



GOVERNMENT OF THE REPUBLIC OF MONTENEGRO  
MINISTRY OF JUSTICE

# **FAMILY LAW OF MONTENEGRO**

# FAMILY LAW

## PART ONE

### BASIC PROVISIONS

#### Article 1

This law regulates: marriage and relationships in marriage, relationships between parents and children, adoption, placement in family (fostering), custody, support, property relationships in the family and actions of authorized bodies with regard to marriage and family relationships.

#### Article 2

The family is a community of living of parents, children and other relatives who in the sense of this law have mutual rights and obligations, as well as the other basic community of living in which children are raised and cared for.

#### Article 3

Marriage is based on a free decision of a man and a woman to enter into marriage, on their equality, mutual respect and mutual assistance.

#### Article 4

Relationships between parents and children are based on their mutual rights and duties, especially that of parents to take care of their children's rights and welfare protection and their responsibility to bring up, educate and train children for independent life, and that of children to take care of their parents and to respect them.

#### Article 5

Everyone shall act in the best interest of child in all child related activities.  
The state shall respect and improve the rights of child and undertake all the necessary measures to protect the child from neglect, abuse and exploitation.

## Article 6

The rights and duties of parents and other relatives pertinent to children, as well as the rights and duties of children towards their parents and relatives shall be equal, notwithstanding the fact whether the children were born in a marriage or out of it.

## Article 7

It is the right of every person to make a free decision on having his/her children, and as a parent to create the possibilities and ensure conditions for their healthy mental and physical development in the family and in the society.

Through measures of social, health and legal protection, system of education and informing, employment policy, housing and taxation policy, as well as through development of all other activities to the benefit of the family and its members, the state shall secure conditions for free and responsible parenthood.

## Article 8

Through adoption, such relationships are established between the adopter and the adoptee as those existing between parents and children, with the aim of providing to the child being adopted the living conditions enjoyed by the children living in a family.

## Article 9

Through custody the state provides protection to minor children who are not under parental custody and to major persons who are not able to or who cannot take care of themselves, their rights and interests by themselves.

Activities of custody are carried out by the centre for social work (hereinafter: custodial body).

## Article 10

The obligation of support between parents and children and other relatives, as well as between marital and extramarital partners, is an expression of family solidarity and it is in the interest of society.

## Article 11

Property relationships in the family are based on the principles of equality, reciprocity and solidarity, as well as on the protection of interests of children.

## Article 12

A community for living of a man and a woman lasting longer (common-law community), is equaled with marital community with regard to the right to mutual support and other property-legal relationships.

Common-law community does not produce effect referred to in paragraph 1 of this Article, if the obstacles to enter into a valid marriage existed at the time when it started.

#### Article 13

Full age is acquired after completing 18 years of life.

Full business capability is acquired with full age and with entering into marriage before full age with a permission of the court.

#### Article 14

For providing expert assistance and protecting the rights and interests of the child and of other members of the family, for resolving disputes between family members, as well as in all other cases where family relationships are disturbed, the custodial body, the court and the person authorized for mediation shall be competent.

### SECOND PART

## **MARRIAGE**

#### Article 15

Marriage is the community of living of a man and a woman regulated by the law.

### **I. ENTERING INTO MARRIAGE**

#### **1. Conditions for Full Validity of a Marriage**

#### Article 16

A marriage is entered into by consent of the wills of a woman and a man given before of a competent body, in the manner established by this law.

#### Article 17

A marriage is entered into with a view to realizing a community for living of the spouses.

#### Article 18

A marriage cannot be entered into by a person whose will is not free.

#### Article 19

No one can enter into a new marriage until a marriage entered into earlier terminates.

#### Article 20

A marriage cannot be entered into by a person who due to a mental illness or for other reasons is not able to form its own opinion.

#### Article 21

A marriage cannot be entered into between blood relation in the first line, nor by a brother and a sister, brother and sister on the side of the mother or the father, between an uncle and a niece, an aunt and a nephew, nor between the children of sisters and brothers and sisters and brothers on the side of the father or the mother.

#### Article 22

Relationship based on full adoption represents a hindrance for entering into marriage in the same manner as blood relationship.

Relationship based on partial adoption represents a hindrance for entering into marriage only between the adopter and adoptee and his descendants.

As an exception to paragraph 2 of this Article, the competent court may, for justified reasons, allow a marriage to be entered into between the adopter and the adoptee, after previously obtaining the opinion of the custodial body.

#### Article 23

A marriage cannot be entered into by relatives in law such as: a father in law and a daughter in law, a son in law and a mother in law, a step-father and a step-daughter, a step-mother and a step-son, notwithstanding whether the marriage due to which they came into such relationships is terminated.

As an exception to paragraph 1 of this Article, the competent court may, for justified reasons, allow a marriage to be entered into, after obtaining previously an opinion of the custodial body.

#### Article 24

A person who has not completed 18 years of age cannot enter into a marriage.

As an exception to paragraph 1 of this Article, the court may allow a marriage to be entered into by a minor person older than 16 in accordance with a separate law.

## **2. Procedure of Entering into Marriage**

#### Article 25

Persons intending to enter into marriage shall submit an application for entering into marriage to the body competent for conducting registers in the municipality (hereinafter: the Registrar). Along with the application the birth certificate is submitted for each of them, and when necessary other documents as well.

#### Article 26

Based on the statements of persons desiring to enter into marriage, documents enclosed and when necessary in some other manner the registrar shall determine whether all the conditions have been met for the validity of marriage.

If s/he determines that not all the conditions established by this law for the validity of the marriage have been met, the registrar shall verbally inform the applicants that they cannot enter into marriage and will make an official record thereon.

#### Article 27

Persons who have submitted an application for entering into marriage, in the event they do not agree with the verbal report as of Article 26 paragraph 2 of this law may ask the Registrar to submit a decision on refusal of the application for entering into marriage within three days.

Complaint against the decision as of paragraph 1 of this Article may be lodged by the applicants to the competent municipal administration body within 8 days from the day when the decision is received. This body is under an obligation to make a decision on the complaint within 5 days from the day when the complaint is received.

#### Article 28

The day when the marriage is to be concluded is determined by the Registrar in agreement with the persons wishing to enter into marriage.

#### Article 29

The registrar shall make a recommendation to the persons desiring to enter into marriage to inform each other on the state of their health, to visit the marriage i.e. family counseling centre and to become acquainted with the expert opinion on the conditions for development of harmonious marriage and family relationships, to visit the health institution for becoming acquainted with the possibilities and advantages of family planning, as well as to make an agreement on the future surname before entering into marriage.

#### Article 30

If one or both persons submitting an application for entering the marriage do not appear at the agreed time, and do not justify their absence, the application shall be deemed withdrawn.

### Article 31

Marriage is concluded before the competent municipal body in a solemn manner, in the official room arranged to suit such purposes.

As an exception, the Registrar may allow the marriage to be concluded at some other appropriate place, if spouses require that and submit justified reasons for it.

### Article 32

Both future spouses, a municipal assembly councilor delegated by the municipality, two witnesses and the Registrar shall be present when the marriage is being entered into.

### Article 33

In particularly justified cases, the competent municipal body may allow the marriage to be concluded in the presence of one of future spouses and an authorized agent of the other spouse.

The authorization, which has to be certified and issued only for the purpose of entering into marriage must include specified personal data of the authorized agent and of the person with which, by the mediation of an authorized agent, the marriage is being entered into and the date when the authorization is issued.

The authorization as of paragraph 2 of this Article shall be valid 90 days from the day of certification.

Complaint against the decision by which the request for entering into marriage by mediation of an authorized representative is refused may be lodged by the applicants to the Ministry competent for interior affairs and public administration.

### Article 34

Every person with business capability may be a witness when the marriage is being entered into.

### Article 35

Entering into marriage begins by determining the identity of future spouses and by a statement given by the Registrar stating that applicants have started the procedure of entering into marriage and that conditions established by the law for the validity of their marriage have been met.

If the marriage is concluded by mediation of an authorized agent the enclosed authorization shall be read.

### Article 36

After the municipal councilor determines that there are no objections to the report of the Registrar, s/he will acquaint the future spouses in an appropriate manner with the provisions of this law on their rights and duties and point out the importance of marriage, and in particular the fact that a harmonious marriage is of utmost significance for family life.

The municipal councilor shall ask individually each one of the future spouses whether they agree to mutually entering into marriage.

After agreeing statements are given on entering into marriage, the councilor proclaims the marriage entered into.

#### Article 37

The Registrar shall register the marriage entered into in the Register of Marriages, which the spouses, the municipal councilor, the witnesses and the Registrar sign.

#### Article 38

Immediately after entering into marriage, the spouses are issued a marriage certificate.

## **II RIGHTS AND DUTIES OF SPOUSES**

#### Article 39

Spouses shall be equal in marriage.

#### Article 40

Spouses are under an obligation to be faithful to each other, to assist and respect each other and develop and maintain harmonious marital and family relationships.

#### Article 41

When entering into a marriage the spouses may agree:

- 1) that each of them keeps his/her surname,
- 2) to take as a joint surname the surname of one of them,
- 3) to take both their surnames as a joint surname,
- 4) that only one of them adds the surname of the spouse to his/her surname.

In case of an agreement on surname as of paragraph 1 item 3 of this Article, spouses shall decide which surname will be used in the first place.

#### Article 42

The spouses shall determine the place of residence by consent.

#### Article 43

The spouses are independent in their choice of work and profession.

#### Article 44



The spouses shall decide on upbringing of their joint children and on how they will regulate the relationships and perform tasks regarding marriage i.e. family community by consent.

### **III TERMINATION OF MARRIAGE**

#### Article 45

Marriage is terminated by death of a spouse, by proclaiming a spouse dead, by annulment and by divorce of marriage.

If a spouse has been proclaimed dead, marriage terminates on the day which is by a legally valid decision of the court determined as the day of his death. Marriage is terminated by annulment and divorce when the court decision on annulment or divorce becomes legally valid.

#### **1. Annulment of Marriage**

#### Article 46

A marriage shall be null and void if it is entered into by two persons of the same sex, if statements of will of the spouses were not positive or if the marriage has not been concluded before a competent body.

#### Article 47

A marriage shall be null and void if it was concluded during the period of an earlier marriage of one of the spouses.

If, during the procedure for annulment of marriage the spouses state that the earlier marriage is not legally valid, a decision shall first be made on the legal validity of the earlier marriage and if that marriage is annulled, their marriage shall not be annulled.

A new marriage entered into during an earlier marriage of one of the spouses shall not be annulled if the earlier marriage was terminated.

If due to the death of the spouse who entered into a new marriage during the period of an earlier marriage, at the same time both marriages are terminated, the new marriage shall be annulled, except in case when the earlier marriage is annulled, or if the new marriage lasted for a longer time period, and the spouse from the earlier marriage did not take any measures with a view to establishing a marriage community.

#### Article 48

A marriage shall be null and void if it is entered into by a person who due to a mental illness or for other reasons is not able to form its own opinion.

A marriage shall be null and void if it has been entered into between blood relations, between relatives by adoption or relatives in law since it is not allowed according to the law.

If a marriage has been concluded between relatives by adoption and between relatives in law, between whom marriage is possible only according to a permission of the court (Article 22 paragraph 3 and Article 23 paragraph 2 herein), the court to which a plea for annulment of the marriage has been filed, may subsequently grant this permission.

#### Article 49

A marriage may be annulled if a spouse has consented to enter into it for fear caused by force or serious threat.

#### Article 50

A marriage may be annulled if it was entered into by a person misled about the personality of the spouse when s/he thought s/he was entering into marriage with one person and entered into marriage with another one, or when marriage was entered into with a certain person but who is not the one it claimed to be.

A marriage may be annulled if entered into by a person misled about significant characteristics of a spouse, which would discourage him/her from entering into marriage had s/he known about them and which have led to serious and permanent disturbance of relationships in the marriage.

#### Article 51

Marriage shall be null and void if the spouses did not really want to establish a community for living but tried to hide some other legal affair or to achieve some other objective.

Such a marriage shall not be annulled if a living community has subsequently been established.

#### Article 52

The right to lodge a complaint for annulment of marriage for reasons stated in Articles 46 to 48 and Article 51 of this Law belongs to spouses and other persons who have direct legal interest for the marriage to be annulled, as well as to the state prosecutor.

After cessation of reasons as of Article 48 of this law, the right to complaint for annulment of a marriage belongs only to a spouse who was seriously mentally ill or who, for some other reasons, cannot form his own judgment. A complaint may be filed within one year from termination of the above reasons, and if a spouse was completely deprived of business capability, within one year from the coming into force of the decision on return of the business capability.

#### Article 53

Annulment of marriage entered into under coercion or through misleading may be required only by a spouse who was forced or who consented to enter the marriage after being misled.

Annulment of marriage cannot be required if one year elapsed from the day when coercion ceased or when the misleading was noticed, and the spouses lived together during that time.

## Article 54

Upon a complaint of a parent or a custodian, investigating all the circumstances, the court may annul a marriage concluded by a person younger than 18 without the consent of a competent court until that person comes of age.

The right to complaint belongs also to a person who was minor at the time when marriage was entered into, and within a year from the date when s/he comes of age.

## Article 55

The right to take an action for annulment of a marriage is not transferred to successors, but the successors of the suitor may continue already begun procedure with a view to proving the well-foundedness of the complaint.

## **2. Divorce**

### Article 56

A spouse may ask for a divorce of a marriage if the relationships in the marriage have seriously and permanently been disturbed or if the purpose of marriage cannot be realized for some other reasons.

### Article 57

Spouses may require the marriage to be divorced based on their agreement.

Along with a proposal for divorce of a marriage by consent, spouses are under an obligation to submit a written agreement on performance of the parental right and on joint property division.

### Article 58

A husband cannot require a divorce of the marriage during pregnancy of his wife, i.e. until their baby completes one year of life, except in cases when the wife consents to divorce.

## THIRD PART

### **RELATIONSHIPS BETWEEN PARENTS AND CHILDREN**

#### **I. PARENTAL RIGHT**

### Article 59

The parental right comprises the rights and duties of parents to take care of the personality, rights and interests of their minor children.

## Article 60

The parental right shall belong to the mother and the father together.  
If one of the parents died or is not known or has been deprived of the parental right, the parental right shall belong to the other parent.  
A parent cannot renounce the parental right.  
Abuse of parental right is forbidden.

### **1. Rights of a Child**

## Article 61

A child has the right to know who its parents are.  
The right of a child to know who its parents are may be limited only by this law.  
A child who has completed 15 years of age and who is able to form an opinion may have an insight into the birth register and other documents pertinent to its origin.

## Article 62

A child has the right to live with its parents and the right to have its parents take care of it before everyone else.  
The right of the child to live with its parents may be limited only by a court decision, when this is to the best interest of a child.  
A court may make a decision to separate the child from its parents if there are reasons for restriction or depriving of the parental right or in case of violence in the family.  
A child who has completed 15 years of age and who is capable of forming its own opinion may decide which of the parents it wants to live with.

