



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

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On Court Application of Legislation in Resolution of Disputes regarding the Protection of Rights and Lawful Interests of a Child in View of a Direct Threat to the Life or Health of the Child or during Limitation or Deprivation of Parental Rights

Every child has the right to live in a family and the right to upbringing in a family, the right to live with his or her parents and to upbringing by them, as well as the right not to be separated from them against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (Paragraph 1 of Article 8, Paragraph 1 of Article 9 of the Convention on the Rights of the Child, Item 2 of Article 54 of the Family Code of the Russian Federation).

In order to ensure the uniform practice of court application of legislation in consideration of disputes regarding the limitation or deprivation of parental rights, as well as removal of a child in view of a direct threat to its life or health, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

General Provisions

1. The Family Code of the Russian Federation (hereinafter – the FC RF), giving the parents priority in the upbringing of their children, stipulates that the exercise of parental rights may not contradict the interests of the child; parents, in exercise of their rights, may not impair the physical or mental health of their children, their moral development; the means of upbringing of children must exclude neglectful, cruel, degrading treatment, maltreatment, insult or exploitation (Item 1 of Article 63, Item 1 of Article 65 of the FC RF).

If parents exercise parental rights to the detriment of rights and interests of the children, the court may limit their parental rights or deprive them of parental rights (Item 1 of Article 65, Article 69, Article 73 of the FC RF).

In exceptional cases, when there is direct threat to the life or health of the child, the custodianship and guardianship body may, in accordance with Article 77 of the FC RF, immediately remove the child from the parents (one of the parents) or from other persons in whose care the child is at the moment, by virtue of an act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity, if a law of a constituent entity of the Russian Federation vests local self-government bodies with the powers in the sphere of custodianship and guardianship in accordance with federal laws (hereinafter referred to as an “act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the removal of a child”). If the parents or other persons in whose care the child was staying disagree with the act of the executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the removal of the child, they may apply to court with a claim for invalidation of the aforementioned act and for return of the child to the family.

2. Cases regarding the limitation or deprivation of parental rights, the cancellation of limitation or restitution of parental rights, the invalidation of an act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the removal of a child and the return of the child to the family are subject to consideration by a district court at the place of residence (stay) of the defendant (Articles 24 and 28 of the Civil Procedure Code of the Russian Federation, hereinafter – the CPC RF). If a claim for recovery of alimony is stated simultaneously with the claim for limitation or deprivation of parental rights (e.g. by the parent with whom the child is residing), such a claim may be presented by the plaintiff to the court at its own place of residence, proceeding from provisions of Part 3 of Article 29 of the CPC RF.

When resolving the issue of accepting the statement of claim in such cases, the court must take into account that in accordance with Item 1 of Article 54 of the FC RF a child is a person under eighteen years of age (an underage person).

If a child has reached the age of eighteen or acquired full legal capacity before reaching that age as a result of emancipation or marriage (Item 2 of Article 21, Item 1 of Article 27 of the Civil Code of the Russian Federation, hereinafter – the CC RF), the judge refuses to accept the statement of claim, taking into account the provisions of Item 2 of Article 61 of the FC RF and by virtue of Item 1 of Part 1 of Article 134 of the CPC RF; if proceedings have commenced in the case, the court terminates the proceedings in the case in accordance with the second paragraph of Article 220 of the CPC RF.

3. Taking into account the provisions of Article 78 of the FC RF and of Article 47 of the CPC RF, cases of this category are considered by the court with participation of a custodianship and guardianship body. This body is obliged to inspect the living conditions of the child and its parent (parents), whose parental rights are subject to limitation or deprivation, or the living conditions of the person willing to upbringing the child (of a parent (parents), applying to court with a claim to cancel the limitation or restore parental rights; of a parent (parents) or a person, in whose care the child is staying, demanding the return of the child removed by virtue of Article 77 of the FC RF).

The court should resolve the issue of inspection of living conditions of the child and of the aforementioned persons during the preparation of the case for trial.

The presented act of inspection and the conclusion of the custodianship and guardianship body (based upon that act) regarding the merits of the dispute are subject to court assessment in conjunction with all the evidence gathered in the case (Article 67 of the CPC RF).

The courts should take into account that based on the provisions of Item 1 of Article 34 of the CC RF, Item 2 of Article 121 of the FC RF and Article 6 of Federal Law No. 48 of 24 April 2008 “On Custodianship and Guardianship”, the conclusion of the custodianship and guardianship body must be signed by the authorised official of the custodianship and guardianship body of the constituent entity of the Russian Federation or of the local self-government body (if a law of the constituent entity of the Russian Federation vests local self-government bodies

with the powers in the sphere of custodianship and guardianship in accordance with federal laws).

