

## THE ALBANIAN FAMILY CODE - A STEP FORWARD IN THE DEVELOPMENT OF FAMILY RELATIONS

**Dr. Cand. Irisi Topalli**  
European University of Tirana  
ALBANIA

### ABSTRACT

The parents and the family are primary responsible for the protection and upbringing of the child. The Albanian legislation which regulates the relations between the child and the parents, the family or the other persons responsible for upbringing of the child, gives priority to the rights and responsibilities of parents, family and other legal guardians of the child. It is important to define the proper place and role of the child in the protection of his or her rights. But what are the tendencies? What does The Code of the Family authorize? The Code of the Family envisages the duty and responsibility of parents to keep, educate and upbringing the child born in or out of their marriage, who in case of need are assisted by the state. In addition, the Code envisages the understanding of parental responsibilities which comprise the rights and responsibilities which ensure the moral and material well-being of the child, while caring for the child, while maintaining personal relations with the child, while ensuring the upbringing, development, legal representation and management of properties of the child.

**Keywords:** The code, family, legislation, parental, child.

### PARENTAL RESPONSIBILITY

#### Responsibility during the marriage life

The Code of the Family recognizes the fact that parents shall be responsible for the child-rearing and education. A child means every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained<sup>1</sup>. The common responsibility of parents for the upbringing and development of the child shall take place through the exercise of parental right (or parental authority, the term used by the Code of the Family). This responsibility equally belongs to both parents. This is the conclusion drawn from the content of the Code of the Family, according to which parents enjoy equal rights and responsibilities towards their minor children .

In addition, family legislation does not accept any advantage to one of the parents in relation to the paternal right and its exercise shall be in the best interests of the child. In cases when parents, due to several reasons, can not care for the child, they can ensure that another person shall care for the upbringing of the child. This person shall have the characteristics of the guardian, as defined by law.

Parents shall protect all the individual and property rights of their children, no need for special appointment. This is part of the rights and duties of parents towards their children. Both parents are responsible for the education, physical and mental upbringing, health and nutrition of their child .

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<sup>1</sup> The Convention on the Rights of the Child, Article 1

## Responsibility after the divorce

In case parents dissolve their marriage through the divorce, the parental right shall be exercised by the parent who shall be legally responsible for the upbringing of the child. The other parent shall continue to enjoy the parental right, but the manner to exercise it shall be defined by the decision of the law on divorce.

With regard to the food benefit to the child, to the care for the normal upbringing and education of the child, etc. he or she shall continue to be responsibly parallel with the other parent. The child's best interest shall be the primary consideration in all the cases<sup>2</sup>.

## Responsibility for nutrition

Parentless children and the ones with no support, are educate and cared for by the state. According to the Code of the Family, the parents are responsible for the nutrition of their minor children when they do not have sufficient means of living. The responsibility for nutrition continues even for the time that children attend middle school or go to University, up to 25 years of age. Parents continue to be responsible for the nutrition of their children even if the parents are deprived of the parental right.

Whereas, the Code of the Family has defined that upon the decision of the court for the divorce, the court at the same time, solves the issue of defining the parent who shall be responsible for upbringing and education of the child, and what would be the necessary contribution for the upbringing and education of the child .

## CUSTODY

Under the Albanian Family Code a parent may lose parental authority by reason of family abandonment or should he or she commit a criminal offense (e.g., battery) against his or her child. Children whose parents have lost parental authority may be placed under guardianship while in state custody. Guardians are tasked with caring for both the child and his or her property, and must also represent the child in legal proceedings. In cases of guardianship, the Code envisages the responsibilities of the court of law to decide based on the qualities of the selected person to upbring and educate the minor in accordance with the requirements envisaged by the Code of the Family.

## Guardianship

A permanent, safe, family- like living situation for every child is the goal of currant child welfare legislation and practice<sup>3</sup>. The Code of the Family recognizes the right of the Guardianship Council to require the court of law to decide the withdrawal of the child from the parents in such a case when the parents shall not care for the upbringing and education of the minor child or when this is in the best interest of the child. The responsibility of upbringing and education of the child shall be recognized to a state institution or to another person, when he or she agrees.

