

Сергей Михайлович Карпушкин<sup>1</sup>

## **Curious way of the civil protection of children's rights and interests in Russia**

In Russia a child is not entitled to his/her parents' property, and parents in their turn have no right to own their child's property. However, parents, as legal representatives of their child, can manage the property of latter until the child attains the age of full legal capacity which is eighteen years.

Hence, parents are not eligible to dispose of the child's property without the preliminary permission of the state authority (the Custody and Guardianship Agency). The following regulations recognize that.

*According to the paragraph 3 of the Article 60 of the Family Code of the Russian Federation: "When the parents exercise the powers to manage the child's property, they are subject to the rules established by the civil law with regard to the disposal of the property of the ward" (Art. 37 of the Civil Code of the Russian Federation).*

*Moreover, paragraph 2 of the Article 37 of the Civil Code of the Russian Federation states as follows: "The guardian is not entitled to perform, without the prior permission of the guardianship and trusteeship authority, the consent of the trustee to carry out alienation transactions, including the exchange or donation of the ward's property, its hiring out (renting), free use or pledge, transactions resulting the refusal of the rights belonging to the ward, the division of his property or the withdrawal of its parts, as well as any other actions that entail a reduction in the property of the ward".*

This stringent rule raises many academic and practical questions:

---

<sup>1</sup> Doktorant, Санкт-Петербургский государственный университет, Российская Федерация (Sankt-Petersburski Uniwersytet Państwowy, Federacja Rosyjska).

1. Obtaining the official permission of the authorized agencies can be a heavy burden for child's property management. Scrupulously following the rule could make the management of child's property more complicated. Therefore, in practice this rule is applied only for transactions with real estate (dwelling) which belongs to the child.

2. Parents are dissatisfied with assessment criteria, as these criteria are not transparent, clear-cut and rather vague. This assessment tends to be subjective as a particular official of the guardianship may have his/her own opinion about child's interests. And this stance may contradict parents' point of view.

*For example, a family lives in a three-room apartment that was inherited by the child. Parents are planning to move into centrally located two-room flat. The new residential area is abundant in various facilities: school, swimming pool, medical center etc. In this case the parents will face the problem of obtaining preliminary permission as the state authorities usually take token approach dealing with this issue. The official will base his or her decision on the formal reduction of the dwelling space.*

The other extreme aspect of this problem is an abuse of power by officials when they give preliminary permission without consideration of the child's interests whereas they make a deal with dishonest parents

3. This legislative rule was established to prevent dishonest actions that could be carried out by the guardians. However now it is applicable to parents both natural and adoptive. In this case law-maker disregards the natural desire of the parents to act in compliance with interests of their child and law-maker's position is in fact based on the presumption of parent's bad faith.

4. What are the consequences of the transaction with the child's property without the preliminary permission of the Custody and Guardianship Agency? This transaction shall be invalid by virtue of being deemed as such by a court (contested transaction). However, the state authority has the right not to dispute a transaction if it was made in accordance with the interests of the child.

Thus, the preliminary permission of the Custody and Guardianship Agency, understood as the protection of children's rights instrument, can be detrimental to children's interests in practice.