

NATIONAL REPORT: FRANCE

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A. GENERAL

1. Having regard to the concept of parental responsibilities as defined by the Council of Europe (see above), explain the concept or concepts used in your national legal system.

French legal provisions use the terminology “*autorité parentale*” [parental authority]. Until the Act of 4 April 1970, the French CC used the terms ‘*puissance paternelle*’, which states the power of decision the father had over his children (this power belonged only to the father). In Art. 371-1 French CC the ‘*autorité parentale*’ is now defined as “‘a collection of rights and duties aimed at the child’s interests.’ This concept of parental authority encompasses several aspects, including care and protection, the maintenance of personal relationships, determination of the child’s residence, the child’s education, legal representation, a maintenance obligation towards the child, administration of property, and civil liability of the parents for damages caused by their child. See also Q 2.

2. Explain whether your national concept or concepts encompass:

The French concept of “*autorité parentale*” [parental authority] encompasses several different parental rights and duties. The child, regardless of age, owes honour and respect to his or her parents (Art. 371 French CC). Art. 371-1 French CC gives a broad definition of parental authority: it is a collection of rights and duties aimed at the interests of the child. The parental authority belongs to the father and mother until the child reaches the age of majority or is *émancipé* (emancipated). This authority is used for the protection of the child’s safety, health and morality. The rights and duties also ensure the child’s education and allow for its personal development. The parents should make the child a party to the decisions relating to him, allowing for the child’s age and degree of maturity.

(a) Care and protection

Yes. The fundamental function of parental authority is protection.¹ French legal provisions require the parents to protect the child’s safety, health and morality (Art. 371-1 C.C.). Although the 4 March 2002 reform of the French CC no longer mentions the classical triptych that formed the contents of parental responsibilities (*garde, surveillance, éducation*),² French authors assert that these three fundamental parental tasks still exist and remain part of the parental responsibilities³. *Garde* meant that the

¹ See G. CORNU, *Droit civil, La famille*, 2001, Paris : Montchrestien, 7th Ed., No. 71: *l’autorité parentale est en soi un droit-fonction*; see also No. 73: *l’autorité parentale est fondée sur la vocation naturelle des parents à protéger leur enfant*).

² See G. CORNU, *Droit civil, La famille*, 2001, Paris : Montchrestien, 7th Ed., No. 77.

³ See, for example, Th. FOSSIER, *L’autorité parentale*, 2002, ESF, 2nd Ed., p. 4. A reason for this solution is not only the contents of Art. 371-1 French CC, which defines parental responsibilities and their aims, but also Art. 213 French CC. that states that spouses are

parents should live with their child or, more generally, determine where their child should live. It is therefore part of the "*communauté de vie*" (living together, community of living) between parents and children. *Surveillance*, a term no longer used in the new legal provisions, still exists as a parental duty to take care of, to protect, and to pay attention to the child and its needs.⁴ This is indirectly stated in Art. 371-1 French CC, which requires that the exercise of parental responsibilities should be used to protect the child's safety, health and morality. Education is still mentioned in the legal provisions of the French CC concerning the parental authority.

(b) Maintenance of personal relationships

Yes. The child cannot leave the family home without the parents' permission (Art. 371-3 French CC). The European Court of Human Rights decisions interpreting Art. 8 of the European Convention on Human Rights insist that the parent and child living together is an essential and fundamental part of the right to respect for family life.⁵ The maintenance of personal relationships between parent and child is not expressly stated in the French CC except as it relates to the divorce or separation of the parents; even if the parents get divorced or separated and only one parent retains parental responsibilities, the other parent has the right and the duty to maintain personal relationships with the child. See Art. 373-2 para. 2 French CC: "'The father and mother shall maintain personal relationships with the child and respect the bonds between the child and the other parent.' The use of the word 'maintain' shows that this duty also existed when the parents lived together.

(c) Provision of education

Yes. Each parent shall contribute to the education and support of the child in proportion to his or her means, to those of the other parent and in proportion to the child's needs (Art. 371-2 French CC). Education has several aspects, including school education and studies, moral education, professional orientation and religious upbringing.

(d) Legal representation

Yes. Parents are the legal representatives of their minor child if they have parental responsibilities (see Art. 389 French CC). If the parents have joint parental responsibilities, they are both *administrateurs légaux* of the child; they both represent the child in all legal transactions (*actes civils*) except those where law allows the minor child to act on its own behalf (see Art. 389-3 French CC). If only one parent has parental responsibilities, that parent alone is *administrateur légal* (legal representative, Art. 389 para. 2 French CC).

(e) Determination of residence

Yes. See Art. 108 and 108-1 French CC. Spouses are allowed to have separate domiciles, but only if this does not undermine the legal provisions concerning the community of living (Art. 108 French CC). Regardless, the spouses shall jointly determine the family residence (Art. 215 para. 2 French CC) where the children will live. The domicile of a minor child who has not been emancipated is at the domicile of

jointly responsible for the moral and material guidance of the family. They shall provide for the children's education and prepare their future.

⁴ Cf. G. CORNU, *Droit civil, La famille*, 2001, Paris : Montchrestien, 7th Ed., No. 77, p. 164.

⁵ See ECtHR, 13.07.2000, *Elsholtz v. Germany*, Appl. No. 25735/94, (2001) I JCP 291; 26.02.2002, *Kutzner v. Germany*, Appl. No. 46544/99.

his parents (Art. 108-2 French CC). If the parents have different domiciles, the child's domicile is at the domicile of the parent with whom he lives (Art. 108-2 para. 2 French CC).

(f) Administration of property

Yes. See Art. 382 to 387 French CC. The parents have the right to administer their child's property and the right of usufruct (*droit de jouissance légale*).

3. In what circumstances (e.g. child reaching majority or marrying) do parental responsibilities automatically come to an end?

In three circumstances parental responsibilities automatically come to an end:

- when the child reaches majority (Art. 371-1 para. 2 French CC);
- when the child is emancipated. This takes place when the child, who must be at least 16, obtains the capacity to enter in legal transactions (*faire les actes civils*, Art. 481 French CC). The parents can petition jointly or one parent can act alone. If the *juge des tutelles* (guardianship court) believes after the child is heard that there are *justes motifs* (serious reasons) for the emancipation, an emancipation order will be issued (Art. 477 French CC); or
- when the minor child gets married (Art. 476 French CC).

In other cases, it is possible for the court to discharge parents of their parental responsibilities (*retrait de l'autorité parentale*, see Art. 378 *et seq* French CC and Q 51).

4. What is the current source of law for parental responsibilities?

The legal provisions concerning parental responsibilities are contained in Art. 371 to 387 French CC. These provisions have been amended several times. The latest reform is the Act No. 2002-305 of 4 March 2002, which was integrated into the parental responsibilities' provisions of the French CC.

5. Give a brief history of the main developments of the law concerning parental responsibilities.

Until 1970, parental responsibilities belonged solely to the father (*puissance paternelle*), who made all decisions concerning the child. A very important reform (Act No. 70-459 of 4 June 1970) put both parents on equal footing; they both had parental responsibilities but had to use them in the child's interest. A reform in 1985 (Law No. 85-1372 of 23 December 1985) abolished the only advantage the father had retained *i.e.* with respect to the administration of the child's property. Act No. 87-570 of 22 July 1987 modified the rules concerning the exercise of parental responsibilities after divorce, as well as for all other non-married parents. Another reform (Law No. 93-22 of 8 January 1993) stated the principle of joint parental responsibilities (*autorité parentale conjointe*) for divorced or separated parents and for non-married parents.

The newest reform is the Act No. 2002-305 of 4 March 2002, which provides a new definition for *autorité parentale* (parental authority): a collection of rights and duties aiming at the child's interest (see Art. 371-1 French CC). This reform also modernises the exercise of parental responsibilities. This reform retained the term 'parental authority' even though many foreign law provisions now use the term 'parental

responsibilities'. The French approach insists upon giving the parents an authority to comply with their educational task. The new law follows and improves the principle of equality between the parents (*coparentalité*) in the exercise of their parental responsibilities. The law also very clearly states that all children are equal (the law no longer uses the terms *filiation légitime* and *filiation naturelle* with respect to parental responsibilities. Now all legal provisions concerning parental responsibilities after divorce are put in the section containing the general rules on parental responsibilities under a broad heading concerning the situations of separated parents or parents who do not cohabit).

6. Are there any recent proposals for reform in this area?

No new recent proposal for reform has been prepared or contemplated since the law of 4 March 2002 has been enacted.

B. THE CONTENTS OF PARENTAL RESPONSIBILITIES

7. Describe what the contents of parental responsibilities are according to your national law including case law.

In French law, parental responsibilities (*autorité parentale*) encompass the right and the duty of the parents to live with their child (this is part of the *garde*, a term still used by French scholars⁶ but no longer appearing in legal provisions). The minor child has the obligation to live together with its parents (Art. 371-3 French CC). *Garde* means living together, cohabitation and more generally the collection of rights and duties of each parent to contact with the child. This encompasses the right of the parents to determine the child's residence. French law (Art. 108 French CC) allows the spouses to have distinct domiciles (one of them is chosen by the spouses as the family home). If the parents have separate domiciles, the child's domicile is the home of the parent with whom he actually lives (Art. 108-2 French CC). The parents can force the minor child to live with them (Art. 371-3 French CC); the child can only be removed from the family home as allowed by law.

Garde is also a parental duty that is based on the idea of protection. Parents who do not comply with the duty can be condemned to civil or criminal sanctions. Civil sanctions are, among others, the discharge of parental responsibilities or measures of educational support (*mesures d'assistance éducative*) that can even consist of the placement of the child with a third person or a social institution (in these cases, the child lives at the third person's home or is put in care at the social institution). Criminal sanctions (see e.g. Art. 227-1 French Criminal Code) for the abandonment of a minor under fifteen years of age is punishable by seven years' imprisonment and a fine of €100,000, unless the circumstances of the abandonment assured the health and the safety of the minor.

If a parent does not have parental responsibilities or if the child does not live with the parent, the parent has a right and duty of contact (*droit de visite, d'hébergement et de correspondance*). For joint parental responsibilities, see Art. 373-2 French CC, which states that a father and mother shall maintain the bond with their child regardless of the circumstances of separation. If only one parent is a holder of parental

⁶ See e.g. Ph. SIMLER, 'La notion de garde de l'enfant', *RTDCiv.* 1972, p. 685.

responsibilities, see Art. 373-2-1 French CC (the exercise of contact rights cannot be denied to the parent who is not holder of parental responsibilities except for *motifs graves* (very serious reasons). Both parents shall maintain personal relationships with the child.

(a) Right and duty of care (*soins, surveillance*)

The Law No. 2002-305 of 4 March 2002 theoretically suppressed the concept of *surveillance*, but it has maintained the parental duty to lead the family (*direction de la famille*, Art. 213 French CC) and to protect the child's health, safety and morality (Art. 371-1 French CC), which implies some supervision.⁷ Since the parents shall control and guide (*diriger*) their minor child they are liable for the damages the child causes (see Art. 1384 para. 4 French CC).⁸ The duty of care also requires that parents meet the elementary needs of the child (Art. 203 and 371-2 French CC): food, maintenance and upbringing.

The parents have the right to decide upon medical treatment, surgery *etc.* concerning their child. See also the special legal provisions with regard to: interdiction of sterilisation of minor children: Art. L. 2123-1 and L. 2123-2 French Code of Public Health (*Code Santé Publique*); delivery of contraceptive products to minor children: Art. L. 2311-4 and L. 5134-1 French Code of Public Health; voluntary termination of pregnancy by a minor child : Art. L. 2212-4 and L. 2212-7 French Code of Public Health; removal of organs on a minor child see Art. L. 1231-2 and L. 1232-2 French Code of Public Health; biomedical research concerning a minor child, see Art. L. 1121-6 and L. 1122-2 French Code of Public Health. See also Q 8.

(b) Upbringing (*éducation*)

See Art. 371-1 para. 2 French CC. Parental responsibilities belong to the father and mother until the child's majority or emancipation in order to protect the child's safety, health and morality, to ensure his education and to allow his personal development. In France, children must go to school from the age of six to sixteen (Law No. 75-620 of 11 July 1975). The parents can choose which school the child will attend and when the child will stop their studies (after 16 and under some restrictions). The French term *éducation* in the French terminology encompasses the right to control the child's studies, to decide upon his professional future, religious upbringing, *etc.* Parents shall also teach the child respect for the law. Corporal punishment (*châtiments corporels*) can be a part of the parental rights.⁹

⁷ See Th. FOSSIER, *L'autorité parentale*, 2002, ESF, 2nd Ed., p. 8.

