with by a court of first instance with general jurisdiction in normal civil proceedings. Specialisation amongst the judges of those courts is also not common. Furthermore, no special training in juvenile and family psychology is required for a judge.

Investigation of the circumstances relating to the child is carried out by the Guardianship and Curatorship Department (Art. 78 Russian Family Code). This body is supposed to have experts specialised in child psychology and family sociology at its disposal.¹¹¹ In practice, however, the Department is constantly understaffed due to the low wages offered, and is largely staffed by persons without the necessary education. The Guardianship and Curatorship Department advises judges as to the welfare of particular children in disputes concerning their residence and contact arrangements, drafts reports on the suitability of each of the parents as the educators of the children, investigates the circumstances constituting grounds for discharge of parental rights, estimates whether the wishes of a child are against its best interests, and so on.

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 law does not contain any provisions on this matter. However, in practice the parents are free to ask the court to review a decision regarding a child's residence or contact arrangement if the circumstances have changed. In these cases, the circumstances are never the same: a child grows older, the family situation of the parents or their residence changes, etc., such application is almost always possible. A special case of revision of a child's residence is mentioned in the Art. 66 (3) Russian Family Code: a parent, living apart from the child, can ask the court to transfer the child's residence if the other parent persistently and deliberately disobeys the court order concerning contact of the claimant with the child.

57. What alternative disputes solving mechanisms, if any, e.g. mediation or counselling, are offered in your legal system? Are such mechanisms also

¹¹¹ In Moscow the legal norm is one employee of the Department of Guardianship and Curatorship per 5,000 minor children. See: art. 7 of the Act of the City of Moscow 'On Execution of Custody and Guardianship in the city of Moscow ('Ob obespechenii paboti po opeke i popechitel'stvu v gorode Moskve'), Vedomosti Moskovskoi Dumi, 1997, No 6.

available at the stage of enforcement of a decision/agreement concerning parental responsibilities, the child's residence or contact?

Mediation of counselling is one of the tasks of the Guardianship and Curatorship Department.

Such mediation can be applied at the stage of the decision-making by the parents as well as during the execution of the agreements and judicial decisions concerning execution of parental responsibilities, the child's residence or contact.

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 enforceability of decisions regarding child's residence.

If the parents of the child, due to whatever reason, do not live together, they are free to determine their child's residence by agreement (Art. 65 (3) Russian Family Code). If the child's residence is being determined other than in the framework of a divorce or annulment procedure, there is no obligatory judicial scrutiny of the parental arrangements. If one of the parents violates the agreement, the issue must be brought before the court (Art. 65 (2, 3) Russian Family Code). After scrutinizing the agreement the court has two options: to approve the agreement by a court order or to disapprove the agreement and determine the child's residence by a court order. If the parents fail to reach an agreement they can ask the court to determine child's residence by a court order.

The parents can also agree upon the child's residence if it is being determined during a divorce or annulment procedure (Art. 24 (1) Russian Family Code Russian Family Code); however, in this case judicial scrutiny of their agreement is obligatory. As in the previously described case, the court is entitled to set parental arrangement aside if the agreement is not in the best interests of the child or one of the spouses (Art. 24 (2) Russian Family Code), and the court will then determine the child's residence by a court order. If the court approves the parental agreement, it will be incorporated into the divorce or annulment order.

Therefore, enforcement of the decisions regarding child's residence always takes the form of an execution of court orders. The procedure of such execution is set down in the Federal Law on the Execution Proceedings, and the Federal Law on the Court Bailiffs.¹¹² The peculiarity of the execution of the decisions relating to children is the obligatory participation of the Guardianship and Curatorship Department in the executions proceedings (Art. 79 (2) Russian Family Code). The need to enforce the decisions relating to the child's residence arises if the non-resident parent refuses to transfer the child to the resident parent, or abducts the child. In both cases, the child must be taken from one parent to be transferred to the other. This action is considered to be extremely problematic, and requires great caution.

¹¹² Law of 21 July 1997, *Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1997, No. 30, item 3590.