4. When considering cases regarding the limitation or deprivation of parental rights, cancellation of limitation or restoration of parental rights, as well as cases regarding the invalidation of an act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the removal of a child and the return of the child to the family, the courts should take into account the provisions of Article 12 of the Convention on the Rights of the Child and of Article 57 of the FC RF, in accordance with which a child may freely express its opinion on all issues pertaining to its interests and has the right to be heard in any court or administrative proceedings.

With due regard to the aforementioned norms, a child over the age of ten or under the age of ten (if the court concludes that the child is able to formulate its views on issues pertaining to its rights) may be questioned by the court directly in the court session in order to clarify the child's opinion in regard of the issue under consideration. Herewith it should be noted that a court may decide to restore parental rights in regard of a child over the age of ten only with consent of that child (Article 57, Item 4 of Article 72 of the FC RF).

5. If the claim to limit parental rights or deprive of parental rights, to cancel the limitation of parental rights or restore parental rights, as well as to return children to the family (in particular when the children were removed in the manner stipulated in Article 77 of the FC RF) is stated in regard of two and more children, it is subject to consideration by the court with due regard to the interests of every child.

6. Cases regarding the limitation or deprivation of parental rights, as well as the restoration of parental rights, are considered by the court with participation of a prosecutor (Item 4 of Article 73 of the FC RF, Item 2 of Article 70, Item 2 of Article 72, Article 45 of the CPC RF).

Based on analogy of statute (Part 4 of Article 1 of the CPC RF), cases regarding the cancellation of limitation of parental rights and the invalidation of an act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the removal of a child and the return of the child to the family are also subject to consideration with participation of a prosecutor, since in accordance with Item 2 of Article 77 of the FC RF where a child is removed due to

direct threat to its life or health, a prosecutor is immediately notified about this by the custodianship and guardianship body.

7. If during the consideration of a case the court finds elements of a crime stipulated in Chapter 20 of the Criminal Code of the Russian Federation or elements of other crimes perpetrated against an underage in the actions of a party, other participants of proceedings, of an official or another person, it informs the bodies of inquiry or preliminary investigation in accordance with Part 3 of Article 226 of the CPC RF.

The courts also should not leave unattended the facts of failure of custodianship and guardianship bodies to timely take measures for protection of rights and legally protected interests of the underage, as well as the facts of unlawful actions violating children's rights performed by other persons, and should react by issuing special court decrees in regard of the corresponding organisations or officials (Part 1 of Article 226 of the CPC RF).

Limitation and Deprivation of Parental Rights

8. The court may limit parental rights with due regard to the interests of the child and in order to protect the rights of the child (Article 73 of the FC RF).

In accordance with the first paragraph of Item 2 of Article 73 of the FC RF, parental rights may be limited, if leaving the child with the parents (one of them) presents a danger for the child due to circumstances beyond control of the parents (one of them) (mental illness or another chronic illness, dire life situation, etc.). Herewith, the law does not draw a connection between the possibility of limitation of parental rights and the recognition of parents as legally incapable or having limited legal capacity.

The court may also decide to limit parental rights, if leaving the child with the parents (one of them) is dangerous for the child due to their culpable conduct, but there are insufficient grounds to deprive the parents (one of them) of parental rights (second paragraph of Item 2 of Article 73 of the FC RF).

9. A claim for limitation of parental rights may be submitted to court by close relatives of the child, bodies and organisations obliged by law to protect the rights of underage children (Item 1 of Article 70 of the FC RF), pre-school educational

organisations, general education organisations and other organisations, as well as by a prosecutor (Item 3 of Article 70 of the FC RF).

Proceeding from the third paragraph of Article 14 of the FC RF, the close relatives of the child who may apply to court for the limitation of parental rights are one of its parents, grandfathers and grandmothers, brothers and sisters of full or half blood.

If the claim for limitation of parental rights is submitted by a person that is a relative, but not a close relative of the child (e.g. an aunt or uncle), the judge refuses to accept the statement of claim by virtue of Item 1 of Part 1 of Article 134 of the CPC RF.

10. Taking into account that it is only possible to file a claim for limitation of parental rights against the parents, the judge also refuses to accept the statement of claim by virtue of Item 1 of Part 1 of Article 134 of the CPC RF, if such a claim is stated against persons in whose care the child is staying (custodians, guardians, foster parents, foster carers).