⁸ Art. 1384 para. 4 French CC: "*Le père et la mère, en tant qu'ils exercent l'autorité parentale, sont solidairement responsables du dommage causé par leurs enfants mineurs vivant avec eux*" (Father and mother, as holders of parental responsibilities, are jointly liable for the damages caused by their minor children living with them). See also French Supreme Court, Civ. II, 19.02.1997, *JCP* 1997.II. 22 848: this liability has become objective because the parents can only be discharged of it if they prove a case of *force majeure* or the fault of the victim. See also French Supreme Court. Crim., 25.03.1998, *JCP* 1998. II. 10 162 annotated HUYETTE; French Supreme Court, Civ. II, 20.01.2000, *Bull. civ. II*, No. 14 (the holder of parental responsibilities remains liable for the damages caused by the child even if the child is put up for a short time at the other parent's or at a third person's home).

⁹ See French Supreme Court. Crim., 21.02.1967, *Bull. crim.* No. 73; *cf.* TGI Paris, 24.05.1972, *Gaz. Pal.* 1972. 2. P. 560. Teachers do not have such a right. The parents are nevertheless not allowed to treat their child in a degrading way, for example by food deprivation, Cass. Crim., 02.12.1998, *Bull. crim.* n°327.

If a parent without any legitimate reason does not comply with this duty of *éducation* and the child is seriously endangered, the parent can be condemned to a maximum of two years imprisonment.¹⁰ Art. 227-18 *et seq* French Criminal Code provides for a possible sanction of imprisonment for parents who provoke their child to use drugs unlawfully, to transport, keep, or offer drugs, or regular excessive consumption of alcoholic beverages, or habitually commit felonies or misdemeanours.

(c) Maintenance obligation (*obligation d'entretien*)

Parents shall feed and maintain their child in proportion to each parent's means and to the child's needs (Art. 371-2 French CC). The maintenance obligation of the parents towards the child goes further than the simple vital needs. It encompasses, among others, the affiliation to social security and the duty to get insured for civil liability (*assurance responsabilité civile*). The maintenance obligation does not automatically cease when the child reaches majority (Art. 371-2 para. 2 French CC); it still exists when, for example, the child is studying at university and is not yet able to support himself.

The amount of the maintenance is not determined in advance by *barèmes* (tables), such as the German *Tabellen*. When a dispute arises (most frequently when the parents separate) the court decides the amount that shall be paid, so there are some discrepancies in the amounts ordered between the different French courts. All the judges, however, apply some common criteria: income of each parent, property, child's age and needs, exceptional costs of one parent or of both *etc.*

If a parent does not comply with his or her duty to maintain the child, Art. 227-3 French Criminal Code titles the offence *abandon de famille*: "The non-execution of a judicial decision or a judicially affirmed agreement imposing upon a person an obligation to pay, in the interest of a legitimate, natural or adoptive child, of a descendant, an ascendant or spouse, a pension, a contribution, subsidies or benefits of any nature on the basis of one of the family obligations set out in Titles V, VI, VII and VIII of Book I of the Civil Code, by remaining more than two months without fulfilling that duty in its entirety is punished by two years' imprisonment and a fine of € 15,000: 'The offences referred to in the first paragraph of the present article are assimilated to abandoning the family for the purposes of 3° of Art. 373 of the Civil Code'.¹¹ In some cases the court can release the parents from their duty to maintain (*e.g.* if the child has assets and resources).

(d) Legal administration and right to *jouissance légale*

See Q 10 and 11.

8. What is the position taken in your national law with respect to:

(a) Care

In France, care encompasses the *garde* and the *surveillance* (see Q 7) and is part of parental responsibilities. See definition of *autorité parentale* in Art. 371-1 French CC (the set of rights and duties that ensure the welfare of the child; the aim of parental

¹⁰ Art. 222-17 French Criminal Code: 'Failure by the legitimate, natural or adoptive father or mother, without a legitimate reason, to comply with their legal obligations to the point of seriously endangering the health, safety, morals or education of their minor child is punished by two years imprisonment and a fine of €30,000.'

¹¹ Official Translation.

responsibilities is to protect the child and his security, health and morality, to ensure his education and allow his personal development). The parents are liable (Art. 1384 para. 4 French CC) for the damages caused by their minor child living with them. See also Q 7.

(b) Education

Education is also part of the parental duties. See Q 7. The parents control the minor child's relationships, the letters the child receives *etc.* They also choose the school at which the child will study and decide on the child's professional direction.

(c) Religious upbringing

The parents are free to decide upon the religious upbringing of the child. This is part of the parental responsibilities. Family court case law reflects the many disputes stemming from this right.¹²

(d) Disciplinary measures and corporal punishment

Disciplinary measures and corporal punishment (*châtiments corporels*) can be part of the parental rights,¹³ but the punishment must be proportionate and may not consist of maltreatment.

(e) Medical treatment

Parents are entitled to decide on any medical treatment or surgery for their child. In case of serious danger, however, the parents' permission is not required.¹⁴ The parents also generally must give their permission for a minor to terminate a pregnancy,¹⁵ but there are exceptions if the minor child wishes to keep the pregnancy and termination secret (See Art. L-2212-7 French Code of Public Health (*Code de la Santé Publique*)).

See also the special legal provisions with regard to:

- prohibition of sterilisation of minor children : Art. L 2123-1 and L. 2123-2 French Code of Public Health;
- delivery of contraceptive products to minor children : Art. L 2311-4 and L 5134-1 French Code of Public Health; the child does not need the parental authorisation (Art. 4 Law Act of 4 December 1974);
- voluntary termination of pregnancy by a minor child : Art. L 2212-4 and L. 2212-7 French Code of Public Health; the parental authorisation is generally required but Act No. 2001-588 of 4 July 2001 states that if the minor child wants to keep the pregnancy and termination secret from the holders of

¹² See *e.g.* French Supreme Court, Civ. I, 11.06.1991, *D.* 1991. P. 521 annotated MALAURIE (dispute between the parent about the possible conversion of the child to another religion. The judge decided that the parents must wait until the child's majority); CA Rennes, 18.02.1993, *JCP* 1994. II. 22 210 annotated CHEVALIER.

¹³ See French Supreme Court, Crim., 21.02.1967, *Bull. crim.* No. 73; *cf* TGI Paris, 24.05.1972, *Gaz. Pal.* 1972. 2. P. 560. Teachers do not have such a right. The parents are nevertheless not allowed to treat their child in a degrading way, for example by food deprivation, French Supreme Court, Crim., 02.12.1998, *Bull. crim.* No. 327.

¹⁴ See TOUZELIN, 'Le refus de consentement à un traitement par les parents d'un mineur en danger de mort', *JCP* 1974. I. 2672.

¹⁵ But the court may control whether a parent abuses their right to refuse termination of pregnancy in case of incest, CA Bordeaux, 4.12.1991, *D.* 1993. p. 129 annotated DUBAELE.

- parental responsibilities or the legal representative, she must be assisted in the choice of the person of majority who will accompany her.¹⁶
- removal of a minor child's organs, see Art. L. 1231-2 (such removal is not allowed on living minor children) and L. 1232-2 French Code of Public Health (for removal of a dead minor child's organs, both holders of parental responsibilities must give their written authorisation. If one of them cannot be consulted the removal of organs can take place if the other holder of parental responsibilities gives her or his authorization in writing);
 - biomedical research concerning a minor child (see Art. L. 1121-6 and L. 1122-2 French Code of Public Health), is allowed only in very limited cases (see L. 1121-7 French Code of Public Health).

(f) Legal representation

The parents who have parental responsibilities are also the legal representatives of the child (Art. 389 French CC). They are *administrateurs légaux* (statutory administrators) representing the minor child in all civil transactions, except where the law or usage authorises minors to act for themselves (Art. 389-3 para. 1 French CC). When parental responsibilities are jointly exercised by the two parents, they are statutory administrators. In regard to third parties, each parent is deemed to have received from the other the power to act alone in any transaction for which a guardian would not normally need authorisation from the court. Statutory administration is outright when the two parents exercise joint parental responsibilities. The administrative powers are placed under supervision of the guardianship court if one of the parents is dead or deprived of the exercise of parental responsibilities (Art. 389-2 French CC). For more details, see Q 10 and 11.

9. What is the position taken in respect of the child's right to be heard with regard to the issues mentioned under Q 8 ((a)-(f)). What relevance is given to the age and maturity of the child?

See Art. 388-1 French CC.¹⁷ In any proceeding relating to the minor child, a child capable to understand (*capable de discernement*) can be heard by the judge or by the person appointed by the judge. If the minor child makes a request to be heard, the judge must give special reasons if the request is denied. The minor child can be heard alone or with the assistance of a lawyer or another person of his choice. If the judge thinks the person the child chooses will not represent the child's best interests, the judge can appoint another person. If the child is heard before court, it does not follow that that the child will necessarily become a party to the proceedings.

¹⁶ See art. L 2212-7 Code Santé publique : "*Si la femme est mineure non émancipée, le consentement de l'un des titulaires de l'autorité parentale ou, le cas échéant, du représentant légal est recueilli. Ce consentement est joint à la demande qu'elle présente au médecin en dehors de la présence de toute autre personne. Si la femme mineure non émancipée désire garder le secret, le médecin doit s'efforcer, dans l'intérêt de celle-ci, d'obtenir son consentement pour que le ou les titulaires de l'autorité parentale ou, le cas échéant, le représentant légal soient consultés ou doit vérifier que cette démarche a été faite lors de l'entretien mentionné à l'article L 2214-4. Si la mineure ne veut pas effectuer cette démarche ou si le consentement n'est pas obtenu, l'interruption volontaire de grossesse ainsi que les actes médicaux et les soins qui lui sont liés peuvent être pratiqués à la demande de l'intéressée, présentée dans les conditions prévues au premier alinéa. Dans ce cas, la mineure se fait accompagner dans sa démarche par la personne majeure de son choix.*"

¹⁷ This legal provision was included in the French CC by the Act No. 93-33 of 03.01.1993.

There are special provisions concerning the right of the child to be heard when the judge decides upon the modalities of the exercise of parental responsibilities (Art. 373-2-11 French CC the judge shall take into account the feelings expressed by the child during proceedings) or when the *juge des enfants* (juvenile court judge) has to decide on possible educational support (Art. 1186 New French Code of Civil Procedure). All legal provisions require the child to be capable of understanding. The judge can deny the child a hearing if the age, health or intellectual skills of the child make the hearing impossible or if the hearing could endanger the child's health, mental health¹⁸ or psychological balance.¹⁹ If the child wants to be heard and formulates its request before the court,²⁰ the court shall state any circumstances of the case, which make the hearing of the child undesirable.²¹

10. Do(es) the holder(s) of parental responsibilities have the right to administer the child's property?

Yes. See Art. 382 French CC, which states that the father and mother have the right to administer and use the child's property (*administration* and *jouissance légale*). It is therefore a kind of usufruct so that the parents have the *usus* and the *fructus* on the child's property. The parents can spend the yields of the child's property without having to justify their expenses. The parents shall use these amounts first to maintain the child and to provide for his education and upbringing (Art. 385(2) French CC).²² The right to use the property ceases when the child reaches the age of 16 (Art. 384(1) French CC) or when he gets married, while the right of administration ceases when the child reaches the majority (18 years), gets married or is emancipated.

11. If yes, explain the content of this right.

The *administration légale* (right of administration) belongs equally to both parents if they both hold parental responsibilities. The *administrateur légal* (legal representative) represents the child in all routine daily acts (legal transactions, Art. 389-3 French CC), unless the child is authorised by law or custom to act on his or her own behalf. The child may act alone in some situations: e.g. a child who is at least 16 can write his or her last will (*testament*, Art. 904 para. 1 French CC); a child with employment can decide to become a member of a trade union of her or his choice (Art. 411-6 French Employment Code), but one parent can oppose it; the child may also spend his or her own pocket money or, more generally, enter into small contracts.

The legal administrator can act alone for all "*actes d'administration*" (administration acts) e.g. remove the child's money from the bank²³ or pay lawyer's fees.²⁴ Legal administration also means that the parents have the power to represent the child in judicial proceedings. But if the child and the legal administrator seem to have opposite interests in a proceeding, the *juge des tutelles*²⁵ (guardianship court) or the judge before

¹⁸ French Supreme Court, Civ. I, 20.02.1985, *Gaz. Pal.* 1985. 2. 756.

¹⁹ French Supreme Court, Civ. I, 02.11.1994, *Rép. Defrénois* 1995. 1027 annotated MASSIP.

²⁰ See G. CORNU, *Droit civil, La famille*, No. 90, p. 184.

²¹ French Supreme Court, Civ. I, 25.06.1991, *Bull. civ.* I, No. 210.

²² "*La nourriture, l'entretien et l'éducation de l'enfant selon sa fortune*" (Art. 385(2) French CC).

²³ French Supreme Court, Civ. I, 20.03.1989, *D.* 1989. 406 with obs. MASSIP.

²⁴ See French Supreme Court, Civ. I, 03.07.2001, *Bull. civ.* I, No. 195.

²⁵ The *juge des tutelles* is a single judge of the *tribunal d'instance*.

whom the proceedings are pending shall appoint an *ad hoc* administrator (a special administrator only for the pending proceedings, see Art. 388-2 C.C.).

