

### 1. Content of parental care

*Q1: Could you please describe the main exemptions from parental rights over adolescents (children being 14 years of age or older) (determination of residence or temporary stay of the adolescent, choice of education or religion and registration in schools etc., medical treatments, conclusion of labour contracts or professional education contracts etc.)?*

In accordance with Article 6 of the Family Code of Ukraine in the legal perspective, a person shall be deemed a child until he/she reach the legal age of majority.

A child under the age of 14 shall be considered a minor.

A child aged fourteen to eighteen shall be considered underage person.

According to Article 31 of the Civil Code of Ukraine an individual who has not reached the age of fourteen (a minor) has the right to:

1) make independently small household transactions.

A deed is considered a small household transaction if it satisfies the household needs of a person, corresponds to his physical, spiritual or social development and concerns an object of low value;

2) exercise personal intangible rights to the results of intellectual and creative activities protected by law.

A minor shall not be liable for damage caused by him/her.

According to Article 32 of the Civil Code of Ukraine in addition to transactions under Article 31 of this Code, an individual aged fourteen to eighteen years (underage child) has the right to:

- independently dispose of their earnings, scholarships or other income;

- independently exercise the rights to the results of intellectual and creative activities protected by law;

- be a participant (founder) of legal entities, unless prohibited by law or the constituent documents of the legal entity;

- independently enter into a bank deposit agreement (account) and dispose of the deposit made by it in its own name (cash on the account).

Underage child commits other transactions with the consent of parents (adoptive parents) or custodians.

The written notarized consent of the parents (adoptive parents) or custodian and the permission of the guardianship authority is required for the underage child to enter into a transaction concerning vehicles or real estate.

Underage child may dispose of funds contributed in whole or in part by other persons to a financial institution in his/her name, with the consent of the guardianship authority and the parents (adoptive parents) or custodian.

Consent to a transaction by the underage child must be obtained from the parents (adoptive parents) or custodian and the guardianship authority in accordance with the law.

If there are valid grounds, the court may, at the request of the parents (adoptive parents), custodian, guardianship authority, restrict or deprive the underage child of the right to independently dispose of his/her earnings, scholarship or other income.

The court overturns its decision to restrict or deprive this right if the circumstances that were the basis for its adoption have disappeared.

The procedure for limiting the civil capacity of the underage child is established by the Civil Procedural Code of Ukraine.

However, in accordance with Article 35 of the Civil Code of Ukraine, full civil capacity may be granted to a natural person who has reached sixteen years of age and works under an employment contract, as well as to a minor who is registered as the child's mother or father.

Granting full civil capacity is carried out by the decision of the guardianship authority under the request of the concerned person with the written consent of the parents (adoptive parents) or custodian, and in the absence of such consent full civil capacity may be granted by court.

Full civil capacity can be granted to an individual who has reached the age of sixteen and who wishes to engage in entrepreneurial activity.

With the written consent of the parents (adoptive parents), custodian or guardianship authority, such a person may be registered as an entrepreneur. In this case, the individual acquires full civil capacity from the moment of state registration as an entrepreneur.

Full civil capacity granted to an individual applies to all civil rights and obligations. In case of termination of the employment contract, termination of the individual's entrepreneurial activity, the full civil capacity granted to him shall be preserved.

### **Regarding the determination of the place of residence**

Pursuant to Article 313 of the Civil Code of Ukraine a natural person who has reached the age of fourteen has the right to move freely on the territory of Ukraine and to choose his or her place of residence.

An individual who has not reached the age of fourteen has the right to move on the territory of Ukraine only with the consent of parents (adoptive parents), custodians and accompanied by them or accompanied by persons authorized by them.

An individual who has reached the age of sixteen has the right to leave Ukraine independently.

An individual who has not reached the age of sixteen has the right to leave Ukraine only with the consent of parents (adoptive parents), custodians and accompanied by them or accompanied by persons authorized by them, except as provided by law.

In accordance with the second part of Article 29 of the Civil Code of Ukraine, a natural person who has reached fourteen years of age freely chooses his place of residence, except for restrictions established by law.

The third part of Article 160 of the Family Code of Ukraine contains similar provisions, according to which if the parents live separately, the place of residence of the child who has reached the age of fourteen is determined by him / her.

### **Children's rights**

Pursuant to Article 1 of the Law of Ukraine "On Protection of the Childhood" a child is a person under the age of 18 (majority), if according to the applicable law, he/she does not reach the age of majority before this age.

Ensuring the best interests of the child - are actions and decisions that aimed at meeting the individual needs of the child according to his/her age, gender, health status, developmental characteristics, life experience, family, cultural and ethnic background and take into account the child's views, if he/she has reached such an age and level of development that can express them.