If there are no legally stipulated grounds for cancelling the adoption of a child (Article 141 of the FC RF), but leaving the child with the adoptive parents (one of them) presents a danger for the child due to circumstances beyond control of the adoptive parents (e.g. illness of the adoptive parents, dire life situation, etc.), by analogy of statute a claim may be filed against the adoptive parents (one of them) for limitation of their parental rights acquired as a result of the adoption (Article 5, Item 1 of Article 137 of the FC RF).

11. When resolving the issue of limiting parental rights, the court should proceed from the nature and degree of danger, as well as from the possible consequences for the life or health of the child, if it is left with the parents (one of them), and should also take other circumstances into account (e.g. in case of culpable conduct of the parents (one of them) that creates a danger for the child – whether the parents understand the culpability of their conduct and have a steady resolve to change it for the better, what concrete measures they are going to take or have taken in order to change their conduct).

12. Since Article 73 of the FC RF does not stipulate a time, for which parental rights of the parents (one of them) may be limited (independent from the reasons that served as grounds for such limitation), the court adopts a decision on

limitation of parental rights without stipulating the time of limitation of parental rights.

Herewith, when satisfying the claim for limitation of parental rights due to culpable conduct of the parents (one of them), the court should clarify it to the parents (one of them) that if they do not change their conduct, a claim for deprivation of parental rights may be filed against them in the manner and within the time stipulated in the second paragraph of Item 2 of Article 73 of the FC RF.

13. Deprivation of parental rights is the extreme liability measure for parents, which may only be applied by the court for culpable conduct of the parents, on the grounds indicated in Article 69 of the FC RF (that list of grounds is exhaustive).

Deprivation of parental rights is allowed when it is deemed impossible to protect the rights and interests of the children in a different way.

14. Based on provisions of Articles 47 and 69 of the FC RF, the only persons that may be deprived of parental rights are the parents, i.e. the persons indicated as the mother and (or) father of the child in the child's birth record (Items 1 and 2 of Article 51 of the FC RF).

Persons substituting for the child's parents (adoptive parents, custodians, guardians, foster parents, foster carers) cannot be deprived of parental rights.

If the adoptive parents evade the parental duties imposed upon them, abuse parental rights, treat the adopted child in a cruel way, have chronic alcohol or drug addictions, the court may cancel the adoption in accordance with Item 1 of Article 141 of the FC RF.

If the custodians (guardians), foster parents or foster carers fail to duly perform the duties imposed upon them, violate the rights and lawful interests of the person under care, in particular engage in custodianship or guardianship for lucrative purposes or leave the person under care unattended and without necessary assistance, the custodianship and guardianship body may terminate their duties as custodians (guardians), foster parents or foster carers (Part 5 of Article 29 of Federal Law No. 48 of 24 April 2008 "On Custodianship and Guardianship").

15. In accordance with Item 1 of Article 70 of the FC RF, cases regarding deprivation of parental rights are considered by the court upon application of:

- one of the parents, independent from whether he/she resides with the child;
- persons substituting for the parents (adoptive parents, custodians, guardians, foster parents, foster carers);
- a prosecutor;
- a body or organisation tasked with protection of rights of underage children (custodianship and guardianship bodies, commissions for the underage, organisations for orphans and children left without parental care (educational organisations, medical organisations, social security organisations (Article 155¹ of the FC RF) and others).

16. In accordance with Article 69 of the FC RF, the court may deprive the parents (one of them) of parental rights, if they:

- a) evade their parental duties, in particular maliciously evade the payment of alimony.

Evasion of parental duties regarding the upbringing of children may take the form of lack of care for the children's health, physical, mental, spiritual and moral development, education.

When resolving whether a parent is maliciously evading the payment of alimony, the courts should take into account the time and reasons for the parent's failure to pay the child maintenance.

For example, the malicious nature of alimony evasion may be indicated by arrears in alimony, accrued because of the payer's fault, where alimony is paid by virtue of an alimony agreement certified by a notary or by virtue of a court ruling on recovery of alimony; concealment of the actual amount of earnings and (or) of other income, from which alimony is to be subtracted; search for the parent obliged to pay alimony due to concealment of his/her place of residence; administrative or criminal liability of the parent for failure to pay the funds necessary for the maintenance of an underage person (Part 1 of Article 5.35¹ of the Code of Administrative Offences of the Russian Federation, Part 1 of Article 157 of the Criminal Code of the Russian Federation);

- b) refuse, without a good reason, to take their child from a maternity hospital (maternity department) or another medical organisation, education organisation, social security organisation or a similar organisation.