If the parents keep the child against court order and refuse to voluntarily transfer him or her to the other parent, the court order is sent to a court bailiff for enforcement. The bailiff is obliged to accomplish the execution within two months.¹¹³ According to law (Art. 9 (2) Russian Law on the Execution Proceedings) the court bailiff first gives the parent a term (up to five days) to voluntarily comply with court order. If the parent refuses the bailiff can first try to facilitate a peaceful settlement by letting the Guardianship and Curatorship Department to mediate between the parents one more time.¹¹⁴ If the mediation provides no result, the bailiff can ask the court that issued the residence order to impose a fine on the disobedient parent of up to two-hundred times the minimum wage.¹¹⁵ After the fine is paid the bailiff sets up a new term for complying with court order.¹¹⁶ If the parent disobeys again, the fine can be doubled. As the law does not limit the number of times a fine can be increased and reapplied,¹¹⁷ in principle the disobeying parent can be financially ruined. If fines do not help, the bailiff can try to take the child against the will of the parent. The bailiff may ask experts in child psychology, psychiatry or a education to advise on the best way to execute and perform this action.¹¹⁸ Taking a child away is processed in the presence of a representative of the Guardianship and Curatorship Department and the parent with whom the child resides. It is recommended not to take the child away from the residence of the persisting parent but on the neutral territory: school, kindergarten, medical institution.¹¹⁹ If a direct transfer of the child from one parent to another parent is psychologically difficult for the child, the court may order that the child can be temporarily placed in a child protection institution (Art. 79 (2) Russian Family Code). If necessary, the bailiff can also use police assistance to neutralise the resistance of the parent (Art. 79 (2) Russian Family Code). Application of force to the child is not allowed. The task of the representative of the Guardianship and Curatorship Department is to supervise that this does not happen. If the child resists the execution of the decision, the bailiff has to postpone the execution or report to the court that the execution turned out to be impossible.¹²⁰

The enforceability of decisions regarding contact

¹¹³ Article 13 (1) Law on the Execution Proceedings. In case of an illness of the child or other serious reasons, execution can be delayed.

¹¹⁴ A. NETCHAEVA, *Commentary to art. 79 FC in: I. KUZNETZOVA (ed.), Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 277.

¹¹⁵ Article 83 (1) Federal Law on Execution Proceedings.

¹¹⁶ A. NETCHAEVA, *Commentary to art. 79 FC in: I. KUZNETZOVA (ed.), Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 278.

¹¹⁷ A. NETCHAEVA, *Commentary to art. 79 FC in: I. KUZNETZOVA (ed.), Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 278.

¹¹⁸ A. NETCHAEVA, *Commentary to art. 79 FC in: I. KUZNETZOVA (ed.), Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 277.

¹¹⁹ A. NETCHAEVA, *Commentary to art. 79 FC in: I. KUZNETZOVA (ed.), Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 277.

¹²⁰ A. NETCHAEVA, *Commentary to art. 79 FC in: I. KUZNETZOVA (ed.), Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 278.

The enforceability of parental agreements regarding contact is a matter of controversy. The law does not explicitly state what happens if one of the parents violates a contact agreement. According to an influential opinion, such agreements are not legally enforceable, their violation 'cause no legal consequences,'¹²¹ and the agreement is no more than 'a piece of evidence'.¹²² This point of view, however, seems to be controversial. Treating contact agreements as not legally binding would mean that if one parent applies to court regarding the agreement's violation, the court would automatically set the agreement aside and decide upon contact arrangements as if no agreement has been made. Comparison of contact agreements with other agreements relating to children allows for the conclusion that this is definitely not the case. Even in cases where parental agreements are made in the framework of divorce procedure and are subject to obligatory judicial scrutiny, such as those regarding child maintenance or residence (Art. 24 (2) Russian Family Code), the court's starting point is to approve the parental agreement. Only if the agreement is against the interests of the child or one of the parents can it be set aside by the court. It is rather illogical to suggest that when the law does not prescribe obligatory judicial scrutiny to contact arrangements, the court is supposed to disregard the agreement without even investigating the possibility of its approval. Thus, if a contact agreement is violated by one of the parents, he or she can ask the court to approve and enforce the agreement. By doing this the court can scrutinise the agreement and refuse its enforcement only in case of violation of the interests of the child or one of the parents.

If the residential parent does not obey the contact arrangements laid down in the court order, the enforcement measures of civil procedural are applicable. The court bailiff in charge of the execution of the order can impose a fine on the disobeying in the fashion similar to the above described case relating to the child's residence. No physical force can be used to facilitate the contact between the parent and child. If there is persistent and deliberate disobedience of the court order, the judge, taking into consideration the opinion of the child, can order a change of the child's residence to the other parent, if it is not against the best interests of the child (Art. 66 (3) Russian Family Code). This measure is not usually applied, but the mere threat of its application can compel most uncompromising parent to respect the right of the child to contact the other parent.¹²³

Execution of decisions regarding taking the child away after the restriction or discharge of parental rights.

Execution of these decisions is very similar to the execution of the decisions regarding the child's residence. There are, however, two peculiarities. If living with the parent(s) constitutes an acute danger for the child, a court order can enjoin immediate execution (Art. 13 (2) Russian Law on the Execution Proceedings). In case of acute danger, taking the child away can be facilitated by the application of force to the child.

¹²¹ A. NETCHAEVA, Commentry to art. 66 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 230.

