

**JUDGES' COUNCIL OF SUPREME PEOPLE'S COURT'S  
SOCIALIST REPUBLIC OF VIETNAM**

**JUDGES' COUNCIL OF SUPREME  
PEOPLE'S COURT**

**Independence - Freedom - Happiness**

No. 01/2024/NQ-HĐTP

*Hanoi, May 16<sup>th</sup> 2024*

## RESOLUTION

### Regarding guidance on applying some legal provisions in resolving marriage and family cases

#### THE JUDGES' COUNCIL OF THE SUPREME PEOPLE'S COURT

*Pursuant to the Law on Organization of the People's Courts dated  
November 24<sup>th</sup> 2014;*

*Pursuant to the Law on Marriage and Family dated June 19<sup>th</sup> 2014;*

*Pursuant to the Civil Code dated November 24<sup>th</sup> 2015;*

*Pursuant to the Civil Procedure Code dated November 25<sup>th</sup> 2015;*

*Pursuant to the Resolution No. 326/2016/UBTVQH14 dated December 30<sup>th</sup>  
2016, of the National Assembly Standing Committee, which stipulates the rates of  
collection, exemption, reduction, collection, payment, management and use of  
court fees and charges;*

*In order to apply correctly and uniformly some legal provisions in resolving  
marriage and family cases;*

*After the receiving the opinions of the Director of the Supreme People's  
Procuracy and the Minister of Justice,*

#### RESOLUTION:

##### **Article 1. Scope of the resolution**

This resolution provides guidance on applying some legal provisions in resolving marriage and family cases.

##### **Article 2. The right to petition for divorce stipulated in clause 3 Article 51 of the Law on Marriage and Family**

1. "Pregnant" as defined in clause 3 Article 51 of the Law on Marriage and Family refers to the period during which the wife is carrying a fetus, as determined by competent medical facilities, up until childbirth or termination of pregnancy.

2. "Giving birth" as defined in clause 3 Article 51 of the Law on Marriage and Family encompasses the following scenarios:

- a) The wife has given birth but is not nurturing the child from birth until the baby is under 12 months old;
- b) The wife has given birth, but the child dies within 12 months of birth;
- c) The wife has carried the fetus for at least 22 weeks old but must terminate the pregnancy.

3. The husband is prohibited from petitioning the Court for divorce within a period of 12 months from the date the wife gave birth as stipulated in point a, point b clause 2 of this Article or from the date the pregnancy was terminated as stipulated in point c clause 2 of this Article.

4. In cases where the wife is pregnant or has recently given birth, the husband is prohibited from petitioning for divorce regardless of whether the child is biologically his.

5. In cases where the wife is nurturing a child under 12 months old, the husband is prohibited from petitioning for divorce regardless of whether the child is biological or adopted.

6. In case of surrogacy for humanitarian purposes, the husband's right to petition for divorce is determined as follows:

- a) The husband of the surrogate mother is prohibited from petitioning the Court for divorce during the period in which the surrogate mother is pregnant, giving birth or nurturing a child under 12 months old;
- b) The husband of a woman who is the intended parent of a surrogate-born child is prohibited from petitioning the Court for divorce during the period in which the intended parent is nurturing a child under 12 months old.

### **Article 3. Divorce by mutual consent as stipulated in Article 55 of the Law on Marriage and Family**

1. *"Husband and wife jointly petition for divorce"* as stipulated in Article 55 of the Law on Marriage and Family refers to the scenario in which both spouses sign the petition requesting the Court to confirm their mutual consent to divorce, child custody, property division upon divorce or one spouse has petitioned for divorce and the other spouse agree to the divorce, child custody, property division upon divorce.

2. Agreements between husband and wife regarding property division, the supervising, caring for, nurturing, and educating of the children must not violate legal prohibitions or be contrary to social ethics.

3. Agreement between husband and wife includes scenarios where the

spouses do not petition the Court to divide their property.

4. “*Supervising, caring for, nurturing, and educating of the children*” as stipulated in Article 55 of the Law on Marriage and Family refers to the supervising, caring for, nurturing, and educating of the minor children, and adult children who lack civil capacity, are unable to work, or do not have assets to support themselves.

