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**RESTRICTION AND DEPRIVATION OF PARENTAL RIGHTS AS
MEASURES OF LEGAL RESPONSIBILITY IN FAMILY LAW OF THE
RUSSIAN FEDERATION**

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Abstract

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Relevance of the research topic. Family law, which regulates relations of paramount importance, is a strategically significant branch of Russian law. The stability of the Russian family and the exclusivity of state intervention predetermine the need to find a balanced approach to the regulation of measures of legal responsibility in the family law of the Russian Federation. The problem of the effectiveness of protection of a child's rights and legitimate interests determines the relevance of drawing up theoretically grounded recommendations on improvement of legal regulation.

To date, the Russian Federation and its multinational people have faced the most acute foreign policy threats that are existential for the state and society. The hostile acts of the United States and NATO member states manifest not only in open geopolitical confrontation, including military and economic aspects, but also in the comprehensive media impact on Russian society, including attempts to corrupt values and impose alien ideological clichés.

One of the directions of destructive influence of geopolitical opponents is the undermining of the family institution as the basis of Russian society. In order to protect traditional moral and spiritual values, the Decree of the President of the Russian Federation No. 809 dated 09.11.2022 has been passed approving the Basic Principles of State Policy for Preservation and Strengthening of Traditional Russian Moral and Spiritual Values, which designated a strong family as one of the most important traditional values (clause 5). Earlier, the President of the Russian Federation Vladimir Vladimirovich Putin noted in his Address to the Federal Assembly that "support for the family and its values is always an appeal to the future, to the generations that will live in an era of colossal technological and social changes and will determine the destiny of Russia in the XXI century."

One of the areas of concern is the improvement of the material well-being of families. A mechanism has already been implemented to exempt families with two or more children that purchase a large apartment or house from paying capital gains tax on home sales. In addition, it is proposed to increase the amount of the social tax deduction relating to costs of children's education.

Taking into account the fact that deprivation of parental rights, being a last resort measure of responsibility in family law, actually represents an external formalisation of family breakup, the issue of proper legal regulation in this area is topical. The need to support and protect the family underpins the importance of taking into account all factors and possible circumstances that are instrumental in the proper resolution of a dispute in this category of cases, which cannot be achieved without legal regulation that would meet both the interests of individuals and of preserving and protecting the institution of family as a nationwide value, which is what determines the importance of scientific and legal research in this field.

Cultural and religious traditions, economic stability, balanced relations between family members, as well as the integrity of mechanisms for the protection of rights of family members (especially children) are the conditions and circumstances that influence the strengthening of the institution of family. Given that the legal doctrine does not fully define the circumstances that allow the application of the institutions of restriction and deprivation of parental rights, it is relevant to supplement the theory of family law as to determining the essence of the institutions under study, their legal nature, as well as their role in the mechanism of protection of a child's rights.

The relevance of the research topic is also evidenced by the rather high number of children whose parents are deprived of, or limited in, their rights. Namely, in the period of 2014-2021, the number of such children was approximately in the range of 43000-51000.

State support for the family is one of the provisions included in the fundamentals of the constitutional system. The goal of family preservation is envisaged by the Concept of State Family Policy in the Russian Federation for the period up to 2025. This document also establishes the presumption of good faith on the part of parents in the exercise of parental rights, which means that interference in parent-child relations is possible only in strictly limited cases.

According to the Comprehensive Child Safety Strategy of the Russian Federation until 2030, one of the goals of state policy in this area is to strengthen the

institution of family and to preserve and support traditional Russian moral and spiritual values, including family values,. This goal cannot be achieved without comprehensive improvement of the institutions of restriction and deprivation of parental rights.

A special procedure for the application of restriction and deprivation of parental rights, distinct from the mechanism of removal of a child from home in case of immediate threat to the child's life or health, justifies their independent consideration. The compulsory nature of court proceedings in such a case indicates the existence of additional requirements, including the totality of provisions of procedural legislation.