The French legal provisions distinguish between three kinds of judicial acts:

- those that concern the routine day to day management, in which one parent can act alone and is deemed to have received power to act alone from the other parent (Art. 389-4 French CC). This is the *gestion concurrente*, which means that father or mother can act alone.
- those that are important and serious (so called *actes de disposition*, disposition acts), see Art. 389-5 French CC. If the parents cannot reach an agreement, one of them can call the guardianship court judge and petition for the authorisation to act alone;
- those that are so serious that both parents must ask for judicial authorization even if they agree upon the act to be made (see Art. 389-5 para. 3 French CC.): to renounce a right in the child's name, to contribute an immovable or a business concern belonging to the child to a partnership, to enter into a loan agreement on the child's behalf *etc.* The guardianship court judge is competent to give the necessary authorisation for such acts.

When only one parent is holder of parental responsibilities (for example in some situations with an extra-marital family, or after divorce or separation), the legal administration is exercised by one parent, but under judicial control (see Art. 389-6 C.C.). The holder of parental responsibilities may undertake acts of administration alone but she or he needs judicial authorization for all acts or disposition (Art. 457 C.C.).

12. Are there restrictions with respect to:

(a) Certain goods and/or values (inherited property, gift...)

Yes for *administration légale* (right of administration) and *jouissance légale* (right to use and enjoyment)(see Q 9). See Art. 389-3 para. 3 French CC for the right of administration: the property given to the child under the condition that it should be administrated by a third person is not subject to legal parental administration.

See also Art. 387 French CC for the right to use and enjoyment: the right to use the child's property does not extend to property acquired by the child through its work, nor to property donated or bequeathed to the child under the express condition that the parents may not have use and enjoyment of the property. If the parents' legal right of use has been expressly excluded by the testator or the donor, the parents still keep the right to administer the property but are not allowed to spend the yields. It is also possible for the testator or the donor to expressly exclude the parents' legal administration of the given or inherited property.²⁶

(b) Salary of the child

Yes for the right to use and enjoyment. (see Art. 387 French CC). The salary of the child and the property bought with this salary is not subject to the parental right of use and enjoyment.²⁷

²⁶ See G. CORNU, , *Droit civil, La famille*, 2001, Paris : Montchrestien, 7th Ed., No. 97, p. 191.

²⁷ See G. CORNU, *Droit civil, La famille*, 2001, Paris : Montchrestien, 7th Ed., No. 97, p. 191.

(c) Certain transactions

Yes. As seen above (see Q 10) some transactions require the consent of both holders of parental responsibilities (so called *gestion conjointe*, Art. 389-5 para. 1 French CC: this applies to acts of dispositions). If the parents do not agree on the consent, the one who wants to undertake the act must petition the judge of the guardianship court for authorisation.

Some very important and serious transactions require not only the consent of the holders of parental responsibilities, but also the authorization of the guardianship court (see Art. 389-5 para. 3 French CC); this applies to some sales, credit contracted on the child's behalf, a contribution of an immovable or a business concern belonging to the minor child to a partnership, or a renunciation to a right in the child's name.²⁸

13. Are there special rules protecting children from indebtedness caused by the holder(s) of parental responsibilities?

Art. 389-5 French CC states that both parents who hold parental responsibilities can undertake acts of administration and disposition. Still, some serious acts require judicial authorization (Art. 389-5 para. 3 French CC). If the act undertaken by the parents causes damage to the child, the parents are jointly liable (para. 4).

14. Do the contents of parental responsibilities differ according to the holder(s) of parental responsibilities (e.g. married, unmarried, parents not living together, stepparents, foster parents or other persons). If so, describe in some detail how it differs.

In principle, the contents of parental responsibilities do not differ according to the holder(s) of parental responsibilities. The definition of parental responsibilities is the same in a family based on marriage as in other families. The exercise of parental responsibilities only differs depending on whether there is one holder of parental responsibilities or two. For example when only one parent holds parental responsibilities, the administration of the child's property takes place under judicial control and all acts of disposition must be expressly authorised by a judge of the guardianship court.

C. ATTRIBUTION OF PARENTAL RESPONSIBILITIES

I. Married Parents

15. Who has parental responsibilities when the parents are:

(a) Married at the time of the child's birth

In this situation the mother and father have joint parental responsibilities (see the general assertion in Art. 372 para. 1 French CC: Father and mother shall exercise the parental responsibilities in common). This rule of joint parental responsibilities is the

²⁸ See, for example, for the approval of a judgment in the name of the children (the judicial decision concerned the damages suffered by the children. The approval (*acquiescement*) meant renunciation to appeal), French Supreme Court, Civ. I, 03.03.1992, *Gaz. Pal.* 4-8 sept. 1992. Pan. p. 219. See also French Supreme Court, Civ. I, 06.07.1982, *Bull. civ. I*, No. 252.

general principle for married parents, as well as for separated or divorced parents (except in certain situations).

(b) Not married at that time but marry later

After the marriage both parents hold parental responsibilities. This also applies before the marriage, if they both acknowledge the child (but if the parentage of one parent is established either more than a year after the child's birth or by judicial decision, the other parent who has recognised the child is sole holder of parental responsibilities, see Art. 372 para. 2 French CC).

16. How, if at all, is the attribution of parental responsibilities affected by:

(b) Divorce

In principle the attribution of parental responsibilities is not affected at all by divorce, see Art. 373-2 para. 1 French CC: '[T]he separation of the parents has no consequence to the application of the rules concerning the allocation of parental responsibilities.' The reform Act of 4 March 2002 incorporated a new section into the French CC concerning "the exercise of parental responsibilities by separated parents." This section makes no distinction between married and non-married parents who are separated. The criterion chosen by the French legal provisions is the 'separation of the parents'; it does not matter if the separation is a divorce, an annulment, a legal separation or even a factual separation.

In all cases of parental separation both parents generally remain holders of parental responsibilities (Art. 373-2 French CC), and the French CC requires each parent to maintain personal relationships with the child (para. 2). However, if the child's interest so requires, the judge can decide that only one parent shall have the exercise of the parental responsibilities (Art. 373-2-1 French CC).²⁹ The other parent then has a contact right (*droit de visite et d'hébergement*, see Art. 373-2-1 para. 2 French CC).

The judge is free to discern what is in the child's best interests. The *Cour de cassation* refuses to overrule decisions made under the discretion of the court using this standard,³⁰ but the *Cour de cassation* requires the family judge to state why the child's interests require that the exercise of parental responsibilities should be attributed to only one parent³¹.

(b) Legal separation

Same rules as above under (a) divorce.

²⁹ See e.g. the case which was brought before the European Court of Human Rights (ECtHR, 16.12.2003, *Palau-Martinez v. France*, Appl. No. 64927/01: the French court had decided that the children would live with the father because the mother was a member of the religious sect called Jehovah's Witnesses. The European Court of Human Rights criticises the insufficiency of the reasons given by the French court.

³⁰ See French Supreme Court, Civ. II, 28.03.1977, *Gaz. Pal.* 1977. 2. 602; Civ. I, 20.06.1995, *Bull. civ* I, No. 264.

³¹ See French Supreme Court, Civ. II, 31.05.1995, *Bull. civ.* II, No. 165 (the decision that attributed the exercise of parental responsibilities to the mother only mentioned that she was more available than the father to take care of the child and that her educational skills were as high as the father's ones). Several decisions insist upon the necessity for the family judge to give reasons concerning the research of the child's interest and its results, see e.g. Cass. Civ. II, 24.02.1993, *Bull. civ.* II, n° 76.

Annulment of the marriage

Same rules as in case of divorce (see under (a)).

Factual separation

The same rules apply as in case of a divorce (see above under (a)).

17. To what extent, if at all, are the parents free to agree upon the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage? If they are, are these agreements subject to scrutiny by a competent authority.

In principle, a parent may not waive or transfer his or her parental responsibilities; such a renunciation or cession is void unless confirmed by a judicial decision (Art. 376 French CC). Nevertheless French law does promote parental agreements on the exercise of parental responsibilities in separations and divorce.

See Art. 373-2-7 French CC: Parents can bring a joint petition to the court (more precisely to the *Juge aux affaires familiales (JAF)*, the family court that is competent to hear most issues concerning divorce and parental responsibilities) in order to submit their agreement concerning the modalities of the exercise of parental responsibilities and the financial contribution to the maintenance and the education of the child to the judge. This agreement is subject to scrutiny by the judge who will *homologue* (approve) it unless he thinks the agreement (*convention*) does not protect the child's interests, or that the consent of one parents was not freely given.

The parents' agreement only relates to the modes of exercise of parental responsibilities, not to their allocation, because each parent remains a holder of parental responsibilities even if the parent and child do not live together. The parent who does not have the exercise of parental responsibilities maintains a contact right (see Art. 373-2-1 para. 2 French CC) unless there are very serious reasons preventing it; she or he also keeps the right and the duty to control the child's maintenance and education, and must be informed of important choices relating to the child's life. She or he is also still obliged to contribute to the child's maintenance and education (Art. 373-2-1 § 3 French CC). See also Art. 376-1 French CC (when the family judge makes a decision on the modalities of the exercise of parental responsibilities, on the education of a minor child or decides to entrust the child to a third person, he or she can take agreements made freely between the parents into account, unless one of the parents invokes serious reasons as to why his or her consent should be withdrawn.

18. May the competent authority attribute joint parental responsibilities to the parents of the child even against the wish of both parents/one of the parents? To what extent, if at all, should the competent authority take account of a parent's violent behaviour towards the other parent?

The recent reforms in France promote the principle of joint parental responsibilities after parental separation. Art. 373-2 French CC states that the parental separation has no consequence to the allocation of the exercise of parental responsibilities; both parents remain holders of parental responsibilities and continue to act in this respect. If only one parent was holder of parental responsibilities, that parent remains the sole holder.

The legal provisions do not expressly mention whether a judge may attribute joint parental responsibilities to the parents against the wish of one or both parents. The joint exercise of parental responsibilities requires a minimum of good will from both parents, but the judge can attribute the exercise of parental responsibilities to both parents against their wish³² because this is a legal principle of parental separation and because parents continue to have duties to their child even if they separate.

Art. 373-2-1 French CC states that the family judge can attribute the exercise of parental responsibilities to only one parent if the child's interest requires it. The most important criteria for the judge are the child's interests (see also Art. 373-2-6 French CC); the judge can take all measures to preserve the continuity and strength of the child's bonds with each parent. The family judge tries to promote conciliation between the parents (Art. 373-2-10 French CC); she or he can also propose a mediation procedure in order to find a solution between the parents concerning the exercise of parental responsibilities. The judge can even order the parties to meet with a family mediator (Art. 373-2-10 para. 3 French CC).

A parent's violent behaviour towards the other parent can indirectly be taken into account by the family judge if, in the child's interest, this violent behaviour should exclude the possibility of joint parental responsibilities. The judge can also rely on social inquiry (*enquête sociale*), the spouses agreement and/or hearing, or the child's hearing to decide on the attribution of the exercise of parental responsibilities (see Art. 373-2-11 French CC for all elements the judge can take into account in order to decide upon the attribution of the exercise of parental responsibilities: *e.g.* parental agreement or former practice, feelings expressed by the child, ability of each parent to take on his duties and to respect the rights of the other parent, result of expert testimony, the child's age and all information obtained through social inquiries).

19. Provide statistical information on the attribution of parental responsibilities after divorce, legal separation or annulment of the marriage.

Some statistical information from 1996 can be provided.³³ In 1996, the family courts ordered joint parental responsibilities in 86% of all divorce cases; in 11% of the cases, parental responsibilities were attributed to the mother and in 2% to the father.³⁴ The child's residence was with the mother in 86% of all cases. An alternating residence between the mother and father's home was ordered in only 1% of all judicial decisions. If the parents disagreed, the family court judge accepted the mother's request in 61% of the cases and the father's request in only 21%.³⁵ 10% of the children met their father once a week, 25% once a month and 30% never saw their father.

There have been no statistics available since the reform act of 2002 was enacted, but joint parental responsibilities connected with a residence of the child on an alternating basis between the mother and father's home must have increased because the new Law Act states this as the normal rule. The Ministry of Justice provides only a few figures

³² See Th. FOSSIER, *L'autorité parentale*, 2002, ESF, 2nd Ed., p. 45.

³³ *Chiffres du ministère de la justice*, direction des affaires générales, 1996.

³⁴ See also <http://www.senat.fr/rap/101-071/101-0712.html>.

³⁵ See also <http://www.senat.fr/rap/101-071/101-0712.html>.

concerning alternating residence (*résidence alternée*):³⁶ 80.7% of the cases requesting alternating residence are jointly presented by the parents. When the parents disagree, an alternating residence is ordered in 25% of the cases; in 75% of the disputes the residence is fixed at the home of only one parent, usually the mother's. Most of the children for whom an alternating residence is jointly proposed are under 10 years old.