**Article 4. Divorce at the request of one spouse as stipulated in clause 1 Article 56 of the Law on Marriage and Family**

1. “*Husband or wife has committed domestic violence*” refers to scenarios where a spouse has committed acts as stipulated in clause 1 Article 3 of the Law on Prevention and Fighting Domestic Violence.

2. “*Serious violation of the rights and obligations of the husband or wife*” means the violation of provisions of the Law on Marriage and Family regarding the rights and obligations of spouses, leading to serious infringement of the legitimate rights, interests of the other spouse.

Example: A spouse loses the family’s assets.

3. “*Marriage is in serious impediment, life together cannot last, the purpose of the marriage cannot be achieved*” includes the following scenarios:

a) There is no marital relationship, for example: spouses does not love, respect, care for, or help each other; spouses living seperately, leaving the other alone;

b) A spouse has adulterous relationship;

c) Spouses insult each other, harm each other’s honor, intergrity, reputation, causing mental anguish or injury, or harm to each other’s health;

d) Spouses has unequal rights and obligations; do not respect each other’s freedom of belief or religion, or do not help or create conditions for each other to develop themselves.

**Article 5. Restrictions on the division of the deceased spouse’s estate in cases where one spouse dies or is declared dead by the court as stipulated in clause 3, Article 66 of the Law on Marriage and Family**

The division of the estate that severely affects the livelihood of the surviving spouse and family, as stipulated in Clause 3, Article 66 of the Law on Marriage and Family and Article 661 of the Civil Code, refers to situations where the deceased has left an estate, but dividing this estate among the heirs would cause significant difficulties for the surviving spouse and family. Such difficulties may

include: lack of housing, loss of the sole source of material production, etc.

Example 1: Before marriage, Mr. A purchased a 35 square meter house. Subsequently, Mr. A married Ms. B and did not incorporate this house into the marital property. After the birth of their child, Mr. A passed away without leaving a will. Mr. A's parents requested the division of the estate, specifically the house. Ms. B and the child have no other place to live and do not have the means to secure alternative housing. Additionally, the house cannot be physically divided. In this case, dividing the estate, specifically the house, would severely affect the livelihood of Ms. B and the child.

Example 2: Mr. C and Ms. D got married and purchased a 35 square meter house. After the birth of their child, Mr. C passed away without leaving a will. Mr. C's parents requested the division of the estate, specifically Mr. C's share of the house. Ms. D and the child have no other place to live, and dividing the house physically would not ensure minimum living conditions for Ms. D and the child. Additionally, Ms. D is unable to pay Mr. C's parents the value of their inheritance share in cash. In this case, dividing Mr. C's share of the house would severely affect the livelihood of Ms. D and the child.

#### **Article 6. Resolution of child custody in divorce as stipulated in Article 81 of the Law on Marriage and Family**

1. When considering the “*best interests of the child*” as stipulated in clause 2, Article 81 of the Law on Marriage and Family, an objective and comprehensive evaluation of the following criteria must be conducted:

- a) The conditions and capabilities of the parents to supervise, care for, nurture, and educate the child, including the ability to protect the child from harm and exploitation;
- b) The child's right to live with the custodial parent and maintain a relationship with the non-custodial parent;
- c) The child's emotional attachment and closeness to each parent;
- d) The level of care and attention each parent provides to the child;
- d) Ensuring stability and minimizing disruptions in the child's living and educational environment;
- e) The child's desire to live with siblings (if any) to ensure psychological and emotional stability;
- g) The child's preference to live with either parent.

2. When obtaining the opinion of a minor child aged 7 years or older, as stipulated in clause 2, Article 81 of the Law on Marriage and Family and clause 3, Article 208 of the Civil Procedure Code, the following requirements must be met:

- a) The process must be friendly and appropriate to the child's psychology, age, and maturity level, allowing the child to express their views accurately and fully;
- b) The child's opinion should not be sought in the presence of the parents to avoid psychological pressure;
- c) The child should not be coerced or subjected to any pressure or stress.