The above circumstances indicate insufficient theoretical and practical elaboration of the topic and the relevance of the research on restriction and deprivation of parental rights as a measure of legal responsibility in the family law of the Russian Federation.

The degree of elaboration of the research topic. The theoretical foundations and practical aspects of legal responsibility in family law, including those relating to the deprivation and restriction of parental rights, are the subject of analysis and research in the works of such authors as M.V. Antokolskaya, Yu.F. Besspalov, E.M. Vorozheikin, L.A. Emelina, V.V. Zaitsev, N.F. Zvenigorodskaya, O.Yu. Ilyina, V.V. Kotlyarova, I.A. Mikhailova, L.M. Muratova, A.M. Rabets, V.A. Rysentsev, E.N. Sabitova, A.S. Sidorova, S.N. Tagaeva, V.I. Tsukanova, L.M. Pchelintseva, A.M. Nechaeva, M.V. Ulyanova, P.Ya. Yakushev.

The issues of protecting the rights and legitimate interests of a child are analysed in the works of V.N. Borodina, N.A. Gallyamov, V.A. Guseva, K.A. Zhirikova, S.G. Sayadyan, S.V. Startseva. The problems posed by the legal consequences of the application of restriction and deprivation of parental rights, as well as the development of statutory regulation in the field of children's rights protection are addressed in the research of N.I. Ogenova, T.V. Osipova, Zh.G. Pochivalova, O.V. Kolyada, L.V. Pavlova, A.M. Rabets, S.I. Smirnovskaya, S.N.

Tagaeva, E.A. Tatarintseva, P.M. Filippov, G.S. Dzhumagazieva, G.R. Khanzafarova, A.A. Khodusev, Yu.V. Chesnokova.

At the same time, the restriction and deprivation of parental rights as a measure of legal responsibility have not been studied comprehensively. The lack of proper coverage of the problematics in question allows us to assert the need for its further development.

The object of the study is social relations arising in connection with and as a consequence of subjection of parents to such measures of responsibility in family law as deprivation and restriction of parental rights. **The subject of the study** covers statutory instruments regulating social relations in cases of deprivation and restriction of parental rights, subjection of a person to legal consequences of these measures, judicial practice, as well as views prevailing in legal science on topical issues relating to the subject of this study.

The purpose of the study is to elaborate the theoretical provisions within the framework of legal regulation of the institutions of restriction and deprivation of parental rights being an integral part of the family law of the Russian Federation.

To achieve the goal of this paper, the author has set the following **objectives**:

1) to identify the specificity of legal responsibility in family law, the peculiarities of considering certain circumstances in its application, as well as to elaborate the theoretical justification for the goals of its application;

2) to research the legal nature of restriction and deprivation of parental rights, as well as to elaborate the theoretical justification for the correlation between legal and moral and ethical aspects of these measures;

3) to study the genesis of the institutions of restriction and deprivation of parental rights and foreign approaches to their legal regulation (mainly in European countries), showing the similarity of the basic principles of regulation of the institutions being considered, as well as the peculiarities of the domestic model of legal regulation;

4) to identify and research the role of legal responsibility in the mechanism of protection of children's rights, as well as to substantiate the preventive role of the institutions of restriction and deprivation of parental rights;

5) to study the circumstances under which the institution of restriction of parental rights can be applied, theoretically justifying the classification of grounds for restriction of parental rights;

6) to research the peculiarities of application of the institution of restriction of parental rights, as well as to make reasoned proposals to improve the family law regulation of this institution for the purposes of ensuring the protection of a child's rights;

7) to identify the legal consequences of the restriction of parental rights, as well as to elaborate the theoretical justification for their potential correlation with the deprivation of parental rights;

8) to substantiate the conceptual distinction between deprivation of parental rights and restriction of parental rights, as well as to study the circumstances under which such a measure of legal responsibility as deprivation of parental rights is applied;

9) to research the mechanism of deprivation of parental rights from the point of view of protection of the rights and interests of children, as well as to theoretically justify the exclusivity of such a measure;

10) to identify the legal consequences of deprivation of parental rights, to substantiate proposals to improve the mechanism of deprivation of parental rights, taking into account the expansive interpretation of the legal consequences of deprivation of parental rights by the Supreme Court of the Russian Federation.