## Article 63

A child has the right to maintain personal relationships with the parent it does not live with.  
The right of the child to maintain personal relationships with the parent it is not living with may be restricted only by a court decision when this is to the best interest of the child.  
The court may make a decision to restrict the right of the child to maintain personal relationship with the parent it is not living with if there are reasons for restrictions or deprivation from the parental right or in case of violence in the family.  
A child who has completed 15 years of age and who is able of forming its own opinion may make a decision to maintain personal relationship with the parent it is not living with.  
A child has the right to maintain personal relationships also with relatives and other persons it is in particular close to if this is to its best interest.

## Article 64

A child has the right to be secured the best possible living and health conditions for its proper and complete development.

A child who has completed 15 years of age and who is able of forming its own opinion may give consent to undertaking of a medical intervention.

#### Article 65

A child has the right to education in accordance with its abilities, desires and inclinations.

A child who has completed 15 years of life and who is able of forming its own opinion may decide which secondary school it will attend.

#### Article 66

A child who has not completed 14 years of age may undertake legal affairs by which it acquires neither rights nor obligations and legal affairs of small significance.

A child who has completed 14 years of life may undertake, apart from the legal affairs as of paragraph 1 of this Article also all other legal affairs along with a previously or subsequently obtained consent of the parents, i.e. consent of the custodial body for legal affairs as of Article 308 paragraph 2 of this Law.

A child who has completed 15 years of life may undertake legal affairs by means of which it manages and disposes of its revenues or property it acquired by its own work.

A child may undertake also other legal affairs when this is foreseen by the law.

#### Article 67

A child who is able to form its own opinion has the right to freely express that opinion.

A child has the right to obtain in a timely manner all the information needed for forming its opinion.

Due attention has to be devoted to the opinion of a child in all issues regarding it and in all the procedures in which his rights are decided on, all in compliance with the age and the maturity of the child.

A child who has completed 10 years of age may freely and directly express its opinion in every court and administrative procedure in which his rights are being decided on.

A child who has completed 10 years of life may by its own, or through the mediation of some other person or institution, address the court or an administrative body and require assistance for the realization of its right for free expression of opinion.

Competent authority shall determine what the opinion of the child is through an informal talk conducted in an appropriate place, in cooperation with the school psychologist or the custodial body, family councilor or some other institution specialized for family relationships, and in the presence of a person the child itself chooses.

#### Article 68

A child is under an obligation to help its parents in accordance with its age and maturity.

A child making an income or having revenues from property is under an obligation to cover partly the needs for its own support or for the support of its parents or a minor brother or sister, on conditions determined by this law.

## **2. Parental care**

### Article 69

Parents have a right and a duty to take care of the child.

Taking care of the child includes: watching, raising, upbringing, educating, representing, supporting the child and managing and disposing of its property.

Parents have the right to obtain all information on the child from the educational and health institutions.

### Article 70

Parents have a right and a duty to watch and raise the child by taking care personally of its life and health.

Parents must not subject the child to humiliating actions and penalties that offend human dignity of the child and they are under an obligation to protect the child from such actions of other persons.

Parents must not leave a child of pre-school age unattended.

Parents may temporarily entrust the child with another person only if such a person meets the conditions for a custodian.

### Article 71

Parents have a right and a duty to develop with the child a relationship based on love, trust and mutual respect, and to direct the child to adopt those values that have a universal character.

### Article 72

Parents have a duty to provide primary education to a child, and they are obliged to take care of future education of the child according to their possibilities.

### Article 73

Parents have a right and a duty to represent the child in all legal affairs and in all procedures outside the borders of business and processing ability of the child (legal representation).

Parents have a right and a duty to represent the child in all legal affairs and in all procedures within the business and processing ability of a child, unless otherwise stipulated by the law (willingness representation)

Parents have the right to undertake legal affairs by means of which they manage and dispose of the revenues that a child younger than 15 has acquired.

#### Article 74

Parents have a right and a duty to support a child under the conditions stipulated by this law.

#### Article 75

Parents have a right and a duty to manage and dispose of the property of the child under the conditions stipulated by this law.

### **3. Exercising the Parental Right**

#### Article 76

Parents exercise the parental right jointly and by consent when living together. Parents exercise the parental right jointly and by consent even when not living together if they conclude an agreement on joint exercising of the parental right and if the court estimates that such an agreement is to the best interest of the child.

#### Article 77

An agreement on joint exercising of the parental right includes an agreement of parents to exercise jointly and by consent all the rights and duties contained in the parental right.

An integral part of the agreement on joint exercise of the parental right is also an agreement on what shall be considered the permanent residence of the child.

#### Article 78

One parent exercises the parental right by its own when the other parent is unknown, or s/he died, or has been utterly deprived of the parental right or business capability.

One parent exercises the parental right alone when only s/he lives with the child, and the court has not yet made the decision on exercising of the parental right.

One parent exercises the parental right by its own based on a court decision when the parents are not living together, and did not conclude an agreement on exercising of the parental right

One parent exercises the parental right by its own based on a court decision when the parents are not living together, and they have concluded an agreement on exercising of the parental right jointly or independently, but the court assesses that the agreement is not to the best interest of the child.

One parent exercises the parental right alone based on a court decision when parents are not living together, and they have concluded an agreement on independent

exercising of the parental right and if the court assesses that the agreement is to the best interest of the child.

#### Article 79

An agreement on independent exercising of the parental right implies an agreement of parents on entrusting their child to one parent, an agreement on the amount of contribution for supporting the child to be provided by the other parent and an agreement on the manner of maintaining personal relationships between the child and the other parent.

Through an agreement on independent exercising of the parental right the exercising of parental right is transferred to that parent who the child has been entrusted with.

A parent who fails to exercise the parental right shall have a right and a duty to support the child, to maintain with the child personal relationships and to make decision on the issues influencing significantly the life of the child together and by consent with the parent exercising the parental right.

Issues that significantly influence the life of the child, in the sense of this law, are considered in particular: education of the child, undertaking of major medical interventions on the child, change of permanent residence of the child and disposing of the child's property of considerable value.

### **4. Measures for protection of rights and well-being of a child**

#### Article 80

Custodial body shall give appropriate forms of help and support to parents and undertake necessary measures to protect the rights of a child and in its best interest, on the basis of direct knowledge or notification.

Judicial authorities, other bodies, medical, educational and other institution, non-governmental organizations and citizens shall notify custodial body as soon as they get to know that a parent is unable to exercise parental right.

Custodial body shall examine the case immediately after the receipt of the notification and undertake measures in order to protect the rights of the child.

Registrar shall report the birth of a child whose one or both parents are unknown to custodial body, in order to undertake the measures for its protection.

#### Article 81

If thus required by the justified interests of the child, the custodial body shall warn the parents about errors and failures in education and upbringing of the child and assists them to bring up the child properly, and it can direct them to address, alone or with the child, a particular counseling centre, health, social, educational or some other adequate institution.

#### Article 82



When parents need longer-term support and direction in exercising their parental rights and duties or when an explicit follow up of the situation and conditions in which a child lives is necessary, custodial body shall determine supervision over the exercising parental rights regarding children or a specific individual child.

A decision on supervision made by the custodial body shall define the supervision programme and determine a person to follow up child's development, monitor acts of parents, submit periodical reports to the custodial body and undertake other measures in the interest of a child.

#### Article 83

The court may, in extra-judiciary procedure, as per official duty or at the request of parents, respectively custodian or other person to whom a child is entrusted to take care for and to raise it, or at the request of a custodial body, make a decision to send a child to an appropriate institution for upbringing, or to other family if there has been a disturbed behaviour of a child which requires upbringing affect and removal of the child from the surroundings where it lives.

Under the decision referred to in paragraph 1 of this Article, the court shall determine also a time duration for this measure, which cannot be longer than one year.

Before the expiration of the time period defined in the decision, the court may, as per its official duty or at the request of a person referred to in paragraph 1 of this Article, prolong the time for this measure, or order an other measure for the protection of the rights of a child.

Decision on sending shall be immediately submitted by the court to the custodial body which shall then, based on such decision, make a decision on sending a child to an appropriate institution or other family

#### Article 84

In justified cases, the custodial body may require the parents to submit the bills on how they manage the child's property.

In an extra-judiciary procedure, the custodial body may require to court to allow means of insurance on the parents' property with a view of protecting the property right of the child.

With a view to protecting the property interests of the child, the custodial body may require the court to make a decision according to which the parents shall have the position of a custodian with regard to the management of the child's property.

### **5. Restricting Parental Right**

#### Article 85

In an extra-judiciary procedure, the court may by its decision restrict the parental right to the parent who unconscientiously exercises the rights or duties towards the child.

Through the restriction the parent may be deprived of the exercising of one or several rights and duties towards the child, except of the duty to support the child.

The court shall deprive a parent of the right to live with a child if s/he neglects to a larger extent the upbringing and education of the child.

A parent is considered to neglect to a larger extent the upbringing and education of a child in particular if s/he does not pay sufficient attention to nutrition, clothing, medical assistance, regular attendance of school, does not prevent the child from keeping bad company, tramping, begging or theft.

#### Article 86

The procedure for restricting the parental right is initiated by the court by the official duty upon a proposal of the custodial body, other parent or the child.

The restriction of parental right is determined for a period up to one year.

A complaint against the decision as of Article 85 of this law does not postpone its execution.

Prior to expiry of the notice as of paragraph 2 of this Article, the court shall investigate all the circumstances of the case and to the best interest of the child through a new decision return the restricted right to the parents, prolong duration of the pronounced measure or pronounce another measure for the protection of the child's best interest.

### **6. Deprivation of the Parental Right**

#### Article 87

A parent who abuses the exercising of the parental right or neglects seriously the performance of parental duties, shall be deprived of the parental right.

Abuse of the right is present in particular if a parent: abuses the child in a physical, sexual or emotional manner, exploits the child by forcing it to excessive work or to work that threatens morality, health and education of the child, or work which is forbidden by law; instigates the child to perpetrate criminal acts; develops bad habits and tendencies and the like.

Serious neglect of the duty is present in particular if a parent: abandons the child or does not take care at all of the basic living necessities of the child s/he lives with; avoids to support the child or to maintain personal relationships with the child s/he does not live with, i.e. prevents the maintenance of personal relations between child and the parent the child is not living with; if deliberately and in an unjustified manner s/he avoids to create conditions for joint life with the child who is accommodated in social and child protection institution.

#### Article 88

A parent may be deprived of the parental right with regard to all the children, and if thus required by special circumstances only with regard to one child.

The decision on deprivation of the parental right shall be made by the competent court in an extra-judiciary procedure.

#### Article 89

The procedure for deprivation of the parental right may be initiated by the other parent, the custodial body or the state prosecutor.

The custodial body is under an obligation to initiate the procedure for deprivation of the parental right when in any manner whatsoever it learns that there are reasons for this established in this law.

If the custodial body learns that there is a danger of abuse of the parental right or a danger of serious neglect of parental duties, it is under an obligation to take urgent measures to protect the personality, rights and interests of the child.

#### Article 90

In marital disputes and disputes pertinent to relationships between parents and children the court resolving these disputes may by its official duty make a decision on deprivation from the parental right if it determines that there are reasons for this stipulated by this law.

#### Article 91

A parent may by a court decision be returned its parental right when reasons for which s/he was deprived of the parental right cease to exist.

Proposal for returning of the parental right may be submitted by the parents and the custodial body.

In marital disputes and disputes pertinent to relationships between parents and children, the court making a decision on these disputes may by its official duty make a decision to return the parental right, if it determines that there are reasons for this.

### **6. 6. Prolongation of the Parental Right**

#### Article 92

The parental right may be prolonged even after the child comes of age if due to a mental illness, mental retardation or bodily defects or for some other reasons it is not able to take care by itself of its personality, rights and interests.

#### Article 93

The decision to prolong the parental right is made by the court in an extrajudiciary procedure upon a proposal of a parent or a custodial body.

The proposal for prolonging of the parental right is submitted before the child comes of age, but the court may prolong the parental right also in cases when the proposal was not submitted in timely manner, if at the time when the child came of age there were reasons for prolonging of the parental right.

In the decision to prolong the parental right, the courts shall determine whether the person to which the parental right was prolonged was equaled with a child.

## Article 94

When reasons due to which the parental right was prolonged cease to exist, the court shall make a decision on termination of prolonged parental right over the person of age, upon the proposal of that person, a parent or a custodial body.

### **8.6.Termination of the Parental Right**

## Article 95

The parental right shall be terminated when the child acquires full business capability, when it is adopted or when the child or the parent dies.

If a child is adopted by a step-father or a step-mother, the parental right shall not cease for the parent who is the spouse of the adopter.

## Article 96

The legally valid court decision on restriction, deprivation, restitution, prolonging and termination of the prolonged parental right shall be entered into the Register of Births, and if such a person owns immovable property into the register of immovables as well.

## **II FAMILY STATUS OF THE CHILD**

### **1. Determining of Paternity and Maternity**

## Article 97

The husband of the child's mother shall be considered the father of the child born during marriage, or within 300 days from termination of marriage.

If a child was born in a later marriage of the mother, the husband of the mother from that marriage shall be considered the father of the child, provided that 300 days did not elapse from termination of the previous marriage of the mother until birth of the child.

If the husband of the mother from a later marriage denies his paternity, the husband of the mother from the previous marriage shall be considered the father of the child if the child was born within 300 days from the termination of the previous marriage of the mother.

## Article 98

A child born in a common law marriage shall be considered born within marriage if its parents enter into a marriage with each other.

If parents of the child born in a common law marriage had an intention to enter into a marriage, and were prevented from doing it for reasons of death of one or both of them or by some marriage obstacle that arose after the child was conceived, in an

extrajudiciary procedure and upon a proposal of one of the parents or the child, the court shall proclaim that the child was not born in a marriage.

If the parents are not living or if a living parent is deprived of business capability or of the parental right, the procedure of the court for proclaiming that the child was born in a marriage shall be initiated by the custodial body until the child comes of age.

#### Article 99

The man who recognizes the child as his own or whose paternity has been determined by a court decision shall be considered the father of the child who was not born in the marriage or within the 300 days notice after termination of marriage.

#### Article 100

As soon as s/he learns about the birth of a child born in a common law marriage, and prior to its registration into the register of births, the Registrar is obliged to invite the mother of the child to give a statement on who she considers the father of her child. The mother can give this statement also without an invitation.

When s/he receives the statement of the mother on whom she considers the father of her child, the Registrar shall invite the identified person to give a statement on his paternity within 30 days directly before the Registrar or through a certified document. The invitation must be delivered in person to this person and in the manner so as to ensure secrecy.

If the invited person states that he is not the father of the child or if within 30 days he does not give a statement on paternity of the child, the Registrar shall inform thereon the mother of the child.