In 2002, the family courts were seized with 99,121 petitions concerning parental responsibilities and contact rights. 18,244 requested modification of either the exercise of parental responsibilities or of the minor child's residence; 9,130 requested a modification of contact rights; 2,640 dealt with the contact right of grandparents or other persons, 908 aimed to solve a dispute about the exercise of parental responsibilities, 3,137 dealt with delegation or regaining of parental responsibilities and 65,062 concerned the exercise of parental responsibilities, the child's residence or the contact rights for children of unmarried parents.³⁷

II. Unmarried Parents

20. Who has parental responsibilities when the parents are not married?

In principle, and as with married parents, unmarried parents have joint parental responsibilities (Art. 372 French CC); however, this only applies if both parents have acknowledged the child. Nevertheless, Art. 372 para. 2 French CC states that in two cases only one parent has parental responsibilities:

- when the parentage of one parent was established more than a year after the child's birth. If the child was acknowledged earlier by the other parent, this other parent remains sole holder of parental responsibilities.
- The same applies if the second parent's parentage was established by judgment; if the parentage was established by judgment, the parent did not want to spontaneously acknowledge his paternity (or her maternity).

In these two situations parental responsibilities can nevertheless be exercised jointly if both parents make a joint declaration before the Secretary of the Court (*tribunal de grande instance*) or if the family judge issues an order allocating joint parental responsibilities to both parents (Art. 372 para. 3 French CC).

21. Does it make a difference if the parents have formalised their mutual relationship in some way (registered partnership, civil union, pacte civil de solidarité...).

No. French legal provisions do not have regard to this criterion but instead see if both parents acknowledged the child soon enough after the child's birth.

22. Under what condition, if at all, can

³⁶ See <http://www.justice.gouv.fr/publicat/etudesst.htm>.

³⁷ See *Annuaire Statistique de la Justice 2004*, p. 85.

(a) The unmarried mother obtain parental responsibilities

Most of the time when a child is acknowledged by only one parent, it is by the mother. Therefore if only the mother has acknowledged the child,³⁹ she is sole holder of parental responsibilities. The same applies if the father acknowledges the child more than one year after the child's birth, or if the paternity is not established by voluntary recognition but instead by judicial decision (Art. 372 § 2 French CC). In these two situations, only the parent that has acknowledged the child (or the parent that acknowledged first) has parental responsibilities. This is usually the mother. The attribution of parental responsibilities is automatic in such cases and does not require a judicial decision. The parent (mother or father) who is the sole holder of parental responsibilities has almost the same rights and duties as the parents who are both holders of parental responsibilities. Only the legal administration for acts of disposition is subject to some restrictions (see Q 11).

(b) The unmarried father obtain parental responsibilities

The same rules apply for the unmarried father. In France it is possible for a woman to deliver a baby anonymously (*accouchement anonyme, sous X*), so it is theoretically possible for a child to be acknowledged by a father alone. In this seldom case the father is automatically sole holder of parental responsibilities⁴⁰. See Art. 372 French CC and also the situations faced in Art. 372 para. 2 French CC. See also the details of the legal provisions under (a).

23. How, if at all, is the attribution of parental responsibilities affected by the ending of the unmarried parents' relationship?

As with married couples who separate, the attribution of parental responsibilities is not, in principle, affected by the unmarried parents ending their relationship. See Art. 373-2 French CC. Each mother and father maintain personal relationships with the child. But with married couples (see Q 16 and Q 18), the judge can attribute the exercise of parental responsibilities to only one parent 'if the child's interests requires it' (Art. 373-2-1 French CC).

24. May the competent authority attribute joint parental responsibilities to the parents also against the wish of both parents/one of the parents? To what extent, if at all, may the competent authority take into account a parent's violent behaviour towards the other parent?

Yes. Parental responsibilities are not just a parental right, but also a duty and a responsibility of the parents towards their child. The same rules apply as for married parents. Therefore, see Q 18. When unmarried parents do not separate (or have never lived together), upon request of the mother, the father or the prosecutor (*ministère*

³⁸ The recognition by the mother can be implicit when the mother's name is mentioned in the birth certificate and the child has *possession d'état* (this means that the child has been treated by the woman as a child of her and that he is considered as the child of this woman), see Art. 337 French CC.

³⁹ The recognition by the mother can be implicit when the mother's name is mentioned in the birth certificate and the child has *possession d'état* (because the child has been treated by the woman as her child, it is considered to be hers), see Art. 337 French CC.

⁴⁰ For a very complicated case in which the father recognised his paternity before the mother anonymously delivered the child and entrusted it to spouses in order to be adopted by them, see CA Nancy, 23.02.2004, D. 2004. P. 2249 annotated POISSON-DROCOURT.

public), the family judge can decide that parental responsibilities shall be jointly exercised by both parents in the two situations stated in Art. 372 para. 2 French CC:

- when one parent acknowledged the child more than one year after the child's birth and the other parent did it much earlier;
- or when the parentage of the second parent was been established by judicial decision and not by voluntary acknowledgment. See also Art. 373-2-8 French CC.

25. To what extent, if at all, are unmarried parents free to agree upon the attribution of parental responsibilities after the ending of their relationship?

To the same extent as married couples who separate or divorce, because the same rules apply. See Art. 373-2 French CC. The reform Act of 4 March 2002 introduced the same rules for all kinds of couples (married, unmarried, *Pacs* etc.), therefore the same legal provision set in Art. 373-2-7 French CC apply with regard to the parental agreements on the exercise of parental responsibilities. Parents (married or not) may enter into agreements about parental responsibilities and the contribution to the child's maintenance and education. They may present a request to the family judge aiming at the *homologation* (judicial approval) of this agreement. The family judge (*juge aux affaires familiales, JAF*) will approve the parental agreement unless it does not protect the child's interests or the consent of one parents was not freely given (see Art. 373-2-7 para. 2 French CC).

See also Art. 376-1 French CC (when the family judge makes a decision on the modalities of the exercise of parental responsibilities, on the education of a minor child or on the entrustment of the child to a third person, the judge can take agreements the parents freely made between themselves into account, unless one of the parents invokes serious reasons for withdrawing her or his consent.)

26. Provide statistical information available regarding the attribution of parental responsibilities for unmarried parents.

There is no statistical information available regarding the attribution of parental responsibilities for unmarried parents. It seems to frequently be disputed; the *Annuaire statistique de la Justice* for 2004⁴¹ mentions that in 2002, 65,062 petitions were filed concerning the exercise of parental responsibilities, the determination of the minor child's residence or the contact rights for children of unmarried parents. These statistics do not give more details on how the issues were solved by the family courts.

III. Other Persons

27. Under what conditions, if at all, can the partner of a parent holding parental responsibilities obtain parental responsibilities, when, he/she is:

(a) Married to that parent

Only one legal provision deals indirectly with this issue: Art. 371-4 French CC. This provision states that the child has the right to personal relationships with his *ascendants* (grandparents and great grandparents) and that only very serious reasons can hinder this right. Para. 2 of the same provision adds that if it is in the child's interest, the

⁴¹ P. 85.

family judge can determine the mode of the relationship between the child and a third person who may or may not be a relative. The judge will therefore only allow a partner who is married to a parent holding parental responsibilities some personal relationship rights to the child, such as contact rights (visiting, lodging right *etc.*).⁴² The partner can never obtain parental responsibilities.

In some cases (and especially when one parent is deprived from the exercise of parental responsibilities) the family judge can order that the child shall be entrusted to a third person (see Art. 373-2 French CC). Usually this third person is a grandparent; it will very seldom be the partner of a parent. When the child is entrusted to a third person's care, the parental responsibilities are still exercised by their holder; the third person undertakes all ordinary acts related to the child's supervision and upbringing (Art. 373-4 French CC).

(b) Living with that parent in a formalised relationship (registered partnership, civil union, *pacte civil de solidarité*...)

The same rules apply as under (a). But a very recent court order (*Tribunal de Grande Instance Paris*, 7 July 2004)⁴³ determined that two female same-sex partners can have joint parental responsibilities. First, only the mother of the three daughters had parental responsibilities, but her female partner adopted the three children (so called *adoption simple* which does not destroy the official bonds between the adopted child and the child's biological parents). The adoption normally transfers parental responsibilities to the adoptive parent. The women brought a petition to obtain joint parental responsibilities, which was accepted by the civil court. Sometimes (although a very recent evolution of French judicial practice),⁴⁴ the homosexual partner of a parent can obtain part of parental responsibilities through a delegation of parental responsibilities by the parent who is his or her partner.

(c) Living with that parent in a non formalised relationship

The same rules apply as under (a) and (b).

28. Does it make any difference if the partner of the parent holding parental responsibilities is of the same sex?

No. The partner of the parent holding parental responsibilities can only try to obtain a contact right from the family judge (*juge aux affaires familiales*) (see Art. 371-4 para. 2 French CC). The judge will discern the child's interests. This visiting right (or more generally the "*relations*," or relationships, between the child and the third person) can be decided by the judge without regard to the gender of the parent's partner. See, for example, CA Aix-en-Provence, 12 March 2002, D. 2003. 1528 with annotation by CADOU: attribution of visiting rights to the female former-partner of the mother.

⁴² The judge is free to decide whether the third person should be allowed to personal relationships with the child. Even if the situation is exceptional a visiting right can be denied if this corresponds to the child's interest; the court must give reasons for its decision, see French Supreme Court, Civ. I, 10.05.1977, *Bull. civ. I*, No. 213; 16.07.1997, *Dr. famille* 1997 n° 173 with obs. Murat. For a *droit d'hébergement* (housing, lodging right), v. French Supreme Court, Civ. I, 05.05.1986, *Bull. civ. I*, No. 112.

⁴³ http://www.legalnews.fr/cgi-bin/file_alert.pl?action=show;id=97068;from=alert;uid=4...

⁴⁴ See *Le Monde* 23.09.2004, p. 12.

29. How, if at all, is the attribution of parental responsibilities in the partner affected by the ending of his/her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q 28.

The partner of the parent holding parental responsibilities cannot obtain parental responsibilities. The end of the partner's relationship with the parent therefore has no special consequence on parental responsibilities. The partner can go to court (the family judge (*juge aux affaires familiales*) is competent for such issues) to obtain a visiting right or a housing right (*droit d'hébergement*); the judge will decide the issue with regard to the child's interests (Art. 371-4 French CC), especially taking into consideration the feelings the child has developed towards the previous partner of his parent.

30. To what extent, if at all, is the parent holding parental responsibilities and his/her partner free to agree upon the attribution of parental responsibilities after the ending of his/her relationship with the parent? Distinguish according to the different relationships referred to in Q 27 and Q 28.

This question has no relevance under French law since the partner of the parent holding parental responsibilities cannot obtain parental responsibilities. Therefore there is no reason for an agreement between the partner and the parent of the child. It is only a possible contact right that could be agreed on.

But a very recent court order (*Tribunal de Grande Instance Paris, 7 July 2004*)⁴⁵ determined that two female same-sex partners can have joint parental responsibilities. First, only the mother of the three daughters had parental responsibilities, but her female partner adopted the three children (so called *adoption simple* which does not destroy the official bonds between the adopted child and the child's biological parents). The adoption normally transfers parental responsibilities to the adoptive parent. The women brought a petition to obtain joint parental responsibilities, which was accepted by the civil court. If the partners separate, they might enter into an agreement on parental responsibilities, but this agreement would be, as in any other case, scrutinised by the family judge.

31. Under what conditions, if at all, can other persons not being a parent or a partner of a parent holding parental responsibilities, obtain parental responsibilities (e.g. members of the child's family, close friends, foster parent...)? Specify, where such other persons may obtain parental responsibilities, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.

Generally, when the parents (or at least one parent) are alive and holders of parental responsibilities, no other person can obtain parental responsibilities. Only in a few special cases can a third person obtain these responsibilities. When both parents are dead or are not able to exercise personal responsibilities or when neither the father nor mother has voluntarily acknowledged the child (see Art. 373-5 and 390 French CC), the *juge des tutelles* (guardianship court) shall order a *tutelle* (guardianship). The *tuteur*

⁴⁵ See http://www.legalnews.fr/cgi-bin/file_alert.pl?action=show;id=97068;from=alert;uid=4.

⁴⁶ http://www.legalnews.fr/cgi-bin/file_alert.pl?action=show;id=97068;from=alert;uid=4. See also *Le Monde*, 23.09.2004, p. 12.

(guardian) will have the same rights and duties as a holder of parental responsibilities but under the supervision and the direction of the board of guardians (see Art. 449 and 450 French CC).

Also if only one parent is holder of parental responsibilities and has legal administration under judicial supervision, the judge of the guardianship court can, either on his own motion or upon request of relatives or of the prosecutor, order that a guardianship shall be established (Art. 391 para. 1 French CC). If both parents are holders of parental responsibilities, the guardianship court may only order the opening of a guardianship for serious reasons (Art. 391 para. 2 French CC). In such cases, the parent(s) generally keeps his or her parental responsibilities, except for the legal administration⁴⁷.