When considering a claim for deprivation of parental rights on these grounds, the court should verify, in particular: what were the reasons for such refusal and whether those were good reasons; whether the parents (one of them) have a legally stipulated right to place their child in full state care into the corresponding organisations and institutions, and if so, for what time (Item 2 of Article 155¹ of the FC RF, Article 13 and Item 3 of Article 14 of Federal Law No. 120 of 24 June 1999 “On Basic Principles of Child Neglect and Underage Offences Prevention System”, Article 1 of Federal Law No. 124 of 24 July 1998 “On Basic Guarantees of the Child in the Russian Federation”, Part 3 of Article 54 of Federal Law No. 323 of 21 November 2011 “On Basic Principles of Health Protection of Citizens in the Russian Federation”); whether the parents (one of them) maintain relations with the child; whether the parents (one of them) took any measures to overcome the circumstances, on which their refusal to take the child was based, and (or) whether those circumstances have changed (e.g. parents, who, by virtue of Sub-item 2 of Item 3 of Article 14 of Federal Law No. 120 of 24 June 1999 “On Basic Principles of Child Neglect and Underage Offences Prevention System”, temporarily placed their child into an organisation for orphans and children left without parental care due to loss of residential premises by the family, caused by a natural disaster, were provided with residential premises; a parent, who was in a dire life situation due to job loss, has found a new job);

c) abuse their parental rights.

Abuse of parental rights should be understood as use of those rights to the detriment of the interests of children, e.g. creation of obstacles to receipt of general education; enticement into gambling, inducement to vagrancy, beggary, theft, prostitution, consumption of alcoholic and alcohol-containing products, narcotic drugs or psychotropic substances, potentially dangerous psychoactive substances or intoxicating substances; involvement into the activities of a public or religious association or another organisation, in regard of which there is an effective court decision regarding its liquidation or prohibition of activities (Article 9 of Federal Law No. 114 of 25 July 2002 “On Countering of Extremism”, Article 24 of Federal Law No. 35 of 6 March 2006 “On Countering of Terrorism”);

d) treat the children in a cruel way.

Cruel treatment of children may, in particular, take the form of physical or psychological violence, assault of their sexual inviolability;

e) have a chronic alcohol or drug addiction.

A chronic alcohol or drug addiction must be certified by the corresponding medical documents. A person may be deprived of parental rights on these grounds independent of whether he/she is recognised as having limited legal capacity;

f) commit a premeditated crime against the life or health of their children, of another parent of their children, of their spouse (in particular a spouse who is not a parent of the children) or against the life or health of another family member.

The perpetration of the aforementioned crime must be certified by an effective convicting court sentence or a court ruling (decree) or a decree of a preliminary investigation body regarding the termination of the criminal case on non-rehabilitating grounds.

17. Based on provisions of Article 69 of the FC RF, persons who do not perform their parental duties due to a dire life situation and for other reasons beyond their control (mental disorder or another chronic illness, except for persons suffering from chronic alcohol or drug addiction) cannot be deprived of their parental rights. In such cases the court may decide to limit parental rights, if leaving the child with the parents presents a danger to him/her (Item 2 of Article 73 of the FC RF).

18. Since deprivation of parental rights is an extreme liability measure for parents, in exceptional cases, when the culpable conduct of the parent has been proved, the court may refuse to satisfy the claim for deprivation of parental rights, taking into account the nature of the parent's conduct, the parent's personality and other concrete facts, as well as the interests of the child, and warn the defendant that it needs to change her/his attitude to the upbringing of children.

When refusing to satisfy a claim for deprivation of parental rights in the abovementioned circumstances, the court may also decide to limit the parental rights of the parent in accordance with Article 73 of the FC RF, if the interests of the child so require.

19. Based on provisions of Item 1 of Article 71 of the FC RF, if the court issues a decision on deprivation of parental rights, this entails the loss by the parents (one of them) not only of those rights that they had before the children's coming of age, but also of all the other rights based on the fact of parentage and resulting from

familial, as well as other legal relationships (in particular, civil, labour, pension), including the right to benefits and grants stipulated for persons who have children, the right to receive maintenance from adult non-handicapped children (Article 87 of the FC RF).

20. A court decision on limitation or deprivation of parental rights must indicate, to whom the child is transferred for upbringing: to another parent, a custodian (guardian), if such a person has already been appointed in the stipulated manner, or a custodianship and guardianship body.