If the invited person gives a statement to the minutes in front of the Registrar or by means of a certified document that he is considered the father of the child, the Registrar shall enter him as the father of the child into the register of births and inform on the description the mother of the child.

#### Article 101

Paternity may be recognized before the Registrar, the custodial body, the court or some other state body authorized to compose official documents. These bodies are under an obligation to submit the certified minutes without delay to the Registrar authorized to enter the child into the birth register.

Paternity may be recognized in a will as well.

#### Article 102

A statement whereby paternity is acknowledged may be given also before the child is born. This statement has a legal force on condition the child is born alive.

#### Article 103

After the death of the child paternity may be determined only by a decision of the court upon a request of the persons who have legal interest in it.

#### Article 104

Paternity may be acknowledged a man able to form its own judgment, who has completed 16 years of life.

#### Article 105

Acknowledgment of paternity produces legal effect and is entered into the register of births only if the mother of the child consents to the acknowledgment.

The mother can give a statement on consent to the paternity in the manner prescribed in Article 101 herein for acknowledgment of paternity.

The Registrar is under an obligation to invite the mother of the child to give a statement on acknowledgment of paternity within 90 days, unless she had earlier identified the same person as the father of the child.

#### Article 106

If the child is older than 16, its consent is also needed along with the acknowledgment of paternity. This consent is given in the manner prescribed in Article 100 of this law.

If a child is younger than 16 or older than 16 but has been permanently disabled from forming its own opinion, and the mother is no longer living, or her place of residence is not known, or has been proclaimed dead, or has permanently been disabled for business, the statement on consent to the acknowledgment of paternity is given by the custodian of the child with the permission of the custodial body.

#### Article 107

If a mother of the child or the child older than 16 or the custodian of the child when its consent is needed do not consent to the acknowledgment of paternity, or do not give a statement thereon within 30 days after receiving the notice on acknowledgment, the person who acknowledged the child as his own may file a complaint to the court for determining that he is the father of the child.

A complaint may be filed within three years from the receipt of the notice on lack of consent of the mother or the child. If paternity of another person was determined in the meantime the complaint cannot be filed after expiry of the notice for contesting the paternity to that person.

#### Article 108

The statement on acknowledgment of paternity as well as statements of the mother and the child on consent to the acknowledgment of paternity cannot be revoked.

A person who gave a statement on acknowledgment of paternity, or a statement on consent to acknowledgment of paternity, may require annulment of the statement if it was caused by coercion or was given by means of a fraud or if the person was misled.

A complaint for annulment of the statement may be filed within six months from the day when coercion ceased or from the day when the fraud was noticed.

#### Article 109

A complaint for determining paternity of a child born out of a wedlock, apart from the person considering himself the father of the child, may be filed by the child and the child's mother.

A child born out of a wedlock may file a complaint for determining paternity until it completes 23 years of age. If the child is minor or is not capable for business, the complaint may be filed by the mother on its behalf. If the mother is not living, or has been deprived of business capability, or the parental right, as well as when the mother's place of residence is not known, the complaint may be filed by a custodian along with a consent of the custodial body.

A complaint for determining paternity may be filed by the mother in her own name while exercising the parental right.

#### Article 110

If a mother has identified a particular person as the father of her child and within one year from the birth of the child does not initiate a procedure for determining of paternity, the custodial body may by its official duty initiate that procedure on behalf of the child. In that case the child is given a special custodian for conducting the procedure.

The custodial body shall not initiate a procedure for determining paternity by its official duty, if for justified reasons the mother opposes this.

#### Article 111

Provisions of this law pertinent to determining of paternity shall apply duly also to determining of maternity, unless something else results due to the nature of the relationship.

#### Article 112

Determining of paternity for the child conceived by means of artificial insemination of the mother is not allowed.

## **2. Contesting Paternity and Maternity**

#### Article 113

A husband may deny paternity of the child who was born in the marriage or before expiry of 300 days from termination of marriage if he considers he is not the child's father.

The person as of paragraph 1 of this Article shall file the complaint for denying paternity within six months from the day when he learns the fact that he is not the father, but at latest until the child completes five years of life.

#### Article 114

A mother may contest the fact that the father of her child is the person who according to this law is considered its father.

The complaint for contesting paternity is filed within six months from the birth of the child.

#### Article 115

A child may contest the fact that its father is the person considered to be its father according to this law.

The complaint for contesting paternity may be filed until the child completes 23 years of life.

#### Article 116

The person who considers himself the father of the child born out of wedlock, may contest paternity to another person who acknowledged the child as his own, provided he requires his paternity to be determined by the same complaint.

A complaint may be filed within one year from registration of contested paternity into the birth register.

#### Article 117

The person who considers himself the father of the child born in a marriage may contest paternity to a person considered according to this law the father of the child, if he lived in a community with the mother of the child at the time when the child was conceived or if he established the community with her prior to the child's birth, on condition he requires by the same complaint that his paternity be determined.

Complaint for contesting paternity in the case as of paragraph 1 of this Article may be filed within one year from the birth of the child.

#### Article 118

A husband may contest paternity of the child born by his wife during marriage or until expiry of 300 days from the day when the marriage terminated, if the child was conceived without his consent by means of artificial insemination of the mother by the fertilizing cells of another man.



The person as of paragraph 1 of this Article may file a complaint for contesting paternity within six months from the moment when he learns that the child was conceived through artificial insemination by means of fertilizing cells of another man, and at latest until the child completes five years of age.

#### Article 119

After death of a child contesting of paternity is not allowed.

#### Article 120

Provisions of this law pertinent to contesting of paternity shall apply duly also to contesting of maternity, unless something else results due to the nature of the relationship.

### **ADOPTION**

#### **I THE NOTION OF ADOPTION**

#### Article 121

Adoption is a special form of family-legal protection of children without parents or without adequate parental care, by which parental or the relationship of kinship is created.

Adoption may be established as incomplete and complete.

#### Article 122

A child has the right to know that it has been adopted.

Adopters are under an obligation to acquaint the child with the fact that it has been adopted at latest up to its seventh year of life i.e. immediately after adoption if an older child has been adopted.

### **II CONDITIONS FOR ENTERING INTO ADOPTION**

#### **1. Common Provisions**

#### Article 123

Adoption may be entered into only if it is done to the best interest of the adoptee.

A blood relative in the first line, a brother **or** a sister cannot be adopted.

A custodian may not adopt his/her protégée until the custodial body acquires him/her of the custodial duty.

#### Article 124

A child cannot be adopted before three months from his/her birth expire.

A child born to minor parents cannot be adopted either. As an exception, this child can be adopted after expiry of one year from its birth, if there are no prospects of it being raised in the family of parents or other close relatives.

A child whose parents are not known may be adopted only after three months expire from his abandonment.

#### Article 125

Adoption between a foreign citizen as an adopter and a domestic citizen as an adoptee cannot be established.

As an exception, a foreign citizen may adopt a child if no adopter can be found among domestic citizens.

For adoption referred to in paragraph 2 of this Article, it is necessary to get the approval from the Ministry competent for the social welfare activities.

The approval for adoption from paragraph 3 of this Article is given on the basis of the opinion of expert Commission.

Expert Commission referred to in paragraph 4 of this Article is established by the Minister competent for social welfare.

The Commission is composed of 5 members who are the persons having professional experience in the work with minors.

#### Article 126

An adopter can only be a person who is between 30 - 50 years of age and who is older than the adoptee at least 18 years.

Adopters, who adopt the same child jointly, may adopt it also if only one of them meets the conditions as of paragraph 1 herein.

If there are particularly justified reasons an adopter may also be a person older than 50, but the age difference between the adopter and the adoptee must not be bigger than 50 years.

If adopters adopt sisters and brothers, or sisters and brothers who have the same mother or the same father, may enter adoption even if only one of them meets the conditions as of paragraph 1 of this Article in relation to only one child.

#### Article 127

The following persons cannot adopt a child:

- a. if they have been deprived of parental right or the parental right is restricted to it;
- b. if it is deprived of business capability,
- c. if it suffers from an illness which can have a detrimental effect on the adoptee;

- d. if it does not provide sufficient guarantee that it will perform parental care in a proper manner.

A person whose spouse is characterized by one of the circumstances as of paragraph 1 of this Article cannot be an adopter.

#### Article 128

Consent of both parents or of one of child's parents is needed for adoption, unless otherwise stipulated by this law.

Consent of parents must be explicit with regard to the type of adoption.

#### Article 129

Consent to adoption is not needed of adoptees' parent

- 1) who has been deprived of the parental right;
- 2) who does not live with the child, and has for three months already neglected the care of the child;
- 3) who has been deprived of business capability
- 4) whose permanent residence has been unknown for at least six months, and who does not care for the child during that period.

#### Article 130

For adoption of a child under custody consent of the custodian is needed, except if the consent is given by a minor parent.

If the custodian to the person is employed in the custodial body, the consent for adoption is given by the custodian for a special case.

### **2. Special Conditions for Full Adoption**

#### Article 131

A child up to its tenth year of life can be fully adopted.

#### Article 132

A child can be adopted completely by spouses jointly, and by the step-mother or the step-father of a child who is being adopted.

A child can be adopted completely by common law marriage partners who have been living in a common law marriage for a long time.

### **3. Special Conditions for Partial Adoption**

#### Article 133

A child can be adopted partially until it completes its 18<sup>th</sup> year of life.

For adoption of a child older than 10 and able to understand the meaning of adoption, its consent is needed.

#### Article 134

A child can be adopted partially by spouses jointly, by one spouse with the consent of the other spouse or by the step-mother or the step-father of the child being adopted.

A person who is not married and partners in a common law marriage living in a common law marriage can adopt partially a child for a shorter period if there are justified reasons for this.

### **III PROCEDURE FOR ENTERING INTO ADOPTION**

#### Article 135

Adoption is entered into by a decision of the custodial body.

#### Article 136

For conducting the procedure of entering into adoption the custodial body of the place of residence shall be competent or of the place of permanent residence of the child, if its place of residence cannot be determined.

A person who wishes to adopt a child shall submit a request to the custodial body through the Ministry competent for social welfare. Detailed conditions about the way how to submit the request and conduct the records shall be prescribed by the Ministry competent for social welfare activities.

The public shall be excluded from the procedure of entering into adoption.

#### Article 137

The custodial body, based on the enclosed or by official duty obtained proofs shall determine whether conditions have been met for entering into adoption as prescribed by this law.

The custodial body by its official duty obtains an opinion on suitability of the person wishing to adopt a child from the custodial body of its residence, the family counseling centre, other adequate institutions, as well as an elaborated opinion of adequate professionals (social worker, psychologist, medical doctor, pedagogue and other).

#### Article 138

In the procedure of entering into adoption a parent of the child, a spouse of the person intending to adopt the child and the child shall give their consent to adoption before a custodial body conducting the procedure or before the custodial body of their place of permanent residence, or place of residence if permanent residence cannot be determined.

If the consent was given before a body that is not conducting the procedure of entering into adoption, this body shall immediately submit certified minutes to the body conducting this procedure.

A child shall give consent to adoption without presence of parents and the person wishing to adopt it.

#### Article 139

A parent may give his/her consent to adoption also before initiation of the procedure of entering into adoption, but only when the child completes three years of life.

The custodial body shall acquaint the parent with the consequences of his/her consent and adoption prior to his giving of the consent to adoption.

The consent is given to the minutes, and a certified transcript of the minutes is handed to the parent.

A parent may withhold the consent to adoption within 30 days from the day when minutes as of paragraph 3 of this Article are signed.

A parent whose consent to adoption is not needed, as well as the parent who gave consent to the child being adopted by adopters not known to him/her, is not a party in the procedure.

#### Article 140

In the procedure of entering into adoption the custodial body shall warn the adopters of the obligation as of Article 122 paragraph 2 of this law.

In the procedure of entering into adoption the custodial body shall meet the parents of the child, the adopters and the child older than 10 with legal consequences of adoption.

#### Article 141

Prior to making a decision on entering into adoption, the custodial body may decide to place the child into the family of future adopters for a period of six months without compensation, unless when the adopter is a foreign citizen.

During the placement as of paragraph 1 of this Article the child shall be under the special supervision of the custodial body in order to determine whether the adoption is to his/her best interest.

#### Article 142

In the exposition of the decision on entering into adoption, the custodial body shall state: personal name, date and place of birth and citizenship of adopter, personal name of one parent, personal identification number and the citizenship of adopter, type of adoption and the new personal name of the adoptee.

Against the decision on entering into adoption, the party may file a complaint within eight days from the day when it receives the decision.

Adoption is entered into once the decision on entering into adoption becomes legally valid.

The custodial body is under an obligation to submit a legally valid decision on entering into adoption to the competent Registrar for the purpose of its being entered into the register of births.

The Registrar shall enter into the register of births data as of paragraph 1 of this Article.

#### Article 143

The custodial body shall keep documents of cases and minutes on adoption, as well as records and documents on the children adopted.

Data on adoption constitute an official secret.

A major adoptee, the adopter and the child's parent who gave consent to adoption shall have insight into documents of a case.

The custodial body shall allow insight into documents of a case to a minor adoptee if it determines that this is to his interest.

Detailed conditions on the way how to keep records and maintain documents, respectively the files of cases, shall be prescribed by the Ministry competent for social welfare.

### **IV RIGHTS AND DUTIES FROM FULL ADOPTION**

#### Article 144

Through full adoption an inseparable relationship of kinship equal to blood relationship is established between the adopters and their relatives on one side, and the adoptee and his descendants on the other.

The adopters are registered as parents of the adoptee into the register of births.

#### Article 145

Through full adoption mutual rights and duties of adoptees and his/her blood relatives cease to exist, except if the child is adopted by a step-mother or a step-father.

#### Article 146

Adopters shall by consent determine the name of the adoptee.

The adoptee shall obtain a joint surname of the adopters. If the adopters do not have a joint surname, the surname of the adoptee shall be determined by agreement.

If an agreement as of paragraphs 1 and 2 of this Article is not achieved, the custodial body shall make a decision on the name and surname of the adoptee.

#### Article 147

Contesting and determining of maternity and paternity is not allowed after entering into complete adoption.

## **V RIGHTS AND DUTIES PERTINENT TO FULL ADOPTION**

### **Article 148**

Through full adoption, rights and duties arise between the adopters on one side and the adoptee and his/her descendants on the other which, according to the law, exist between parents and children, unless otherwise stipulated by the law.

Partial adoption does not influence the rights and duties of the adoptee with regard to his/her parents and other relatives.

### **Article 149**

Adopters may determine the name of the adoptee.

The adoptee shall obtain the surname of its adopters except if an adopter decides that the adoptee should keep his/her surname or add the surname of adopters to his/her surname.

For change of name and surname consent of adoptee older than 10 is needed.

## **VI TERMINATION OF PARTIAL ADOPTION**

### **Article 150**

Partial adoption may be terminated by the custodial body by its official duty or upon a proposal of the adopter, if it determines that the justified interests of a minor adoptee require this.