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<sup>2</sup> Zaka, T., (2001) UN Convention on the Rights of the Child and Albanian Legislation, Tirane

<sup>3</sup> Berry, M., Barth, P., R. (1978), Outcomes of Child Welfare Services under Permanency Planning, [The University of Chicago Press](#)

The court appoints a special guardian when this is required by the interests of the minor. The special guardianship is removed when the causes for which it was placed cease<sup>4</sup>.

### **Paternal authority**

In cases when parents abuse their paternal rights (or paternal authority) or neglect this authority, or when his or her activity influences negatively in the upbringing and education of the children, upon the request of the other parent or of the Council of Guardianship, or of the prosecutor, and by the decision of the competent court, the parent shall be deprived of the paternal right.

In most of their decisions, the courts of law have attempted to apply the criteria of the best interest of the child, while defining the paternal authority in the proceedings of dissolving a marriage, when a child or the children shall live with one of the parents. But there are other cases when courts of law are not expressed or are vaguely expressed in relation to the interest of the minor under such circumstances.

### **ADOPTION**

A place to call home is one of the most urgent physical and emotional human needs, particularly for those who have been deprived of the stability, warmth and practical support of family life generally associated with a home.

#### **Adoption Authority**

The government office responsible for adoptions in Albania is the Albanian Adoption Committee.

#### **Adoption Procedures**

Individuals may not deal directly with the Albanian Adoption Committee or with individual orphanages or biological parents. The Albanian child must have a certificate from the Albanian Adoption Committee stating that s/he is adoptable. This means that the child has been in an orphanage for at least six months with no contact from his/her biological parents, and that the orphanage has been unsuccessful in placing the child with an Albanian family. The prospective adoptive parents may not go to an orphanage to select a child without authorization from the Albanian Adoption Committee. In general the Committee will propose a child whom the prospective adoptive parents may accept if they wish.

#### **Age and civil status requirements:**

Under Albanian law, prospective adoptive parents must be a minimum of 18 years older than the adopted child<sup>5</sup>. Both married and single prospective adoptive parents are permitted.

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<sup>4</sup> The Code of Civil Procedure of the Republic of Albania, Article 355

<sup>5</sup> The Family Code of the Republic of Albania, Article 241

**CASES**

**A.** The parents A and B ( A- the mother and B- the father ) have a child ( C ) who is 6 years old.

B passes a lot of time out of the city for work. A wants to dissolve her marriage with B through the divorce. So she asks the divorce.

**QUESTIONS**

1. Who shall solve the problem of the upbringing and education of C?
2. With which of the parents must C stay and why?

**ANSWERS**

**1.** The code of the Family has defined that is the court that upon the decision for the divorce, at the same time, solves the issue of defining the parent who shall be responsible for upbringing and education of the child, and what would be the necessary contribution for the upbringing and education of the child.

**2.** Paying attention at : the age of C, the absence of B in the life of C, the best interests of the child, C must stay with A. So the parental right shall be exercised by her. With regard to the food benefit to the child, to the care for the normal upbringing and education of the child, etc. B shall continue to be responsibly parallel with the other parent A.

**B.** The parents A and B ( A- the mother and B- the father ) have a child ( C ) who is 12 years old.

B is a very violent person and he has a very negative influence in the upbringing and education of C. A can't bear the negative influence of B in the upbringing and education of C anymore.

**QUESTION**

What is the legal way in which A can proceed to quit all this ?

**ANSWER**

The code of the Family has defined that when parents abuse their paternal rights (or paternal authority) or neglect this authority, or when his or her activity influences negatively in the upbringing and education of the children, upon the request of the other parent ( in this case ), and by the decision of the competent court, the parent shall be deprived of the paternal right. So in our case , upon the request of A, and by the decision of the competent court, B shall be deprived of the paternal right.

**CONCLUSIONS**

The Code of the Family envisages the duty and responsibility of parents to keep, educate and upbringing the child born in or out of their marriage, who in case of need are assisted by the state. In addition, the Code envisages the understanding of parental responsibilities which comprise the rights and responsibilities which ensure the moral and material well-being of the child, while caring for the child, while maintaining personal relations with the child, while ensuring the upbringing, development, legal representation and management of properties of

the child. In the end, we can say that the Albanian Family Code is a step forward in the development of family relations.

## **REFERENCES**

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