¹²² A. NETCHAEVA, Commentry to art. 66 FC in: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 230.

¹²³ M. ANTOKOLSKAIA, *Family Law (Semeinoe pravo)*, Moscow, Jurist, 1999, p. 202.

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 level of the child's participation in reaching an agreement between his or her parents and in resolving problems in court is largely the same. Russian legislation follows the UN Convention of granting children the right to express their opinion, irrespective of the child's age. Therefore, a child has the right to express his or her opinion with regard to any decision made by the parents which effects the child's interests, as soon as the child is able to formulate such an opinion (Art. 57 Russian Family Code). The child has the same right in any administrative or court procedure. The age of the child is only relevant when it comes to evaluating his or her opinion.

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

The problem is that the law grants the child the right 'to be heard in any judicial or administrative procedure' that affects its interests (Art. 57 Russian Family Code), but does not oblige the judge to involve the child. In practice this means that if the child is aware of his or her rights and asks the judge to be heard, the judge is obliged to hear that child; but the judge is not obliged to take the initiative himself or herself. The judge is also not obliged to inform the child of his or her right to be heard. Unfortunately, judges often consider it a waste of time to hear the child if the parents have already reached an agreement or if the child is younger than ten years old. The judges do not usually call young children to give evidence. A child is mostly heard by an inspector of the Department of Guardianship and Curatorship. A judge will only hear a child younger than ten himself or herself if there are special reasons to do so or if the child insists on being heard (which of course almost never occurs). Even in cases where no agreement as to the child's residence or contact has been reached by the parents, the judge often prefers to leave the hearing of the child to the Department of Guardianship and Curatorship in order to save court time and to spare the child from the emotional experience of being questioned in court. In cases regarding discharge or restriction of parental authority the children are heard by a judge more often. However, even there the judge is frequently satisfied with a report of the child's hearing made by the Department of Guardianship and Curatorship while investigating the circumstances of the child. Thus, if the child does not insist on being heard by the judge personally (even when he or she is not aware of this right), then being heard by the Department of Guardianship and Curatorship is considered to be acceptable. This Department is supposed to have experts specialised in child psychology capable of hearing of children of different ages. In practice, however, this is not always the case, especially in the countryside.

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

(a) Parental responsibilities

In the disputes regarding discharge, restriction or limitation of parental responsibility the child is represented by:

- another parent if the aforementioned measures concern only one parent (Art. 70 (1) Russian Family Code; Art. 64 Russian Family Code);
- a guardian, if one has been appointed (Art. 70 (1) Russian Family Code);
- institutions for children without parental care (Art. 70 (1) Russian Family Code, Art. 73 (3) Russian Family Code; Art. 147 (1) Russian Family Code)
- the Department of Guardianship and Curatorship, which safeguards the interests of the child (Art. 70 (2) Russian Family Code, Art. 73 (4) Russian Family Code; Art. 72 (2) Russian Family Code).

(b) The child's residence

In the disputes regarding the child's residence the child is represented by:

- the parents (Art. 64 Russian Family Code);
- the Department of Guardianship and Curatorship, which safeguards the interests of the child (Art. 79 Russian Family Code).

(c) Contact

In the disputes regarding contact the child is represented by:

- the parents (Art. 64 Russian Family Code);
- the Department of Guardianship and Curatorship, which safeguards the interests of the child (Art. 79 Russian Family Code).

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 Russian law follows the recommendation of UN Convention to consider the child's opinion in the light of the child's ability to formulate it.¹²⁴

A child that has not reached the age of ten must generally be given the opportunity to be heard; however, neither the parents nor the judge are obliged to follow the child's opinion. The wishes of a child under ten are, in practice, not really taken very seriously. However, if a judge has doubts as to the suitability of one of the parents to provide a residence for the young child and the child is also strongly against this, the child's wish can be the decisive argument.

Article 57 of the Russian Family Code provides that if the child is ten years old or older, his or her opinion must be 'considered'.¹²⁵ If the child's opinion is not followed, those who disregard his or her opinion must sufficiently explain the grounds therefore. The wishes of a child ten or older can only be overruled when they are against the child's best interests. According to Art. 57, the parents and a judge are obliged to hear such a child and, if they do not agree with his or her view, they must provide the grounds for their disagreement.

¹²⁴ UN Convention, art. 12.

¹²⁵ Family Code 1995, art. 57. See also: I. KUZNETZOVA (ed.), *Commentary on the Family Code of Russian Federation*, Jurist, Moscow, 2000, p. 199-201.

Parental Responsibilities – RUSSIA

The law grants a child older than ten an absolute veto regarding restoration of parental responsibility (Art. 72 (4) Russian Family Code). If such a child is against the restoration, his or her decision cannot be overruled.