### **Article 151**

The custodial body may make a decision on termination of incomplete adoption also upon an individual or joint request of adopter and an adoptee of age, if it determines there are justified reasons for this.

### **Article 152**

If a minor adoptee has not blood relations who are according to the law under an obligation to support him/her or who are not in a position to support him/her, the custodial body may put an obligation on the adopters to support the adoptee by means of a decision on termination of adoption.

If an adopter is not able to work and does not have sufficient means for living, the custodial body may oblige a major adoptee to support the adopter by a decision on termination, taking into account the reasons that led to termination of adoption.

Through a decision as of paragraphs 1 and 2 of this Article, support may be determined at most for a period of one year.

### **Article 153**

Adoption ceases when decision on termination of adoption becomes legally valid.

In the case of termination of adoption, the adoptee may retain the surname of the adopter.

The custodial body is under an obligation to submit to the competent Registrar the decision on termination of adoption within eight days from the day when it becomes legally valid, with a view of it being entered into the register of births.

## **VII TERMINATION OF ADOPTION**

### **Article 154**

Adoption terminates by annulment.

Adoption is null and void if when entering the adoption the conditions for its legal validity established in this law were not met.

Adoption to which consent was given under coercion or by a person who was misled is null and void.

### **Article 155**

Adopters, the adoptee, the parent or the custodian of the adoptee and other persons having legal interest in adoption being annulled, as well as the state prosecutor shall have the right to file a complaint against adoption.

The person who gave a statement on consent to adoption under coercion or misled may file a complaint for annulment of adoption within one year from the day when coercion ceased to exist or after the misleading was noticed.

### **Article 156**

The court shall deliver the decision on annulment of adoption to the custodial body before which the adoption was established.

Based on the decision as of paragraph 1 herein the custodial body shall make a decision on annulment of the decision pertinent to the new registration of the adoptee.

Based on the decision as of paragraph 2 of this Article the first registration of adoptee's birth becomes legally valid.

## **PART FIVE FAMILY PLACEMENT (FOSTERING)**

### **I NOTION OF FOSTERING**

#### **Article 157**

A child without parental care and a child whose development was disturbed by circumstances in its own family may be placed with another family for watching, care and education, in the manner and on conditions established by this law.

An educationally careless child may be placed and educated in another family, as well as a child with disturbances in physical and mental development.



#### Article 158

The custodial body shall make a decision on placement into another family, if this is to the best interest of the child.

### **II CONDITIONS AND PROCEDURE**

#### Article 159

A child may be placed into a family that consents to receive it and which provides sufficient guarantees that the child will be cared for, watched and educated.

The family into which a minor protégé is placed has to have secured housing and material conditions.

If a child is placed into a family which has both spouses, their consent is needed for the placement.

#### Article 160

When placing the child into another family, the custodial body has an obligation to pay special attention to the national, religious and cultural origin of the child, its age, health and social status, as well as to the distance from the place of its previous residence, i.e. residence of its parents and the school it is attending.

#### Article 161

A child disturbed in its physical and mental development, or educationally careless child may be placed into another family only if it has been determined that members of that family, according to their characteristics are able to watch, take care of and educate such a child.

#### Article 162

Spouses with which the child is given for care into family placement or a person with which the child is given for care into family placement (hereinafter: provider) may be every person of age and with business capacity who, with regard to the characteristics of personality and harmony of family relationships, is in a position to provide a balanced development to the child as well as assistance to return to its own family.

The custodial body is under an obligation to provide adequate preparation for upbringing and education of the child placed into a family, and for a child with special needs to provide preparation according to a special programme with regard to the needs of the child.

Programme of preparation referred to in paragraph 2 of this Article shall be prescribed by public administration authority competent for social welfare.

#### Article 163

As a rule, brother and sisters are placed into the same family.

#### Article 164

Family placement of a child who has both or one parent is determined with a previously obtained consent of the parent.

If a child is under custody, his custodian shall give the consent.

Prior to determining the family placement, the custodial body is under an obligation to make it possible to the child to express freely its opinion with regard to the family placement and to assess the opinion in accordance with the age and the maturity of the child.

#### Article 165

If a child without parental care is found in family placement, the custodial body shall set the provider as the custodian.

#### Article 166

A child shall not be placed into a family:

- 1) in which some of its members has been deprived of the parental right or convicted for a criminal act against marriage and family,
- 2) in which one of the spouses does not meet the conditions for a custodian,
- 3) in which due to an illness of one of the household members its health would be threatened,
- 4) in which relationships in the family have been disturbed, and
- 5) which has a relationship of intolerance with its parents.

#### Article 167

A maximum of three children may be placed into another family or two children whose development is disturbed, while the total number of children living in the provider's family shall not exceed four children.

As an exception, when this is in the interest of children, more children can be placed into the family of the provider, in the event when they are placed into the family of a relative or when brothers and sisters are being placed.

#### Article 168

The family into which a minor protégé has been placed is under an obligation to provide information on all the circumstances important for the child's development, and especially about its health, education and schooling.

#### Article 169

The family into which a minor child is placed shall have the right to compensation.

Costs of placing the child into another family are determined by provisions on social protection.

The amount and manner of payment of compensation are determined by an agreement.

#### Article 170

Decision on placing the child into a family is made by the custodial body at whose territory the child's place of residence or of permanent residence is.

Based on the decision as of paragraph 1 herein, the custodial body shall conclude a written agreement with the provider, which should include:

- 1) name and surname of the provider into whose family the child is being placed and his/her address
- 2) the beginning and, if needed, the duration of placement,
- 3) obligations of the provider and of the family into which the child is being placed with regard to his/her schooling, education and in general preparation for independent life, as well as with regard to food and accommodation,
- 4) amount and manner in which compensation for accommodation is paid,
- 5) time and manner of informing on how protection is performed, and
- 6) notice of dismissal.

#### Article 171

Parents of the child placed into another family have the right and the duty to represent the child, to manage and dispose of the child's property, to maintain the child, to maintain personal relationships with the child and to make decisions on issues influencing significantly the child's life jointly and in agreement with the provider, except when they have been deprived of the parental right or of business capacity or if parents in question do not take care of the child or they take care of it in an inadequate manner.

#### Article 172

If a child is placed in a family which does not live in the territory of the municipality whose custodial body have concluded an agreement on child's placement in family, one copy of such agreement shall be submitted to the custodial body in the territory where the family in which the child is placed lives.

#### Article 173

Custodial body shall point out to the family where child is placed to the failures regarding watching, care and upbringing of minors; propose the measures to remove those failures and advice about all issues, respectively undertake measures being authorized for under the Law.

#### Article 174

The custodial body that concluded an agreement on placement shall keep record of children who have been placed into other families. These records shall include all the important details on the child who has been placed.

#### Article 175

Based on the decision by custodial body, a child may be placed in a social and child protection institution.

The institution referred to in paragraph 1 of this Article shall take care of upbringing, education and health status of the child being placed in such institution, while the custodian shall carry out other duties predicted by this Law and take general care for upbringing and education of the child.

### **III TERMINATION OF CHILD'S PLACEMENT IN FAMILY**

#### Article 176

Placement of a child into another family ceases:

- 1) by agreement of contracting parties,
- 2) by expiry of the contractual notice,
- 3) by revocation of a contract,
- 4) by termination of a contract,
- 5) by coming of age and
- 6) adoption of a child.

Revocation of a contract shall be given in writing.

Custodial body may extend an agreement on placement of the child in other family if the child is on regular education, but no longer than five years after child's coming of age.

#### Article 177

The custodial body shall terminate an agreement on placement of a child into another family if any of the cases established in Article 166 of this law arises.

### **PART SIX**

### **CUSTODY**

#### Article 178

A child without parental care or an adult who has no capacity to take care for him/herself, his/her rights, interests and obligations shall be granted custody.

A person provided with custodian protection in terms of this Law shall be considered as protégé.

#### Article 179

The purpose of custody over a child shall be that, through providing for, upbringing and education, the personality of a child is developed as fully as possible and that a child is capable for independent life and work.

The purpose of custody over other person, who has no capacity or who is not in a position to care for his/her rights and interests, shall be to protect his/her rights and interests.

The purpose of custody shall also be securing property rights and other rights and interests of the protégées and other persons who are provided with protection according to the provisions of this Law.

#### Article 180

The decision on granting custody shall be made by a custodial body  
Decision on granting custody shall obligatorily contain a plan of custody.

In the decision on granting custody, the custodial body shall appoint a guardian and decide on accommodation of the protégée.

If the protégée has any property, the permanent commission of the custodial body shall make the inventory and assessment of the value of the property of the protégée.

### I CUSTODIAL BODY

#### Article 181

The activities of custody shall be performed by the custodial body through an appointed guardian or directly through an expert professional.

#### Article 182

Custodial body shall undertake necessary measures to achieve the purpose of custody in the best possible manner.

In preparation, making and enforcement of decisions and other specific measures the Custodial body shall use all the forms of social protection, methods of social and other professional work as well as services of social, health, educational and other organizations and institutions.

#### Article 183

Custodial body may establish an advisory expert body composed of the appropriate experts (doctors of medicine, pedagogues, lawyers, psychologists, social workers etc.) with the task to consider expert issues and to give proposals for undertaking specific custody measures.

#### Article 184

When granting custody and appointing a guardian, custodial body shall be obliged timely to undertake all the measures aimed at proper accomplishing of the tasks of custody in terms of personality and property of protégée.

#### Article 185

Custodial body shall continually monitor and examine the conditions of life of protégées, particularly minors and it shall control their accommodation, upbringing, health condition, process of qualifying for independent life, social environment in which they live, social relationships that they have and how their property is managed, as well as how their rights and interests are protected.

#### Article 186

Custodial body which passed the decision on granting custody of a person whose property is at the territory of another municipality may entrust custodial body of the municipality the property is located in with the activities of custody of the property of that person.

Custodial body entrusted with the custody of property of the person, who is granted custody and who is referred to in the paragraph 1 of this Article, shall determine a special guardian for that property. The custodial body which passed the decision on granting the custody for the person shall continue to make decisions regarding the property.

## II GUARDIAN

#### Article 187

Custodial body shall appoint a guardian for a protégée, if the interests of the protégée and the circumstances of the case do not require that the custodial body performs the duties of the guardian directly.

A guardian shall be a person who has personal characteristics and abilities necessary for performing the duties of a guardian, and who agrees in advance to be a guardian.

If it is in the interest of the protégée and if the guardian agrees, the same person may be appointed as a guardian of several protégées.

#### Article 188

When appointing a guardian, custodial body shall carefully analyze the circumstances of the persons who are granted custody and it shall appoint a person who, having these circumstances in mind, shall be in a position to perform the duty of a guardian in the best possible manner.

#### Article 189

When appointing a guardian, custodial body shall also take into consideration wishes of the protégée, if the protégée is able to express them, as well as the wishes of close relatives of the protégée.

The first choice for a guardian shall be a spouse or a relative of the protégée, if that is in the interest of the protégée.

#### Article 190

As for a protégée who is placed in a institution for education and upbringing or a health, social or any other institution, custodial body shall appoint a guardian for performing the duties of custody which are performed by the institution within its field of activities.

#### Article 191

Custodial body may, by a decision, limit the powers of a guardian and decide to perform certain activities of a guardian directly.

If the custodial body performs directly duties of the guardian or certain activities of a guardian, the custodial body may entrust other expert persons with certain activities to be performed on behalf of the custodial body and under its supervision.

#### Article 192

In the decision on appointing a guardian the custodial body shall determine his/her duties and the scope of his/her powers.

Before passing the decision referred to in the paragraph 1 of this Article custodial body shall inform the guardian about the importance of custody, about his rights and duties and about all the other important data necessary for performing the duty of a guardian.

#### Article 193

If a protégée owns immovable property, custodial body shall inform the body competent for keeping the register on immovables about granting custody, or about the cessation of the custody.

#### Article 194

Guardian shall be obliged to care for the protégée's personality, rights, duties and interests in an indulgent and conscientious manner, as well to manage the protégée's property conscientiously.

#### Article 195

Guardian shall be obliged to undertake, with the support of the custodial body, all the necessary measures to secure funds for enforcing the measures pronounced by the custodial body in the interest of the protégée.

## Article 196

Expenditures for implementing certain measures which are undertaken in the interest of the protégée shall be covered by:

1. incomes of the protégée;
2. funds obtained by the persons who are obliged to support the protégée;
3. property of the protégée;
4. funds obtained for the protégée on the basis of social protection and
5. other sources.

## Article 197

Guardian shall not be:

1. a person deprived of parental rights;
2. a person who lost business capacity;
3. a person whose interests are in conflict with the interests of the protégée; and
4. a person who cannot be expected to perform the duties of a guardian in a proper manner, due to his/her earlier or current behavior and personal characteristics and relations with the protégée and his/her parents and other relatives.

## Article 198

If a protégée has property, custodial body shall pass the decision to make an inventory of the property, to assess the property and to give the property to be managed by the guardian.

Commission appointed by the custodial body shall make the inventory and assessment of the property of the protégée.

When the inventory and assessment of the property are made, the guardian shall obligatorily be present, as well as the protégée, if he/she is able to understand the situation, and persons who for the protégée hold the property of which the inventory is made.

## Article 199

The inventory of the property of the protégée shall be made and, through the accurate inventory, the property shall be identified at the moment of putting it under custody.

The property must be exactly labeled in the inventory and the approximate assessment of the value must be given at the rates in the open market.

The inventory of the property with the assessment of the value shall be made in two copies, one of which shall be submitted to the custodial body and another to the guardian.



## Article 200

Custodial body, which initiated the procedure for granting custody of a person, may make an inventory and assessment of the property and undertake the necessary measures to protect the property before the decision on granting the custody of such a person is made.

## Article 201

Guardian may do the following things only with the approval of the custodial body:

- 1) terminate education of the protégée or change the type of his/her school;
- 2) decide on choice and type of vocation of the protégée;
- 3) undertake other important measures regarding the personality of the protégée;
- 4) alienate or burden the immovable property of the protégée;
- 5) to alienate movable items of large or special personal value from the property of the protégée or to manage property rights of high value;
- 6) to make a statement of relinquishment of inheritance and legacy and revocation of a gift;
- 7) to take other measures determined by the law.

In the procedure of giving approval to the guardian related to governance and management of the property i.e. the rights of the protégée, custodial body shall determine the purpose of the funds obtained and it shall perform the supervision of the use of the funds.

## Article 202

Without the approval of the custodial body, guardian may alienate fruit, small stock, items intended for sale, perishable items and other items, if that is done within the regular operations and management of the property of the protégée.

The monetary means obtained by selling the items from the paragraph 1 of this Article may be obtained only for the needs of the protégée.

## Article 203

Without the prior approval of the custodial body a guardian may not undertake any activity or work which would go beyond the framework of regular operations and management of the property of the protégée.

