

## RUSSIA

Prof. Masha Antokolskaia

February 2021

### A. New Developments in the field of Divorce (since September 2002)

There have been no substantial changes in the area of divorce.

### B. New Developments in the field of Maintenance between former spouses (since September 2002)

*Change relating to Question 58 of the CEFL Questionnaire:*

The 2017 Directive<sup>1</sup> of the Plenum of the Supreme Court of the Russian Federation 'On the Application of Legislation by the Courts When Deciding Maintenance Cases'<sup>2</sup> has used the notion of analogy of law in order to expand to former husbands the right of former wives to receive maintenance during the period before the common child has reached the age of 3 years. Previously this specific kind of maintenance obligations between former spouses, regulated in Article 90, sub 1 point 2 Russian Family Code, was exclusively reserved to former wives. The law explicitly attributes it to 'a former **wife** during pregnancy, if the pregnancy has commenced before the dissolution of the marriage, and thereafter until the common child has reached the age of 3 years'. The right to maintenance during the pregnancy still remains exclusively the 'mother's right' as (so far) only a woman can carry a child. The right to receive maintenance from the ex-spouse until the child reaches the age of 3 years has been for a long time also seen as wives' prerogative, as traditionally it was the mother who cared for the young children in Russian society. However, in 2017 the Supreme Court has given this provision a gender-neutral interpretation. It has stated that, if after divorce the father takes care of the common child under the age of 3 years old, while the mother has withdrawn herself from caring for and maintaining the child, the husband is entitled to claim ex-spousal maintenance from her.<sup>3</sup> The rationale of this provision is that an ex-spouse has to invest more time in caring for a young child and these investments have to be compensated by the other former spouse by paying a special 'parent's' maintenance in addition to the child maintenance that has to be paid for the child. As caring for a young child impedes the ability of the caring parents to maintain

---

<sup>1</sup> The directives of the Supreme Court should not be confused with case law. They are abstract rules formulated by the Plenum of the Supreme Court in general terms. They are formulated on the basis of Supreme Court cases and are designed to guide the practice of the lower courts. In fact, they are de facto legal acts created by the Supreme Court without any explicit competence to do so.

<sup>2</sup> Directive No. 58 of 26 December 2017. <http://www.supcourt.ru/documents/own/26297/>

<sup>3</sup> Directive No. 58 of 26 December 2017, sub. 44. <http://www.supcourt.ru/documents/own/26297/>

themselves through gainful employment, this special kind of maintenance is paid to the ex-spouse, notwithstanding the ability to work or making use of parental leave.

### **C. New Developments in the field of Parental Responsibilities (since December 2004)**

There have been no substantial changes in the area of parental responsibilities.

### **D. New Developments in the field of Property relations between spouses (since August 2008)**

*Change relating to Question 49 of the CEFL Questionnaire.*

The Federal Law of 25 December 2015<sup>4</sup> has amended article 38 sub. 2 Russian Family Code, governing the division of community of property by mutual agreement of the spouses. Spouses are allowed to divide their community assets by mutual agreement both during the marriage and in the case of divorce. Before the amendment of 2015 a notarial deed was not mandatory for such an agreement, since the amendment a notarial deed became mandatory.

### **E. New Developments in the field of De Facto Partnerships (since February 2015)**

*Change relating to Question 9 of the CEFL Questionnaire.*

In 2018 Senator A. Beliaev has introduced into the Parliament a private member's Bill<sup>5</sup> aimed at regulating de facto partnerships. The Bill suggested amending the Russian Family Code by introducing a number of new articles regulating de facto partnerships, or 'de facto marital relationships' in the Bill's terminology. The Bill defined de facto partnerships as an unregistered union between a man and a woman, who live together and run a common household and are not prohibited from marrying each other. In order to qualify as de facto partnership, the couple has to live together and share a household during at least five years; or during two years, provided that the couple has a common child or children. If the union qualified as de facto partnership, the duties and obligations of the spouses automatically apply to the couple. Their property falls under the matrimonial regime of the community of property, unless they have changed it by an agreement. The Bill has been criticised by the responsible committees of the Parliament and was rejected by the State Duma on 26 July 2018. Among the main points of critique was the often-used argument that informal couples have freely

---

<sup>4</sup> The Federal Law of 25 December 2015 N 391-Ф.  
<http://ivo.garant.ru/#/document/71295520/paragraph/146:0>

<sup>5</sup> Bill N 368962-7 On Amending Family Code of Russian Federation (In relation to the status of de-facto marital relationships) of 22 January 2018.

chosen not to register their relationship and therefore the law may not impose marital rights and obligations on them. Another argument against regulating informal relationships was that it would 'legalise vicious practice' and runs against the state policy of supporting marriage and 'traditional family values'.<sup>6</sup> At the same time during a representative public opinion poll held in 2018, 38% of the respondents declared their support to the Bill. The same poll indicated that 46% of the respondents had nothing against informal unions and 45% consider them normal.<sup>7</sup> The number of informally cohabiting couples has increased in Russia from 9,7% (3,3 million couples) of all couples living together in formal and informal relationships in 2002 to 13% (4,4 million couples) in 2010.<sup>8</sup>

---

<sup>6</sup> Conclusion on the Bill by the Responsible Committee of the State Duma (the Committee on Family, Women and Children Affairs). <https://sozd.duma.gov.ru/bill/368962-7>

<sup>7</sup> Брак и сожительство: ставим знак тождества? *Demoskop weekly*, N. 756-760. Пресс-выпуск ВЦИОМ № 3571, 2 февраля 2018. <http://www.demoscope.ru/weekly/2018/0759/opros02.php>

<sup>8</sup> Состояние в браке, рождаемость. *Demoskop weekly*, N. 491-492, <http://www.demoscope.ru/weekly/2011/0491/perep01.php>