Methodological basis of the study. This work was carried out by the author with the use of universal (dialectical, historical), general scientific (analysis, synthesis, systematic approach) and particular scientific (comparative law, formal logic) methods of cognition. In the course of determining the legal nature of restriction and deprivation of parental rights the formal legal method was used. The genesis of the institutions being considered was determined owing to the historical

method. In turn, the comparative law method allowed to identify the peculiarities of legal regulation of responsibility in family law of foreign legal orders, comparing them with the domestic approach.

Empirical basis of the study is represented by the statutory instruments regulating the sphere of family relations since the XVI century, the Constitution of the Russian Federation, the legislation of the Russian Federation and constituent entities of the Russian Federation, other statutory instruments regulating the procedure and specifics of deprivation or restriction of parental rights, as well as Rulings of the Plenary Sessions, judicial practice of the Constitutional Court of the Russian Federation, the European Court of Human Rights, courts of general jurisdiction of the Russian Federation (decisions in specific cases), collation and analysis of appellate and cassation courts, Reports.

The scientific novelty of the dissertation research lies in its attempt to identify the interrelationships of the institutions of restriction and deprivation of parental rights in legal regulation at its current stage. As a result, the author has developed an awareness of the lack of consistency in the regulation of the presented measures of responsibility in family law, which manifests itself in lack of objective reasons for the differentiation of subjects authorised to bring such claims to court, as well as excessive evaluativity of the concepts used when resorting to the restriction of parental rights.

The conclusions presented in the dissertation on the role of guardianship and custody bodies, offices of public prosecutor and other authorised persons, allow to ensure understanding of the mechanism of restriction and deprivation of parental rights. In particular, an opinion of a guardianship and custody body serves as indispensable evidence when considering such disputes, seeing that a different approach cannot be characterised as being in the best interests of the child.

Based on a comparison of the grounds for restriction and deprivation of parental rights, a number of contradictions has been identified concerning the procedure for deprivation of parental rights in case of application of a measure of responsibility in family law in the form of their restriction, and the role of certain

circumstances interpreted ambiguously by the courts (for example, attempts to deprive of parental rights in case of participation in political actions).

The confusion in the concepts used within the framework of institutions of restriction of parental rights and upon removal of a child from home in case of direct threat to the life or health of the child, makes it impossible to unambiguously establish what degree of danger enables the use of an administrative procedure of intervention in family relations.

Arguments to be defended:

1. Responsibility in family law is the totality of adverse consequences of non-proprietary and proprietary nature for the offender, arising as a result of violation of the norms of family law by the subject of within-family legal relations, the application of which is aimed at protecting and restoring the violated rights of other subjects of legal relations, as well as at restricting/depriving the offender of the opportunity to commit similar acts in the future. The most important purpose of responsibility in family law is: to ensure the existence of a stable family institution in the Russian Federation; to prevent the violation of the rights of subjects of within-family legal relations; the proper upbringing of children; the protection of violated rights of subjects of within-family legal relations; in other words, to create the most favorable family model in the Russian Federation (from the point of view of interests of society and the state).

Responsibility in family law (as applied to restriction and deprivation of parental rights) manifests itself in two aspects: restoration of violated rights and legitimate interests of family members, primarily the child (positive aspect); application of restrictive measures in respect of one or both parents (negative aspect). At the same time, the main purpose of responsibility in family law is not to punish the offender, but to protect and restore the rights of the child, parent or other bona fide family member.

2. Restriction and deprivation of parental rights are of a special legal nature, as they can be both a measure of legal responsibility of a parent and an educational measure in relation to the parent. Moreover, the educational measure is much more

significant in essence (along with ensuring the protection of the rights and legitimate interests of a child as a priority), because for within-family legal relations it is far more important to re-educate an unscrupulous parent than to punish such a parent .