Guardian may not give gifts or dispose of the property of the protégée in any other manner without compensation and he/she may not put on the protégée the obligation of a guarantor.

## Article 204

Custodial body shall be obliged to provide support to the guardian in performing the activities that the guardian cannot perform him/herself, in particular in drawing up briefs for representation at the court or other bodies etc.

#### Article 205

Guardian shall represent his/her protégée.

Custodial body shall represent the protégée when it is performing the duty of a guardian directly or if the powers of the guardian are limited and the custodial body decides to represent the protégée itself.

#### Article 206

In legal issues in which the other party is a spouse or close relatives of the guardian, a protégée shall be represented by custodial body or other guardian appointed by him.

#### Article 207

Guardian may conclude a legal deal with protégée that he/she is a guardian of, only if the custodial body finds that it is required by the interests of the protégée and if the custodial body gives a prior approval for it.

#### Article 208

Guardian shall independently and in the name and in the behalf of the protégée perform the activities that fall within the scope of regular operation and management of the protégée's property.

When undertaking activities referred to in paragraph 1 of this Article, the guardian shall, whenever possible, consult the protégée, if he/she is able to understand the circumstances.

#### Article 209

Guardian is obliged to submit to the custodial body the report on his/her work. He/shall do that every year and also when the custodial body asks for that.

In case of direct custody, the employee of the custodial body or another person who, in the name of the custodial body performs the activities of the custody shall be obliged to submit the report.

The report shall be submitted in a written form or in an oral form with the minutes made about it, and it should contain information about protégée, his/her health, maintenance and qualifying him/her for independent life, data about management and dispose of the protégée's property, final status of his/her property, as well as information being important for the personality of the protégée.

In addition to the data referred to in paragraph 3 of this Article, the report for minor protégée should also contain information about his/her upbringing and education.

#### Article 210

A guardian of several protégées who have a joint property may submit a joint report.

A guardian may give the report to the custodial body in an oral form with the minutes made of it.

#### Article 211

Custodial body is obliged to consider the report on work of the guardian, and, if needed, to undertake the appropriate measures for protection of the interests of the protégée.

Apart from the control of work of a guardian through considering the report on his/her work, custodial body shall make direct control of the guardian's work, from time to time

#### Article 212

Guardian shall be entitled to reimbursement of all justifiable costs occurred in performing his/her duties.

Custodial body may determine an award for the guardian, if he/she has made specific efforts in performing his/her duties.

The award and reimbursement of costs shall be approved by the custodial body and they shall be taken from the incomes of the protégée. If maintenance of the protégée would be jeopardized in that way, they shall be taken from the funds for children and social protection.

#### Article 213

A guardian shall be obliged to compensate to his/her protégée for the damage he/she made by improper and unconscientiously or negligent performing of his/her duties.

Custodial body shall determine the amount of the damage and shall invite the guardian to make amends within a certain deadline. If the guardian does not compensate for the damage within the determined deadline, the Custodial body shall directly compensate to the protégée for the damage.

Custodial body may request at the court that the guardian compensate the paid amount from the paragraph 2 of this Article.

In order to secure rights of the protégée, violated by the improper work of the guardian, custodial body shall be obliged to undertake towards the guardian the other measures provided for in the law.

#### Article 214

If a guardian dies or arbitrarily stops performing the duties of a guardian or if such circumstances appear which prevent the guardian to perform his/her duties, custodial body shall be obliged without any delay to undertake measures for protection of the interests of the protégée until a new guardian is appointed.

#### Article 215

Custodial body shall remove a guardian from his/her duties if the custodial body finds that in performing his/her duties the guardian is negligent, that he/she abuses his/her

powers and that by his/her activities he/she jeopardizes the interests of the protégée, or if it considers that it would be more useful for the protégée to appoint another guardian.

Custodial body shall remove a guardian from his duties when the guardian asks for it. It shall be done at latest within three months from the day of submitting such a request. Custodial body must at the same time undertake all the necessary measures for protection of the interests of the protégée.

The guardian whose duties have ceased shall be obliged to submit a report about his/her work to the custodial body within the deadline determined by the custodial body.

#### Article 216

In case of cessation of the need for custody, custodial body shall invite the guardian to submit a report about his/her work within a determined deadline, as well as a report about the situation of the protégée's property. The guardian shall also be requested to hand over all the property to be managed by the protégée, i.e. parent or adopter.

Handing over of the property shall be done in the presence of the guardian, protégée i.e. parent or adopter and a representative of the custodial body.

#### Article 217

In case of death of the protégée, the guardian shall hand over the duty of the guardian, with the minutes made in the presence of the custodial body in the manner and in the procedure determined by the custodial body.

#### Article 218

Custodial body shall be obliged to undertake the necessary measures towards the guardian for the protection of rights and interests of the protégée which arise from the improper work of the guardian, as well as measures for protection of the rights and interests of other persons which arise from the custody relations.

### III JURISDICTION AND PROCEDURE

#### Article 219

Territorial jurisdiction of a custodial body shall be determined according to the place of permanent residence and, if this is not possible, the territorial jurisdiction shall be determined according to the temporary residence of the person who is to be granted custody.

Permanent i.e. temporary residence shall be determined at the time when conditions have been met for granting custody for a person.

#### Article 220

If the permanent residence of a protégée is changed, the custodial body, which shall decide whether to change the measures imposed by previous custodial body or not, shall be changed as well.

In case of conflict of jurisdictions related to the change of permanent residence of the protégée, the custodial body responsible for the protégée before the procedure related to the conflict of jurisdictions is initiated, shall be obliged to perform all the activities of caring of the protégée until the final decision is made in the aforementioned procedure.

#### Article 221

The jurisdiction of the custodial body shall not change during the time in which the protégée is temporarily out of the territory of that body for the purposes of education, professional qualification, rehabilitation, social and health protection or due to similar justified reasons.

#### Article 222

Procedure for granting custody and for cessation of custody shall be initiated and conducted *ex officio* by the custodial body.

#### Article 223

The following persons shall be obliged to inform custodial body about the need to grant custody for a person, or to apply a form of protection, which is provided by the custodial body, as well as to inform the custodial body about the need to have cessation of the custody:

- 1) registrar, state authorities, local administration bodies, non-governmental organisations, health, social, educational-upbringing and other institutions, when in performing their duties they find out for such a case,
- 2) relatives, household members and other persons who have an insight in the circumstances of such a person.

#### Article 224

Procedure for granting custody is an urgent procedure.

When custodial body finds out that a person should be granted custody or that a form of protection provided by the custodial body should be applied in relation to that person, the custodial body shall be obliged to issue a temporary conclusion, within the next 24 hours, on placement of a protégée, and to immediately undertake measures necessary for protection of personality, property, rights and interests of such a person and it shall initiate a procedure to grant custody for such a person, i.e. to apply a form of protection in relation to him/her.

The custodial body shall be obliged to make a decision on granting custody, immediately, and no later than 30 days as of the day when it was informed about the need for custody over the child, i.e. as of the day when court decision on deprivation of business capability of an adult was received at the custodial body.

#### Article 225

When deciding on which form of protection to apply in relation to a protégée, custodial body shall primarily be governed by the interests of the protégée, application of modern professional methods of social work and available financial possibilities.

#### Article 226

Custodial body may change the decisions passed, in the manner regulated by the law, when it is required by the interests of the protégée and if by doing so the rights and interests of third persons are not violated.

#### Article 227

An objection related to the work of a guardian and custodial body may be filed by the protégée who is capable of doing it, by the judicial and other bodies, institutions, nongovernmental organizations and citizens.

Custodial body shall consider the objections submitted, and if the custodial body finds that they are grounded it shall determine the measures to be undertaken.

If the objection referred to in paragraph 1 of this Article is filed to second instance body, and this body finds that the objection is grounded, it shall give the instructions to the custodial body how to proceed. After receiving the instructions, custodial body shall decide what measures to undertake and it shall inform the second-instance body about it.

#### Article 228

Enactment on granting custody for a person and the enactment on cessation of the custody shall be delivered to the registrar within 15 days after coming into effect.

#### Article 229

Custodial body shall be obliged to keep records and documentation about the persons granted custody, about the measures undertaken and about the property of the protégées.

Instruction on keeping the records and documentation from the paragraph 1 of this article shall be prescribed by the Ministry competent for social affairs.

### IV. CUSTODY OVER A MINOR

#### Article 230

Custody shall be granted for a minor whose parents:

1. died, disappeared, are unknown or don't have a known place of residence for at least a month,
2. are deprived of parental rights,
3. lost business capacities,

4. abused or seriously neglected exercising of parental rights, and
5. are absent and are not in a position to care of the minor regularly, and they have not committed custody of the minor to the person for whom the custodial body has determined that he/she meets the conditions for being a guardian.

#### Article 231

Guardian of a minor person is obliged as a parent to care of the personality of the minor, and in particular of the health of the minor, his/her upbringing, education and qualifying for independent life and work.

#### Article 232

A minor protégée who has reached the age of 14 may enter into legal deals by him/herself, however, for the validity of the deals an approval of his/her guardian shall be required. As for the deals which, in terms of this law, may not be concluded by the guardian him/herself, the approval of the custodial body shall be required as well.

#### Article 233

A minor protégée who is employed may manage his/her earnings by him/herself, provided that he/she shall be obliged to contribute to his/her maintenance, upbringing and education.

#### Article 234

Custody over a minor protégée shall cease when the minor comes of age, enters into a marriage, is adopted or when he/she dies.

### V. CUSTODY OF A PERSONS DEPRIVED OF BUSINESS CAPACITIES

#### Article 235

A person of full age who, due to mental illness, mental retardation or due to any other cause, is not capable of caring him/herself of his/her rights and interest shall be fully deprived of business capacities.

A person of full age who by his/her actions jeopardizes his/her rights and interests or the rights and interests of other persons due to mental illness, mental retardation, excessive use of alcohol or narcotics, senility or due to other similar reasons shall be partly deprived of business capacities.

Decision on deprivation of the business capacity shall be made by the competent court in non-litigation procedure.

#### Article 236

Persons who have been partially or fully deprived of their business capacities by a court decision shall be granted custody by the custodial body.

The court shall be obliged immediately to deliver to the custodial body the final decision on deprivation of business capacities or on limiting business capacities. Within 30 days from receiving the decision custodial body shall grant custody for the concerned person deprived of business capacities.

#### Article 237

Guardian of a person fully deprived of business capacities or with a limited business capacities shall be obliged to care particularly of his/her personality, accommodation, health and causes due to which the person was deprived of business capacities and to put efforts in eliminating these causes.

#### Article 238

If the guardian determines that the circumstances have appeared which indicate that there is the need for the person deprived of business capacities to regain business capacities, or that the earlier decision should be changed, the guardian shall be obliged without any delay to inform the custodial body about it.

#### Article 239

Guardian of a person fully deprived of business capacities shall have the duties and rights of a guardian of a minor under the age of 14.

Guardian of a person partly deprived of business capacities shall have the duties and rights of a guardian of a minor who has reached the age of 14, but the custodial body may, when necessary, determine the activities which the person partly deprived of business capacities can undertake by him/herself without the approval of the guardian.

#### Article 240

The court that the procedure for depriving a person of business capacities is initiated with shall be obliged immediately to inform the competent custodial body about it. The Custodial body shall, if necessary, appoint a temporary guardian for the person.

#### Article 241

A temporary guardian shall have the same rights and duties as the guardian of a minor who has reached the age of 14.

Custodial body may, if necessary, extend the rights and duties of a temporary guardian to the duties and rights of the guardian of a minor who is under the age of 14.

Duties of a temporary guardian shall cease when a permanent guardian is appointed or when the court decides that the decision on deprivation of business capacities shall not become final.



#### Article 242

Custody over persons deprived of business capacities shall cease when by decision of the court they regain business capacities or in case of death of such a person.

#### Article 243

The provisions of this law that apply to custody of minors shall apply to the custody of persons deprived of business capacities and to custody of persons with a temporary guardian appointed, in relation to whom the procedure for deprivation of business capacities is initiated, if a special law does not regulate otherwise or if it does not arise from the nature of the circumstances of custody of these persons.

### VI CUSTODY IN SPECIAL CASES

#### Article 244

Custodial body shall appoint a guardian for certain activities or a certain kind of activities for an absent person whose temporary or permanent residence is not known and who does not have a representative, for an unknown owner of the property when it is necessary that somebody is managing the property, as well as in other cases when it is necessary for the protection of rights and interests of a person.

#### Article 245

A court or another body at which the procedure is conducted may, under the conditions determined by the law, appoint a guardian for the persons referred to in the Article 244 of this Law. The court or another body shall be obliged without any delay to inform the custodial body about that.

In relation to the guardian appointed in compliance with the paragraph 1 of this Article, custodial body shall have all the powers it has in relation to the guardian appointed by the custodial body.

#### Article 246

For a minor whose parents exercise their parental rights in relation to him/her a special guardian shall be appointed for the purposes of a dispute conducted between him/her and his/her parents, for the purposes of making certain business arrangements between them, as well as in other cases when their interests are conflicting.

#### Article 247

A person who is granted custody shall be appointed a special guardian for conducting a dispute between him/her and his/her regular guardian, for making business arrangements between them, as well as in other cases when their interests are conflicting.

#### Article 248

When a dispute is to be conducted or a legal arrangement made between children in relation to whom the same person exercises parental rights, or between minors who have the same person as a guardian and where the interests of children i.e. protégées are conflicting, each of them shall be appointed a special guardian for the purposes of the dispute i.e. making the arrangements.

#### Article 249

When parents, adopters, guardians, judicial and other state bodies in performing their duties find out about the cases from the Articles 246, 247 and 248 hereof, they shall be obliged to report the cases to the custodial body.

#### Article 250

If international contracts do not specify otherwise, custodial body in the cases provided for by this law, shall undertake necessary measures for protection of personality, rights and interests of a foreign citizen, until the custodial body of the country he/she is a citizen of makes the necessary decision and undertakes certain measures related to him/her.

#### Article 251

At the request of a person fully capable to conduct his/her business affairs custodial body may appoint a guardian for that person for performing certain activities if the person is not capable of caring of his/her rights and interests him/herself due to health or other justified reasons.

#### Article 252

When appointing the guardians for special cases, custodial body shall define duties and rights of the guardians, having in mind the circumstances of every individual case.

Provisions of this law shall be applied to the custody in special cases, if this law does not determine otherwise or if otherwise does not arise from the nature of the matter.

### **PART SEVEN**

#### ALIMONY

#### Article 253

Mutual support of family members and other relatives shall be their obligation and right.

In cases in which mutual support of family members or other relatives cannot be exercised fully or partly, the state shall provide, under the conditions determined by the law, the means necessary for the support of family members who don't have the support secured.

Waiving of the right to maintenance shall not have legal effect.