The parents (or one of them) can make a joint petition with a third person in order to delegate some of their rights and duties of parental responsibilities to this third person (see Art. 377 French CC and Q 49 and 50). A third person, an institution or the *service départemental de l'aide sociale à l'enfance* (social institution, public body) can also bring a petition before the family judge to obtain total or partial delegation of the exercise of parental responsibilities. In this case only the exercise of parental responsibilities (or of some rights and duties belonging to parental responsibilities) is delegated; the parent(s) remain holders of parental responsibilities.

When a parent is discharged of her or his parental responsibilities (*retrait de l'autorité parentale*) because of serious fault and when the other parent is dead or has lost the exercise of parental responsibilities, the court shall appoint a third person who will temporarily take care of the child and request a guardianship. The court can also decide to entrust the child to a social institution, see Art. 380 French CC and more details in Q 51.

32. Under what conditions, if at all, can a public body obtain parental responsibilities? Specify, where it is so obtained, if it is in addition to or in substitution of existing holder(s) of parental responsibilities.

The French legal provisions distinguish between:

- delegation of parental responsibilities: see Art. 377 French CC; the mother and father can jointly or separately request for the court to order the partial or total delegation of parental responsibilities to a third person. This third person can be a member of the family, a reliable close person (*proche digne de confiance*), an institution approved to take children in or the *service départemental de l'aide sociale à l'enfance* (departmental Children's Aid Service). The last of the three mentioned above is a public body. The institutions approved to take children in can be either private or state operated.
- If a parent's parental responsibilities have been discharged (*retrait de l'autorité parentale*) and the other parent is dead or has also lost parental

⁴⁷ See French Supreme Court, Civ. I, 13.12.1994, *Rép. Defrénois* 1995, p. 325 annotated MASSIP (the judicial decision to open a guardianship has no influence on the parental responsibilities); comp. French Supreme Court, Civ. I, 8.11.1982, *Gaz. Pal.* 1983.2 p. 517 annotated MASSIP (the guardianship is limited to the legal administration of the child's property but only under the condition that the father is able to exercise his parental responsibilities despite his imprisonment).

responsibilities, the court can appoint a third person to temporarily take care of the child. The court can also entrust the child to the departmental Children's Aid Service (see Art. 380 French CC).

33. To whom are the parental responsibilities attributed in the case of:

(a) The death of a parent holding parental responsibilities

If a parent is alive and has not been discharged of parental responsibilities she or he remains the holder of parental responsibilities (Art. 373-1 French CC). The same rule applies if one parent is discharged of her or his parental responsibilities. The same rule also applies when the parents are separated (Art. 373-3 French CC). But in this situation if there are exceptional circumstances and if the child's interest requires it, the judge may order the child to be entrusted to a third person's care, preferably a relative (Art. 373-3 para. 2 French CC). In exceptional circumstances, the family judge who decides how to implement the exercise of parental responsibilities after the parents' separation can order that if a parent holding parental responsibilities dies, the child shall not be entrusted to the other parent (Art. 373-3 para. 3 French CC).⁴⁸

(b) The death of both parents of whom at least one was holding parental responsibilities at the time of the death

In this case the judge of the guardianship court shall order a guardianship (Art. 373-5 and 390 French CC). The guardian will exercise parental responsibilities under the direction and the supervision of the board of guardians.

34. To what extent, if at all, may the holder(s) of parental responsibilities appoint a new holder(s) upon his/her/their death? If such an appointment is permitted, must it take place in a special form, e.g. will?

In general, if a parent holding parental responsibilities dies, the other parent automatically becomes the sole holder of parental responsibilities (Art. 373-1 French CC). A parent could express a wish to appoint, upon his or her death, someone other than the other parent as holder of parental responsibilities, but such a wish expressed in a will or any other document will usually be of no direct consequence.

If the parents were separated before the death of the parent who exercised parental responsibilities, the family judge who determines the implementation of the exercise of parental responsibilities can order, in very exceptional circumstances, the child not to be entrusted to the other parent. The family judge can also determine to whom the child will be temporarily entrusted in this situation (Art. 373-3 para. 3 French CC). Therefore it is only when the parents are separated that the holder of parental responsibilities (or more precisely if there are two holders, the parent who has the exercise of parental responsibilities) can bring a petition before the family judge to appoint a third person to whom the child should be entrusted if the claiming parent dies. There is no other legal possibility.

If only one parent is still alive, that parent can mention in a document to whom he would like the child to be entrusted in case of this parent's death. On his death a

⁴⁸ See e.g. CA Pau, 12.12.1995, *Rép. Defrénois* 1997.996 annotated MASSIP (exceptional circumstances: the mother is very seriously ill and divorced from a man of Zairean nationality who was expelled from France after a criminal condemnation).

guardianship will be ordered by the guardianship court judge. The judge may take the wish expressed by the parent who held parental responsibilities before his or her death into account, but the judge is not obliged to do so.

D. THE EXERCISE OF PARENTAL RESPONSIBILITIES

I. Interests of the Child

35. In exercising parental responsibilities, how are the interests of the child defined in your national legal system?

French law provisions mention *l'intérêt de l'enfant*, in singular, as a general and vague concept that must be recognized in every case involving holders of parental responsibilities and, if there is dispute, by the court. If the court has to make a decision on the exercise of parental responsibilities, it must always search for the child's best interests.⁴⁹ The *Cour de cassation* does not control the recognition of the child's interests but requires inferior courts to justify their recognition (*appréciation souveraine*) of the child's interests.⁵⁰

See Art. 371-1 French CC for the definition of parental authority and its aims as being a collection of rights and duties aimed at the child's interests. It belongs to the father and mother until the child reaches majority or becomes emancipated, in order to protect the child's safety, health and morality, to provide for his education and to allow for his or her personal development. The parents shall help the child to make decisions that concern the child's life; taking into account the child's age and maturity. This legal provision shows how parental responsibilities are to be used and what kinds of interests of the child are to be protected: safety, health, morality, education *etc.*

Other provisions give more detailed provisions on other aspects of the child's interests:

- Art. 371-2 French CC obliges the parents to contribute to support and to provide for education to the child (in proportion to their means, to those of the other parent and to the child's needs). This obligation does not automatically cease when the child reaches majority. It is in the child's interest to study and have professional education even if the child has reached majority.
- Art. 371-3 French CC: the child cannot be taken away from the family home, except for those necessary situations mentioned in the legal provisions. In principle, it is in the child's interests to live with her or his parents.
- Art. 371-4 French CC: It is normally in the child's interests to have personal relationships with his or her grandparents, and even with the great grandparents.
- Art. 371-5 French CC: the child should not be separated from his brothers and sisters unless it is impossible to keep them together or the child's interests

⁴⁹ See also Art. 373-2-6 French CC, which states that the family judge decides on issues of parental responsibilities in particular over the safeguarding of the minor children's interests.

⁵⁰ See *e.g.* French Supreme Court, Civ. II, 15.04.1981, *Gaz. Pal.* 1982. 2. 583 annotated VIATTE; Civ. I, 20.06.1995, *Bull. civ.* I, No. 264; Civ. II, 31.05.1995, *Bull. civ.* II, No. 165. The court must examine concretely what the child's interests are with regard to all circumstances of the case, French Supreme Court, Civ. I, 13.10.1993, *Bull. Civ.* I, No. 275.

requires another solution. If they are separated, the judge shall determine the modalities of the personal relationships between brothers and sisters.

- Art. 373-2-6 French CC: concerning the decisions made by the family judge on issues of parental responsibilities: para. 2 of this provision insists upon the measures that the judge can order 'to protect the continuity and strength of the bonds between the child and each parent'. This shows the supposition of French law that it will usually be in the child's interests to keep personal relationships with both parents.

II. Joint Parental Responsibilities

36. If parental responsibilities are held jointly by two or more persons, are they held equally?

Yes. Art. 372 French CC states that the father and mother are to exercise communal parental authority. This joint exercise is based on the full equality of both parents.⁵¹ For all usual and ordinary acts concerning the child, each parent is deemed to act with the agreement of the other parent towards third persons in good faith (Art. 372-2 French CC).⁵² If the parents cannot agree on more important decisions, they (or one of them) can bring a petition before a family judge who will try to bring the parents to agreement; if this is not possible the judge will decide on the issue.

37. If parental responsibilities holders cannot agree on an issue, how is the dispute resolved? For example does the holder of parental responsibilities have the authority to act alone? In this respect is a distinction made between important decisions and decisions of a daily nature? Does it make any difference if the child is only living with one of the holders of the parental responsibilities?

If both parents are holders of the parental responsibilities, one of them is allowed to act alone for 'usual decisions relating to the person of the child'. With regard to third persons in good faith, the parent who has acted is deemed to have acted with the agreement of the other holder of parental responsibilities: Art. 372-2 French CC. This rule does not apply for important decisions.⁵³ Both holders of the parental responsibilities must reach agreement for such decisions. If this is impossible, either one or both of them can make a petition before the family judge (*judge aux affaires familiales*). Before the reform of 4 March 2002, Art. 372-1-1 French CC stated that if the parents could not agree on what the child's interests required, they had to follow whatever practice they followed before in similar situations. When no former practice existed or when it was contested, one parent (or both jointly) could bring a petition

⁵¹ See G. CORNU, *Droit civil, La famille*, 2001, Paris : Montchrestien, 7th Ed., No. 80, p. 169: "situation d'égalité et de coopération sur la supposition -idéale sinon idyllique, au moins optimiste - d'une entente entre époux".

⁵² See e.g. TGI Paris, 06.11.1973, *Gaz; Pal.* 1974.1.299 annotated BARBIER (light surgery); CA Dijon, 19.06.1996, *JCP* 1998. IV. 3145 (blood expertise). School insurance, vaccination, authorization given to go camping *etc.* are usual decisions. For serious surgery, change of school, or some trips abroad it will depend on the circumstances, see G. CORNU, *Droit civil, La famille*, 2001, Paris : Montchrestien, 7th Ed., No. 83, p. 174.

⁵³ E.g. for a circumcision, which is a serious decision, see French Supreme Court, Civ. I, 26.01.1994, *D.* 1995.226: unilateral decision by the father. Sanction given by the court: the father is deprived from any contact right.

before the family judge who would first try to conciliate the parents; if the conciliation failed the judge had to decide upon the contested issue. This provision was suppressed by the Act of 4 March 2002 and was replaced by Art. 373-2-11 French CC, which states more generally that the judge who determines the implementation of the exercise of parental responsibilities shall take into account:

- the usual practice previously followed by the parents, or the agreements they had entered into before;
- the feelings expressed by the minor child;
- the ability of each parent to take on his duties and to respect the rights of the other parent;
- the result of the expert testimony possibly ordered and presented (with regard to the child's age);
- the information obtained through potential social inquiries.

The fact that the child is only living with one of the holders of parental responsibilities does not always play a role because the other parent, in principle, remains a holder of the parental responsibilities and therefore also continues to hold part of the exercise of the parental responsibilities.⁵⁴ It depends on the situation; if the child lives primarily with one parent and only occasionally with the other,⁵⁵ this other parent must be consulted for important decisions concerning the child.⁵⁶

Another situation occurs if the parent with whom the child does not live is deprived of the exercise of the parental responsibilities and has instead only contact rights. In this situation, the parent who has the exercise of the parental responsibilities will make the decisions alone but the other parent keeps the right and duty to supervise the maintenance and the education of the child. He or she must be informed of the important choices concerning the child's life (Art. 373-2-1 para. 3 French CC). Neither parent has the power to make these decisions without the other.

38. If holders of parental responsibilities cannot agree on an issue, can they apply to a competent authority to resolve their dispute? If applicable, specify whether this authority's competence is limited to certain issues e.g. residence or contact.

See Q 37. The family judge is competent for issues concerning the parental responsibilities (see Art. 373-2-11 French CC). The competence of this authority is not limited to some issues. The family judge can be called when the holders of the parental responsibilities cannot agree on decisions for which their joint agreement is necessary. For more details, see Q 36 and 37.

⁵⁴ For example he must normally be consulted about the choice of a school for the child, see CA Paris, 20.04.1988, D. 1988. IR. p. 317; 25.10.1991, JCP 1992. IV. P. 203.

⁵⁵ The model proposed by the reform of 04.03.2002 is that after the parents' separation, the family judge should, if possible and consistent with the child's interests, determine the residence of the child alternately at the father's and the mother's home in a more or less equal way depending on the child's interest. If this is not possible, the child's residence can be set mainly (*à titre principal*) at one parent's home and secondarily at the other parent's residence, see Th. FOSSIER, *L'autorité parentale*, 2002, ESF, 2nd Ed., p. 43.

⁵⁶ See Th. FOSSIER, *L'autorité parentale*, 2002, ESF, 2nd Ed., p. 50.

39. To what extent, if at all, may a holder of parental responsibilities act alone if there is more than one holder of parental responsibilities?

See Q 36. A holder of parental responsibilities may act alone if the decision concerns a 'usual decision on issues of parental responsibilities relating to the child'. In this situation the parent acting alone is presumed to act with the agreement of the other holder of parental responsibilities (Art. 372-2 French CC). Usual decisions are, for example, decisions concerning school insurance, holidays, choice of the school (but not always a change of school if it would change the child's life), registration at a sporting club, request for a passport *etc.*

40. Under what circumstances, if at all, may the competent authority permit the residence of the child to be changed within the same country and/or abroad (so called relocation) without the consent of one of the holders of parental responsibilities?