3. *"The mother is not fit to directly supervise, care for, nurture, and educate the child"* as stipulated in clause 3, Article 81 of the Law on Marriage and Family applies in the following circumstances:

- a) The mother suffers from a serious illness or other severe condition that renders her unable to care for herself or directly supervise, care for, nurture, and educate the child;

Example: If the mother has had a stroke and is paralyzed, unable to walk, the Court should not grant custody of a child under 36 months to the mother for direct supervision, care, nurturing, and education.

- b) The mother has a monthly income less than half of the regional minimum wage where she resides and has no other assets to support the supervision, care, nurturing, and education of the child;
- c) The mother lacks the minimum time required to directly supervise, care for, nurture, and educate the child.

4. If the father's conditions for supervising, caring for, nurturing, and educating the child are not better than those of the mother, as stipulated in clause 3 of this Article, the Court shall grant custody to the mother.

#### **Article 7. Obligation to provide child support as stipulated in clause 2, Article 82 of the Law on Marriage and Family**

1. In cases where the custodial parent does not request child support from the non-custodial parent, the Court shall explain that requesting child support is intended to protect the legal rights and interests of the child. If it is determined that the custodial parent has the capability and means to support the child and that their decision not to request support is voluntary, the Court will not compel the other parent to provide child support.

2. Child support payments encompass all expenses related to the child's upbringing and education and are subject to the agreement between the parties. If

the parties cannot reach an agreement, the Court will determine the amount of support based on the income and actual capacity of the obligor and the essential needs of the child. The support amount determined by the Court shall not be less than half of the regional minimum wage at the place of residence of the obligor for each month for each child.

3. If the parties cannot agree on the method of support, the Court shall decide on a monthly support method or another method that is suitable for the needs and interests of the child and the economic conditions of the obligor.

4. The obligation of parents to provide support for their minor children, and adult children who are unable to work and have no assets to support themselves, arises from the time the parents no longer live with the child or live with the child but fail to fulfill their support obligations, unless the parties have agreed otherwise.

#### **Article 8. Restrictions on the rights of parents over minor children as stipulated in Article 85 of the Law on Marriage and Family**

1. *“Convicted of one of the crimes infringing on the life, health, dignity, or honor of the child with intent”* refers to being convicted by a legally effective judgment of the Court for one of the crimes stipulated in Chapter XIV of the Criminal Code concerning a minor child with intent.

For example: A parent is convicted by a legally effective judgment for the crime of "Intentional Infliction of Injury" as stipulated in Article 134 of the Criminal Code concerning a minor child.

2. *“Serious violations of the obligation to supervise, care for, nurture, and educate the child”* means failing to perform, or improperly performing, the obligation to supervise, care for, nurture, and educate the child, causing serious harm to the legitimate rights and interests of the child or impairing the child's comprehensive development.

For example: A parent neglects a minor child, leaving the child to fend for themselves without the means for self-support, resulting in the child engaging in theft.

3. *“Dissipating the child's assets”* refers to acts such as buying, selling, gifting, or destroying the child's assets, or any other acts that damage the child's assets not for the child's benefit.

4. *“Having a depraved lifestyle”* refers to engaging in lowly, vile, and corrupt behaviors contrary to the nation's customs and traditions.

For example: A parent engages in prostitution.

5. *“Inciting or forcing the child to engage in unlawful or unethical*

*activities*” refers to actions that provoke, entice, encourage, or force the child, through words, gestures, or any other means, to engage in activities that are unlawful or contrary to social ethics.

For example: A parent incites or forces the child to drop out of school, steal, commit frauds, or transport illegal drugs.

6. The Court may, on its own initiative or at the request of individuals, agencies, or organizations, issue a decision to restrict a parent's rights over their minor child, specifically as follows:

a) Prohibiting the parent from supervising, caring for, or educating the child when the parent has committed acts stipulated in clauses 1, 2, 4, and 5 of this Article;

b) Prohibiting the parent from managing the child's assets when the parent has committed acts stipulated in clause 3 of this Article;

c) Prohibiting the parent from legally representing the child when the parent has committed acts stipulated in clauses 1, 2, 3, 4, and 5 of this Article.