## I SUPPORT OF CHILDREN, PARENTS AND OTHER RELATIVES

### Article 254

Parents shall be obliged to provide support for their minor children.

If a child has not completed education before coming of age, parents shall be obliged to provide support for the child according to their possibilities until the expiry of the period required for completing the education in the appropriate school, i.e. faculty, and if the period of education is extended due to justified reasons, they shall be obliged to provide support for their children up to the age of 26.

### Article 255

If a child who is of age due to illness or mental deficiency is not capable to work, has no means for living or cannot create the means from the existing property, the parents shall be obliged to provide support for the child for the time in which such a state of affairs exists.

### Article 256

A parent deprived of parental rights shall not be released from the duty to provide support for his/her children.

### Article 257

Children shall be obliged to support their parents who don't have capacity to work, and who do not have sufficient means for living or who cannot create such means from the existing property.

Exceptionally, the court may reject the request for support when support is requested by a person who was deprived of parental rights and who did not provide support for the child, although he/she had the possibility to do so, or if the court, considering all the circumstances of the case, finds that it would be an obvious injustice towards the child.

### Article 258

Stepfather and stepmother shall be obliged to provide support for their minor stepchildren, if the children do not have relatives, who, according to this law, are obliged to provide support for them, or if the relatives do not have the means to do so.

Obligation of stepfather and stepmother to provide support for their minor stepchildren shall exist also after the death of the parent of the children that the stepfather

i.e. stepmother was married to, if up to the moment of death of the parent, there was a family union between the stepfather, i.e. stepmother and the stepchildren.

If the marriage between parent and stepfather i.e. stepmother of the child was annulled or divorced, the obligation of the stepfather i.e. stepmother to provide support for the stepchildren shall cease.

#### Article 259

Stepchildren shall be obliged to provide support for their stepfather and stepmother if the stepfather i.e. stepmother were providing support for them and cared for them for a longer period of time. If the stepfather i.e. stepmother have children, the obligation shall be shared with the children.

#### Article 260

Brothers and sisters shall be obliged to provide support for their minor brothers and sisters who do not have means for living when their parents are not alive, or have no possibility to provide support for them.

#### Article 261

The obligation of providing support exists also among other blood relatives in the line of ascent.

The blood relatives shall exercise the right to support in the order of inheritance according to the law.

If several persons share the obligation to provide support, the obligation of providing the support shall be shared depending on their circumstances.

## II. SPOUSAL SUPPORT (ALIMONY)

#### Article 262

A spouse who does not have sufficient means for living, who does not have the capacity to work or who cannot get employment is entitled to alimony provided by his/her spouse, in proportion to his/her financial circumstances.

Taking into consideration all the circumstances of the case, the court may reject a request for alimony, if the alimony is requested by a spouse who, without a serious cause given by the other spouse, behaved rudely or disorderly in the marital community or if he/she deserted his/her spouse without a justified cause, or if his/her request would be an obvious injustice towards his/her spouse.

#### Article 263

Under the conditions from the Article 262 of this Law, the financially unsecured spouse is entitled to request that in the judgment by which the marriage is divorced

he/she is awarded alimony which shall become the burden on the other spouse, in proportion to his/her financial circumstances.

Exceptionally, the spouse who in the divorce proceedings did not request to be awarded alimony as a burden on the other spouse, may, due to justified reasons, submit such a request in a separate litigation, within a year after the marriage is divorced, but only if the prerequisites for alimony have occurred before the divorce of the marriage and lasted continuously until the closure of the main hearing in the proceedings for maintenance, or if in this term incapacity for work occurred as a consequence of a bodily injury or damaged health from the time before the divorce of the marriage.

If in the case of divorce of marriage spouses agreed about the alimony, or if one spouse without an explicit agreement participated in the alimony for the other spouse by paying certain amounts of money, by leaving his/her property to be used by the other spouse or in some other manner, the deadline from the paragraph 2 of this Article for submitting the request for alimony shall start from the day on which the last contribution for the purposes of the alimony was given, i.e. from the day on which the spouse was given his/her property back.

#### Article 264

If the community of spouses ceased to exist permanently and if the spouses for a large number of years were committed to provide means for alimony completely independently, and if such circumstances existed up to the divorce of the marriage, the court may, considering all the circumstances of the case, reject the request to award alimony to the benefit of such a spouse.

#### Article 265

Court may decide that the obligation to provide alimony shall last for a limited period of time if the person requesting alimony is in the possibility to provide means for living in the foreseeable future.

In case that the marriage lasted for a short time, the court may, considering all the circumstances, decide that the obligation of alimony shall last for a limited period of time, or reject the request for alimony, regardless of the possibilities of the requestor to provide other means for living in the foreseeable future, if the person requesting alimony is not bringing up a minor child. The court shall particularly take into consideration whether the financial circumstances of the spouse changed when entering into the marriage.

In justified cases, the court may extend the obligation of providing alimony.

The action for extension of the obligation to provide alimony may be submitted only before the expiry of the period for which the alimony was awarded.

#### Article 266

The right of a divorced spouse to alimony shall cease when the conditions of the Article 262 paragraph 1 hereof cease to exist, when the period for which the alimony was awarded expires, when a divorced spouse exercising the right to maintenance enters into

a new marriage, into a common-law marriage, or if the court, analyzing all the circumstances, finds that a divorced spouse has become unworthy of exercising the right.

The spouse whose right to alimony ceased once may not exercise the right to alimony from the same spouse again.

#### Article 267

In case of annulment of a marriage, the spouse, who at the time of entering into marriage did not know of the cause of the nullity of the marriage, may request that he/she is awarded alimony which shall become the burden on the other spouse, under the conditions under which the divorced spouse may exercise the right to alimony.

### III SUPPORT OF A PARTNER FROM A COMMON-LAW MARRIAGE

#### Article 268

If a common-law marriage of a woman and a man ceases to exist, each of them, under the conditions referred to in the Article 262, paragraph 1 hereof, is entitled to be provided alimony by the other partner if the common-law marriage lasted for a longer period of time.

The action for alimony may be submitted at latest within a year from the moment of cessation of the common-law marriage, but only under the conditions that the prerequisites for alimony occurred before the cessation of the common-law marriage and lasted continuously up to the closure of the main hearing in the litigation proceedings related to the alimony.

The court may reject a request for alimony, if it is requested by the partner from the common-law marriage who, without a serious cause given by the other partner, behaved rudely or disorderly in the common-law community or if he/she deserted his/her partner without a justified cause, or if his/her request would be an obvious injustice towards his/her partner.

#### Article 269

Court may decide that the obligation to provide alimony shall last for a limited period of time, particularly if the person requesting alimony is in the possibility to provide other means for living in the foreseeable future.

In justified cases the court may extend the obligation to provide alimony.

The action for extension of the obligation to provide alimony may be submitted only before the expiry of the period for which the alimony was awarded.

#### Article 270

The right of a partner from a common-law marriage to alimony shall cease when the conditions from the Article 262 paragraph 1 hereof cease to exist, when the period for which the alimony was awarded expires, when the partner exercising the right to alimony

enters into a marriage, into a new common-law marriage, or if the court, analyzing all the circumstances, finds that the partner has become unworthy of exercising the right.

## SUPPORT FOR A CHILD'S MOTHER

### Article 271

Regardless of the fact whether between the parents of the child born out of wedlock there was a common-law marriage or not, the father shall, under the conditions referred to in the Article 262, paragraph 1 of this Law, be obliged to participate in providing support for the mother of his child in proportion to his circumstances and in the period of three months before the childbirth and a year after the childbirth.

Provision of the paragraph 1 of this Article shall also apply in the case of a stillborn child or if the child dies after the birth, during the period of incapacity to work caused by the childbirth, but at longest for the period of a year from the day of childbirth.

The court may reject the request of the mother for support if accepting her request would be an obvious injustice towards the father.

## IV DETERMINING ALIMONY

### Article 272

Liabilities of the family members who are obliged to provide support shall be determined in proportion to their circumstances, and within the bounds of the needs of the requestor of support.

The total amount of the funds necessary for support referred to in the paragraph 1 of this Article may not be lower than the amount of the permanent allowance in money, which is according to the regulations on social protection given to persons with no income in the municipality which is the place of residence of the dependant.

### Article 273

When assessing the needs of a dependant the court shall take into account his/her financial standing, level of his capacity for work, possibility to find employment, health condition and other circumstances that the decision on determining the maintenance shall depend on.

When support is requested for a child, the court shall take into account the age of the child too, as well as the needs for his education.

When assessing the possibilities of the person obliged to provide support the court shall take into account all his/her incomes and real possibilities to make an earning, as well as his/her own needs and legal obligations of providing support.

### Article 274

In the dispute of parents about the support for their child, the court shall particularly take into account the activities and care of the parent who is committed

custody of the child. These activities shall by the court be considered to be his/her contribution to the support for the child.

#### Article 275

Custodial body shall, on behalf of a minor initiate and conduct the dispute regarding support, i.e. for increasing of the support, if the parent who is committed custody of the child is unjustifiably not exercising that right.

If a parent does not request for the enforcement of the decision on awarding the support, the Custodial body shall on behalf of the minor child submit to the court the proposal for enforcement of the decision, in compliance with the provisions of the Law on Executive Procedure.

#### Article 276

The court shall be obliged to deliver every decision to the competent custodial body.

#### Article 277

Custodial body shall be obliged to keep records of supported children and parents, persons obliged to provide support and to undertake measures for the parents to reach agreement about the support for the child out of the court, i.e. that the amount awarded as support is adjusted to the changed needs of the child and the changed possibilities of the parents.

#### Article 278

Custodial body may on behalf of an old and self-supporting person, at his/her proposal or at its own initiative, initiate and conduct a procedure for exercising his/her right to be provided support by his/her relatives, who according to this law shall be obliged to provide support for such a person. If such a person opposes that, the Custodial body shall not be authorized to initiate the procedure on his/her behalf.

#### Article 279

Support is, as a rule, awarded in form of money.

Support may also be awarded in a different manner if the person providing support and the dependant agree about it.

#### Article 280

At the request of the dependant, or the person obliged to provide support, the court may increase, reduce or revoke support awarded by an earlier decision of the court, if the circumstances on the basis of which the decision was made change after the decision is made.



#### Article 281

The court shall order the person obliged to provide support to pay the future amounts in the fixed determined monthly amounts of money.

If the person who is obliged to provide support has regular monthly incomes in money the court shall, at the request of the dependent, determine the future amounts of support as a percentage of the salary, pension or any other regular money income.

If the amount of support is determined as a percentage of regular monthly money incomes of the person obliged to provide maintenance (salary, compensation of the salary, pension, author's fee, etc), it, as a rule, may not be lower than 15% or higher than 50% of the regular monthly money incomes of the persons obliged to provide support.

If the person who is receiving the maintenance is a child, the amount of support should provide at least such a level of the standard of living for the child which is enjoyed by the parent of the person who is paying the support.

#### Article 282

If the parent, who on the basis of the court decision is obliged to pay certain amount for support of his/her child, does not fulfill his/her obligations regularly, custodial body shall, at the proposal of other parent or *ex officio*, undertake measures to provide temporary support for the child according to the regulations on social and children protection until the parent starts fulfilling his/her obligation.

#### Article 283

Physical or legal entity which bore the costs of support for a person may by an action request a compensation of the costs from the person who is according to this law obliged to provide support, if the costs incurred were necessary.

If several persons share the obligation to provide support, they shall jointly be responsible to the third person for the incurred costs of support, up to the amount of their financial circumstances.

In case of death of the person who was entitled to the permanent monetary support according to the regulations on social protection, the costs of this support may be covered by his/her estate, regardless of whether his/her inheritors are the persons who were legally obliged to support him/her or not.

#### Article 284

The right to alimony provided by a spouse or a partner in a common-law marriage shall be exercised sooner than the right to support provided by relatives.

If, at the same time, there are several persons in need of support, the right of a child to support shall be the priority.

### **PART EIGHT**

## PROPERTY RELATIONS

### 1. Property of spouses

#### Article 285

Spouses may have separate and joint property.

#### Article 286

Separate property shall consist of the property that a spouse obtained before entering into the marriage, as well as the property that the spouse obtained during the marriage by inheritance, gift or other forms of obtaining property free from encumbrances.

Every spouse shall independently manage and dispose of his/her separate property, if the spouses do not agree otherwise.

#### Article 287

If during the marital community there was a slight increase in the value of the separate property of one spouse, the other spouse shall have the right to claim in money the amount proportional to his/her contribution.

If during the marital community there was a slight increase in the value of the separate property of one spouse, the other spouse shall have the right to a share of the property which would be proportional to his/her contribution.

#### Article 288

Joint property consists of the property that spouses gained by their work during the marriage, as well as the incomes from that property.

The incomes from the separate property gained by work of the spouses are incorporated into the joint property, as well as the property gained on games of chance, unless a spouse invested his/her separate property into the game.

#### Article 289

Rights of spouses regarding joint property, in terms of the article 288 of this Law, shall be registered in register of immovables and other appropriate registers under the names of both spouses as their joint property without determining the ownership over the parts of it.

If only one spouse is entered in register of immovables and other appropriate registers as the owner of the joint property, it shall be considered that the entry was made on behalf of both spouses, if the entry was not made on the basis of a written agreement made between spouses.

If both spouses are entered in register of immovables and other appropriate registers as co-owners on the precisely defined parts of the property, it shall be considered that they have divided the joint property in that way.

#### Article 290

A spouse may not manage his/her share in the undivided joint property and he/she cannot place legal encumbrances on the property *inter vivos*.

### 2. Managing joint property

#### Article 291

Joint property, during the marriage, shall be managed and disposed of jointly and by mutual consent of both spouses

#### Article 292

Spouses may conclude a contract regulating that one of them shall perform the activities of managing and disposing of the whole joint property or its parts. The contract can be limited only to the management or only to the disposition. When not agreed otherwise, management shall include disposition within regular business operation.

Contract may refer to all the activities of management and disposition or only to the activities of regular management or to certain individual activities.

Each spouse may terminate the contract on management or disposition of joint property at any time, except in the time in which it is obvious that termination of the contract shall inflict damage to the other spouse.

### 3. Settlement of joint property of spouses

#### Article 293

Spouses may amicably divide the joint property by determining the parts in the whole property or a part of the property or of an individual item, as well as by determining that each spouse obtains certain items or rights from the property or that one spouse pays the other spouse the monetary value of his/her part.

The agreement referred to in the paragraph 1 of this Article must be made in written form.

#### Article 294

If an agreement is not reached, the property of spouses shall be divided to equal parts.

At the request of the spouse who proves that his/her contribution in gaining the joint property is obviously and significantly higher than the contribution of the other spouse, the court shall divide the joint property according to the contributions of each spouse.

When determining the share of each spouse the court shall take into account not only the incomes and earnings of each spouse, but also the support that one spouse provides for another, the work, household and family, care for upbringing of children and every other form of cooperation in management, maintenance and increase of joint property.