In principle, after the parents separate both parents remain holders of the parental responsibilities and shall also maintain personal relationships with the child. Nevertheless, the family judge can attribute the exercise of parental responsibilities to only one parent even if both are holders of parental responsibilities (Art. 373-2-1 French CC). Each parent, even the one with whom the child lives, can change his residence even if this modifies the way the parental responsibilities will be exercised. But Art. 373-2 § 2 French CC requires the parent who changes residence to inform the other parent in advance and in due time. If the informed parent does not agree with the methods of exercise of her or his parental responsibilities the change of residence causes, she or he can call the family judge who will make a decision based on the child's interests. The decision can modify these methods; it could even change the attribution of the exercise of parental responsibilities. If the residence of one of the holders of parental responsibilities changes, the family judge can also order the parents to share the travelling expenses and consequently adjust the contribution of the parent with whom the child does not live to the child's maintenance and education.

If a danger exists that one parent could take the child abroad and never return him or her to France, the family judge can, on petition, order an entry on the passport of both parents prohibiting the child's departure from the territory without both parents' authorisation (Art. 373-2-6 para. 3 French CC). However, the family judge cannot impose such entry on a foreign passport.⁵⁷

41. Under what conditions, if at all, may the competent authority decree that the child should, on an alternating basis, reside with both holders of parental responsibilities (e.g. every other month with mother/father)?

The most recent French reform of 4 March 2002 has opted for this kind of exercise of parental responsibilities as the best possible solution. In principle, the parents' separation does not affect the rules related to the exercise of parental responsibilities. Each parent shall maintain personal relationships with the child (Art. 373-2 French CC). The principle is therefore joint parental responsibilities after any type of parental separation. The new Art. 373-2-9 French CC states that the child's residence can be 'fixed on an alternating basis at both parent's domicile or at the domicile of one of the

⁵⁷ See CA Paris, 03.04.2003, *AJ Famille* 2003. 277.

parents'. Priority is given to parental agreements, if they are not contrary to the child's interests (Art. 373-2-7 French CC), that agree to an alternating residence of the child, at both parent's domiciles.

Art. 373-2-9 French CC also states that on the claim of one parent or if the parents disagree on the child's residence, the family judge can issue an interim order for the child's residence to alternate between the domiciles of each parent for a certain duration. At the end of this period the judge will make a definitive decision on the child's residence, either on an alternating basis at each parents' domicile or at the domicile of one parent. This shows the aim of the French reform to promote the alternating residence of the child as a way to encourage the continuing personal relationships with both parents even after their separation⁵⁸ (as stated in Art. 373-2 French CC). However, if this model does not correspond to the child's interests the family judge shall decide another solution.

III. Sole Parental Responsibilities

42. Does a parent with sole parental responsibilities have full authority to act alone, or does he/she have a duty to consult:

(a) The other parent

French law distinguishes between two situations:

- the parent who is sole holder of parental responsibilities; and
- the parent who holds parental responsibilities with the other parent, but has sole exercise of these responsibilities (*e.g.* after separation or divorce).

In the first situation the parent has full authority to act alone. She or he does not have to consult the other parent who is deprived of parental responsibilities. Some restrictions exist but they concern only the legal administration which takes place under judicial control. The parent can act alone on all *actes d'administration* (acts of administration) but must ask judicial permission for all *actes de disposition* (acts of disposition).

In the second situation, where both parents hold parental responsibilities but only one has the exercise of them, the parent who does not have this exercise nevertheless keeps the right and duty to supervise the child's maintenance and education and must be informed of all important choices relating to the child's life (Art. 373-2-1 para. 3 French CC). He therefore does not have to be consulted but only informed of important matters.

(b) Other persons, bodies or competent authorities

For the legal administration only, the parent with sole parental responsibility must ask for judicial permission for all acts of disposition (Art. 457 French CC). The *juge des tutelles* (guardianship court) is competent to deliver such permissions. See (a) and Q 11.

⁵⁸ Under the Act No. 87-570 of 22.07.1987 the judge had to determine the parent at whose domicile the child would have his 'principal residence'; the child had in this case only a secondary residence at the other parent's domicile.

E. CONTACT

43. Having regard to the definition by the Council of Europe (see above), explain the concepts of contact used in your national legal system.

If both parents are holders of parental responsibilities but do not have the joint exercise of parental responsibilities, the parent who is not in charge of this exercise has contact rights called *droit de visite et d'hébergement*. The parent cannot be deprived of this right except for serious reasons, see Art. 373-2-1 French CC. He or she keeps the right and the duty to supervise the child's maintenance and education and shall be informed of all important choices in the child's life.

Contact rights encompass visiting and lodging rights. The court takes the child's behaviour into account when determining the exercise of these rights,⁵⁹ but the judge will not delegate his power to decide what is in the child's best interests when it comes to the exercise of contact rights.⁶⁰ In order to guarantee the effectiveness of contact rights the court is allowed to pronounce an *astreinte* (civil fine) against the parent with whom the child lives.⁶¹

Only very serious reasons can justify the deprivation of a parent's contact rights if a parent does not have the exercise of parental responsibilities. That the children do not wish to see their father again is not a sufficient reason for a deprivation of contact rights.⁶² The family judge of the tribunal of Paris⁶³ has decided that for a husband who claimed a contact right with the children, his violent behaviour was a reason enough to deny him such a right. Another judicial decision suspended the lodging right of the father because he placed moral and psychological religious pressure on the child (the father wanted the daughter to wear the Islamic veil).⁶⁴

44. To what extent, if at all, does the child have a right of contact with:

(a) A parent holding parental responsibilities but not living with the child

In general the child has a right of contact with a parent holding parental responsibilities but not living with the child. If this parent holds parental responsibilities but does not have the exercise of them, the court may deprive him from contact rights only for very serious reasons (see Art. 373-2-1 para. 2 French CC and the case law cited in Q 42).

(b) A parent not holding parental responsibilities

For the situation of the parent who holds parental responsibilities but does not have exercise of them, see (a).

If a judgment discharges all parental responsibilities, the parent will retain no contact rights (Art. 379 French CC). If the discharge is only partial, the court will specify which

⁵⁹ See French Supreme Court, Civ. II, 23.05.1984, *Gaz. Pal.* 1985. 1. Pan. 69 annotated GRIMALDI.

⁶⁰ French Supreme Court, Civ. II, 07.10.1987, *Bull. civ.* II, no. 190; 22.10.1997, *Bull. civ.* II, No. 255.

⁶¹ CA Rennes, 18.03.1982, *D* 1983. IR. 449. If the parent with whom the child lives does not allow the other parent to make use of his contact rights he will have to pay this civil fine to the parent having contact rights.

⁶² French Supreme Court, Civ. II, 29.04.1998, *Bull. civ.* II, No. 133.

⁶³ TGI Paris, 16.07.1976, *JCP* 1976. II. 18502.

⁶⁴ French Supreme Court, Civ. I, 24.10.2000, *Bul. Civ.* I, No. 262.

parental responsibilities are discharged (Art. 379-1 French CC). If the parent has delegated (*délégation d'autorité parentale*) his parental responsibilities (in part or totally) he still keeps some rights and duties. He keeps the contact right (*i.e.* visiting and lodging rights).

(c) Persons other than parents (e.g. grandparents, stepparents, siblings etc...)

For grandparents⁶⁵ see Art. 371-4 French CC: The child has the right to have personal relationships with his grandparents. This right can be suppressed only for very serious reasons. The provision concerns all *ascendants* (ancestors) of the child, so great grandparents also have a contact right with the child. Only the relatives that are concerned have standing to bring a claim before court.⁶⁶ Generally the courts presume that personal relationships between the child and the child's grandparents are in the child's interests.⁶⁷ Lower courts are free to discern (without possibility of appeal on this issue) whether to grant contact rights to the grandparents;⁶⁸ the *Cour de cassation* does not control this discretion. For a case of denial of contact rights to a grandparent because of a very difficult family past, see CA Lyon, 14.03.2000, *Dr. famille* 2000, No. 126 annotated BERTHET.

Other possible reasons to deny contact rights could be: condemnation of the grandparent because of affront to public decency (*outrage aux bonnes mœurs*) related to minor children; morbid atmosphere at the grandparents' home because of illness; systematic criticism of the parents by the grandparents, etc. However, a simple disagreement between parents and grandparents does not justify the denial of contact rights to the grandparents.

Other third persons: For all other third persons Art. 371-4 para. 2 French CC states that in the child's interests the family judge can determine the *modalités des relations* (modes of relationship) between the child and a third person who may or may not be a relative. See *e.g.* CA Aix-en-Provence, 12.03.2002, *D.* 2003. 1528 annotated CADOU (contact rights granted to a transsexual ex-partner of the mother).⁶⁹

45. Is the right to have contact referred to in Q 43 also a right and/or a duty of the parent or the other persons concerned?

The contact right is also a duty for the parent who does not have the exercise of parental responsibilities. Art. 373-2 §2 C.C. states that after the parental separation each parent must maintain personal relationships with the child and respect the bonds that the child has with the other parent. Contact is therefore a right and a duty. It is also a

⁶⁵ See G. SUTTON, 'Du droit des grands-parents aux relations avec leurs petits-enfants', *JCP* 1972. I. 2504; Th. GARE, *Les grands-parents dans le droit de la famille*, CNRS, 1989; H. BOSSE-PLATIERE, 'La présence des grands-parents dans le contentieux familial', *JCP* 1997. I. 4030.

⁶⁶ French Supreme Court, Civ. II, 20.07.1983, *Bull. civ.* II, No. 154. The divorced mother is not entitled to bring a claim with respect to contact rights before court in the name of her parents (the child's grand-parents)

⁶⁷ French Supreme Court, Civ. I, 01.12.1982, *Bull. civ.* I, No. 346.

⁶⁸ French Supreme Court, Civ. I, 13.12.1989, *Bull. civ.* I, No. 389.

⁶⁹ See also French Supreme Court, Civ. I, 05.05.1986, *Bull. civ.* I, No. 112 (a lodging right (*droit d'hébergement*) can in exceptional circumstances be granted to third persons who are not the child's grandparents); Civ. I, 11.05.1976, *D.* 1976. P. 521 annotated HOVASSE (a third person who provided for the child's upbringing for a while); Civ. I, 17.05.1993, *Bull. civ.* I, No. 475 (a husband who is not the child's father but who took care of the child).

duty when a measure of educational support has been ordered by the court in the child's interest: in this case, the parents shall exercise the rights and duties they have kept (see Art. 375-7 French CC) If they have not exercised them for two years they can be discharged of their parental responsibilities (Art. 378-1 para. 2 French CC).

More generally, a decision of first instance stated that the contact right is also a duty of the parent to whom it is granted; if this parent does not make use of this contact right she or he can be liable on the basis of Art. 1382 French CC (torts).⁷⁰ The right to contact can be denied to the parent only for serious reasons, see Art. 373-2-1 para. 2 French CC.

46. To what extent, if at all, are the parents free to make contact arrangements? If they can, are these arrangements subject to scrutiny by a competent authority?

It depends on the kind of separation: in the case of judicial separation (divorce, legal separation, annulment of marriage), the parents can make contact arrangements but they must submit them to the family judge who will approve the agreement unless it does not protect the child's interests or the consent of one parent was not freely given (Art. 373-2-7 French CC).

Parents are not obliged to go to court if there is a factual separation. They may make their own contact arrangements. Only if one parent does not agree with the arrangements proposed by the other⁷¹ or if both parents want their contact arrangement to become official through judicial approval⁷² does one or both parent(s) bring a petition before the family judge, who will then make a decision based on the child's interest.

47. Can a competent authority exclude, limit or subject to conditions, the exercise of contact? If so, which criteria are decisive?

The exercise of contact can only be denied for serious reasons, see Art. 373-2-1 para. 2 French CC. But the court can subject the exercise of this right to conditions, especially when the contact right will be exercised abroad.⁷³ The court may also allow a contact right to visit without any lodging right. The central criteria used by the judges are the child's interests. More generally the family judge may make an interim decision on the exercise of parental responsibilities and after a test period make a final decision (see, for example, Art. 373-2-9 para. 2 French CC).

⁷⁰ See TGI Poitiers, 15.11.1999, *BICC* 15.11.2000, No. 1294.

⁷¹ See Art. 373-2-8 French CC: a parent can request the family judge to determine the modalities of exercise of parental responsibilities and the contribution to the child's maintenance.

⁷² See Art. 373-2-7 French CC. The same rules apply in every kind of separation (factual, judicial separation, divorce, etc.).

