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COMMENTARY TO ARTICLE 38 OF THE CONSTITUTION OF THE RUSSIAN FEDERATION

Abstract

In connection with the passing of the Law of the Russian Federation for the amendment of the Constitution of the Russian Federation on March 2020 14 , N 1-FKZ "On improving the regulation of certain matters of organization and functioning of the public authorities' increasing the relevance of research in the comment format. This article analyzes the provisions of Article 38 of the Constitution of Russia.

Keywords: motherhood, childhood, children, alimony, family business, family, fatherhood.

In the first part of the commented article 38 of the Russian Federation's Constitution, state guarantees for the protection of the family, motherhood, and childhood are provided. It is stipulated that motherhood and childhood, the family are under the protection of the state [1; 2].

This constitutional principle's specification is carried out in a family, civil, administrative, criminal, and other branches of Russian law.

In article 1 of the Family Code of the Russian Federation [3], a fundamental principle of family law is fixed and the state protection to maternity and fatherhoods well and childhood and the Russian Federation.

Family is a social community, united by kinship relations, taking children into care and under guardianship, adoption (adoption).

The rights of citizens in the family may be restricted only based on federal law and only to the extent that it is necessary for the protection of morality, health, rights, and lawful interests of other family members and other citizens (para . 2 h. 4 Art. 1 Russian Family Code).

One of the principles that protect the family institution is the principle of the inadmissibility of arbitrary interference by anyone in the affairs of the family (paragraph 2 of part 1 of article 1 of the Russian Family Code).

Protection of the family, motherhood, and childhood presupposes both the creation of conditions for the unhindered realization of rights and obligations, and the possibility of restoring rights in case of their violation in court and extrajudicial procedure, and, if necessary, with the participation of the guardianship and guardianship authorities.

The first direction of family protection is carried out by creating conditions for satisfying biological, social, and spiritual family needs, ensuring the family's economic independence and stability as a social institution.

Social protection of the family, motherhood, and childhood is expressed in the continually improving comprehensive system of social support created by the state, improving family life quality. At the legislative level, a system of state benefits for families with children has been established (maternity allowance; a lump-sum allowance for women registered with medical organizations in the early stages of pregnancy; a lump-sum allowance for the birth of a child; monthly childcare allowance; child allowance; lump-sum allowance when transferring a child to a family for upbringing, and others) [4].

States could support a multi-child family and families with a single parent. Article 259 of the Labor Code stipulates that the trend in business trips, attraction to work overtime, work at night, weekends and public holidays, women with children under three years old, the mother of her and fathers, nurturing them without a husband (wife) children under the age of five years, the employee s having x -disabled children, and the employee, caring for sick members of their families following medical findings, are allowed only with their written consent. A tax deduction for personal income tax is provided in double size to the only parent (adoptive parent), adoptive parent, guardian, a trustee (Article 218 of the Tax Code of the Russian Federation) [5].

Additional measures of state support for families with children are being implemented, aimed at creating conditions that provide such families with a dignified life through the allocation of maternal (family) capital: measures that provide an opportunity to improve housing conditions, receive education, social adaptation and integration into society of children with disabilities, and also increase the level of pension provision [6].

Another tool for implementing the principle of protecting families, mothers, and children is government programs (federal targeted programs) to solve the problem of providing families with housing [7, 8, 9].

Federal Law of November 21, 2011, N 323-FZ "On the Fundamentals of Health Protection of Citizens in the Russian Federation" (as amended on July 31, 2020) in Art. 51 establishes the rights of the family in the field of health (the right, for medical reasons, to consultations without charging a fee on family planning, the presence of socially significant diseases and diseases that pose a danger to others, on the medical and psychological aspects of family and marriage relations, as well as on medical genetic and other consultations and examinations in medical organizations of the state health care system in order to prevent possible hereditary and congenital diseases in offspring ; about the child 's father or other family member is given the right, subject to the woman's consent, taking into account the state of her health, to be present at the birth of the child, without charging the child's father or other family member ; about one of the parents, another family member or other legal representative is given the right to a free joint stay with the child in a medical organization when providing him with medical care in inpatient conditions during the entire period of treatment no matter the age of the child.

Maternity is a state of a woman's condition during pregnancy, childbirth, and a child's different upbringing. At the same time, the provisions of Art. 38 of the Constitution cannot be narrowly interpreted as exclusively protecting motherhood. They must be considered in conjunction with Part 2 of Art. 7 and item "g.1" of Art. 72 of the Russian Federation's Constitution, according to which state support is also provided to fatherhood. Also, men and women have equal rights and freedoms and equal opportunities for their implementation (part 3 of article 19 of the Constitution of the Russian Federation).

Article 264 of the Labor Code of the Russian Federation extends g Arantxa and benefits provided to women in connection with motherhood to fathers raising children without a mother and trustees (trustees) of minors.

Protection of the family, mothers, and children is a priority of the state's demographic policy aimed at preserving the reproductively of health I the citizens, increase fertility, reduce maternal and infant mortality, and the priority of family forms of education.

Protection of mothers and children is expressed in the peculiarities of the legal status of women in the world of work, concern for the preservation of reproductive health by restricting the use of women's labor in certain types of work with harmful and dangerous conditions, as well as those associated with lifting and manually moving heavy loads. Besides, the legislation

specifically regulates the peculiarities of the legal regulation of pregnant women's labor and persons with family responsibilities [1].

At the international level, the adoption of the Conventions of the International Labor Organization N 103 on Maternity Protection (Geneva, June 28, 1952).

The Labor Code establishes guarantees for the labor rights of pregnant women (Art. 255-261), persons who are raising and caring for disabled children (Art. 262-262.1), employees with three or more children (Art. 262.2).

Childhood is an important stage in forming a person at which the foundations of personality are laid.