In order to protect the rights of the underage person and ensure proper conditions for its future upbringing, as well as in order to protect the rights of the parent not residing with the child, the court must notify this parent about the time and place of trial in the case regarding the limitation or deprivation of parental rights and explain it to the parent that he/she has the right to claim the transfer of the child to him/her for upbringing.

If it is impossible to transfer the child to the other parent, or if both parents have limited parental rights or were deprived of them, and where the custodian (guardian) has not yet been appointed, the child is transferred by the court to the care of the custodianship and guardianship body.

Herewith it should be noted that the transfer of a child by the court for upbringing to the relatives and other persons is only allowed if those persons are appointed the child's custodians or guardians.

If the child is transferred to the care of custodianship and guardianship bodies, the court does not resolve, how these bodies should determine the fate of the child (place him/her into an organisation for orphans and children left without parental care, appoint a custodian, etc.), since these issues are within the competence of said bodies (Item 5 of Article 71, Item 4 of Article 74, Article 121 of the FC RF).

21. Limitation or deprivation of parental rights does not free the parent from the obligation to support her/his child (Item 2 of Article 74, Item 2 of Article 71 of the FC RF). In this regard, when considering a case on limitation or deprivation of parental rights, the court also resolves the issue of recovery of alimony for the child, independent of whether such a claim was stated (Item 5 of Article 73, Item 3 of Article 70 of the FC RF).

22. Within three days after the court decision on limitation or deprivation of parental rights becomes effective, an excerpt from the court decision must be forwarded by the court to the civil registry body at the place of state registration of the child's birth (Item 6 of Article 73, Item 5 of Article 70 of the FC RF).

Cancellation or Limitation of Parental Rights and Restoration of Parental Rights

23. Cancellation of limitation of parental rights or restoration of parental rights is performed by the court upon the claim of the parents (one of them), whose parental rights are limited or who were deprived of their parental rights (Item 1 of Article 76, Item 2 of Article 72 of the FC RF).

This claim is filed against the person in whose care the child is staying (the other parent, a custodian (guardian), foster parents, foster carers, custodianship and guardianship bodies, an organisation for orphans and children left without parental care).

24. The court may decide to cancel the limitation of parental rights and return the child to the parents (one of them), if the grounds based on which the parental rights of the parents (one of them) were limited, have ceased to exist (e.g. the conduct or the way of live, the health condition of the parents (one of them) has changed for the better), and if the return of the child to the parents (one of them) is in the interests of the child (Items 1 and 2 of Article 76 of the FC RF).

If the court concludes that returning the child to the parents (one of them) contradicts the interests of the child, it may, based on provisions of Item 2 of Article 76 of the FC RF and with due regard to the opinion of the child, refuse to satisfy the claim in part of the return of the child to the parents (one of them).

25. When considering a claim for restoration of parental rights, the court, based on Item 1 of Article 72 of the FC RF, verifies whether the conduct and the way of life of the parents deprived of parental rights and (or) their attitude to the upbringing of the child have changed.

Herewith it should be noted that the court refuses to satisfy the claim, if the parents changed their conduct and may properly upbringing the child, but the child has been adopted, and the adoption has not been cancelled in the stipulated manner, as well

as if the child, who has reached the age of ten, objects to the restoration of the parents' parental rights, independent of the reasons for which the child does not consent to such restoration (second and third paragraphs of Item 4 of Article 72 of the FC RF).

The court also may, with due regard to the opinion of the child, refuse to satisfy the claim of the parents (one of them) for restoration of parental rights, if it concludes that the restoration of parental rights contradicts the interests of the child (first paragraph of Item 4 of Article 72 of the FC RF).

In accordance with Item 3 of Article 72 of the FC RF, the application of the parents (one of them) for restoration of parental rights may be considered together with the claim for return of the child to the parents (one of them). If the court concludes that the return of the child to the parents (one of them) contradicts the interests of the child, the court may refuse to satisfy this claim, even if the claim is satisfied in the part of restoration of parental rights.

26. When satisfying the claim for cancellation of limitation (for restoration) of parental rights and for the return of the child to the parents (one of them), the court resolves the issue of terminating the recovery of alimony from these parents (one of them).

27. Within three days after the court decision on cancellation of limitation of parental rights or on restoration of parental rights becomes effective, the court forwards an excerpt from the court decision to the civil registry body at the place of state registration of the child's birth (Item 3 of Article 76, Item 5 of Article 72 of the FC RF).