#### Article 295

Settlement of joint property of spouses may be requested during the marriage and after cessation of a marriage.

The right to request the settlement of joint property belongs to spouses, inheritors of a deceased spouse or a spouse who was pronounced dead, as well as a claimant of one of the spouses if he cannot cover his claims from the separate property of the spouse.

#### Article 296

In the process of settling joint property, at the request of a spouse, his/her part of the property shall primarily contain the items from joint property that are used by him/her for performing the activities of his/her profession.

Apart from the part of the property of a spouse, the things gained by work during the marital community, which are exclusively for personal use of the spouse, shall be taken from the joint property and given to the spouse.

If the value of the items from the paragraphs 1 and 2 of this Article is disproportionately large in comparison to the value of the whole joint property, those items shall be divided as well, unless the spouse who is to obtain these items compensate to the other spouse by the appropriate value or cedes to the other spouse some other items, with the consent of the other spouse.

#### Article 297

The spouse who is committed custody of children, shall, apart from his/her part of the property, obtain also the items that are used by children only or that are intended only for being directly used by the children.

In the process of settling the property the spouse who is committed custody of children shall be given the items for which it is obvious that it is in the interest to be in the possession and ownership of the spouse who is committed custody of the children.

#### Article 298

When in the executive procedure the final judgment is made to sell the part of the joint property awarded to one spouse, the other spouse shall have the right of prior purchase of that part of the property.

#### 4. Liability of spouses for debts to third persons

#### Article 299

Each spouse shall be liable for his/her own liabilities taken on before or after entering into the marriage. He/she shall be liable by his/her separate property and his/her share in the joint property.

#### Article 300

As for the liabilities to third parties that one spouse takes on for the purposes of satisfying current needs of marital community, and as for liabilities which, according to general regulations, are a burden of both spouses, spouses shall be jointly liable for them by both their joint property and their separate properties.

The spouse, who out of his separate property covers the joint liabilities, shall be entitled to request the other spouse to compensate for his/her part of the liabilities.

### 5. Marital Agreement

#### Article 301

During the marriage or before entering into marriage, spouses may by an agreement (marital agreement) regulate all their property relations related to the existing or future property.

Marital agreement shall be concluded in a written form and it must be certified by the notary, who shall be obliged before certifying the agreement to read it to the spouses and to warn them that the agreement excludes the legal regime for the joint property.

Marital agreement which refers to immovable property shall be registered in the register of immovables.

#### Article 302

Guardian of the spouse deprived of business capacity may conclude the marital agreement on behalf of such a spouse and with the approval of the custodial body.

#### Article 303

Spouses may not make an agreement to have the application of the right of another state to their property relations.

### 6. Returning gifts of spouses

#### Article 304

If a marriage ceases to exist through divorce or annulment, the gifts that the spouses gave to each other before entering into marriage or during the marriage shall not be returned.

The gifts from separate property of the spouse that are of disproportionately large value in comparison to his/her whole property at the time of submitting the request for returning the gifts to the gift-giver shall be returned in case of divorce or annulment of

the marriage. The spouse shall not be obliged to return such a gift if it would mean the obvious injustice towards him/her, or if it would bring him into difficult material circumstances.

#### Article 305

Instead of gifts that have been alienated, the monetary values or the things that have been received in exchange for the gifts shall be returned.

Value in money shall be determined in the amount for which the gift was alienated or in the value that the gift had at the time of the alienation, at the choice of the gift-giver.

If a gift has been alienated or destroyed with a malicious intent, the donee shall be obliged to compensate to the gift-giver for the value of the gift, and he/she shall be obliged to compensate the market price at the time when the item was supposed to be returned.

Provisions of the Article 304 of this Law and paragraphs 1 to 3 of this Article shall apply also in the case of establishing that there was a basis for annulment i.e. divorce of the marriage.

### 7. Property relations of the persons in common-law marriage

#### Article 306

The property obtained by work of the persons in common-law marriage which lasted for a longer period of time shall be considered their joint property.

The provisions of this Law on property relations of spouses shall apply accordingly to the property relations of partners in common-law marriage.

### 8. Property relations of parents and children

#### Article 307

The property of a child which was not obtained by the work of the child shall by the time the child comes of age be to the benefit of the child managed and disposed of by the parents of the child.

The child shall by him/herself manage and dispose of the property that he/she obtains by his/her work.

#### Article 308

Incomes from the property of the child may be used by the parents primarily for the support of the child and covering his/her medical treatments, upbringing and education, as well as for support of the members of immediate family, if they do not have sufficient means.

It is only with the approval of the competent custodial body that parents may alienate or burden the immovable property, more valuable movable property and the

property rights of the child for the purposes of maintenance of the child and child's medical treatments, upbringing and education, or if other important interest of the child requires so.

#### Article 309

Child and parent who exercises the parental rights shall have the right of occupancy in the flat owned by the other parent of the child if the child and parent who exercises the parental rights do not have the right of ownership over a habitable flat.

The right of occupancy shall last until the child comes of age.

The child and the parent shall not have the right of occupancy if accepting their request for the right of occupancy means an obvious injustice towards the other parent.

### 9. Property relations of the members of a family community

#### Article 310

When in a family community with spouses i.e. partners in common-law marriage there are their children and other relatives who live with them and work on a homestead or perform other activities jointly, or make earning together in another manner, the property obtained within the duration of such a community shall be a joint property of all the members of the family community who participated in obtaining of such a property.

#### Article 311

Members of the family community shall jointly and by agreement manage and dispose of the joint property.

Minor members of the family community who reach the age of 15 shall participate independently in obtaining and disposing of the joint property.

A number of members of the family community may, by consent of all the members of the family community, be entrusted with the management of the joint property. In such a case the decision on exercising the rights of management shall be passed by majority of votes.

Every member of the family community may request that the decision on entrusting some members with the management of joint property is revoked, and if other members of the family community do not agree with that the decision shall be made by the court in non-litigation procedure.

#### Article 312

The rights of the members of the family community related to the immovable property which is their joint property in terms of the Article 311 of this Law shall be registered into register of immovables and other appropriate registers under the names of

all the members of the family community who participated by their work in obtaining the unallocated items.

If one of the members of the family community or certain members of family community are registered as owners in the register of immovables and other appropriate registers, the person who is registered shall be considered to be the owner until, at the proposal of other members of the family community, the note of the right of joint ownership is registered in the land register i.e. other public records.

Members of the family community may challenge a contract by which one member of the family community as the owner of the entry alienated or burdened the property obtained in the family community, only if at the time of concluding the contract the note on the right of joint property was registered in the register of immovables or if at the time of concluding the contracts they distinctly informed the third party the contract was concluded with that the property is a joint property.

Unauthorized alienation of a movable item of joint property may be challenged only if the title transferee was unconscientious.

If a member of a family community alienates in an unauthorized manner the item which was jointly obtained within the family community, other members of the family community shall have the right to request that they are awarded the appropriate part of other items and claims or that the member of the family community who performed the alienation pays the compensation in form of money according to the size of their shares.

#### Article 313

If the law does not stipulate otherwise, the provisions of this law regarding the property relations of spouses shall be accordingly applied to the property relations of the members of the family community referred to in the Article 310 of this Law.

#### Article 314

Members of family community may regulate their mutual property relations by a contract or in another manner.

Contract referred to in the paragraph 1 of this Article shall be valid only if it is made in a written form, if it includes all the members of the family community who participate in obtaining the property by their work and if the contract is certified by the notary.

When certifying the contract, the notary shall read the contract and warn the parties of the consequence of the contract.

If minor members of the family community participate in concluding the contract the court shall before certifying the contract ask for the opinion of the custodial body.

#### Article 315

General rules of property law shall apply to the property relations of the members of the family which are not regulated by this law.



## **PART NINE**

### **SPECIAL COURT PROCEEDINGS**

#### **1. Common provisions**

##### **Article 316**

The proceeding related to family relations shall at the first instance be heard by a panel of one judge, and in the appellate procedure it shall be heard by the panel consisting of three judges.

Individual judge and chairman of the panel referred to in paragraph 1 of this Article shall be the persons who acquired specific knowledge in the field of the rights of the child.

##### **Article 317**

The proceeding related to family relations is urgent if it refers to a child or a parent who exercises parental rights.

In the proceeding related to family relations referred to in the paragraph 1 of this Article the action shall not be delivered to the respondent for getting his/her response.

The proceeding referred to in the paragraph 1 of this Article shall be finalized by the court, as a rule, in at most two hearings.

The first hearing shall be scheduled in such a manner that it takes place within 15 days from the day on which the action or proposal was received by the court.

The court at second instance shall be obliged to pass the decision within 30 days from the day on which the appeal was delivered to the court.

##### **Article 318**

In the proceedings related to family relations the court may establish the facts even if the parties do not dispute about them and the court may independently examine the facts that none of the parties presented.

##### **Article 319**

Public shall be excluded from the proceedings related to family relations.

Data from court records shall have the status of official secret and all the participants in the proceedings who have access to the data shall be obliged to keep them confidential.

##### **Article 320**

The court shall decide about compensation of the expenses of the proceedings related to family relations in its discretion, taking into account the grounds of fairness.

## Article 321

Revision shall always be allowed in the proceedings related to family relations, unless this Law stipulates otherwise.

### 2. Proceedings in matrimonial disputes

## Article 322

The proceeding in matrimonial dispute shall be initiated by an action.

The proceedings for divorce by mutual consent shall be initiated by a joint proposal of spouses (proposal for divorce by mutual consent).

If one spouse brings an action for divorce of the marriage, and the other spouse at latest before the closure of the main hearing explicitly states that he/she does not dispute the merits of the statement of claim, it shall be considered that the spouses have submitted a proposal for divorce by mutual consent.

## Article 323

Spouses shall have the right to institute proceedings for divorce. This right shall not be transferred to the inheritors, but the inheritors of the plaintiff may continue with the initiated proceedings in the aim of proving the merits of the action.

If the merits of the action are proved, the surviving spouse shall lose the right to be an inheritor to his/her deceased spouse's estate and the right to benefits from the will or other benefits in other kind of disposal in case of death.

## Article 324

A guardian of a mentally disordered spouse, or a guardian of a person who is not of sound mind, may bring an action for divorce of marriage only after the approval of the custodial body.

## Article 325

If the action for annulment or divorce of marriage is brought by an attorney of a party, the power of attorney must explicitly state the reason of bringing the action.

The power of attorney referred to in the paragraph 1 of this Article must be certified.

## Article 326

In the disputes for divorce of marriage upon the action of one of the spouses, the procedure of mediation shall be conducted in accordance with the Law on Mediation and this Law.

Upon receiving the action the court shall schedule hearing and ask the spouses to make statements immediately as for which mediator they want to approach for the

purposes of the attempt at reconciliation or i.e. achieving agreement on regulation of the legal consequences of the divorce of their marriage.

If spouses do not reach the agreement about the mediator, the mediator shall be appointed by the court.

#### Article 327

The court shall without any delay forward the action to the mediator, together with the enactment of appointing him/her as mediator, the names and addresses of spouses and data on joint children, if any.

#### Article 328

The mediator shall, within eight days from the day of receiving the enactment of appointment, invite the spouses, according to the rules of direct service, to attend the procedure of reconciliation without proxies. In the procedure of reconciliation they shall attempt to resolve the disturbed relations without conflicts and without divorce of marriage.

#### Article 329

If spouses reconcile in the reconciliation hearing, it shall be considered that the action for divorce has been withdrawn.

#### Article 330

If one or both spouses, although duly summoned, fail to respond to the mediator's invitation to reconciliation, and they do not justify their absence, it shall be considered that reconciliation was unsuccessful and the procedure of mediation shall continue in the aim of reaching the agreement of spouses on exercising parental rights after the divorce and agreement on settlement of joint property.

Both spouses and their proxies shall be invited to the meeting aimed at reaching the agreement referred to in the paragraph 1 of this Article.

#### Article 331

The procedure of mediation aimed at attempting reconciliation of spouses must be conducted within a month from the day of forwarding the action to the mediator/ The procedure of mediation aimed at achieving agreement on consequences of the divorce must be conducted within 60 days from the day of termination of the reconciliation procedure.

#### Article 332

Mediator shall be obliged to inform the court the action was brought to about the success of mediation and to deliver to the court the minutes on reconciliation and the minutes containing the agreement of the spouses about exercising of parental rights and

about the settlement of joint property, i.e. the statements of spouses that the agreement was not achieved.

#### Article 333

The agreement of spouses about the settlement of joint property shall be entered into the declaration of court judgment on divorce of the marriage.

The agreement of spouses about exercising parental rights shall be entered into the declaration of court judgment on divorce of the marriage if the court estimates that the agreement is in the best interest of the child.

#### Article 334

If one or both spouses, although duly summoned, fail to appear upon the invitation of the mediator related to reaching the agreement on exercising parental rights or settlement of joint property, and they do not justify their absence, the mediation shall be considered unsuccessful and the proceedings upon the action for divorce of marriage shall continue.

#### Article 335

Procedure of mediation for the purposes of reaching the agreement on exercising parental rights and agreement on settlement of joint property after annulment of the marriage shall be completed within 60 days after forwarding the court decision on annulment of the marriage to the mediator.

#### Article 336

During the whole proceedings for divorce of marriage the court shall be obliged to cooperate with the custody agencies and other professional services which deal with the issues of marriage and family, especially when spouses have joint minor children.

#### Article 337

The main hearing may not be scheduled before the expiry of the term of a month from the day of unsuccessful reconciliation or from the decision of the court not to attempt the reconciliation because it is impossible or it is connected to extreme difficulties.

#### Article 338

During the procedure in matrimonial disputes, upon the proposal of a spouse, the court may make a decision imposing temporary measures for the purposes of providing maintenance and accommodation to the spouse.

The appeal against the decision from the paragraph 1 of this Article shall not delay enforcement of the decision.

#### Article 339

Judgment in default of appearance or the judgment on the basis of confession or waiver may not be pronounced in matrimonial disputes.

Parties in matrimonial disputes may not conclude judicial settlements.

#### Article 340

When the procedure is initiated by the proposal of the spouses for divorce of marriage by mutual consent the facts on which the proposal is based shall not be examined, but the court may decide to conduct the evidence procedure, as in the case of the action for divorce of marriage, if the court estimates that the justified interests of the joint minor children require for the marriage to survive.

If the proposers have children together the court may examine the facts and conduct the evidence procedure, related to the part of the proposal of the spouses which refers to exercising parental rights, if the court is of the opinion that the agreement of the parents about these issues cannot provide sufficient guarantees that the interests of their minor and incapable children shall be sufficiently protected by such an agreement.

#### Article 341

In matrimonial disputes the plaintiff may without the consent of the defendant withdraw the action until the moment of the closure of the main hearing. If the plaintiff has the consent of the defendant the action may be withdrawn until the moment of final completion of the proceedings.