Based on the above, the nature of the consequences of responsibility in family law for a parent is related to the moral aspect, which significantly distinguishes these measures of responsibility in family law from the sanctions arising within the framework of civil, criminal and administrative liability.

3. The independent consolidation of the institution of restriction of parental rights is a novelty of the modern legislation of the Russian Federation as opposed to previous periods of historical development. It is designed to expand the list of mechanisms used in case of violation of the rights of a child. In contrast to the deprivation of parental rights, the restriction of parental rights allows to ensure the protection of the child's interests with the minimum possible legal consequences for the parent, distinguishing between the degree of danger in the parent's behavior and (or) the possibility of living with such a parent. The advantage of such a measure is the continued possibility of contact between the child and the parent restricted in parental rights. In this case, the differentiation between restriction of parental rights as a measure of protection in relation to the child and as a measure of responsibility in relation to parents is accomplished owing to the cause of danger (the fact of the parent's guilty behavior).

4. Restriction and deprivation of parental rights, being an integral part of the mechanism of protection of the rights of a child, allow to stop a violation of the rights and legitimate interests of the child, as well as to prevent such a violation in the future. The use of evaluation categories in the process of law enforcement (abuse of parental rights, maliciousness, danger, etc.) is aimed at establishing the consequences in connection with which the deprivation or restriction of parental rights is applied in the interests of the child. These measures are designed to prevent extremely negative consequences for the child which are due to living with an unscrupulous parent. The assessment of existence of facts and circumstances of abuse of parental rights and of danger in parental behavior allows to determine the

sufficiency of application of legal consequences of restriction or deprivation of parental rights.

5. A classification of grounds for restricting parental rights depending on the actions/inaction of parents has been developed. The classification is based on the correlation with individual circumstances that result in legal consequences:

- 1) living conditions that do not meet the interests of the child;
- 2) improper fulfilment of parental duties, confirmed in accordance with the established procedure;
- 3) lack of care on the part of the parents;
- 4) existence of facts as to threat to child's safety;
- 5) existence of circumstances that may cause deficiencies in personality development.

6. The range of persons vested with the right to sue (the right to bring an action) for restriction and deprivation of parental rights should be uniform, since the legal nature of these institutions is similar, and the court may independently determine the most appropriate measure of responsibility upon consideration of the case. In addition to one of the parents, persons in loco parentis, the public prosecutor, and bodies or organisations authorised to warrant the protection of children's rights and that have the right to bring an action for deprivation of parental rights, an action for restriction of parental rights may also be brought by close relatives of a child, preschool educational organisations, organisations of general education and other organisations. In this connection, we propose to amend articles 70 and 73 of the Family Code of the Russian Federation by unifying the list of persons authorised to file a lawsuit for restriction or deprivation of parental rights.

7. In the opinion of the author of the dissertation, the distinctions between the institutions of restriction and deprivation of parental rights can be classified into three categories.

The first is the circumstances that determine the application of the measure of responsibility. When restricting parental rights, a criterion evaluating danger for the child and bona fide parent is used; there is no exhaustive list of grounds. In the case

of deprivation of parental rights, an evaluation criterion of abuse of parental rights is applied, there being neglect of duty; the list of grounds is exhaustive.

The second ground is the degree of danger for the child. Restriction of parental rights stops the child from being dangerously close to the parent, which the legislator does not consider as a circumstance that implies the loss of all the rights of the parent based on the fact of kinship with the child. In the case of deprivation of parental rights, the danger to the child manifests itself in one of the established grounds specified in article 69 of the Family Code of the Russian Federation, whereby the circumstances have the greatest negative impact on the child.