⁷³ See e.g. TGI Paris, 25.06.1982, *Gaz. Pal.* 1982. 2. 396 (the parent having contact right can take the child abroad but will have to pay a 5,000 French Francs *astreinte* (fine) per day if the parent does not bring the child back at the end of the period fixed for the holidays). See also French Supreme Court, Civ. I, 03.02.1982, *Gaz. Pal.* 1982. 1.342 (contact right limited to French metropolitan territory). The decisive criterion is the existing risk that the child could be abducted abroad and never returned to the parent having the exercise of parental responsibilities.

48. What if any, are the consequences on parental responsibilities, if a holder of parental responsibilities with whom the child is living, disregards the child's right to contact with:

(a) A parent

Each parent must respect the relationship the child has with the other parent (Art. 373-2 para. 2 French CC). If a holder of parental responsibilities with whom the child is living disregards the child's right to contact with a parent, the holder could be condemned by a criminal court on the ground of Art. L 227-5 French Criminal Code (*non-représentation d'enfant*. Possible sanctions: 'The unlawful refusal to produce a minor child to the person who has the right to require the production of the child is punished by one year imprisonment and a fine of €100,000'), or Art. L 227-6 French Criminal Code (if the parent with whom the child lives has not informed the other parent of his change of domicile).⁷⁴ The criminal court (*tribunal correctionnel*) is competent. If the impossibility for the parent to exercise his contact right is caused by the child's behaviour (*i.e.* the child refuses to see the parent), the other parent must try to convince the child to have contact with his father or mother. Only if the child's refusal is insurmountable will the holder of parental responsibilities not be subject to criminal condemnation.⁷⁵

The family judge (as a civil court) could also, upon the request of the parent having contact rights, modify the exercise of parental responsibilities by amending a prior decision. The judge can also order an *astreinte* (civil fine) that the holder of parental responsibilities will have to pay to the other parent if she or he does not let the other parent exercise his contact right.⁷⁶

(b) Other persons

The offence of refusal to produce a child, Art. L 227-5 French Criminal Code, applies to all cases in which the holder of parental responsibilities disregards a contact right that belongs to the child who lives with him or her.

F. DELEGATION OF PARENTAL RESPONSIBILITIES

49. To what extent, if at all, may the holder(s) of parental responsibilities delegate its exercise?

See Art. 376 to 377-3 French CC, Delegation of Parental Authority. In principle parental responsibilities cannot be subject to renunciation or cession unless confirmed by a court decision (Art. 376 French CC). When the family judge must determine the methods of the exercise of parental responsibilities, the child's education or when the judge entrusts the child to a third person, she or he can take parental agreements into account, unless one of the parents invokes serious reasons to withdraw his or her

⁷⁴ Art. 227-6 French Criminal Code: 'The failure of a person whose children habitually reside with him to notify those persons who pursuant to a judgment or a judicially affirmed agreement are entitled to exercise visiting or residence rights over such children, of his change of address within one month from the date of such change is punishable by six months imprisonment and a fine of €7,500'.

⁷⁵ French Supreme Court, Crim., 25.02.1964, *D.* 1964. P. 414; 13.04.1988, *D.* 1989. P. 461 annotated RENUCCI.

⁷⁶ See CA Rennes, 18.03.1982, *D.* 1983. IR. p. 449.

consent (Art. 376-1 French CC). The holders of parental responsibilities can therefore agree upon a delegation of the exercise of parental responsibilities to a third person, but this agreement is subject to the court's discretion and needs a court judgment to have legal effect.

If circumstances require, the father and mother can also (jointly or separately) bring a petition before the family judge to delegate all or part of their parental responsibilities to a third person (Art. 377 French CC). This third person can be a family member, a *proche digne de confiance* (reliable close person), an institution approved to take children in or a public body (*service départemental de l'aide sociale à l'enfance*, departmental Children's Aid Service). The family judge can order a full or partial delegation. The judgment can also decide that for the necessity of the child's education, the father and mother, or one of them, will share all the parental responsibilities or part of them with the delegated third person (Art. 377-1 French CC). Such a share requires the agreement of the parent(s) as holder(s) of parental responsibilities (Art. 377-1 para. 2 French CC). If difficulties arise because of this shared exercise of parental responsibilities, the court (the family judge is competent) can be asked to solve them (para 3).

Sometimes (this seems to be a very recent evolution of French judicial practice),⁷⁷ same-sex partners bring a joint petition before the court to obtain some of the parental responsibilities through *délégation*; the partner who is the father or the mother of the child proposes to delegate some of his parental duties and rights to his or her partner. Some courts of first instance seem to have accepted such a petition.

50. To what extent, if at all, may a person not holding parental responsibilities apply to a competent authority for a delegation of parental responsibilities?

See Art. 377 para. 2 French CC. In two circumstances a third person, an institution or the public body (*service départemental de l'aide sociale à l'enfance*) that has taken the child in can bring a claim before the court (the family judge, *juge aux affaires familiales*, is competent) in order to obtain full or partial delegation of the exercise of parental responsibilities:

- in case of the parent's manifest uninterest towards the child; or
- if the parents are unable to exercise all parental responsibilities or part of them.

In these two situations the parents must receive notice of the claim and be called to the proceedings (Art. 377 para. 3 French CC). When a measure of educational support has been made concerning the child, the judicial delegation of parental responsibilities cannot take place before the *juge des enfants* (special judge who is competent in matters of educational support) has been heard. This judge expresses his opinion about the delegation.

G. DISCHARGE OF PARENTAL RESPONSIBILITIES

51. Under what circumstances, if at all, should the competent authorities in your legal system discharge the holder(s) of his/her/their parental responsibilities for reasons such as maltreatment, negligence or abuse of the child, mental

⁷⁷ See *Le Monde* 23.09.2004, p. 12.

illness of the holder of parental responsibilities, etc.? To what extent, if at all, should the competent authority take into account a parent's violent behaviour towards the other parent?

In French law, discharge of parental responsibilities can be partial or complete. See Art. 378 to 381 French CC. Two legal provisions state the cases in which parents can be discharged of parental responsibilities:

- Art. 378 French CC: A criminal judgment can discharge the parents of their parental responsibilities (completely or only parts of them) when the parents are sentenced as offenders, co-offenders or accomplices of a crime or offence with respect to their child, or of a crime or offence committed by their child. In this situation the discharge is decided by a criminal court in the same judgment which condemns the parents.
- Art. 378-1 para. 1 French CC: A complete or partial discharge of parental responsibilities can also be ordered by a civil court⁷⁸ in the following circumstances: maltreatment, usual and excessive consumption of alcoholic beverages, drug addiction, notorious misconduct, misdemeanour, lack of care or lack of guidance. The legal provision requires that such parental behaviour endangers the child's security, health or morality.
- Art. 378-1 para. 2 French CC: A total or partial discharge can also be decided by the civil court⁷⁹ when a measure of educational support has been made in favour of the child and when the parents have voluntarily refrained from exercising the rights and fulfilling the duties of parental responsibilities they still have⁸⁰ for more than two years.⁸¹

The discharge can be claimed by the prosecutor (*ministère public*), a family member or the guardian (*tuteur*) of the child. For some examples of reasons to discharge or not discharge parents from their parental responsibilities, see:

- serious and long psychiatric illness;⁸²
- mentally ill and dangerous mother who treated her child so badly that the child became disabled (*infirme*), discharge of parental responsibilities even if the mother was not sentenced by the criminal court because of her insanity;⁸³
- father condemned because of murder was a serious danger for the child;⁸⁴
- no proved danger for the child in the case of a father sentenced because of drug traffic;⁸⁵
- no proved danger for the child although the father was condemned because of the sexual abuse of his 15-year old niece;⁸⁶

⁷⁸ See Art. 378-1 para. 3 French CC.

⁷⁹ See Art. 378-1 para. 3 French CC.

⁸⁰ Parents keep all rights and duties of parental responsibilities which are not consistent with the measure decided by the judge.

⁸¹ This legal provision must be interpreted strictly because a discharge can only be justified by an essential requirement corresponding to the child's interests", see ECtHR, 07.09.1996, D. 1997. Somm. P. 210 annotated FRICÉRO; French Supreme Court, Civ. I, 15.07.1999, Bull. civ. I, No. 237.

⁸² French Supreme Court, Civ. I, 13.01.1998, Dr. famille 1998, No. 97 annotated MURAT: the mother did not voluntarily refrain from exercising her rights and duties (see Art. 378-1 para. 2 French CC) because she was seriously mental ill.

⁸³ French Supreme Court, Civ. I, 14.04.1982, D. 1983. 294.

⁸⁴ French Supreme Court, Civ. I, 15.05.1990, Bull. civ. I, No. 107.

⁸⁵ French Supreme Court, Civ. I, 06.03.2001, RJPf 2001, 6/35 annotated BLANC.

- generally the *Cour de cassation* requires inferior courts not to rely on possible (and unproved) danger for the child.⁸⁷

The assertion of the mental fragility of the mother is not sufficient if the court has not researched whether the mother's illness or behaviour endangers the child's safety, health or morality.⁸⁸

Each year between 450 and 600 discharges are decided by judgment. From ten to thirty cases concerning restitution of parental responsibilities are also decided each year.⁸⁹

52. Who, in the circumstances referred to in Q 51, has the right or the duty to request the discharge of parental responsibilities?

See Art. 378-1 para. 3 French CC: the public prosecutor, a member of the family or the guardian of the child.

53. To what extent, if at all, are rights of contact permitted between the child and the previous holder of parental responsibilities after the latter has been discharged of his or her parental responsibilities?

The answer depends on the kind of discharge that has been ordered by the court. If the discharge is total the parent who is discharged automatically loses all rights connected with parental responsibilities (Art. 379 French CC). These consequences apply for all children already born when the judgment is given unless the judgment expressly limits the discharge to one or more of the children. Therefore, in case of total discharge, the discharged parent does not have any contact right.

If the discharge is partial the judgment specifies the parts of parental responsibilities the parent is discharged of. It can also specify that the judgment will only apply for some of the already born children (Art. 379-1 French CC). In both situations if the other parent is dead or has also lost the exercise of parental responsibilities, the court shall appoint a third person to whom the child will be temporarily entrusted and who will request a guardianship from the judge of the guardianship court. The court can also prefer to entrust the child to a public body, see Art. 380 French CC. The court has the same powers if the parental responsibilities only belong to one parent because of a discharge pronounced against the other parent.

54. To what extent, if at all, can the previous holder(s) of parental responsibilities, who has been discharged of his/her parental responsibilities, regain them?

See Art. 381 French CC: A father and mother who have been totally or partly discharged of their parental responsibilities can make a request before court in order to regain all or part of them. The claim must be brought before the civil court and the parents must invoke and prove new circumstances. For example, a parent can use a medical certificate to prove that she or he no longer drinks alcohol or takes drugs. In

⁸⁶ CA Lyon, 22.05.2001, *JCP* 2002. II. 10 177 annotated GARÉ.

⁸⁷ French Supreme Court, Civ. I, 06.07.1999, *Dr. famille* 2000, No. 4 annotated MURAT.

⁸⁸ French Supreme Court, Civ. I, 14.06.1988, *Bull. civ.* I, No. 186.

⁸⁹ See Th. FOSSIER, *L'autorité parentale*, 2002, ESF, 2nd Ed., p. 81.

most cases the public prosecutor will order an inquiry; the court may also do so in order to obtain more information about the 'change of circumstances'. The claim may not be brought for one year after the judgment ordering the discharge has become irrevocable. If the court dismisses the claim, a new claim cannot be brought for one year. If the child has been entrusted to a third person's home in order to be adopted by him or her, the claim is not admissible. If the court decides that the parent(s) may regain parental responsibilities the prosecutor can request that measures of educational support shall be ordered (Art. 381 para. 3 French CC).

H. PROCEDURAL ISSUES

55. Who is the competent authority to decide disputes concerning parental responsibilities, questions of residence of the child or contact? Who is the competent authority to carry out an investigation relating to the circumstances of the child in a dispute on parental responsibility, residence or contact?

Three kinds of judges can be competent depending on the issues which have to be solved:

- The *juge aux affaires familiales* (JAF, family judge) is a member of the civil court called *tribunal de grande instance*. She or he is competent to decide on the exercise of parental responsibilities in all cases of separation (divorce, legal, factual separation, etc.). This judge also determines the parental contribution for the child's maintenance if the child is living with the other parent. She or he also solves all kinds of disputes concerning the attribution or the exercise of parental responsibilities between parents, or concerning the delegation of parental responsibilities. More generally the family judge must protect the child's interests. Most of the time (but not in case of a legal separation or of divorce) she or he can be seized directly by written declaration at the court's office; a lawyer is not necessary. The court cannot be seized by the minor child himself. For questions concerning the child's residence and contact, the family judge is usually the competent court. In a dispute over parental responsibilities the judge can carry out an investigation relating to the circumstances of the child (he can order an expert testimony or a social inquiry (*enquête sociale*)).
- The *juge des enfants* (juvenile-court judge) is also a member of the *tribunal de grande instance* and has exclusive jurisdiction in matters of educational support and protection of the child.⁹⁰ If the education of the child presents a danger, the judge can order educational support measures.⁹¹ In this situation he or she can order that the child shall be entrusted to a third person and the parents will no longer exercise all parental responsibilities. The judge can also order protective measures for a young child. The judge can be called either by

⁹⁰ For statistical information about the activity of the juvenile court judge in civil matters of educational support and protection of children, see *Infostat Justice* September 2004, *L'activité des tribunaux pour enfants en 2003* : in 2003 the juvenile court judges were seized for 105,400 minor children in danger (2% less than in 2001). 58,000 inquiry measures and 250,000 protection measures have been ordered.