The joint proposal for divorce of marriage by mutual consent may be withdrawn by spouses until the decision on divorce of the marriage comes into effect.

The proposal shall also be considered withdrawn if one spouse gives up on it

In cases from paragraphs 1 and 2 of this Article, if withdrawal of the action or joint proposal for divorce of marriage by mutual consent happened after the judgment was passed at the first instance, the court of the first instance shall by a decision state that the judgment is without legal effect and that the procedure is stayed. The court shall proceed in the same manner also when only one of the spouses gives up on the proposal for divorce of marriage by mutual consent.

The court shall also proceed in the manner referred to in the paragraph 3 in case of death of a spouse, which does not affect the rights of inheritors to continue the procedure in terms of the Article 325 of this Law.

In matrimonial disputes giving up on statement of claims has the same legal effect as withdrawing of the action.

#### Article 342

In the judgment on matrimonial dispute the court shall be obliged to decide on exercising parental rights.

In the judgment on matrimonial dispute the court may decide on limitation or deprivation of parental rights.

#### Article 343

The judgment by which marriage is divorced upon the proposal of spouses for divorce by mutual consent, can be attacked in the part referring to the divorce of marriage, only due to significant violation of provisions of litigation procedure or due to the fact that the proposal was given in delusion, or under the influence of force or fraud.

#### Article 344

If a marriage is divorced or annulled by a final judgment, the decision on cessation of the marriage cannot be changed by use of ancillary remedy, regardless of whether any of the parties has entered into a new marriage.

### 3. Procedure in paternity and maternity disputes

#### Article 345

In the disputes for determination or denial of paternity or maternity a minor child may bring an action either at the court of general territorial competence or at the court at the territory of whose jurisdiction the place of permanent or temporary residence of the child is.

The child may bring an action to the court of territorial jurisdiction in the place of his/her permanent or temporary residence, even after he/she comes of age, but only if the defendant does not have the place of temporary or permanent residence at the territory of Montenegro.

Provision of the paragraph 1 of this Article shall apply also in case that the child brings the action together with another person.

#### Article 346

Parties in the dispute for determination of paternity shall be the persons whose paternity is being determined, the child and the mother of the child.

Parties in the procedure for denial of paternity of the person who is legally considered to be the father of the child shall be that person, the child and the mother of the child.

When the person who considers himself father of a child challenges the paternity of the person who has acknowledged the child, the parties in the procedure shall be the person who challenges the acknowledged paternity, the person whose paternity is challenged, the child and the mother of the child.

#### Article 347

If the action for determining, i.e. challenging paternity does not include all the persons referred to in the Article 346 of this Law, the court shall ask the plaintiff to extend the action in order to include all of them. These persons may not oppose the extension of the action.

If in the procedure for challenging paternity in the period determined by the court a plaintiff does not extend the action to the persons not included in the action, or if those persons do not join the action as new plaintiffs in that period, the action shall be rejected.

If in the procedure for challenging paternity in the period determined by the court a plaintiff does not extend the action to the persons not included in the action, or if those persons do not join the action as new plaintiffs in that period, the court shall inform custodial body about that and determine the deadline in which the action may be extended to persons who are not included in the action. If in that deadline the action is not extended, the court shall reject the action.

#### Article 348

The parties who are jointly bringing the action for determining or challenging of paternity, i.e. the parties who are sued by the same action, shall be considered one party in litigation, so that in case that one of the jointly interested parties fails to perform any of the activities in the litigation, the effect of the activities performed by the other jointly interested parties shall be extended to the ones who did not perform those activities.

#### Article 349

If the child and the parent who legally represents the child together bring the action for determining or challenging paternity, or if they are sued by the same action, that parent shall represent the child in the litigation, but custodial body may determine a special guardian to the child if between the parent and the child there are conflicting interests in that litigation procedure.

If the child and the parent, who legally represents the child, appear in the litigation with opposite litigation roles – the roles of the plaintiff and the defendant, the custodial body shall appoint a special guardian for the child.

#### Article 350

If the action in the procedure regarding paternity and maternity is brought by an attorney of a party, the power of attorney must be certified and issued only for the purposes of representation in this procedure.

Power of attorney should contain the particulars in terms of the kind of action or grounds for instituting the procedure.

#### Article 351

Judgment in default of appearance or the judgment on the basis of confession or waiver may not be pronounced in procedures regarding paternity and maternity, neither may a judicial settlement be concluded.

If in the procedure for determining paternity the defendant acknowledges paternity the procedure shall be suspended, and the court shall immediately deliver the

certified transcript of the minutes with the statement on acknowledgment of paternity to the registrar competent for entering the child into the register of births.

#### Article 352

Within procedures regarding paternity and maternity, the court shall be obliged to include into the judgment the decision on exercising of parental rights. The court may also decide on limitation and deprivation of parental rights.

#### 4. Procedure in disputes for protection of the child's rights

#### Article 353

A child may bring an action in the dispute for protection of his/her rights or in a dispute for exercising parental rights before the court of territorial jurisdiction or the court in the jurisdiction of which the child has the permanent i.e. temporary place of residence.

#### Article 354

Actions for protection of a child's rights may be brought by: the child, parents of the child, state prosecutor and custodial body.

Actions for protection of a child's rights may be brought in relation to all the rights that children have according to this law and which are not protected by some other procedure.

All the children institutions, health and educational institutions or institutions for social protection, judicial and other state bodies, associations and citizens have the right and duty to inform the state prosecutor or custodial body about the reasons for protection of a child's right.

#### Article 355

An action for exercising parental rights may be brought by: the child, parents of the child and custodial body.

#### Article 356

If there are conflicting interests between the child and his/her legal representative, the child shall be represented by a "guardian in case of conflict of interests" (hereinafter: collision guardian).

The child who has reached the age of 10 and who is capable of reasoning may by him/herself or through another person or institution request from the custodial body to appoint a collision guardian.

The child who has reached the age of 10 and who is capable of reasoning may by him/herself or through another person or institution request from the court to appoint a temporary representative for him due to the fact that there are conflicting interests between him/her and his/her legal representative.



#### Article 357

In the dispute related to protection of a child's rights and in the dispute related to exercising parental rights the court shall always be obliged to be governed by the best interests of the child.

If the court estimates that in the dispute related to protection of a child's rights and in the dispute related to exercising parental rights the child as a party is not represented in an appropriate manner, the court shall be obliged to appoint a temporary representative for the child.

If the court establishes that in the dispute related to protection of a child's rights and in the dispute related to exercising parental rights the party is a child capable of forming an opinion, the court shall be obliged:

1. to provide that the child timely obtains all the information that he/she might need;
2. to allow the child to express his/her opinion directly and to pay due attention to the opinion of the child, in line with the age and maturity of the child;
3. to take the statement of the opinion of the child in the manner and on the place which is in line with the child's age and maturity, unless that would be obviously in conflict with the best interest of the child.

#### Article 358

If the collision guardian or temporary representative establishes that in the dispute related to protection of a child's rights and in the dispute related to exercising parental rights i.e. deprivation of parental rights he/she is representing a child who is capable of forming an opinion, he/she shall be obliged:

1. to provide that the child timely obtains all the information that he/she might need;
2. to provide explanation to the child related to the possible consequences of the actions he/she is undertaking;
3. to convey to the court the opinion of the child, if the child did not directly express the opinion at the court, unless that would obviously be in conflict with the best interest of the child.

#### Article 359

Provisions of the Articles 356-358 of this Law shall apply in other court proceedings related to family relations if these proceedings also refer to the rights of a child.

Bodies conducting other proceedings shall be obliged to apply provisions of the Articles 356-358 of this Law if these proceedings also refer to the rights of a child.

#### Article 360

Procedure for protection of a child's rights shall be particularly urgent.

The first hearing shall be scheduled in such a manner that it takes place within eight days from the day on which the court received the action.

Second-instance court shall be obliged to pass the judgment within 15 days from the day on which it was delivered the appeal.

#### Article 361

Before passing the judgment on protection of a child's rights or on exercising parental rights, the court shall be obliged to ask for findings and expert opinion of custodial body, family guidance clinic or other specialized institution.

#### Article 362

Judgment in default of appearance or judgment on the basis of confession or waiver may not be pronounced in a dispute related to protection of a child's rights and in a dispute related to exercising of parental rights.

In a dispute related to protection of a child's rights and in a dispute related to exercising of parental rights parties may not conclude a judicial settlement.

#### Article 363

Agreement of parents on joint or individual exercising of parental rights shall be entered into the declaration of judgment on exercising parental rights if the court estimates that such an agreement is in the best interest of the child.

If the parents have not made an agreement on exercising parental rights or if the court estimates that their agreement is not in the best interest of the child, the court shall pass the decision on committing custody of the child to one parent, the decision on the amount of contribution for alimony which is to be given by the other parent and the decision on the manner of keeping personal relations between the child and the other parent.

If the court passes a decision on joint or individual exercise of parental rights at the time when the child is not with the parent who is to exercise the parental rights, the court shall order that the child is immediately handed over to the parent who is to exercise the parental rights.

### 5. Proceedings in the disputes related to the alimony

#### Article 365

In matrimonial disputes related to caring for and upbringing of children, the court shall *ex officio* decide upon alimony for minor children and children of age for whom the parental rights have been extended.

Agreement of parents on alimony for their child shall be accepted by the court only if it is in accordance with the provisions of this law on awarding alimony.

Court shall *ex officio* decide on alimony for a child, when in a procedure for determining paternity the court establishes that the defendant is the father of the child or when in the procedure of establishing maternity the court establishes that the defendant is the mother of the child.

#### Article 366

The proceeding in the disputes regarding alimony is urgent.

The first hearing shall be scheduled within eight days from the day on which the court received the action.

Second-instance court shall be obliged to pass the judgment within 15 days from the day on which it was delivered the appeal.

#### Article 367

The court shall not be tied by the bounds of the statement of claims for alimony.

#### Article 368

When the court establishes that parents, neither individually nor jointly, are in the position to satisfy the needs of support for a minor child in the amount provided for by this Law, the court shall inform the custodial body about that, and, if needed, the court shall suspend the proceedings until the expiry of the deadline determined for the custodial body to express its opinion.

Custodial body may in such a case on behalf of the minor extend the action for support to other persons who are legally obliged to provide support. These persons may not oppose extension of the action.

Legal representative of a minor child shall also have the right to extend the action under the conditions from the paragraph 2 of this Article.

If in the further procedure it is established that other relatives are also not in a position to satisfy the needs of support for the child, custodial body shall undertake all the necessary measures in order to secure the means for support of the child according to the regulations on social protection.

#### Article 369

In the disputes regarding support for minor children and children for whom parental rights have been extended, as well as in other disputes in which the decision on support for these children is passed *ex officio*, the court shall *ex officio* pronounce temporary measures for the purposes of providing support, if both parents do not participate in support of the child with the appropriate contributions.

In the disputes for legally awarded support for a capable adult persons the court may pronounce temporary measures for support for these persons only at the request of the requestor of support.

Temporary measures referred to in the paragraphs 1 and 2 of this Article shall be pronounced by the court if the facts that the right to support depends on are likely to be true. In procedures for determining paternity i.e. maternity such measures shall also be pronounced if it appears to be likely that the defendant is the father of the child, i.e. that the defendant is the mother of the child.

## Article 370

Custodial body shall be obliged at the request of the court to collect all the data important for passing the court decision on support.

In the procedures of deciding on legally awarded support for minor children and children for whom the exercising of parental rights has been extended, the procedure shall be conducted according to the provisions of the Article 366 of this Law.

## Article 371

When a person obliged to provide support, in relation to whom the executive court decision on support is enforced, has its employment terminated, the body, organization or community i.e. employer, whose treasury has been issued an order for forced collection of contribution for support, shall be obliged to deliver the data on the executive document and approval of execution, as well as the name and the address of the person the payment is made to, to the body, organization or community, i.e. employer that employed the person obliged to provide support.

Body, organization or community, i.e. employer that employed the person obliged to provide support shall be obliged immediately to inform the person who, according to the court decision, is paid the support.

## 6. Application of the Code on Civil Procedure

### Article 372

Unless this Law regulates otherwise the provisions of the Code on Civil Procedure shall apply to the proceedings of the court related to family relations.

## 7. Application of the Law on Non-litigation Procedure

### Article 373

The provisions of the Law on Non-litigation Procedure shall apply in legal matters for which this Law stipulates that they shall be solved in a non-litigation procedure.

## 8. Executive proceedings

### Article 374

The court which has the general territorial jurisdiction for the party which is demanding enforcement of the decision, as well as the court within whose territorial jurisdiction the child happens to be shall be competent for deciding on proposal for enforcement of the decision of the court which includes the order to hand the child over to its parent or to some other person i.e. organization which is committed custody of the child.

The court in whose territory the child happens to be shall have the territorial jurisdiction for implementing the enforcement.

#### Article 375

When implementing coercive enforcement, the court shall take into account the urgency of the procedure and the need that the personality of the child is protected to the largest possible extent.

After considering all the circumstances of the case, the court shall decide whether to implement the enforcement by pronouncing fines against the person that keeps the child or by taking the child away from that person.

If the purpose of enforcement may not be achieved by pronouncing and enforcing decision on fines, enforcement shall be implemented by taking the child away from the person who keeps the child and by handing the child over to the parent, i.e. other person or organization which is committed custody of the child.

In the procedure of enforcement the court shall ask for the support of the custodial body.

#### Article 376

Unless otherwise regulated by this or some other law the provisions of the Law on executive procedure shall be applied in the procedure of enforcement and securing the decision on protection of the rights established by this law.

### **PART TEN**

#### TRANSITIONAL AND FINAL PROVISIONS

#### Article 377

Marriage contracted before this Law came into effect shall be valid if it was contracted according to the regulations which were in force at the time of contracting the marriage.

#### Article 378

Provisions of this Law shall also apply to family relations which were created before the day of the beginning of application of this Law, unless this law provides otherwise.

#### Article 379

Provisions of this Law shall be applied in the proceedings at a court, or custodial body in the matters in which up to the day of the beginning of application of this law no decision at the first-instance was passed.

#### Article 380

If before the day of the beginning of application of this Law the first-instance decision was made by which the procedure is completed at the first-instance court, custodial body or other body, further procedure shall continue, according to the regulations which were in force up to the day when this Law came into effect.

If after the beginning of application of this law a first instance decision from the paragraph 1 of this Article is overruled, further procedure shall be conducted according to the provisions of this Law.

#### Article 381

Regulations for enforcement of this Law shall be passed within 6 months from the date when this Law enters into force.

#### Article 382

Family Law (“Official Gazette of the Socialist Republic of Montenegro”, No 7/89) ceases to be valid on the day on which this Law comes into effect.

#### Article 383

This Law shall come into effect on the eight day from the day on which it is published in the “Official Gazette of the Republic of Montenegro” and it shall be applied from September 1<sup>st</sup> 2007.