The third ground presupposes infringements on the rights of the child stemming from parent's behavior (or absence of such infringements). Restriction of parental rights may be applied even in cases of violation of the child's rights due to circumstances beyond the parent's control. Deprivation of parental rights prevents only culpable behavior of the parent that is inconsistent with the interests of the child and that results in the violation of the child's rights.

Theoretical significance of the dissertation lies in the fact that the conclusions formulated in the course of the work (the concept of responsibility in family law, the legal nature of restriction and deprivation of parental rights) can be used for the purposes of further research into the institutions of deprivation and restriction of parental rights, including through the prism of ensuring the priority of the interests of the child in within-family legal relations.

The main results of the study, including the range of persons entitled to sue for restriction and deprivation of parental rights, the specificity of the used evaluation concepts, can be taken into account in further improvement of family, civil and administrative legislation, and separate norms regulating social security issues.

Materials of the thesis might be of use in the framework of lectures and practical classes in family law courses.

The practical significance of the dissertation lies in the fact that practical recommendations have been developed aimed at improving the legislation of the

Russian Federation regulating the issues of restriction and deprivation of parental rights.

The practical significance of the study also lies in the fact that the conclusions and recommendations formulated in it can be used for the formulation of documents devoted to the interpretation of the procedure for the application of restriction and deprivation of parental rights, as well as in the process of preparation of learning and teaching support materials in family law.

Reliability and validity of the thesis research. The reliability of the conducted research results from the use of a wide range of methods in the process of using scientific works on the topic of responsibility in family law, a significant amount of law enforcement practice, on the basis of which conclusions of significance for the institutions of restriction and deprivation of parental rights are made.

8 scientific articles on the subject of the dissertation have been published in peer-reviewed scientific journals wherein the main scientific results for the degrees of candidate of sciences and doctor of sciences should be published: Farafontova D.S. Mechanism of restriction of parental rights in the legislation of the Russian Federation // Eurasian Law Journal. - № 6 (157). - 2021. - P. 214-216; Farafontova D.S. The essence of the institution of deprivation of parental rights in the Russian legal system // Law and Education. - № 4. - 2022. - P. 117-122; Farafontova D.S. Features of intersectoral regulation of alimony obligations // Eurasian Law Journal. - № 2 (165). - 2022. - P. 202-204; Farafontova D.S. Protection of property rights of spouses (former spouses) // Collection of materials of the International scientific and practical student conference in memory of Associate Professor S.V. Nikolyukin. - Current issues in private law. - RSUP. - 2022. - P. 977-980; Farafontova D.S. Specificity of application of the institution of restriction of parental rights // Law and Education. - № 9 - 2023. - C. 110-115; Farafontova D.S. Some directions for improvement in the institutions of restriction and deprivation of parental rights // Pravo i Upravlenie. - № 10 - 2023. - P. 88-92; Farafontova D.S. Alimony (allowance or spousal support): foreign experience // Features of the Intersectoral

approach in legal science: Economics. Law. Court: collection of materials of the I International Scientific and Practical Postgraduate Conference in memory of V. F. Yakovlev (Moscow, December 2, 2021) / edited by O. V. Zaitsev, D. S. Farafontova; RANEPA, Institute of Public Administration and Management, Graduate School of Law. - Moscow: Statute, 2022. P. 107 - 110; Farafontova D.S. International Child Abduction. Issues of application and implementation of the Convention in the Russian Federation // Intersectoral approach in legal science: Economics. Law. Court: collection of materials of the II International Scientific and Practical Postgraduate Conference in memory of V. F. Yakovlev (Moscow, December 2, 2022) / edited by O. V. Zaitsev, A. I. Surdina; RANEPA, Institute of Public Administration and Management, Graduate School of Law. - Moscow: Statute, 2023. P. 324 - 328.

The results of the dissertation research were presented at international and all-Russian scientific and practical conferences.

The structure of the study. The structure of this work is determined by the object, goals and objectives of the dissertation research. The dissertation consists of an introduction, three chapters covering ten paragraphs, as well as a conclusion and a list of sources used. All this is underpinned by the object, goals and objectives.