⁹¹ These measures can modify the contents of a judicial order made by the family judge with regard to the exercise of parental responsibilities, see French Supreme Court, Civ. I, 12.01.1994 and 23.02.1994, *JCP* 1994. II. 22 341 annotated BERNIGAUD.

a lawyer or directly by a written declaration. The minor child can also call him directly. The parents, the person with whom the child lives or the prosecutor (*procureur de la République*) can also call him or her; the judge can also act on his or her own motion. The *juge des enfants* is also competent for some offences committed by minor children. He or she can carry out an investigation relating to the existing danger for the child's safety, health or morality (he can order an expert testimony, a social inquiry (*enquête sociale*), a personality study of the child *etc.*).

- The *juge des tutelles* (guardianship-court judge) is a member of the civil court called *tribunal d'instance*. She or he is competent to order the opening of a guardianship and to supervise the administration of the child's property and the functioning of the guardianship.

56. Under what conditions, if any, may a legally effective decision or agreement on parental responsibilities, the child's residence or contact, be reviewed by a competent authority? Is it, e.g., required that the circumstances have changed after the decision or agreement was made and/or that a certain period of time has passed since the decision or agreement?

In general, a legally effective decision on parental responsibilities can be modified or supplemented at any time by the family judge on request of one or both parents, or of the prosecutor, see Art. 373-2-13 French CC. If a prior agreement on parental responsibilities was accepted by the court, the same rule applies: the rules contained in the agreement and all judicial decisions relating to parental responsibilities can be modified or supplemented by the family judge on request of one or both parents, or of the prosecutor who can be called by a third person (child's relative or not), see Art. 373-2-13 French CC.⁹² If in a divorce on joint petition of the spouses, the spousal agreement did not foresee any financial contribution from the father to the child's maintenance, the mother can later claim such a financial contribution because the duty to maintain a child is a legal obligation for the parents.⁹³ See also for a modification of the amount of the child's maintenance (stated in the spousal agreement) in case of a change of circumstances, French Supreme Court, Civ. II, 21.04.1982, *Bull. civ.* II, No. 57.

Also if the domicile of one parent changes, the other parent can call the family judge to can modify the methods of the exercise of parental responsibilities due to the change of residence (see Art. 373-2 para. 3 French CC). More generally the family judge will review the decision or the parental agreement that had been accepted by the court only if there is a change of circumstances.⁹⁴ The legal provisions do not require a certain period to time pass after the decision or the agreement. In the special case of discharge of parental responsibilities, the parent can regain them if he or she can prove a "change of circumstances" (see Art. 381 French CC). A claim can be brought before the *tribunal de grande instance*. The court will examine the claim and decide whether the parent

⁹² See e.g. French Supreme Court, Civ. II, 04.03.1987, *Bull. civ.* II, No. 60.

⁹³ See also French Supreme Court, Civ. II, 02.05.2001, *Bull. civ.* II, No. 80.

⁹⁴ See e.g. CA Aix-en-Provence, 30.05.1995, *JCP* 1996. II. 22 566 annotated GARÉ: the court modifies its decision on the exercise of parental responsibilities because of the children's insurmountable refusal to reside with the parent as stated in the court order. See also a modification of the judicial decision because of the expatriation project of one parent, CA Montpellier, 08.01.1998, *JCP* 1999. IV. 2621.

shall regain parental responsibilities. At least one year must pass after the discharge decision has become legally effective and irrevocable.

57. What alternative disputes solving mechanisms, if any, e.g. mediation or counselling, are offered in your legal system? Are such mechanisms also available at the stage of enforcement of a decision/agreement concerning parental responsibilities, the child's residence or contact?

If the parents cannot agree on the exercise of parental responsibilities, the family judge is called on request of both parents or of one of them. Art. 373-2-10 French CC states that in such a situation of parental disagreement the family judge shall first try to conciliate the parents. Therefore the first task of the judge is to try to find a settlement between the parties. The French Code of Civil Procedure more generally states that the judge can at any stage of the proceedings try to help the parties to find a settlement (Art. 21).⁹⁶

Art. 373-2-10 para. 2 French CC adds that in order to facilitate an agreement between the parents on the exercise of parental responsibilities the judge can propose mediation. If the parents agree, the judge can appoint a mediator. The judge can also order the parents to meet a family mediator who will inform them about the matter and the unfolding of the mediation.⁹⁷

Such mechanisms do not seem to be available at the stage of enforcement of a decision or agreement concerning parental responsibilities, child's residence or contact. The bailiff who will have to enforce the court order will try to get the parents to find a compromise and settle, but this is not an official mediation or conciliation.

58. To what extent, if at all, is an order or an agreement on parental responsibilities, the child's residence or contact enforceable and in practice enforced? Describe the system of enforcement followed in your national legal system. Under what conditions, if at all, may enforcement be refused?

Theoretically a court order (or an agreement on parental responsibility which has been officially approved by the court) can be enforced with the assistance of the police⁹⁸. The bailiff (*huissier de justice*) could call the police (*force publique*) and ask for their assistance in enforcing the order. In practice, the bailiffs are much more cautious. The parent who has a contact right must bring the court order, which states this right to the bailiff. The bailiff will then first go alone to the other parent's residence and explain the possible legal consequences of refusing to let the other parent have contact with the child. The bailiff tries to get the contact order enforced *à l'amiable* (out of court). Sometimes the child spontaneously gives his or her opinion, but the bailiff should not ask the child for

⁹⁵ It shall be part of the duties of the judge to conciliate the parties.

⁹⁶ It shall be part of the duties of the judge to conciliate the parties.

⁹⁷ See e.g. CA Paris, 11.09.2002, D. 2002. IR. 3241. See also TGI La Rochelle, 17.02.1988, D. 1991.411 with annotated LIENHARD (the family judge appointed a mediator to help with methods of reviving personal relationships between a child and his grandparents).

⁹⁸ At the end of September 2004 the French mass media mentioned the case of an American judgment allocating parental responsibilities to the American father. The French mother did not comply with this judgment and the French police tried to take the four-year-old child from the school in France in order to give the child back to the father. The teachers and other parents opposed to this.

it. If the parent still refuses to let the other parent exercise his contact right, the bailiff never physically takes the child under constraint to bring him to the other parent. He makes a record of the difficulties met with and gives this record to the parent who wanted to exercise the contact right. With the record, the parent can go before court in order to show that the other parent will not comply with the court order. The family court may then modify the exercise of parental responsibilities. It may also order an *astreinte* (a civil fine which the parent who does not comply with the order will have to pay per day, week or month of delay). If the parent finally accepts the exercise of the contact right by the other parent, the bailiff brings the child to the other parent.

59. To what extent, if at all, are children heard when a competent authority decides upon parental responsibilities, the child's residence or contact, e.g., upon a dispute, when scrutinizing an agreement, when appointing or discharging holder(s) of parental responsibilities, upon enforcement of a decision or agreement?

The new principle stated in Art. 388-1 French CC (since the Act of No. 93-22 of 8 January 1993) is that the minor child can be heard before the court or before the person appointed by the court, in any proceedings related to the child. The only condition is that the child is *capable de discernement* (capable to understand). If the child requests to be heard, the judge can only deny this hearing with a specifically reasoned decision. The child can be heard alone, with a lawyer or another person of his choice. If this choice does not appear to be consistent with the child's interests, the judge can appoint another person. The child does not become party to the proceedings even if she or he is heard (Art. 388-1 para. 3 French CC).⁹⁹

In some proceedings the child's interests can be contrary to the ones of his legal representatives. In such cases the guardianship court judge or the court that has the power to decide on the claim shall appoint a special administrator for the child. The special administrator will then represent the child in the pending proceedings (Art. 388-2 French CC). This special administrator does not have more powers than the child. This is why neither the minor child nor the administrator are allowed to file a third party opposition (*tierce opposition*) to the judicial decision on parental responsibilities (since the legal provisions do not mention the child under the persons entitled to claim for a modification of the exercise of parental responsibilities).¹⁰⁰ The court appointed special administrator can himself or herself appoint a lawyer to represent the child and defend his interests in the pending proceedings.¹⁰¹ The child automatically obtains legal aid (Art. 9.1 , Act of 10 July 1991).

In the more special cases in which the family judge has to decide on the methods of the exercise of parental responsibilities (and also contact rights) she or he can take into account (under several possible and additional criteria) the 'feelings expressed by the child under the conditions of Art. 388-1 French CC'. Therefore the child can be heard

⁹⁹ The child is therefore not entitled to recourse against the judicial decision, see French Supreme Court, Civ. II, 25.10.1995, *Bull. civ.* II, No. 253; the child cannot require a modification of the decision, French Supreme Court, Ch. mixed, 09.02.2001, *JCP* 2001. II. 10 514 annotated FOSSIER.

¹⁰⁰ See French Supreme Court, Ch. mixed, 09.02.2001, *Bull. civ.* No. 1.

¹⁰¹ TGI La Roche-sur-Yon, 29.07.1993, *BICC* 01.03.1994, No. 302.

before court (either by the family judge or by a person appointed by this judge)¹⁰² and be asked about his or her own feelings concerning the exercise of parental responsibilities. (Art. 373-2-11 French CC) The child's hearing does not oblige the court to take into account or to follow the child's wishes concerning the exercise of parental responsibilities¹⁰³. If the child has already been heard before the court of first instance, the appellate court is not obliged to hear him again and will decide whether a new hearing would be useful or not.¹⁰⁴ If the court hears the child, it must specify in its decision whether the feelings expressed by the child during the hearing have been taken into account.¹⁰⁵

60. How will the child be heard (e.g. directly by the competent authority, a specially appointed expert or social worker)?

The child can be heard either directly by the judge who decides on parental responsibilities or by a person appointed by this judge. This person can be, among others, a social worker in charge of the social inquiry¹⁰⁶ or another judge at the court. See Art. 388-1 French CC.

61. How, if at all, is the child legally represented in disputes concerning:

(a) Parental responsibilities

In all issues of this kind, the child can be represented by his parents (holders of parental responsibilities). But if in any proceeding the minor child's interests appear to be contrary to those of his legal representatives (normally the father and mother) the guardianship-court judge or the judge who will decide on the issue raised in the proceedings shall appoint a special administrator (*administrateur ad hoc*) who will represent the child in the pending proceedings. The ad hoc administrator will be entitled to appoint a lawyer who will defend the child's interests.¹⁰⁷

(b) The child's residence

Same answer as under (a).

(c) Contact

Same answer as under (a).

62. What relevance is given in your national legal system to the age and maturity of the child in respect of Q 59-61?

For the child's hearing, Art. 388-1 French CC requires that the child shall be able to understand the situation, the questions he will be asked by the judge or by a person

¹⁰² See French Supreme Court, Civ. II, 05.06.1991, *Bull. civ.* II, No. 173: the judge must not personally hear the child himself. It is sufficient for him or her to mention in the decision that the child has been heard during the social inquiry.

¹⁰³ French Supreme Court, Civ. II, 25.05.1993, *Bull. civ.* II, No. 185; CA Paris, 07.04.1999, *D.* 1999. IR. 142.

¹⁰⁴ French Supreme Court, Civ. I, 02.04.1996, *Bull. civ.* No. 163.

¹⁰⁵ French Supreme Court, Civ. II, 20.11.1996, *D.* 1997. 192 annotated BENHAMOU; 25.02.1993, *Bull. civ.* II, No. 185 : the judge is not obliged to follow the child's feelings.

¹⁰⁶ See French Supreme Court, Civ. II, 05.06.1991, *Bull. civ.* II, No. 173.

¹⁰⁷ TGI La Roche-sur-Yon, 29.07.1993, *BICC*, 01.03.1994, No. 302; CA Rouen, 25.05.1993, *BICC* 01.11.1993, No. 1222.

appointed by the court. No precise age is mentioned in this legal provision. Under the former law act of 22 July 1987, the court had to hear the child if he or she was at least 13 years old. This rule does not apply anymore, but in practice, most family courts will want to hear a child of this age because he will be in most cases 'capable to understand'. Since the Law Act of 8 January 1993, a child who is capable of understanding can request to be heard alone, with a lawyer or with another person of his or her choice. If the child requests to be heard the court cannot deprive him from this right without mentioning in its decision the reasons for this refusal. The court makes its decision not with regard to the child's age but only with regard to his health and his intellectual skills.¹⁰⁸

¹⁰⁸ French Supreme Court, Civ. I, 20.02.1985, *JCP* 1985. IV. 159; 26.06.2001, *JCP* 2002. I. 101, No. 18 annotated FOSSIER (six-year-old child).