7. The Court may decide to shorten the period of restriction on the parent's rights over their minor child if the parent has served half of the term as determined by the Court and during this period has not committed any of the acts stipulated in clauses 1, 2, 3, 4, and 5 of this Article.

#### **Article 9. Determination of jurisdiction to resolve marriage and family cases in certain circumstances**

1. In marriage and family cases involving disputes over immovable property, where the residence or workplace of the defendant and plaintiff, as specified in points a and b, clause 1, Article 39 of the Civil Procedure Code, and the location of the disputed immovable property are different, the jurisdiction of the Court shall be determined according to the provisions of points a and b, clause 1, Article 39 of the Civil Procedure Code.

2. In cases where both parents are Vietnamese residing abroad and file a lawsuit regarding the change of the custodial parent after divorce, with the common child living in Vietnam, the jurisdiction shall belong to the Vietnamese Courts as stipulated in point đ, clause 1, Article 469 of the Civil Procedure Code.

#### **Article 10. Resolution of divorce cases where the defendant is a Vietnamese citizen residing abroad with an unknown address**

In divorce cases where a Vietnamese citizen residing domestically files for divorce from a Vietnamese citizen residing abroad, and the plaintiff can only provide the last known address of the defendant in Vietnam without an overseas



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address, the Court shall resolve the case as follows:

1. If it can be established through the defendant's relatives that they have contact with their domestic relatives, but the relatives do not provide the defendant's address to the Court or do not fulfill the Court's request to notify the defendant, it shall be considered as intentionally concealing the address.

If the Court has made a second request and the relatives still do not provide the defendant's address or notify the defendant, the Court shall continue to resolve and adjudicate the case in the absence of the defendant according to standard procedures.

2. After adjudication, the Court shall send a copy of the judgment or decision to the defendant's relatives for them to forward to the defendant. The Court shall also publicly post a copy of the judgment or decision at the headquarters of the People's Committee of the commune where the defendant last resided and where the defendant's relatives reside, to ensure the defendant can exercise their right to appeal according to procedural law.

#### **Article 11. Court fees in the resolution of marriage and family cases**

1. The parties must bear the court fees in cases involving disputes over the determination of parentage (father or mother) according to the provisions of Article 26 of Resolution No. 326/2016/UBTVQH14 dated December 30, 2016, of the Standing Committee of the National Assembly, which stipulates the rates, exemptions, reductions, collection, payment, management, and use of court fees and charges, except in cases involving the determination of parentage for minor children or adult children who have lost civil capacity.

2. In divorce cases where the parties mutually consent to the divorce in accordance with the laws on marriage and family, the following distinctions must be made:

a) If the parties mutually consent to the divorce before the opening of the first-instance court session, the parties shall bear 50% of the prescribed court fee (each party shall bear 25% of the prescribed court fee).

b) If the parties mutually consent to the divorce at the first-instance court session, the parties shall bear 100% of the prescribed court fee (each party shall bear 50% of the prescribed court fee).

3. In cases where the parties mutually consent to the divorce before the court session but cannot reach an agreement on child custody and common property, and the Court adjudicates and issues a first-instance judgment, the parties shall bear 50% of the prescribed court fee for the divorce petition (each party shall bear 25% of the prescribed court fee). For property relations, each party shall bear

the court fee corresponding to the value of the property portion each party is awarded according to the law on court fees.

**Article 12. Effectiveness**

1. This Resolution was approved by the Judges' Council of the Supreme People's Court on April 24<sup>th</sup>, 2024, and shall come into effect on July 1<sup>st</sup>, 2024.

2. During the implementation process, if there are any difficulties, suggestions for improvement should be promptly sent to the Supreme People's Court for timely guidance./.

**ON BEHALF OF THE JUDGES'  
COUNCIL  
CHIEF JUSTICE**

**Nguyen Hoa Binh**

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