In accordance with Article 9 of the Law of Ukraine "On Protection of the Childhood" every child has the right to freely express his or her personal opinion, to form his or her own views, to develop his or her own social activity, and to receive information appropriate to his or her age. This right includes freedom to seek, receive, impart, disseminate and store information orally, in writing or otherwise, through works of art, literature, the media, communications (computer, telephone, etc.) or other means of communication on his/her choice. The child is granted access to information and materials from a variety of national and international sources, especially those that promote healthy physical and mental development, social, spiritual and moral well-being.

Children have the right to address public authorities, local governments, enterprises, institutions, organizations, media and their officials with comments and suggestions on their activities, statements and petitions for the realization of their rights and legitimate interests and complaints of violations.

Article 12 of the Law of Ukraine "On Protection of the Childhood" provides in particular that the upbringing in the family is the basis of the development of the child's personality. Each of the parents has the same responsibility for education, training and development of the children.

Parents or guardians have the right and obligation to bring up a child, take care of his/her health, physical, spiritual and moral development, training, create appropriate conditions for development of his/her natural abilities, respect the dignity of the child, prepare for independent life and work.

Parents or guardians are responsible for violations rights and restrictions on the legitimate interests of the child in health, physical and spiritual development, learning, non-fulfillment and evasion of fulfillment parental responsibilities in accordance with the law.

In case of refusal to provide the child with the necessary medical care, if any threatens her health, parents or guardians bear them liability under the law.

### **Labor**

As regard the issues related to the conclusion of an employment contract, in accordance with Article 21 of the Law of Ukraine “On Protection of the Childhood” the procedure of use of the child’s labor is determined by the legislation of Ukraine on labor.

The age from which a child is allowed to be hired is 16 years old. Children who have reached the age of 15 may be hired without compromising their health and education, with the consent of one of the parents or person, who replaces him/her.

For children under the age of 16, working hours are limited according to their development and training needs. Time spent by the child with the consent of the owner or the authorized body for training within the statutory working hours is counted as working time.

It is prohibited to involve children in the worst forms of child labor, to participate in heavy work and work with harmful or dangerous working conditions, as well as in underground work and to work in excess of the statutory reduced working hours.

Children are hired only after a preliminary medical examination with a written medical opinion on the absence of contraindications to work and then until the age of 21 are subject to mandatory preventive medical examinations annually.

According to Article 22 of the Law of Ukraine “On Protection of the Childhood” children, who have reached the age of 16, have the right to engage in entrepreneurial activity, may be members of a collective agricultural enterprise and members of a peasant (farmer) farm in the manner prescribed by law.

Regarding the conclusion of employment contracts with minors it should be noted the following.

Part one of Article 3 of the Labor Code of Ukraine stipulates that labor legislation regulates labor relations of employees of all enterprises, institutions, organizations, regardless of forms of ownership, type of activity and industry affiliation, as well as persons who work under an employment contract with natural person.

According to paragraph 5 of the first part of Article 24 of the Labor Code, the employment contract concluded, as a rule, in writing. Adherence to the written form is obligatory when concluding an employment contract with a underage person (Article 187 of this Code).

Article 187 of the Labor Code stipulates that minors, the persons who has not reached eighteen years old, in labor relations equated to rights to adults, and in the field of labor protection, working hours, vacations and some other working conditions enjoy the benefits established by legislation of Ukraine.

In accordance with Article 188 of the Labor Code it is not allowed to employ persons under sixteen years of age.

With the consent of one of the parents or the person replacing them, as exception, could be hired persons who have reached 15 years of age.

For preparation of youth for productive work it is accepted to hire students of general secondary, professional institutions (vocational and technical), professional higher or higher education, which receive in any form of primary, basic secondary or specialized secondary education for performing light work that does not harm health and does not disrupt the process of

studying, in free time from studying when they reach fourteen years of age with the consent of one of the parents or the person replacing them.

Pursuant to Articles 190 and 192 of the Labor Code the employment of persons under the age of eighteen is prohibited for hard work and work with harmful or dangerous conditions labor, as well as underground work.

It is also forbidden to involve persons under the age of eighteen lifting and moving things that weigh more than those set for them limit norms.

It is prohibited to involve employees under the age of eighteen for night, overtime work and work on weekends.

According to Article 199 of the Labor Code parents, adoptive parents and minor's guardians, as well as the government agencies and officials on whom is imposed the supervision and monitoring of compliance with labor legislation, have the right to demand termination of the employment contract with the underage, including urgent, when the continuation of its validity threatens minor's health or violates his/her legitimate interests.

### Healthcare

In accordance with Article 39 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" (hereinafter – the Fundamentals) the patient who has reached the age of majority shall have the right to receive reliable and complete information about the state of his or her health, including access to the relevant medical documents relating to his or her health.

Parents (adoptive parents), custodian shall have the right to receive information about the health status of the child.

In accordance with parts one and two of Article 43 of the Fundamentals the consent of a patient informed in accordance with Article 39 of these Fundamentals is required for the application of diagnostic, prophylactic or treatment methods. In the case of a patient under the age of 14 (a minor patient), as well as a patient who has been declared a legally incapable person, medical intervention shall be carried out with the consent of his or her legal representatives.

The patient's or his legal representative's consent to the medical intervention is not required only if there are signs of a direct threat to the patient's life, provided that it is impossible for objective reasons to obtain consent for such intervention from the patient or his or her legal representatives.

If the failure to obtain consent may lead to serious consequences for the patient, the physician must explain it to him or her. If the patient still refuses treatment, the physician has the right to take written confirmation from him or her, and if it is impossible to obtain it, the physician shall certify the refusal by an appropriate act in the presence of witnesses.

A patient who has acquired full civil capacity and is aware of the significance of his or her actions and can manage them shall have the right to refuse treatment.

If the refusal is given by the patient's legal representative and it can have serious consequences for the patient, the physician must notify the guardianship authorities.

New diagnostic, prophylactic or treatment methods and medications that are under consideration in the prescribed manner, but not yet approved for use, as well as unregistered medications, may be used for a person's treatment only after obtaining his or her written consent. In the case of a person under the age of 14 (a minor), these methods and means may be used with the written consent of his or her parents or other legal representatives, and in the case of a person aged 14 to 18, it shall be possible with his or her written consent and written consent of his or her parents or other legal representatives; in respect of a person whose civil capacity is limited, these methods and means may be used with his or her written consent and the written consent of his or her trustees; in respect of a person declared legally incapable, it shall be acceptable with the written consent of his or her legal representative. Upon consent to the use of new diagnostic, prophylactic or treatment methods and medications that are under consideration in the prescribed manner, but not yet approved for use, as well as unregistered drugs, the person and (or) his or her legal

representative must be provided with information about the purposes, methods, side effects, possible risk and expected results (part two of Article 44 of the Fundamentals).

Unregistered medicines or registered medicines for indications not specified in the instructions for medical use or a brief description of the drug, within the extended programs patients' access to unregistered drugs or access programs study subjects (patients) to the investigational medicinal product after completion of a clinical trial may be of interest treatment of a person only after obtaining his written consent.

In the case of a person under the age of 14 (a minor) these drugs can be used with the written consent of his/her parents (one of the parents) or other legal representatives (legal representative), and in respect of a person aged 14 to 18 - with his/her written consent and written consent of his/her parents (one of the parents) or other legal representatives (representative), in respect of a person whose civil capacity is limited – with his/her written consent and written consent of his/her guardians (custodial), in respect of a person declared incapable in the manner prescribed by law – with the written consent of his/her legal representative. Upon consent to the use of such drugs to the person and / or his / her legal representative should provide complete information about the goals, methods, side effects, possible the risk and expected results from the use of these drugs, the presence or absence of alternative treatments (part two of Article 44<sup>1</sup> of the Fundamentals).

In accordance with Article 59 of the Fundamentals parents shall be obliged to take care of the health of their children, their physical and spiritual development, leading a healthy lifestyle. In case of violation of this obligation, if it causes significant damage to the child's health, the perpetrators may be deprived of parental rights in the prescribed manner.

In order to educate a healthy young generation and provide the harmonious development of physical and spiritual strength, the state will provide a wide network of kindergartens, boarding schools, health resorts, recreation camps and other children's facilities.

Children who are brought up in children's facilities and study in schools shall be provided with the necessary conditions to maintain and strengthen their health and obtain hygiene education. The conditions of training and workload and the requirements for the class regime shall be determined in consultation with the central executive authority shaping state policies in the field of public healthcare.

### **Education**

Pursuant to Article 55 of the Law of Ukraine “On Education” upbringing in a family is the primary basis for the development of a child as a personality. Parents have equal rights and responsibilities regarding the education and development of their child.

Parents of education seekers shall have the right to:

- protect the rights and legitimate interests of education seekers in accordance with the law;
- apply to educational institutions and educational management bodies on issues related to education;
- choose an educational institution, curriculum, type and form of education;
- participate in the public self-government of an educational institution, in particular, to elect and be elected to the public self-government bodies of an educational institution;
- be notified in advance about all scheduled and unscheduled pedagogical, psychological, healthcare and sociological events, studies, surveys, pedagogical experiments in the educational institution and give consent to their child's participation;
- participate in the compiling of an individual child development programme and/or an individual curriculum;
- be notified about the activities of an educational institution, including the provision of social and psychological and pedagogical services to persons who have suffered from bullying (harassment), witnessed it or committed bullying (harassment), learning outcomes of their children (children whose legal representatives they are) and the results of assessing the quality of education in the educational institution and its educational activities;

- submit a statement to the management body or a founder of an educational institution about cases of bullying (harassment) against a child or any other educational process participant;
- demand a comprehensive and impartial investigation of cases of bullying (harassment) against a child or any other educational process participant.

Parents of education seekers are obliged to:

- instill in the child respect for dignity, rights, freedoms and legitimate interests of human, laws and ethical norms, responsible attitude to one's own health, health of the other people and the environment;
- promote the child's implementation of the educational program and the child's achievement the learning outcomes provided by it;
- respect the dignity, rights, freedoms and legitimate interests of the child and others participants in the educational process;
- take care of the physical and mental health of the child, promote of development his/her abilities, to form skills of a healthy way of life;
- form in the child a culture of dialogue, a culture of life in mutual understanding, peace and harmony between all peoples, ethnic, national, religious groups, representatives of different political and religious views and cultural traditions, different social origins, family and property state;
- attitude and personal example to establish respect for public morality and social values, including truth, justice, patriotism, humanism, tolerance, diligence;
- form children's awareness of the need to abide by the Constitution and laws of Ukraine, to protect the sovereignty and territorial integrity of Ukraine;
- instill in the child respect for the state language and state symbols Ukraine, national, historical, cultural values of Ukraine, careful attitude to the historical and cultural heritage of Ukraine;
- adhere to the constituent documents, internal regulations educational institution, as well as the terms of the contract for the provision of educational services (for availability);
- assist the management of the educational institution in conducting an investigation into cases of bullying;
- follow the decisions and recommendations of the bullying commission (harassment) in an educational institution.

Regarding the enrollment of a person in a professional institution (professional technical) education, it should be taken into account that according to paragraph 3.1 of the Standard rules of admission to vocational schools (vocational and technical) education of Ukraine, approved by the Order of the Ministry of Education and Science of the 14<sup>th</sup> of May 2013 № 499 (registered by the Ministry of Justice of Ukraine on May 29, 2013, № 823/23355), entrants supply personally application for admission to the institution of professional (vocational) education, indicating the chosen profession (specialty), the form of education, place of residence, etc.

*Q2: Are there any specific rules requiring the consent of a child being less than 14 years old for the validity of certain parental decisions or transactions? In particular, as Art. 160 FC is requiring a co-consent of child and parents if the child is between 10 and 14 years old for matters of stay and residence, what are the consequences and procedures in case of disagreement between child and parents?*

According to Article 171 of the Family Code of Ukraine the child shall have a right to be heard by parents, other family members, officials on any matters related to him or her personally, as well as to any matters of the family.

The child who is able to express his/her opinion must be heard when resolving a dispute between his/her parents or other persons to an extent related to his/her upbringing, place of residence, including a dispute related deprivation of parental rights, restoration of parental rights, and disputes over the management of his/her property.

The court may award a decision that would not be in line with the child's opinion if so required by the child's interests.

*Q3: In case both parents have joint parental care - we understand it is the standard case in Ukraine regardless of the marital status of parents – are there decisions or transactions one parent may exercise alone (without the prior consent or a veto right of the other parent)? Is there a presumption of consent from the other parent?*

The parents are the legal representatives of their minor and underage children (part one of Article 242 of the Civil Code).

Legal representation of parents is based on the positive legal fact of the origin of children from their parents. At the same time, legal representation gives parents full rights and responsibilities in relation to the child, including in the sense of custody as actions in relation to the child.

According to Article 121 of the Family Code of Ukraine, the rights and responsibilities of mother, father and child are based on the child's origin from them, certified by the state registration civil office in the order prescribed by Articles 122 and 125 of this Code.

In accordance with Article 141 of the Family Code the mother and father shall have equal rights and responsibilities with respect to the child, regardless of whether or not they were married to each other.

Divorce between parents, living separately from the child shall not affect the scope of their rights and shall not release from their obligations in regard of the child, unless where otherwise governed by part five of Article 157 of the Family Code of Ukraine.

One of the parents who lives separately from the child is obliged to participate in its upbringing and has the right to personal communication with him/her.

The parent with whom the child lives has no right to prevent the parent who lives separately from communicating with and participating in the child's upbringing, provided that such communication does not interfere with the child's normal development.

Parents have the right to conclude an agreement on the exercise of parental rights and responsibilities of those who live separately from the child. The agreement shall be executed in writing and must be certified by the notary.

The parent, with whom the child resides, and who evades from duly performing the agreement, shall reimburse any material and moral damage made to the other parent.

If the parent, with whom the child lives, evades from duly performing under the agreement, he/she shall reimburse any material and moral damage made to the other parent.

The parent who was awarded to be the resident parent by the court decision or order of the guardianship authority, except the parent being subjected to the enforcement of the judgment regarding the child visitation and removing obstacles to the child visitation, shall, at their own discretion, resolve any matters related to travelling outside Ukraine for no longer than one month for the purpose that includes medical treatment, education, participation of the child in children's competitions, festivals, scientific shows, student Olympiads and contests, environmental, technical, art, tourism, research and sports events, child's recreation abroad, including as part of an organised tour, and if they are aware of the place of residence of the other parent who is duly performing their parental duty, shall notify such other parent by sending them a postage-prepaid letter about the child temporarily traveling outside Ukraine; such notice shall include the purpose of travel, travel destination and period of stay in the destination country.

The parent who was awarded to be the resident parent by the court decision or order of the guardianship authority shall, at their own discretion, resolve any matters related to travelling outside Ukraine for one month and longer for the purpose that includes medical treatment, education, participation of the child in children's competitions, festivals, scientific shows, student Olympiads and contests, environmental, technical, art, tourism, research and sports events, child's recreation abroad, including as part of an organised tour, in case of:

1) any child support in arrears where the total amount in arrears exceeds the amount of the relevant payments for four months as evidenced by the child support arrears certificate;

2) any child support in arrears where the total amount in arrears exceeds the amount of the relevant payments for three months in case the child support is paid in support of the child with disabilities or the child having serious perinatal damage of the nervous system, serious inborn developmental defects, rare orphan disease, cancer, blood cancer, cerebral palsy, serious mental disorders, Type 1 diabetes (insulin-dependent), acute or chronic kidney injury (level IV); or for the support of the child who received a serious injury, is in need for organ transplantation or is in need of palliative care as confirmed by the document issued by the medical advisory board of the medical treatment facility in accordance with the applicable guidelines issued by the central executive agency making and implementing the state healthcare policy.

The parent who resides separately and is duly performing the parental duties and has no child support in arrears shall give written notice, return receipt requested, to the resident parent confirming the consent to the child travelling outside Ukraine for the purpose that includes medical treatment, education, participation of the child in children's competitions, festivals, scientific shows, student Olympiads and contests, environmental, technical, art, tourism, research and sports events, child's recreation abroad, including as part of an organised children's tour.

If the resident parent does not give a consent certified by a notary for the child to travel abroad for the designated purpose within ten days upon receiving the notice by certified mail, the non-resident parent, provided that they do not have any child support payments in arrears, may request the court to award the permission for the child to travel abroad without the consent of the other parent.

The child support arrears certificate shall be issued by the state enforcement office in accordance with the order, established by the law.

Pursuant to parts 6-7 of the Article 177 of the Family Code Ukraine where either parent carries out any transaction involving the minor's property it shall be deemed that they act upon approval of the other parent. The other parent may apply to the court for declaring the transaction null and void as executed without their consent if such transaction is more than a minor routine transaction by nature.

Transactions carried out by either parent where any vehicles and real estate of the minor are involved shall require written consent of the other parent certified by the notary.

If the parent has been living apart from the child for at least six months and is not involved in the child-rearing, or when their location is unknown, the transactions referred to in the para two of this Part may be executed without his/her consent.

Parents shall manage the child's property jointly unless otherwise envisaged by the applicable agreement made by and between them. Any disputes that emerge between the parents with regard to managing the child's property may be resolved by a guardianship authority or the court.

*Q4: In case the child is accompanied by his or her mother and the father remained in Ukraine, serving in the defence of the country, are there any rules in Ukrainian Family Law for the case the father is not available for urgent decisions (lack of communication, war prisoner or else) suspending his right of parental care? If yes, please describe the procedure to initiate and end suspension.*

The answer to this question is reflected in the answer to question 3.

The legislation of Ukraine does not foresee the procedures for “suspension of parental rights”. Involvement of the child's father or mother in the defense of the state does not affect the scope of their rights and responsibilities towards the child.

## 2. Rights and duties of other relatives of the child

*Q5: In case both parents live and are not deprived of parental care, which rights and duties do grandparents, adult sisters and brothers and stepparents have if the child is now living with them instead of with the parents?*

According to Article 257 of the Family Code of Ukraine grandparents, great-grandparents have the right to communicate with their grandchildren, great-grandchildren to participate in their upbringing.

Parents or other persons with whom the child lives have no right to interfere with the exercise by grandparents, great-grandparents of their rights to raise grandchildren and great-grandchildren.

Grandparents have the right to self-protection of grandchildren.

Grandparents have the right to apply for protection of the rights and interests of minors, minors and adult incapable grandchildren to the guardianship authority or to a court without special powers (Article 258 of the Family Code).

According to Article 265 of the Family Code grandparents are obliged to support their minor grandchildren if they do not have a mother or a father or if the parents cannot provide them with adequate maintenance for a valid reasons, provided, however, that the grandparents are able to provide financial support.

At the same time, Article 259 of the Family Code stipulates that the rights and obligations established by law for siblings have native (full-fledged, half-born) brothers and sisters.

Siblings, especially those who do not live together, have the right to communicate. The mother, father, grandmother, grandfather and other persons with whom the minor/underage siblings live are obliged to facilitate their communication.

Adults have the right to participate in the upbringing of their minor/underage siblings, regardless of their place of residence.

If the stepmother/stepfather lives with their minor/underage step-child they have the right to participate in their upbringing (Article 260 of the Family Code).

According to Article 262 of the Family Code the siblings and step-parent have the right to self-defense of their minor, underage, adult incapable siblings and step-children. The sibling or step-parent may seek the protection of their minor, underage and adult incapable sibling or step-child by the guardianship service or the court; this shall not require any special powers.

According to Article 267 of the Family Code adult siblings are obliged to support minor/underage siblings who need financial support and if they do not have parents/spouse, or these persons for valid reasons are not able to provide sufficient support; provided, however, that such adult siblings are able to provide such financial support.

The adult siblings must provide for the incapable adult siblings who are in need of financial support, if they do not have spouse/parents or adult children; provided, however, that the adult siblings are able to provide such financial support.

According to Article 268 of the Civil Code, stepmothers are obliged to support stepchildren, minors, stepdaughters, stepsons who live with them if they do not have a mother, father, grandfather, grandmother, adult siblings or these persons for good reasons can not provide them proper maintenance, provided that the stepmother, stepfather are able to provide such financial support.

The court may release the stepfather, stepmother from the obligation to maintain the stepdaughter, stepson or limit it for a certain period, in particular in the case of: short-term residence with their mother, father; unworthy behavior in the marital relationship of the mother, father of the child.

The step-parent must provide for the minor/underage step-child with whom they are living, if they do not have parents/grandparents/adult siblings or where these persons for valid reasons are not able to provide sufficient support; provided, however, that the step-parent is able to provide such financial support.

The court may release the step-parent from the obligation to provide for the step-child or limit the duration of such obligation, in particular, if:

- 1) the duration of living together with the step-child's parent was insignificant;
- 2) the step-child's parent was misbehaving during the marriage.

*Q6: In case the parents are dead or deprived of parental care, which rights and duties do grandparents, adult sisters and brothers and stepparents have if the child is living with them instead of with the parents?*

The answer to this question is reflected in the answer to question 5.

The orphans and children deprived of parental care is established custody, care as it is prescribed by Article 243 of the Family Code of Ukraine.

The custody is established over a child under the age of fourteen, and care for a child between the ages of fourteen and eighteen.

Custody (care) is established by the guardianship authority as well as by the court in cases established by the Civil Code of Ukraine.

A custodian, a caregiver is appointed mainly from persons who are in a family relationship with the child, taking into account personal relationships between them, the ability of a person to perform duties of custodian, caregiver.

The child's wish shall be taken into account when appointing the custodian for the minor or the caregiver for the underage child (part 4 of Article 63 of the Civil Code).

*Q7: Do the rights and duties of the mentioned persons require any authority or court decision or do they apply by operation of law?*

The answer to this question is reflected in the answers to questions 5-6.

*Q8: In case the child has been living with his parents and is now entering a EU country accompanied by a grandparent, adult sister or brother or stepparent only, having permission to do so by both parents, can these persons be deemed to be entitled to legal representation of the child in all matters arising abroad or do they need a specific certificate or power of attorney on parental care matters issued by parents? In case the custodial rights of these persons is legally limited, can you specify these limits? When is consent/agreement of the parents required? Are there any requirements with regard to a consent/agreement (i.e. form requirements)?*

According to the second part of Article 151 of the Family Code of Ukraine parents have the right to involve in upbringing of their child of other persons, to transfer them for upbringing to individuals and legal entities.

Transferring the child to foster care shall not release the parents of the parental care duty (part five of Article 150 of the Family Code).

*Q9: Are there any rules on other relatives' rights and duties towards children in Ukrainian Family law (aunts, uncles etc.), except for a right of access or contact with the child?*

The Family Code of Ukraine does not regulate family relations between cousins, aunt, uncle and niece, nephew and between other relatives by descent (part 4 of Article 2 of the Family Code).

### 3. Children-orphans and children deprived of parental care

*Q10: Do all the rights and duties of representatives of the child in case of parent-educators in family type orphanage, caregivers in foster homes, foster parents and staff members of administration of institutional care for orphans and children deprived of parental care apply by operation of law or is it necessary to obtain a certificate, permission or court appointment? Can you specify the limits of the rights granted to them? What can parent-educators, caregivers in foster homes decide by themselves and when do the parents need to be involved?*

According to the second and fourth parts of Article 256<sup>2</sup> of the Family Code of Ukraine foster parents have responsibilities for the upbringing and development of children provided for in Article 150 of this Code.

Foster parents are the legal representatives of foster children and act without special powers as a custodian, a caregiver.

According to Article 256<sup>4</sup> of the Family Code of Ukraine the decision to create a foster family is made by the district, district in Kyiv and Sevastopol state administrations, the executive committee of the city council (for cities of republican importance (in case of the Autonomous Republic of Crimea) and cities of Oblast importance in accordance with the applicable procedure established by the Cabinet of Ministers of Ukraine.

An agreement on the placement of children in a foster family is concluded between the foster parents and the body that made the decision to establish a foster family on the basis of a standard agreement.

The authority that made the decision to establish a foster family is obliged to monitor the performance of foster parents of their responsibilities for the upbringing and maintenance of children.

In accordance with parts two and four of Article 256<sup>6</sup> of the Family Code foster parents have responsibilities for the upbringing and development of children provided for in Article 150 of this Code.

Foster parents are the legal representatives of children and act without special powers as a custodian, a caregiver.

According to Article 256<sup>8</sup> of the Family Code the decision to establish a family-type orphanage is made by the district, district in Kyiv and Sevastopol state administrations, the executive committee of the city council (for cities of republican importance (in case of the Autonomous Republic of Crimea) and cities of Oblast importance in accordance with the applicable procedure established by the Cabinet of Ministers of Ukraine.

An agreement on the organization of the activity of a family-type orphanage is concluded between the parents-educators and the body that made the decision to establish a family-type orphanage.

The body that made the decision to establish a family-type orphanage is obliged to monitor the performance by parents-educators of their responsibilities for the upbringing and maintenance of children.

If the child permanently resides in a health care institution, educational or other children's institution, the functions of the custodian (the caregiver) in relation to him/her are entrusted to the administration of these institutions (Article 245 of the Family Code).

*Q11: The official English translation of the Family Code published at Verkhovna Rada Homepage is using “adoptive family” for “приїмна сім’я”. Is it correct to translate it “foster family” instead of “adoptive family” as adoption is governed by Chapter 18 and not by Chapter 20.1?*

We assume that it is not the official translation of the Code. It is just a translation.

The correct translation is “foster family” instead of “adoptive family”.

According to Ukrainian law “adoption” and “foster family” are different forms of placement of orphans and children deprived of parental care.

Thus, according to Article 207 of Chapter 18 “Adoption” of the Family Code adoption is taking by the adoptive parent of a person to the adoptive parent’s family as the daughter or son, under the relevant court decision, except in the case provided for in Article 282 of this Code.

Following the adoption, any personal and property rights and obligations between the parents and the adopted person as well as between the adopted person and other biological relatives shall terminate.

Adoption imposes the rights and obligations upon the adoptive parent regarding the adopted child in the same scope as for the parents of the child.

Adoption imposes the rights and obligations upon the adopted child regarding the adoptive parent in the same scope as for the child of the parents (parts one, four, five of Article 232 of the Family Code).

In the meantime, according to Articles 256<sup>1</sup> and 256<sup>3</sup> of Chapter 20<sup>1</sup> “Foster Family” of the Family Code a foster family is a family that has voluntarily accepted from one to four orphans and children deprived of parental care for upbringing and mutual living.

Foster children live and are raised in a foster family until they reach the age of 18. After reaching the age of 18, such persons may, if they continue their education in a general secondary, vocational (technical), professional higher or higher education institution, at their choice, continue to live and be brought up in this foster family until such institution is completed.

Foster children have the right to maintain personal contact with their parents and other relatives, except in cases where this may be detrimental to their lives, health and moral upbringing.

*Q12: If foster parents are appointed for children-orphans and children deprived of parental care, do they need a guardian under Ukrainian Family law – at least to supervise the foster parents?*

The answer to this question is reflected in the answer to question 10.

*Q13: Is it possible under Ukrainian Family law that parents – living and exercising parental care – appoint foster parents on a private (or contractual) basis and if yes, do such foster parents also enjoy the rights and duties of guardians or foster parents within the meaning of sec. 256.2 para. 4 FC? Are there any formal requirements for any such power of representation (e.g. certification, registration or alike)?*

According to Article 256<sup>3</sup> of the Family Code foster children are orphans and children deprived of parental care, placed in foster care and cohabitation.

An orphan is a child whose parents have died or perished.

Children deprived of parental care - children left without parental care due to deprivation of parental rights, deprivation of parents without deprivation of parental rights, recognition of parents missing or incapable, declaring them dead, serving a sentence in prison and their detention during the investigation, their search by the National Police for lack of information about their whereabouts, the long-term illness of their parents, which prevents them from fulfilling their parental responsibilities, and children separated from their families, abandoned children, children whose parents are unknown, children who have been abandoned by their parents, children whose parents do not fulfill their parental responsibilities for reasons that cannot be determined due to the parents' stay in the temporarily occupied territory of Ukraine or in districts of anti-terrorist operation, implementation of measures to ensure national security and defense, repulse and deter the armed forces the Russian Federation in Donetsk and Luhansk oblasts, and homeless children (Article 1 of the Law of Ukraine “On Protection of the Childhood”).

Part four of Article 256<sup>2</sup> of the Family Code of Ukraine stipulates that foster parents are the legal representatives of the foster children and shall act as custodians or caregivers without any special power. This means that a decision on establishing of the foster family is enough for foster parents to exercise their authority. For more details, please, refer to answer on question 10.

#### 4. Certification / formal aspects

*Q14: Upon arrival in Germany the legitimacy of existing birth certificates and other documents concerning family relations shall be reviewed by the authorities here to prevent child abduction and child sale or in short: to be sure that certificates and documents are valid. Is there currently any possibility that the authenticity of Ukrainian documents can be verified and certified by Ukrainian authorities? Sometimes, there are no documents available at all and Germany has to issue new – preliminary – documents. Can any such replacing documents be verified and*

*certified by Ukrainian authorities? What would be required and what would be checked by Ukrainian authorities?*

According to the first part of Article 1, the second part of Article 2 of the Law of Ukraine “On State Registration of Civil Status Acts” the birth of a natural person and his/her origin, marriage, divorce in cases provided by law, change of name, death are subject to state registration.

State registration of civil status acts is carried out by drawing up civil status records containing information about personal data of an individual which is confidential and not subject to disclosure (part two, third of Article 9 of the Law).

The authorities of state registration of acts of civil status issue the appropriate certificate on state registration of act of civil status.

Forms of certificates of state registration of civil status are made according to the samples and their descriptions approved by the Cabinet of Ministers of Ukraine, as defined in part one of Article 18 of the Law.

Thus, the samples of certificate forms were approved by the Resolution of the Cabinet of Ministers of Ukraine of July 10, 2010 № 1025 “On approval of samples of civil status records, descriptions and samples of forms of certificates of state registration of civil status.”

The sample, in particular, of the birth certificate contains information about the child and his/her parents, the name of the body of state registration of civil status that issued the certificate, initials and surname of the head, as well as the imprint of the seal of this body.

Ukraine is Contracting State to the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention).

The Ministry of Justice of Ukraine is one of the authorities empowered by the Resolution of the Cabinet of Ministers of Ukraine of January 18, 2003 № 61 to issue Apostille on documents issued by the judiciary and courts, as well as on documents issued by notaries of Ukraine.

In this regard the apostilled document does not require additional certification or verification and can be used in any other State - party to the Apostille Convention.

The legislation does not provide any other procedure for verifying the authenticity of documents on state registration of civil status acts.

By the Resolution of the Cabinet of Ministers of Ukraine of 04.11.2015 № 890 “Some issues of ensuring the introduction of electronic service of issuing apostille” in Ukraine has been introduced the Electronic Register of Apostilles (e-Register) and established that the Apostille shall be issued with the use of electronic document software of e-Register.

The e-Register is maintained with the help of technical and software tools that ensure the formation of an apostille in the form of an electronic document, protection of information contained in the e-Register from unauthorized actions, search for entries in the e-Register, providing information from the e-Register. Any person has the right to access the information of the e-Register free of charge in order to check the issued Apostille through the website maintained by the administrator of the e-Register through the website <https://apostille.minjust.gov.ua/>.

Search in the e-Register of information about Apostille is carried out by its registration number and date of issue. According to the results of the search in the e-Register of information about Apostille, the information is provided in the form of an image of the issued apostille.

Currently, all departments of state registration of civil status, which operate in the controlled territory of Ukraine, accept documents on state registration of civil status for issue Apostille, which are considered in compliance with the requirements of law.

Access to court decisions is provided by the state information system “Unified State Register of Court Decisions” via the link <https://reyestr.court.gov.ua>.

Any person can verify the authenticity of a special form of notarial document, which contains a notarized document through the site with open access on the link <https://rnb.nais.gov.ua>.

In accordance with subparagraph 3 of the first paragraph of the Resolution of the Cabinet of Ministers of Ukraine № 164 of 28.02.2022 “Some issues of notaries during martial law” (as amended) certificate of power of attorney (except power of attorney for real estate, object of

unfinished construction or property rights to future real estate (hereinafter - real estate), funds in accounts with banking and other financial institutions, as well as vehicles for more than three months, management and disposal of securities, corporate rights, the right to access an individual bank safe), certification of the authenticity of the signature on the application for permission to temporarily departure of the child abroad, is carried out without the use of special forms of notarial documents on white sheets of paper with computerized details of the notary: image of the State Emblem of Ukraine, name, surname, patronic name (if available), the name of the state notary office (for a public notary), the name of the notarial district (for a private notary), the number of the certificate of the right to engage in notarial activities, workplace address, telephone number, e-mail address. To verify the validity of the power of attorney, certified on white sheets of paper, the person concerned shall apply with a copy to the relevant notary, who must within two working days issue a certificate confirming or refuting the certificate of such power of attorney.