Childhood is a condition of the child until he reaches the age of majority (Art. 1 of the Convention of the United Nations on the Rights of the Child, Art. 1 of the Federal CSO law as of July 24, 1998, N 124-FZ "On Basic Guarantees of Child Rights in the Russian Federation" (ed. 07/31/2020)).

Child protection consists of creating conditions for the full-fledged moral, psychological, physical development of a child, and eliminating factors that harm him, creating a system for protecting children's rights and legitimate interests, providing social support for children in difficult life situations.

Federal CSO law as of July 24, 1998, N 124-FZ "On Basic Guarantees of Child Rights in the Russian Federation" established the fundamental guarantees of the rights and legitimate interests of the child, provided for by the Constitution of the Russian Federation, in order to create the legal, social and economic conditions for the realization of rights and the legitimate interests of the child, including children in difficult life situations. In the Russian Federation, a system has been built to assist the child in realizing and protecting his rights and legitimate interests (Article 7 of the Law on the Basic Guarantees of the Rights of the Child).

A child in the Russian Federation is guaranteed human and civil rights and freedoms.

Article 52 of the Federal CSO law as of November 21, 2011, N 323-FZ "On the basis of public health protection in the Russian Federation" establishes the rights of pregnant women and mothers in the health sector and the guarantee of free medical care about support pregnant women nursing mothers, as well as children under the age of three, including through particular food points and trade organizations, is carried out after doctors under the legislation of the constituent entities of the Russian Federation.

When solving issues arising in legal relations with the participation of children in the Russian Federation, the priority is the principle of the priority of the interests of the child.

Taking care of children, their upbringing is an equal right and duty of parents (part 2 of article 38 of the Constitution of the Russian Federation) [10]. By Part 1 of Art. Sixty-one of the Russian Family Code, parents have equal rights and bear equal responsibilities to their children (parental rights).

UN Convention on the Rights of the Child in Art. 18 establishes the principle of common and equal responsibility of both parents for the child's upbringing and development. Where applicable, parents or legal representative have primary responsibility for the upbringing and development of the child. The best interests of the child are their primary concern.

Parental rights act simultaneously as parental duties (part 1 of article 63 of the Russian Family Code).

The basic principles of exercising parental rights are enshrined in Chapter 12 of the Russian Family Code.

Raising children is one of the main functions of the family. Family legislation establishes the priority of family forms of raising children (Article 123 of the Russian Family Code). The state provides support to the family to provide education, upbringing, recreation, and health improvement of children, protect their rights, and prepare them for a full life in society (Article 4 of the Law on the Basic Guarantees of the Rights of the Child).

The rights of the child correspond to parental rights and responsibilities: the child's right to live and grow up in a family, the right to communicate with parents and other relatives, the right to protection, the right to express one's opinion, the right to a given name, patronymic, surname, the right to receive maintenance from parents and other family members (Articles 54-60 of the Russian Family Code). Parents have the right to demand the child's return from any person who is not keeping him at home based on the law (Article 68 of the Russian Family Code).

Parents assist the child in realizing his rights (the right to education, health care, vocational guidance, and vocational support, employment, the right to rest and health improvement (Articles 7-12 of the Law on Basic Guarantees of the Rights of the Child), as well as their protection, acting as legal representatives of the child (clause 1 of article 64 of the Russian Family Code). In the Russian Federation, the availability and free of charge are guaranteed under federal state educational standards of preschool, primary general, basic general and secondary general education, secondary vocational education, as well as free of charge on a competitive basis higher education, if education level of the citizen receives first (ch. 3 of Art. 5 of the Federal law as from 29.12.2012 N 273-FZ (ed. from 07.31.2020) "On education in the Russian Federation" .

The maintenance of children is the responsibility of the parents. If this obligation is not carried out voluntarily, the parent may be compelled to fulfill this obligation in court (Article 80 of the Russian Family Code).

Considering the child's interests is the cornerstone of the exercise of parental rights in the Russian Federation (Article 65 of the Russian Family Code). As a measure to protect the interests of the child in the event of improper performance by the parents of parental responsibilities, the state may initiate deprivation of parental rights (Article 69 of the Russian Family Code), restriction of parental rights (Article 73 of the Russian Family Code), as well as the removal of the child (Article 77 of the Russian Family Code)/

It is the moral duty of children to take care of elderly parents. In this regard, in part 3 of Art. 38 of the Russian Federation's Constitution, it is established that non-disabled children who have reached the age of 18 must take care of disabled parents.

The obligation of adult children to support disabled parents is enshrined in Art. 87 Russian Family Code.

Under the current family legislation, the obligation to maintain and care arises for adult non-disabled children to disabled parents in need of assistance.

Under disabled adult persons entitled to alimony, it is understood the persons duly recognized as disabled I, II or Group III, as well as persons who have reached the average retirement age (p. 7 Resolution of the I Plenum of the Supreme Court on December 26, 2017 N 56 "On the application of legislation by courts in consideration of cases related to the recovery of alimony").

The amount of alimony is set, taking into account the parties' material and family situation and other noteworthy circumstances or interests of the parties.

The law binds the obligation to support parents with their need for help, which is determined by the financial situation insufficient to meet vital needs, taking into account age,

health, and other circumstances (clause 9 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of December 26, 2017, N 56 "On the applicable courts of law when considering cases related to the recovery of alimony ").

Children with parents deprived of parental rights are exempted from the fulfillment of this obligation, and children can be exempted if the parents avoided fulfilling the duties of parents.

Also, Part 2 of Art. 119 of the Russian Family Code court has the right to refuse to recover alimony to a capable adult person if it is established that he committed a deliberate crime against a person obliged to pay alimony or in the case of misbehavior of a capable adult person in the family.

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