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On Court Application of Legislation in Consideration of Cases regarding Establishment of Parentage

The Constitution of the Russian Federation proclaims that motherhood and childhood, the family are under state protection, and that care for children and their upbringing is the equal right and duty of the parents (Parts 1 and 2 of Article 38).

Every child has the right to live in a family and the right to upbringing in a family, as far as possible, the right to know and be cared for by his or her parents, the right to live with them, except where this is against the child's interests, as well as the right to upbringing by the child's own parents, the right to have his or her interests ensured, to all-round development, respect for the child's human dignity (Articles 7–8, Paragraph 1 of Article 9 of the Convention on the Rights of the Child, Item 2 of Article 54 of the Family Code of the Russian Federation).

In order to ensure the uniform practice of court application of legislation in consideration of cases regarding the establishment of parentage, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 "On the Supreme Court of the Russian Federation", hereby rules to provide the following explanations:

General Provisions

1. Parentage of children, certified in the manner stipulated in law, constitutes grounds, on which the rights and duties of parents and children arise (Article 47 of the Family Code of the Russian Federation).

This manner, in accordance with Federal Law No. 143 of 15 November 1997 "On Acts of Civil Status" (hereinafter referred to as Federal Law No. 143 of 15 November 1997), is the state registration of birth, as a result of which the parentage of a child becomes a legal fact and gives rise to legal consequences.

State registration of birth is performed through the creation of a birth record, which in particular includes information about the parents of the child (Item 2 of Article 6, Article 22 of Federal Law No. 143 of 15 November 1997).

The record about the mother and (or) father of the child, made by a civil registry body in accordance with Items 1 and 2 of Article 51 of the Family Code of the Russian Federation (hereinafter – the FC RF), as well as the child's birth certificate, issued on the basis of such a record, confirm the fact of birth of the child from the persons indicated therein (Item 2 of Article 6, Item 1 of Article 8, Article 17, Item 1 of Article 57, Article 69, Item 2 of Article 73 of Federal Law No. 143 of 15 November 1997).

2. Where state registration of a child took place, but the birth certificate was lost or cannot be used for other reasons (Item 1 of Article 9 of Federal Law No. 143 of 15 November 1997), the persons referred to in Item 2 of Article 9 of Federal Law No. 143 of 15 November 1997 have the right, by virtue of Item 1 of that norm, to request the issue of a duplicative birth certificate or of another document confirming the fact of state registration of birth (Item 3 of Article 9 of Federal Law No. 143 of 15 November 1997).

If a person is denied issue of a duplicative birth certificate due to absence of the original or restored birth record (e.g. due to loss of the archive fund of the civil registry body caused by a natural disaster, fire), this person is not deprived of the opportunity to apply to court with an application for the establishment of the fact of state registration of birth (Item 3 of Part 2 of Article 264 of the Civil Procedure Code of the Russian Federation, Item 2 of Article 74 of Federal Law No. 143 of 15 November 1997).

The aforementioned application is considered by the court in accordance with the rules stipulated in Chapter 28 of the Civil Procedure Code of the Russian Federation (hereinafter – the CPC RF).

The court decision establishing the fact of state registration of birth constitutes grounds for restoration of the birth record and issue of a birth certificate (Items 3–4 of Article 74 of Federal Law No. 143 of 15 November 1997).

3. If there are no grounds for state registration of birth, listed in Item 1 of Article 14 of Federal Law No. 143 of 15 November 1997, as well as when a dispute regarding the maternity (paternity) of the child arises, or in other situations, when information about the mother (father) of a child is subject to entry into the birth record (expungement from the birth record) exclusively by virtue of a court decision, the issues of parentage of the child (in particular, the issues of establishment of the father (mother), of establishment of the fact of birth of the child from a certain woman, establishment of the fact of acknowledgement of paternity or of the fact of paternity, challenge of paternity (maternity) and expungement of information about the child's father (mother) from the birth record; hereinafter – cases, disputes regarding parentage) are resolved by the district court (Item 4 of Part 1 of Article 23, Article 24 of the CPC RF) in action proceedings or in special proceedings in accordance with the rules stipulated in Chapter 28 of the CPC RF.

4. Claims in cases regarding parentage are submitted to the district court in compliance with the rules of court jurisdiction stipulated in Article 28 and Parts 1 and 3 of Article 29 of the CPC RF.

By implication of Part 3 of Article 29 of the CPC RF, the rule on alternative court jurisdiction regarding claims for recovery of alimony and for establishment of paternity (stipulating that a claim may be filed at the place of residence of the defendant or at the place of residence of the plaintiff) is directed at creating more favourable conditions of judicial procedure for the person applying to court for the protection of rights and interests of the child, as well as for the child itself, providing them with the right to participate in the court session, and also providing the child with the right to be heard during the court proceedings (Paragraph 2 of Article 12 of the Convention on the Rights of the Child, Article 57 of the FC RF). Herewith, this rule applies both to situations when the aforementioned claims are stated simultaneously and when the claim for establishment of paternity is stated separately.

Based on the analogy of statute (Part 4 of Article 1 of the CPC RF), the same rules apply to claims for establishment of maternity.

Cases regarding the establishment of parentage, subject to consideration in the manner stipulated in Chapter 28 of the CPC RF, are considered by the district court at the place of residence of the applicant (Article 266 of the CPC RF).

5. If the defendant in a case regarding establishment of paternity and recovery of alimony is a foreign citizen residing in a foreign state, then, by virtue of Item 3 of Part 3 of Article 402 of the CPC RF, such a case may be considered by a court in the Russian Federation only if the plaintiff has a place of residence in the Russian Federation, and an international treaty of the Russian Federation does not stipulate other rules of determining the court competent to resolve the dispute (Part 4 of Article 15 of the Constitution of the Russian Federation, Article 5 of Federal Law No. 101 of 15 July 1995 "On International Treaties of the Russian Federation", Part 2 of Article 1 of the CPC RF).

6. When resolving the issue of accepting the application for proceedings, the court should take into account that since the record about the parents of the child is made only after the birth of the child (second paragraph of Item 3 of Article 48 of the FC RF), disputes regarding the establishment of parentage also may be resolved by the court only after the birth of the child.

If an application in a dispute pertaining to the establishment of parentage (e.g. on challenge of paternity) is submitted before the birth of the child, the judge refuses to accept it by virtue of Item 1 of Part 1 of Article 134 of the CPC RF. Such refusal does not preclude repeated application to court after the birth of the child.

7. When considering disputes on establishment of parentage, the courts should take into account that in accordance with Item 3 of Article 62 of the FC RF, underage parents have the right to acknowledge and challenge their paternity and maternity on general grounds, i.e. the consent of parents (persons *in loco parentis*) of the underage father and mother is not required for the registration of the child's birth and the establishment of maternity and paternity.

By virtue of Item 3 of Article 62 of the FC RF, upon reaching the age of fourteen, underage parents have the right to apply to court on their own with a claim for the establishment of paternity (maternity) in regard of their children.

8. Lack of information about the actual place of residence of the defendant does not preclude the court from considering cases regarding the establishment of parentage. If the place of residence of the defendant is unknown, the court begins to consider the case after receiving this information from the last known place of residence of the defendant (Article 119 of the CPC RF). Herewith, if the case is considered in the absence of a defendant, whose place of residence is unknown, the court, by virtue of Article 50 of the CPC RF, appoints an advocate to act as a representative of the defendant, unless the defendant has its own representative.

9. In consideration of cases regarding the establishment of parentage, the courts should take into account the provisions of Article 12 of the Convention on the Rights of the Child and of Article 57 of the FC RF, in accordance with which a child has the right to freely express its opinion on all issues affecting its interests, and also the right to be heard in any judicial or administrative proceedings (e.g. in a case on establishment of the fact of acknowledgement of paternity the court may ask the child about the circumstances, significant for the correct consideration of the case).

Establishment of Maternity and Paternity

10. A father and mother married to each other are recorded as the parents in the birth record upon the application of any one of them; herewith, information about the mother of the child is included into the birth record on the basis of documents referred to in Item 1 of Article 14 of Federal Law No. 143 of 15 November 1997, and information about the father of the child – on the basis of its parents' marriage certificate (Item 1 of Article 51 of the FC RF, Item 1 of Article 17 of Federal Law No. 143 of 15 November 1997).

The origin of a child from a mother (maternity) is established on the basis of documents confirming the birth of the child by the mother in a medical organization; if the child was born outside of a medical organization – on the basis of medical documents, witness testimony or other evidence (Item 1 of Article 48 of the FC RF).

In accordance with Item 1 of Article 14 of Federal Law No. 143 of 15 November 1997, the following are the grounds for the state registration of birth and entry of information about the child's mother into the birth record:

- a document regarding birth, in the stipulated form, issued by a medical organization (independent of the legal form of the organisation; hereinafter – medical organization), in which the birth took place;
- a document regarding birth, in the stipulated form, issued by a medical organization, the doctor of which provided medical assistance during birth, or to which the mother applied after giving birth; or by an individual entrepreneur engaged in medical activities – in case of birth outside a medical organization;
- a written statement of a person present during birth, regarding the birth of a child – in case of birth outside a medical organization and without medical assistance.

If the aforementioned grounds are absent, state registration of birth of a child under the age of one is performed by virtue of a court decision regarding the establishment of fact of birth of the child by the given woman (Item 4 of Article 14 of Federal Law No. 143 of 15 November 1997).

If the child reaches the age of one and over, and there is no document regarding birth, in the stipulated form, issued by a medical organization or an individual entrepreneur engaged in medical activities, state registration of birth may also be performed only by virtue of a court decision regarding the establishment of fact of birth (Item 2 of Article 21 of Federal Law No. 143 of 15 November 1997).

11. An application for the establishment of fact of birth of the child by the given woman is considered by the court in special proceedings (Chapter 28 of the CPC RF), and if there is a dispute regarding maternity, the issue of establishment of maternity is resolved in action proceedings.

12. Based on provisions of Item 4 of Article 14 and Item 2 of Article 21 of Federal Law No. 143 of 15 November 1997, and also of Article 265 of the CPC RF, the application for the establishment of fact of birth of the child by the given woman may be considered by the court under the rules of Chapter 28 of the CPC RF, in particular if there are no documents referred to in Item 1 of Article 14 of Federal Law No. 143 of 15 November 1997, and it is impossible to receive them in a different manner, or if it is impossible to restore the lost documents that serve as grounds for state registration of birth, or if the document that serves as ground for state registration of birth (e.g. a medical birth certificate) contains data about the mother that is different from the analogous data in her identification document

(Items 2 and 3 of Article 16 of Federal Law No. 143 of 15 November 1997), provided that there is no dispute regarding maternity.

13. The court may not resolve the issue of establishment of maternity in special proceedings in regard of a child, whose birth was registered in the manner stipulated in law, in particular if the birth record does not contain information about the child's mother (e.g. if, based on Article 19^1 of Federal Law No. 143 of 15 November 1997, state registration of birth of a child abandoned by his/her mother, who did not present an identification document, was performed in a medical organization in which the birth took place or to which the mother applied after giving birth).

In view of the foregoing, if during the submission of an application for establishment of fact of birth of the child by a certain woman, drawn in accordance with the rules of Chapter 28 of the CPC RF, or during its consideration by the court it is established that state registration of birth actually took place or that there are circumstances indicating that there is a dispute regarding maternity, the court issues a decree to leave the application without consideration, in which it explains to the applicant and to other interested persons their right to resolve the dispute in action proceedings (Part 3 of Article 263 of the CPC RF).

14. When considering cases regarding establishment of paternity, the courts should take into account that if a child is born to persons married to each other, as well as within three hundred days from the moment of divorce, annulment of marriage or death of the mother's spouse, the spouse (former spouse) of the child's mother is regarded as the child's father, unless proved otherwise in accordance with Article 52 of the FC RF; herewith, the paternity of the spouse of the child's mother is certified by the record regarding their marriage (Item 2 of Article 48 of the FC RF, Items 1 and 2 of Article 17 of Federal Law No. 143 of 15 November 1997).

If, referring to the aforementioned circumstances, a civil registry body refuses to register the birth of a child with indication of another person (the actual father) as the child's father in the birth record, based upon the joint application for the establishment of paternity submitted by such a person and the child's mother, the issue of establishment of paternity of this person may be resolved by the court in action proceedings after the registration of the child's birth in accordance with provisions of Item 2 of Article 48 of the FC RF and Items 1 and 2 of Article 17 of Federal Law No. 143 of 15 November 1997.

15. If a child is born to parents not married to each other, and there is no joint application of the parents, the issue of origin of the child from a certain person (paternity) is resolved by the court in action proceedings upon the application of one of the parents, of the custodian (guardian) of the child or upon the application of a person, in dependence on whom the child lives, or upon the application of the child, after he/she reaches adulthood (Article 49 of the FC RF).

Based on provisions of Item 3 of Article 48 of the FC RF and taking into account the provisions of Items 1 and 3 of Article 51 of Federal Law No. 143 of 15 November 1997, the court may also establish paternity in action proceedings upon the application of a person not married to the child's mother, in case of her death, legal incapacity, if it is impossible to establish her location or if she is deprived of parental rights, provided that the custodianship and guardianship body does not consent to establishment of this person's paternity by a civil registry body. Taking this into account, if it is found during the acceptance of the statement of claim that the plaintiff did not apply to the custodianship and guardianship body for consent to establishment of his paternity by a civil registry body, the judge returns the statement of claim by virtue of Item 1 of Part 1 of Article 135 of the CPC RF, and if the case was initiated – leaves the statement of claim without consideration by virtue of the second paragraph of Article 222 of the CPC RF and explains to the plaintiff his right to apply to the corresponding custodianship and guardianship body in regard of this issue.

16. The court also examines in action proceedings the claims for expungement of the entry about the child's father, made in the birth record in accordance with Items 1 and 2 of Article 51 of the FC RF, and the claims for entry of new information about the child's father, i.e. for establishment of paternity of another person, in particular where there is no dispute in this regard among the interested persons (e.g. among the child's mother, the person recorded as the father and the actual father) (Item 3 of Article 47 of the Civil Code of the Russian Federation (hereinafter – the CC RF), Articles 53, 69 and 75 of Federal Law No. 143 of 15 November 1997.

17. Taking into account that by virtue of Article 47 of the FC RF the record about the mother and father of the child, made by the civil registry body, is proof of origin of the child from the persons indicated in the record (in accordance with Items 1 and 2 of Article 51 of the FC RF), when a claim for establishment of paternity (maternity) is considered in regard of a child, and a certain person is

indicated as its father (mother), this person must be drawn by the court to participation in the case in the capacity of a defendant, because if the stated claims are satisfied, the previous information about the father (mother) must be expunged from the birth record (Articles 69 and 75 of Federal Law No. 143 of 15 November 1997).

18. In consideration of disputes regarding the establishment of paternity (maternity), the courts should take into account that based on provisions of Item 4 of Article 48 of the FC RF, establishment of paternity (maternity) in regard of a person over the age of eighteen is allowed only with consent of that person, and if that person was recognised legally incapable – with the consent of her/his custodian or of a custodianship and guardianship body.

Since an underage person becomes fully legally capable in case of emancipation or marriage, the establishment of paternity (maternity) in regard of such an underage person is also allowed only with consent of that person (Item 2 of Article 21, Item 1 of Article 27 of the CCRF).

Lack of consent of the aforementioned persons for the establishment of paternity (maternity) constitutes grounds for refusal to satisfy the claim.

19. In accordance with Article 49 of the FC RF, when establishing paternity, the court takes into consideration any evidence, which reliably confirms the origin of the child from a certain person. Such evidence may be produced from explanations of the parties and third persons, witness testimony, written and material evidence, audio and video recordings, expert conclusions (second paragraph of Part 1 of Article 55 of the CPC RF).

In consideration of cases on establishment of maternity, the court may also take into consideration any evidence, which reliably confirms the origin of the child from the given woman (Item 4 of Article 14, Item 2 of Article 21 of Federal Law No. 143 of 15 November 1997). For these purposes, the court should, in particular, inspect the medical documents confirming the fact of the child’s birth, medical documentation regarding the origin of the child from a certain woman (labour and delivery record), explanations of persons participating in the case, testimony of witnesses, in particular of persons that attended the birth (in case of birth outside a medical organization), expert conclusions.

20. In order to clarify the issues pertaining to the parentage of a child, the court may, taking into account the opinion of the parties and the facts of the case, appoint an expert examination, in particular a molecular genetics examination, which allows to establish paternity (maternity) with a high level of precision.

Herewith, the courts should take into account that the conclusion of the expert (experts) in regard of the child's parentage is one piece of evidence; it does not have predetermined force for the court and is subject to evaluation together with the rest of the body of evidence (Part 2 of Article 67, Part 3 of Article 86 of the CPC RF).

21. In accordance with Part 3 of Article 79 of the CPC RF, if a party evades participation in an expert examination, fails to provide the experts with the necessary materials and documents for study and in other situations, when it is impossible to conduct the expert examination based on the facts of the case and without the participation of that party, the court may, depending on which party is evading expert examination and what significance it has for that party, recognize the fact, for the ascertainment of which the expert examination was appointed, as established or refuted.

The aforementioned issue is resolved by the court in each individual situation separately, depending on what party and for what reasons failed to appear at the expert examination or failed to provide the expert (experts) with the necessary study objects, and also depending on what significance the conclusion of the expert (experts) has for this party, based on the body of evidence in the case. For these purposes the court should, in particular, verify whether there were circumstances that objectively prevented the appearance of the parent with the child at the expert examination, whether provisions of Part 3 of Article 79 of the CPC RF were clarified to that person, whether a new term was appointed for the expert examination, what other evidence the parties presented to the court in support (refutation) of the stated claim.

Establishment of the Fact of Acknowledgment of Paternity and of the Fact of Paternity by the Court

22. In case of death of a person, who acknowledged himself as the father of a child born on 1 March 1996 and later, but was not married to the mother of the child, the

court may, in accordance with Article 50 of the FC RF, establish the fact of acknowledgment of paternity by that person in special proceedings.

As regards children born before 1 October 1968 from persons not married to each other, the fact of acknowledgment of paternity (in case of death of the person, who acknowledged himself as the child's father) may be established by the court, provided that the child lived in dependence on that person at the moment of his death or earlier (Article 3 of the Law of the USSR No. 2834-VII of 27 June 1968 "On Adoption of the Basic Provisions of Legislation of the USSR and of the Union's Republics on Marriage and Family", Article 9 of the Decree of the Presidium of the Supreme Council of the RSFSR of 17 October 1969 "On the Manner of Enactment of the Code on Marriage and Family of the RSFSR").

23. The court may also establish the fact of paternity of a person, who was not married to the child's mother (in case of death of that person), in special proceedings. This fact may be established by the court in regard of a child born on 1 March 1996 and later, if there is evidence that reliably confirms the origin of the child from that person (Article 49 of the FC RF), and in regard of a child born from 1 October 1968 to 1 March 1996 – if there is evidence confirming at least one of the circumstances listed in Article 48 of the Code on Marriage and Family of the RSFSR.

24. Where there is no dispute at law, the court may establish the fact of acknowledgment of paternity or the fact of paternity in accordance with the rules of Chapter 28 of the CPC RF. If during the submission of an application or during the consideration of the case in special proceedings it is found that there exists a dispute at law, which that court is competent to resolve, the court issues a decree to leave the application for the establishment of fact of acknowledgment of paternity or the fact of paternity without consideration, in which it clarifies to the applicant and to other interested persons their right to resolve the dispute in action proceedings (Part 3 of Article 263 of the CPC RF).

Challenge of Paternity or Maternity (Article 52 of the SC RF)

25. In accordance with Item 1 of Article 52 of the FC RF, the entry about the parents, made in the book of birth records in accordance with Items 1 and 2 of Article 51 of the FC RF, may be challenged in court proceedings by the person recorded as the father or mother of the child, or by the person who is the actual

father or mother of the child (biological parent), as well as by the child himself/herself, after he/she reaches adulthood, by the child's custodian (guardian), by the custodian of a parent recognised by the court as legally incapable. The aforementioned right also belongs to a child, who has not reached the age of eighteen, but acquired full legal capacity as a result of emancipation or marriage (Item 2 of Article 21, Item 1 of Article 27 of the CC RF).

As family legislation does not allow voluntary interference of any person into family matters (Article 1 of the FC RF), the aforementioned list of persons is exhaustive and not subject to extended interpretation.

If a statement of claim on challenge of an entry about the father (mother) of a child in the book of birth records is submitted by a person not listed in Item 1 of Article 52 of the FC RF (e.g. by one of the successors of the person recorded as the child's father (mother) or by a relative of the child, not appointed as its custodian or guardian in the manner stipulated in law), the judge refuses to accept the statement of claim by virtue of Item 1 of Part 1 of Article 134 of the CPC RF, and if proceedings were initiated in the case, the court terminates the proceedings in accordance with the second paragraph of Article 220 of the CPC RF.

26. Based on provisions of Item 1 of Article 52 of the FC RF, the challenge of an entry about the father (mother) of the child is possible also after the death of the person recorded as the father (mother) of the child, as well as if such a person is deprived of parental rights, since deprivation of parental rights does not constitute grounds for expungement of information about the father (mother) of the child from the birth record and for the full termination of rights and duties based on the fact of parentage (Items 2–4 of Article 71 of the FC RF).

27. When considering cases on challenge of an entry about the father of the child, the courts need to take into account that the rule stipulated in Item 2 of Article 52 of the FC RF – that it is impossible to satisfy the claims of a person recorded as the father of the child by virtue of Item 2 of Article 51 of the FC RF for the challenge of his paternity (if at the moment of record that person knew that he is not the child's father) – does not deprive that person of the right to challenge that entry on the grounds of violation of will (e.g. if the application for the establishment of paternity was submitted under the influence of threats, violence or in a state in which the plaintiff was not able to understand the meaning of his actions or control them).

28. Taking into account that in cases on challenge of paternity the subject of relations is, in particular, the underage child, a court decision to satisfy the claim may not be based solely on the acknowledgement of the claim by the mother or the custodian (guardian) of the child, as this may entail violation of rights of the underage person, in particular of the right to know his or her parents, of rights to their care, to receive corresponding material assistance, to protect his or her own rights and lawful interests, as well as of the right to protection from parental abuse (Part 2 of Article 39 of the CPC RF, Article 54, Items 1 and 2 of Article 56 of the FC RF).

The courts should also take into account that, proceeding from the nature of the dispute, it is not allowed to approve conciliation agreements in the aforementioned cases.

29. If it is established during the trial that the person recorded as the father (mother) of the child is not the child's biological parent, the court may adopt a decision to satisfy the claim on challenge of the entry about the child's father (mother) in the birth record.

A court decision to satisfy the aforementioned claim constitutes grounds for expungement of information about the father (mother) of the child from the birth record.

Herewith, the courts should take into account that if the mother or custodian (guardian) of the child does not state claims for the establishment of paternity in regard of the biological father of the child simultaneously with the claim on challenge of paternity, or if such a claim is not stated by the biological father of the child, and the person recorded as the child's father objects against the satisfaction of the claim, in exceptional cases, in order to better guarantee the interests of the child and based on the priority of protection of the child's rights and interests (Article 3 of the Convention on the Rights of the Child, Item 3 of Article 1 of the FC RF) and taking into account the concrete facts of the case (e.g. long-term family relations established between the child and the person recorded as the child's father, stable emotional attachment of the child to this person, intention of this person to raise the child and care for her/him as for his own child), the court may refuse to satisfy the claim on challenge of paternity.

Resolution of Disputes Arising Due to Application of Assisted Reproductive Technologies

30. Married persons, who gave their written consent to the use of methods of artificial insemination or embryo implantation, if a child is born to them as a result of use of these methods, are recorded as the child's parents in the book of birth records (first paragraph of Item 4 of Article 51 of the FC RF).

Herewith, the courts should take into account that provisions of the first paragraph of Item 3 of Article 52 of the FC RF, in accordance with which the spouse, who in the manner stipulated in law gave written consent to the use of methods of artificial insemination or embryo implantation, has no right to refer to these circumstances when challenging paternity, do not preclude him from challenging the entry regarding paternity on other grounds.

For the purpose of correct adjudication of the claim on challenge of paternity, filed by a person recorded as the father of a child born as a result of use of the aforementioned methods, the courts should, in particular, check such legally significant facts, as: whether the child was born as a result of use of methods of artificial insemination or embryo implantation, whether the aforementioned person gave his consent to the use of methods of artificial insemination or embryo implantation voluntarily and consciously, for what term such consent was given and whether it was recalled before the expiration of that term, whether that term expired at the moment of artificial insemination or embryo implantation, whether the plaintiff consented to the use of donor biological material in application of those methods.

31. Part 9 of Article 55 of Federal Law No. 323 of 21 November 2011 "On Basic Norms of Health Protection of Citizens in the Russian Federation" (hereinafter – Federal Law No. 323 of 21 November 2011) stipulates that surrogacy is child bearing and childbirth (including premature birth) under a contract concluded by a surrogate mother (a woman who carries the child after the transfer of the donor's embryo) and the potential parents, whose sex cells were used for insemination, or a single woman, for whom child bearing and childbirth are impossible for medical reasons (hereinafter – potential parents).

In accordance with the second paragraph of Item 4 of Article 51 of the FC RF, persons married to each other, who gave written consent for the implantation of an embryo to another woman for the purposes of child bearing, may be recorded as

the child's parents only with consent of the person that gave birth to the child (surrogate mother).

Taking into account the provisions of Part 9 of Article 55 of Federal Law No. 323 of 21 November 2011, the rule stipulated in the second paragraph of Item 4 of Article 51 of the FC RF also applies when the contract of child bearing is concluded between a surrogate mother and a single woman.

Herewith, the courts should take into account that if a surrogate mother refuses to consent to the recording of the aforementioned persons (potential parents) as parents, this fact does not constitute absolute grounds for refusal to satisfy the claim of those persons for their acknowledgement as the child's parents and for the transfer of the child to them for upbringing.

For the purposes of correct consideration of the case, the court should, in particular, verify whether a contract of surrogacy was concluded and what were the provisions of that contract, whether the plaintiffs are the genetic parents of the child, for what reasons the surrogate mother refuses to consent to plaintiffs being recorded as the child's parents, and resolve the dispute in the best interests of the child, taking into account the facts established in the case and the provisions of Article 3 of the Convention on the Rights of the Child.

32. By implication of family legislation (Item 4 of Article 51 of the FC RF), the birth of a child with the use of donor genetic material by the spouses (single woman) does not entail establishment of parental rights and duties between the donor and the child, independent of whether that person was known to the child's parents or not (anonymous donor).

Taking this into account, the person that was the donor of genetic material has no right to refer to the fact that he/she is the actual parent of the child during adjudication of claims of challenge and (or) establishment of paternity (maternity).

Based on the same grounds, the claims of persons recorded as the child's parents (single parent) for the establishment of paternity in regard of the person that was the donor of genetic material, with the use of which the child was born, cannot be satisfied.

Court Resolution of the Issue of the Child's Family Name and Patronymic. Operative Part of the Court Decision

33. An effective court decision on establishment of paternity or establishment of the fact of acknowledgment of paternity constitutes grounds for the state registration of establishment of paternity (Article 48 of Federal Law No. 143 of 15 November 1997). Information about the father of the child is entered into a record on establishment of paternity in accordance with the data indicated in the court decision on establishment of paternity or on establishment of the fact of acknowledgement of paternity (Item 3 of Article 54 of Federal Law No. 143 of 15 November 1997). Based on the record on establishment of paternity, information about the child's father is also entered into the birth record (Item 1 of Article 57 of Federal Law No. 143 of 15 November 1997).

Taking into account the aforementioned norms, if a claim for the establishment of paternity or establishment of the fact of acknowledgment of paternity or of the fact of paternity, or a claim on challenge of an entry about the child's father in the birth record is satisfied, the operative part of the court decision must contain information necessary for the registration of establishment of parentage by the civil registry body and (or) for making the corresponding amendments to a civil status record.

For these purposes, the courts should proceed from the provisions of Article 55 of Federal Law No. 143 of 15 November 1997, which stipulates the information subject to indication in a record on establishment of paternity.

34. Taking into account that information entered on the basis of Article 55 of Federal Law No. 143 of 15 November 1997 into the record on establishment of paternity also includes information about the family name, first name and patronymic of the child before and after the establishment of paternity, the court should suggest it to the parties to discuss the issue of the family name and (or) patronymic of the child after the establishment of paternity, if these do not match the family name and (or) first name of the person that will be established as the father.

If there is a dispute between the parents on this issue, the court resolves it proceeding from the best interests of the child. For these purposes, the court, taking into account the provisions of Item 4 of Article 59 of the FC RF, should draw the custodianship and guardianship body to participation in the case. Herewith it should be noted that in accordance with Item 4 of Article 59 of the FC RF, the first

name and (or) family name of a child that has reached the age of ten may only be changed with the consent of the child.

35. If information about the child's father was entered by a civil registry body based on the joint application of the mother and father of the child, who were not married to each other (Item 2 of Article 51 of the FC RF, Article 50 of Federal Law No. 143 of 15 November 1997), the operative part of a court decision, satisfying the claims on challenge of paternity, must indicate not only that the corresponding amendments are to be made to the birth record (that information about the child's father is to be expunged from the record), but also that the record on establishment of paternity is to be annulled (Article 75 of Federal Law No. 143 of 15 November 1997).

36. In view of adoption of this Ruling, Items 1–7, 9 and 10 of Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 9 of 25 October 1996 "On Court Application of the Family Code of the Russian Federation in Consideration of Cases on Establishment of Paternity and on Recovery of Alimony" (as amended by Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 6 of 6 February 2007) are abrogated.

Chief Justice of the Supreme Court of
the Russian Federation V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation V.V. Momotov