Removal of the Child in View of a Direct Threat to Her/His Life or Health

28. If there is direct threat to the life or health of the child, the custodianship and guardianship body may, by virtue of an act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity, immediately remove the child from the parents (one of them) or from other persons in whose care the child is staying, instantly informing a prosecutor about this, provide temporary care for the child, and, within seven days after adoption of the aforementioned act regarding the removal of the child, apply to court with a claim for deprivation or limitation of parental rights (Article 77 of the FC RF).

A direct threat to the life or health of the child, which may constitute grounds for adoption of the act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the immediate removal of the child from the family, should be understood as a threat that clearly presents the real possibility of negative consequences in the form of death, harm to physical or mental health of the child as a result of conduct (actions or failure to act) of the parents (one of them) or of other persons, in whose care the child is staying. In particular, such consequences may be entailed by lack of care for the child, meeting the physiological requirements of the child according to its age and health condition (e.g. failure to provide a minor child with water, food, shelter; failure to provide care to an infant or leaving it unattended for a long time).

The nature and degree of danger must be determined individually in each case, with due regard to the age, health condition of the child and other circumstances.

29. The issue of immediate removal of the child by virtue of Article 77 of the FC RF is within the exclusive competence of a custodianship and guardianship body and is performed in a non-judicial manner. In this regard, if a custodianship and guardianship body applies to court with the aforementioned claim, the judge refuses to accept the statement of claim by virtue of Item 1 of Part 1 of Article 134 of the CPC RF.

30. Since by virtue of Article 77 of the FC RF it is possible to immediately remove a child not only from parents, but also from other persons in whose care the child is legitimately staying (from adoptive parents, custodians (guardians), foster parents, foster carers), if these people disagree with the act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the immediate removal of the child, these persons also have the right to apply to court with a claim for invalidation of the act regarding the immediate removal of the child and for the return of the child to the family.

31. The courts must take into account that the measure of protection of the rights of the child, stipulated in Article 77 of the FC RF, is of extraordinary nature. It may be applied in exceptional circumstances that allow no delay due to the threat to the life or health of the child, and only by virtue of the corresponding act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity. The adoption of such an act entails temporary termination of the right of the parents (one of them) or of other persons in whose care the child was

staying, to personal upbringing of the child (until the court considers an application for limitation of parental rights of the parents (one of them) or their deprivation of parental rights, an application for cancellation of adoption, or until the custodianship and guardianship body resolves the issue of termination of duties of the custodian (guardian), foster parent, foster carer).

In view of the above, the courts should distinguish the aforementioned measure of protection of rights of the child from the other measures of protection of socially vulnerable underage persons, in particular from those stipulated in Federal Law No. 120 of 24 June 1999 “On Basic Principles of Child Neglect and Underage Offences Prevention System”.

32. When resolving whether there existed grounds for removal of the child in the manner stipulated in Article 77 of the FC RF, the court should in particular examine the acts of inspection of living conditions of the parents (persons in whose care the child was staying) and of the child, hear the witness testimony, explanations of representatives of custodianship and guardianship bodies and also examine expert conclusions and other evidence significant for the correct consideration of the case.

33. The financial hardship of a family does not by itself constitute sufficient grounds for removal of children from their parents by virtue of Article 77 of the FC RF, if the parents perform their duty of upbringing the children in good faith, care for them, create the necessary conditions for the children’s development in accordance with the material and financial abilities of the family.

34. If immediate removal of the child by virtue of Article 77 of the FC RF was performed due to the danger to life or health of the child, presented by third persons (e.g. people residing together with the family of the child’s parents, neighbours in a shared apartment), the court, taking into account the concrete facts of the case, may refuse to satisfy the claim for invalidation of the act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the removal of the child and for the return of the child to the family, if the parents or persons, in whose care the child was staying, took no measures to protect the rights of the child.

35. If a claim for invalidation of an act of an executive body of a constituent entity of the Russian Federation or of the head of a municipal entity regarding the removal of the child and for the return of the child to the family is satisfied, the

court, taking into account the concrete facts of the case and upon the plea of the plaintiff, may order the immediate execution of the court decision by virtue of Part 1 of Article 212 of the CPC RF.

36. Due to the adoption of this Ruling, the second sentence of the first paragraph and the second paragraph of Item 3, Items 9–16, the first paragraph of Item 17, Items 18–19 of the Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 10 of 27 May 1998 “On Court Application of Legislation in Resolution of Disputes regarding the Upbringing of Children” (as amended by Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 6 of 6 February 2007) are abrogated.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov