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*For provisions of the repealed Law No.743, dated 17/2/1926 please see Volume 2 page number 1299 and onwards of 'Corpus of Abolished Provisions of Certain Laws in Force' and for the repealed provisions of Law No.4721, please see page number 1304-135 and onwards.*

BOOK TWO  
FAMILY LAW  
CHAPTER ONE  
MATRIMONIAL LAW  
PART ONE  
MARRIAGE  
SECTION ONE  
ENGAGEMENT

*A. Engagement*

**Article 118-** Engagement takes place when there is promise of marriage.

Unless there is consent of legal representatives, engagement shall not be binding for the minor and the person under legal disability.

*B. Provisions of engagement*

*I. Absence of the right to sue*

**Article 119-** Engagement shall not be a cause of action for compelling someone into marriage.

Forfeit money envisaged for avoidance of marriage or penalty clause shall not be sued. However, payments made shall not be reclaimed.

*II. Results of breach of engagement*

*1. Pecuniary damage*

**Article 120-** In the case that one of the fiancées breaks off an engagement without a justified reason or breakup of an engagement is imputable to one of the parties, the party at fault shall be obliged to provide pecuniary damages of an appropriate amount to the other party in return for the money spent and for pecuniary sacrifice incurred for marriage within the framework of good faith. The same rule shall apply to engagement expenses.

Parents or those acting similar to the parents during the engagement entitled to pecuniary damages can demand compensation of an appropriate amount for the expenses made under similar conditions.

*2. Non-pecuniary damages*

**Article 121-** The party incurring an attack on personal rights due to breakup of the engagement can demand compensation of an appropriate amount as non-pecuniary damages of the other party.

*III. Return of the gifts*

**Article 122-** If engagement breaks off due to a reason other than marriage, gifts given by the engaged parties or their parents or those acting similar to the parents during the engagement to one another can be reclaimed.

If the gifts cannot be given back ad verbum or in kind, provisions of unjust enrichment shall apply.

*IV. Statute of limitations*

**Article 123-** Rights to sue arising from breakup of engagement shall be time barred within one year as of the breakup.

SECTION TWO  
MARRIAGE LICENSE AND OBSTACLES

*A. Conditions for the license*

*I. Age*

**Article 124-** A man or woman shall not get married unless they turn eighteen.

However, the judge may allow a man or woman having turned seventeen to get married under exceptional circumstances or for a very important reason. If possible, parents or guardians of the people in question shall be heard.

*II. Mental competence*

**Article 125-** Those without mental competence shall not get married.

*III. Permission of the legal representative*

*1. About minors*

**Article 126-** Minors shall not get married without permission of their legal representatives.

*2. About the person under legal disability*

**Article 127-** The person under legal disability shall not get married without permission of their legal representatives.

*3. Applying to court*

**Article 128-** The Judge may allow a minor or person under legal disability having applied to the court to get married after hearing the legal representative not giving permission without a justified ground.

*B. Impediments to marriage*

*I. Kinship*

**Article 129-** Marriage is prohibited between the following:

1. Between kinship in the direct line; between siblings; between uncle, aunt and their nephews and nieces,
2. Although kinship by marriage is terminated, between one of the spouses and the other one's ascendants and descendants,
3. Between the adoptive parent and adopted child or between one of them and descendants and spouse of the other.

*II. Former marriage*

*1. Proof of dissolution*

*a. In general terms*

**Article 130-** The person that wants to remarry shall be obliged to prove that their former marriage has ended.

*b. In case of absence*

**Article 131-** Spouse of a person deemed to be in absence shall not remarry unless the court rules for nullity of marriage.

Spouse of the person in absence can demand nullity of marriage through an application for absence or a lawsuit filed to that end.

A separate lawsuit to demand nullity of marriage can be filed with the court where the plaintiff has domicile.

*2. Waiting period for women*

**Article 132-** If marriage has ended, woman shall not remarry until after three hundred days have passed as of the dissolution of the marriage.

Giving birth ends this period.

In the case that woman is not pregnant from her former marriage and the spouses want to remarry each other, the court shall revoke this period.

*III. Mental illness*

**Article 133-** People with mental illness shall not get married unless it is clear that there is no medical prejudice to their marriage as approved by an official medical board report.

SECTION THREE  
MARRIAGE APPLICATION AND CEREMONY

*A. Application*

*I. Application authority*

**Article 134-** Man and woman to marry each other apply together to marriage registry office in the domicile of one of the parties.

Marriage officer is the mayor when there is municipality or other officer to be assigned with this task, in villages it is the head of the village.

*II. Form*

**Article 135-** Application is made by the parties to marry in written form or orally.

*III. Documents*

**Article 136-** Both man and woman must submit their identity card and birth certificate, a document attesting dissolution of a former marriage if any, the written and signed consent of the legal representative if a minor or person under legal disability is in question and a medical report indicating that there is no illness posing an obstacle to marriage.

*IV. Examination and dismissal of application*

**Article 137-** The marriage officer examines the application for marriage and the documents to be added. If there is a shortcoming in the application, the officer shall make up for it or make sure that the relevant parties make up for it.

If it is understood that the application is not duly made or that one of the parties is not eligible to marry or that there is a legal obstacle to marriage, the application for marriage shall be dismissed and the parties shall be immediately notified of that in writing.

*V. Objection to dismissal and proceeding*

**Article 138-** The parties with an intention to marry can apply to court for decision of dismissal. Objection shall be examined based on the documents and a final judgment shall be made about the issue.

However, lawsuits filed for decisions of dismissal given based on grounds for absolute nullity shall be tried (...) <sup>(1)</sup> through simplified procedure<sup>(1)</sup>.

*B. Marriage ceremony and registration*

*I. Conditions*

*1. Marriage license*

**Article 139-** If the marriage officer determines existence of conditions for marriage or if the decision of dismissal is revoked by the court, the officer shall notify the parties to marry of the day and time of marriage or provide them with a marriage license document if they wish so.

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<sup>(1)</sup> Through article 31 of Law No. 6217 and dated 31/3/2011, the phrase "and with the presence of public prosecutor" featuring in this paragraph is repealed.

Marriage license document entitles the parties with an intention to marry to be able to get married before a marriage officer within six months as of the date of issuance.

*2. Not being able to officiate a marriage*

**Article 140-** In the event that the conditions required for marriage are not met or the six-month period as of the issuance of marriage license has expired, the marriage officer shall not officiate a marriage.

*II. Form*

*1. Venue of ceremony*

**Article 141-** Marriage ceremony shall be performed in the presence of two witnesses who are of age and have mental competence by the marriage officer. However, upon request of the parties, the ceremony can also be performed in other venues deemed appropriate by the marriage officer.

*2. Form of the ceremony*

**Article 142-** The marriage officer asks the parties the same question, that is, whether they are willing to marry each other. Upon hearing affirmative answers, the marriage shall be enacted. The officer shall declare the marriage to be enacted as per law with the consent of both parties.

*3. Certificate of marriage and religious ceremony*

**Article 143-** After completion of the ceremony, the marriage officer provides the parties with a marriage certificate.

A religious ceremony shall not be performed without showing the civil marriage certificate.

Validity of marriage shall not depend on religious ceremony.

*C. Regulation*

**Article 144-** Marriage, register of marriage, correspondence regarding marriage and other issues related to marriage shall be regulated through regulations.

SECTION FOUR  
VOID MARRIAGES

*A. Absolute Nullity*

*I. Grounds*

**Article 145-** Marriage shall be void with absolute nullity in the following circumstances:

1. One of the spouses is already married at the time of marriage,
2. One of the spouses does not have mental competence due to a persistent reason,
3. One of the spouses has mental illness to the degree that it poses an obstacle to marriage,
4. There is consanguinity between the spouses to the degree that it poses an obstacle to marriage.

*II. The duty and right to sue*

**Article 146-** Lawsuit for absolute nullity shall be filed by the public prosecutor ex officio.

This lawsuit can also be filed by anyone interested.

*III. Limitation of abolition of the right to sue*

**Article 147-** Absolute nullity of a dissolved marriage shall not be sued by the public prosecutor ex officio. However, anyone interested can ask for absolute nullity to be adjudicated.

In cases where mental competence is gained later or mental illness is healed, absolute nullity lawsuit can only be filed by the spouse who has gained mental competence later or whose mental illness is healed.

If the marriage of a person remarrying while already married has ended before the decision of absolute nullity and the other spouse is well-intentioned, this marriage shall not be declared void.

*B. Relative nullity*

*I. Spouses' right to sue*

*1. Temporary deprivation of mental competence*

**Article 148-** The spouse temporarily deprived of mental competence at the time of marriage can sue for annulment of marriage.

*2. Lapse*

**Article 149-** One of the spouses can sue for annulment of marriage in the following circumstances:

1. If the person is mistaken into consenting to the marriage even though they didn't have an intention to marry at all or didn't intend to marry with the person in question,

2. If the person married by being mistaken about a certain trait of their spouse, the absence of which can make the life unbearable.

*3. Deception*

**Article 150-** One of the spouses can sue for annulment of marriage in the following circumstances:

1. If the person consented to marriage by being deceived about their spouse's honor and dignity by their spouse directly or by someone else within their spouse's knowledge,

2. If a disease that can pose a severe danger for the plaintiff's or their descendants' health was concealed.

*4. Intimidation*

**Article 151-** The spouse that consented to marriage by being intimidated with an immediate and severe danger to their own life or that of their relatives, their health or honor and dignity can sue for annulment of marriage.

*5. Lapse of time*

**Article 152-** The right to sue for annulment shall cease to be within six months as of the date when the reason for annulment is learnt about or the effects of fear die out and within five years as of the start of marriage under any circumstances.

*II. Legal representative's right to sue*

**Article 153-** If a minor or person under legal disability marries without permission of the legal representative, the legal representative whose consent is not obtained can sue for annulment of marriage.

Thus, if the person getting married comes of age after turning eighteen subsequently, is no longer under legal disability or if the wife gets pregnant, the court shall not rule for annulment of marriage.

*C. Grounds that do not necessitate nullity*

*I. Noncompliance with waiting period*

**Article 154-** Woman marrying before the expiration of waiting period shall not necessitate nullity of marriage.

*II. Noncompliance with form*

**Article 155-** The court shall not rule for nullity of a marriage performed in the presence of a marriage officer due to noncompliance with other rules regarding form.

*D. Nullity decision*

*1. In general terms*

**Article 156-** A void marriage shall only be terminated by a decision of the judge. Even in the case of absolute nullity, marriage shall give rise to all the consequences of a valid marriage until the decision made by the judge.

*II. Consequences*

*1. In terms of children*

**Article 157-** Children born into a marriage declared void by the court shall be deemed to be born into a marriage although their parents are not well-intentioned.

As regards relationship between children and parents, provisions for divorce shall apply.

*2. In terms of spouses*

**Article 158-** If the marriage is declared void, the spouse deemed to be well-intentioned at the time of marriage shall retain his/her personal status acquired through marriage.

As regards division of matrimonial property, compensation, alimony and surname, provisions for divorce shall apply.

*E. The heirs' right to sue*

**Article 159-** The right to sue for nullity of marriage shall not pass on to heirs. However, the heirs can proceed with a lawsuit already filed. The surviving spouse deemed not to be well-intentioned at the time of marriage as a result of the lawsuit shall lose the rights provided to him/her through dispositions mortis causa and not be a legal heir.

*F. Jurisdiction and proceeding*

**Article 160-** In nullity of marriage cases, provisions for divorce shall apply in terms of jurisdiction and proceeding.

PART TWO  
DIVORCE

*A. Grounds for Divorce*

*I. Adultery*

**Article 161-** If one of the spouses commits adultery, the other spouse can file a lawsuit for divorce.

The right to sue shall cease to be within six months as of the date when the spouse with a right to sue learns about the cause of divorce and within five years as of the commencement of the act of adultery under any circumstances.

The forgiving party shall not have a right to sue.

*II. Attempt against life, abominable or degrading treatment*

**Article 162-** Each one of the spouses can file for divorce against the other one due to attempt against life, abominable or degrading treatment.

The right to sue shall cease to be within six months as of the date when the spouse with a right to sue learns about the cause of divorce and within five years as of the occurrence of this cause under any circumstances.

The forgiving party shall not have a right to sue.

*III. Committing crimes and leading a dishonorable life*

**Article 163-** If one of the spouses commits a humiliating crime and leads a dishonorable life and the other spouse is not expected to cohabit due to these reasons, this spouse can always file for divorce.

*IV. Desertion <sup>(1)(1)</sup>*

**Article 164-** If one of the spouses deserts the other one in order not to fulfill his/her obligations stemming from union of marriage, or does not return to matrimonial home without a valid ground, the deserted spouse can file for divorce provided that separation has lasted at least for six months and is ongoing and the notice given by the judge or notary public upon request is inconclusive. The spouse that compels the other one to desert the matrimonial home or prevents the other one from returning without a valid ground shall also be deemed to have deserted.

Upon request of the spouse with a right to sue, the judge or notary public shall give a notice to the deserting spouse without examining the grounds specifying that they must return to the matrimonial home within two months otherwise there will be consequences. This notice shall be given through announcements when necessary. However, a request for a notice can only be made when the fourth month of the deadline specified for divorce is over and a lawsuit can only be filed after two months have passed as of the issuance of a notice.

*V. Mental illness*

**Article 165-** If one of the spouses is mentally ill and this makes married life unbearable for the other spouse, a lawsuit for divorce can be filed provided that a medical board report confirms the incurable nature of the illness.

*VI. Matrimonial breakdown*

**Article 166-** If there is severe breakdown of family life that the continuation of common life cannot be expected, either spouse can sue for a divorce.

In the cases mentioned above, if the plaintiff is more at fault, the defendant shall have a right to object. However, if this objection constitutes abuse of right and if there is no good in the continuation of marriage for the defendant and children, the court can rule for divorce.

If the marriage lasted for at least one year and the spouses apply together for divorce or one of the spouses accepts the lawsuit filed by the other one, union of marriage shall be deemed to have incurred a breakdown. In order to rule for a divorce, the judge must hear the parties in person and be convinced that the parties have expressed their free will and deem suitable the arrangement regarding financial consequences of the divorce and situation of children to be accepted by both parties. The judge can make the necessary amendments to this agreement by taking into account interests of children and both parties. In the case that such amendments are accepted by both parties, the judge shall rule for divorce. In this case, the provision that acknowledgement of the parties is not binding for the judge shall not apply.

In the case that the lawsuit filed based on one of the grounds for divorce is dismissed, three years have passed as of the date when this decision is finalized, union of marriage shall be deemed to have incurred a breakdown if a common life is not established over again for any reason whatsoever and a ruling shall be given for divorce upon request of one of the spouses.

*B. Lawsuit*

*I. Matter*

**Article 167-** The spouse with a right to sue for divorce can request either divorce or judicial separation.

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<sup>(1)</sup> Through article 19 of Law No. 6217 and dated 31/3/2011, the phrase "or notary public" is added and incorporated into the text in such a way as to ensue the phrase «judge» featuring in paragraph one and two of the said article.



## *II. Jurisdiction*

**Article 168-** The court of competent jurisdiction for divorce or separation shall be the court where one of the spouses has domicile or where the spouses lived together for the last time for six months before filing for divorce.

## *III. Interim measures*

**Article 169-** When a lawsuit for divorce or separation is filed, the judge shall take the interim measures regarding accommodation of spouses, subsistence, matrimonial property regime and childcare and protection of children ex officio.

## *C. Decision*

### *I. Divorce or judicial separation*

**Article 170-** If there is a proven ground for divorce, the judge shall rule for divorce or judicial separation.

If the lawsuit is only for judicial separation, a ruling shall not be given for divorce.

If the lawsuit is for divorce, the judge may rule for judicial separation only if there is a possibility to establish a common life over again.

### *II. Judicial separation period*

**Article 171-** Judicial separation can last for one to three years. This period shall start when the ruling for judicial separation is final.

### *III. End of judicial separation period*

**Article 172-** When this period ends, judicial separation shall be terminated ipso facto.

If no common life is established between the spouses, either spouse can file for divorce.

When the consequences of divorce are regulated, the events proven in the first lawsuit and the incidents that occurred during judicial separation shall be taken into account.

## *IV. Personal status of a divorced woman*

**Article 173-** In case of divorce, woman shall maintain her personal status acquired through marriage. However, she shall take her maiden name as her surname. If the woman was a widow before marriage, she can ask the judge to give permission for her to use her maiden name.

She can keep the family name of the husband if she convinces the judge that she has an interest in using this name and if this does not damage the interest of the husband.

The husband can ask that this permission be revoked if the conditions change.

## *V. Damages and alimony in divorce*

### *1. Pecuniary and non-pecuniary damages*

**Article 174-** The party at less fault or with no fault whose current or expected interests are damaged by divorce can demand pecuniary damages of an appropriate amount of the party at fault.

The party whose personal rights are attacked due to events leading to divorce can demand an appropriate amount of money to be paid in the form of non-pecuniary damages.

### *2. Alimony*

**Article 175-** The party to be driven to poverty due to divorce can demand alimony for subsistence of the other party indefinitely to the extent permitted by their financial power provided that the party demanding alimony is not at more fault.

No fault shall be sought for with the party incumbent to pay alimony.

*3. Form of payment of damages and alimony*

**Article 176-** It can be decided that pecuniary damages and alimony be paid collectively or in the form of revenue as is required by the case.

Non-pecuniary damages shall not be paid in the form of revenue.

Pecuniary damages or alimony ruled to be paid in the form of revenue shall cease to be in the case that the payee remarries or one of the parties dies. If the payee de facto lives as if they are married without a civil marriage, poverty is out of the question or the payee leads a dishonorable life, alimony shall be revoked by court decision.

In the case that financial standing of the parties changes or as is required by equity, it can be decided to increase or decrease the amount of revenue.

Upon request, the judge can make a decision about how much pecuniary damages and alimony to be paid in the form of revenue will be paid in the upcoming years as per social and economic conditions of the parties.

*4. Jurisdiction*

**Article 177-** For alimony lawsuits to be filed after divorce, the court where the payee of alimony has domicile shall be the court of competent jurisdiction.

*5. Statute of limitations*

**Article 178-** Rights to sue stemming from breakdown of marriage due to divorce shall be time barred within one year as of the issuance of decree absolute of divorce.

*VI. Division of matrimonial property*

*1. In case of divorce*

**Article 179-** As regards division of matrimonial property, provisions of the regime by which the spouses are bound shall apply.

*2. In case of judicial separation*

**Article 180-** If a ruling is given for judicial separation, the court can decide that matrimonial property regime approved through agreements between the parties be terminated depending on the period of judicial separation and situation of spouses.

*VII. Inheritance rights*

**Article 181-** The divorcees shall not be legal heirs to each other, and they shall lose the rights provided to them through dispositions mortis causa stipulated before divorce unless otherwise specified in the dispositions.

**(Amended paragraph two: 31/3/2011-6217/19 art.)** In the case that one of the heirs of the deceased spouse who died pending a divorce decree proceeds with the case and fault of the other spouse is proven, provision of the above-mentioned paragraph shall apply.

*VIII. Parentage rights in terms of children*

*1. Discretion of the judge*

**Article 182 –** When the court is to rule for divorce or judicial separation, the judge shall hear mother and father as much as possible and receive the opinion of the guardian and guardianship authority if the child is under guardianship and then regulate parentage rights and personal relationship with the child.

In regulation of personal relationship of the child with the noncustodial parent, interests of the child in terms of health, education and morals shall prevail. This spouse shall be obliged to contribute to childcare and education expenses of the child to the extent permitted by their financial power.

Upon request, the judge can make a decision about the amount of money to be paid for these expenses in the form of revenue in the upcoming years as per social and economic conditions of the parties.

*2. Change of conditions*

**Article 183-** In the case that new phenomena occur such as mother or father remarrying, going someplace else or dying, the judge shall take the necessary measures ex officio or upon request of mother or father.

*D. Divorce proceeding*

**Article 184-** Divorce proceeding shall be subject to Code of Civil Procedure without prejudice to the following rules:

1. Unless the judge is convinced in all conscience about the phenomena on which divorce or judicial separation is based, he/she shall not treat them as proven.

2. The judge shall not offer attestation to parties about these phenomena ex officio or upon request.

3. Acknowledgements of the parties to that end shall not be binding for the judge.

4. The judge shall appraise the proofs freely.

5. Agreements as to accessory consequences of divorce or judicial separation shall only be valid if they are approved by the judge.

6. The judge can decide to hold a closed hearing upon request of one of the parties.

PART THREE

GENERAL PROVISIONS OF MARRIAGE

*A. Rights and obligations*

*I. In general terms*

**Article 185-** Marriage establishes a union between spouses.

Spouses shall be obliged to ensure continuity of this union and be attentive to childcare, education and supervision of children together.

Spouses shall be obliged to live together, be loyal to and help each other.

*II. Selection of matrimonial home, management of union and participation in the expenses*

**Article 186-** Spouses shall choose their matrimonial home together.

Union of marriage shall be managed by the spouses together.

Spouses shall contribute to expenses of the union by way of endeavor and assets to the extent permitted by their power.

*III. Surname of the wife*

**Article 187-** The wife shall take on her husband's surname after marriage. However, through a written application made to the marriage officer or civil registry office later on, the wife can also use her own surname preceding that of her husband. Women having used two surnames before can benefit from this right only for one surname.

*B. Representation of the union*

*I. Representative authority of spouses*

**Article 188-** Each one of the spouses shall represent the union of marriage to meet permanent needs of the family as long as a common life continues.

For other needs of the family, one of the spouses can only represent the union in the following circumstances:

1.If this spouse is authorized by the other spouse or by the judge for valid grounds,

2. If delay is deemed inconvenient for the interests of the union and consent of the other spouse cannot be obtained due to a disease, being somewhere else or similar reasons.

*II. Liability*

**Article 189-** In circumstances where representative authority of the union is used, spouses shall be jointly and severally liable to third parties.

Each one of the spouses shall be personally liable for actions taken without representative authority of the union. However, in cases where representative authority is exceeded in such a way that cannot be understood by third parties, spouses shall be liable jointly and severally.

*III. Revocation or limitation of representative authority*

**Article 190-** If one of the spouses exceeds representative authority of the union or falls short of using this authority, the judge may revoke or limit representative authority upon request of the other spouse. The spouse having made the request can only personally notify third parties of revocation or limitation of representative authority.

Revocation or limitation of representative authority bearing legal consequences for well-intentioned third parties shall depend on whether the situation is declared through the judge's decision.

*IV. Restitution of representative authority*

**Article 191-** Decision about revocation or limitation of representative authority can be amended by the judge upon request of one of the spouses when conditions change.

If the first decision is declared, then decision on amendment shall also be declared.

*C. Profession and work of spouses*

**Article 192-** Neither of the spouses shall be obliged to obtain permission from the other one in choice of profession or work. However, peace and interests of the union of marriage shall be taken into account in choice of profession and work and when handling them.

*D. Legal transactions of spouses*

*I. In general terms*

**Article 193-** Unless otherwise specified in the laws, either spouse can engage in all kinds of legal transactions with the other one and third parties.

*II. Matrimonial home*

**Article 194-** One of the spouses shall not terminate the rental contract of matrimonial home, alienate the matrimonial home or impose limitation of rights on the matrimonial home without consent of the other spouse.

The spouse not having obtained the consent of the other one or the spouse not having been given the consent without a valid ground can request intervention of the judge.

The spouse not in possession of the immovable property allocated as matrimonial home can ask the directorate of land registry to put the necessary annotation on the land registry.<sup>(1)</sup>

If the matrimonial home is a house to let, the spouse not being a party to the contract shall become a party after notifying the leaser and both spouses shall be liable jointly and severally.

*E. Protection of the union*

*I. In general terms*

**Article 195 –** In the case that obligations stemming from union of marriage are not fulfilled or there is a dispute about an important issue regarding the union of marriage, spouses can request intervention of the judge together or separately.

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<sup>(1)</sup>Through article 44 of Law No. 6518 and dated 6/2/2014, the phrase "directorate of land registry" was incorporated into the text in such a way as to ensue the phrase "put an annotation" featuring in this paragraph.

The judge can warn the spouses about their obligations, try to reconcile them and ask for experts' help with the consent of both parties.

The judge shall take the measures prescribed by law upon request of one of the spouses when necessary.

*II. Spouses living together*

**Article 196** – Upon request of one of the spouses, the judge shall determine the amount of money that each party will contribute for subsistence of family.

When determining the amount of money to be contributed, one of the spouses doing housework, taking care of children, working for the other spouse free of charge shall all be taken into account.

These contributions can be demanded for the past year and upcoming years.

*III. Suspension of living together*

**Article 197** – One of the spouses shall have a right to live separately if their personality, economic safety or peace of the family is in serious danger due to living together.

If suspension of living together has a valid ground, the judge shall take the necessary measures about the amount of money to be contributed by one party to the other, enjoyment of a residence and household goods and property regime of the spouses upon request of one of the spouses.

One of the spouses can make the above-mentioned requests if the other spouse refrains from living together without a valid ground or leading a common life is impossible for another reason.

If the spouses have children who are not of age, the judge shall take the necessary measures as per the provisions regulating relationship between parents and children.

*IV. Measures regarding debtors*

**Article 198** – If one of the spouses does not fulfill his/her obligations in terms of contributing to the expenses of the union, the judge can order the debtors of the said spouse to make their payments in total or in part to the other spouse.

*V. Limitation of the power of disposition*

**Article 199** – Upon request of one of the spouses, the judge can decide that power of disposition for certain assets to be determined by the judge can only be used with consent of the other spouse as far as maintaining economic assets of the family or fulfilling a financial obligation stemming from the union of marriage is concerned.

In this case the judge shall take the necessary measures.

If the judge revokes one of the spouses' power of disposition on immovable property, a decision shall be made to put an annotation on the land registry ex officio.

*VI. Change of conditions*

**Article 200** – If the conditions change, the judge shall make the necessary amendments to his/her decision upon request of one of the spouses or revoke the measure in case the ground has ceases to be.

*VII. Jurisdiction*

**Article 201** – About measures to be taken to maintain union of marriage, the court where one of the spouses has domicile shall be the court of competent jurisdiction.

If the spouses have different domiciles and both spouses have made a request for measures, the court of competent jurisdiction shall be the one that is located where the first spouse to make the request has domicile.

The court of competent jurisdiction to change, complement or revoke the measures shall be the one that has made the decision to take measures. However, if domiciles of both spouses have changed, the court located where one of the spouses newly resides shall be the court of competent jurisdiction.

PART FOUR  
MATRIMONIAL PROPERTY REGIME  
SECTION ONE  
GENERAL PROVISIONS

*A. Statutory property regime*

**Article 202-** Applying the provision of participation in acquired property between the spouses shall be of essence.

Spouses can agree on one of the other property regimes prescribed by law through contractual property regime.

*B. Marital property contract*

*I. Content of the contract*

**Article 203-** Marital property contract can be concluded before or after the marriage. The parties can determine, terminate or modify the property regime of their choice within the boundaries of law.

*II. Competency to contract*

**Article 204-** Marital property contract can only be concluded by those having mental competence.

The minors and persons under legal disability shall obtain the consent of their legal representatives.

*III. Form of the contract*

**Article 205-** Marital property contract can be drawn up in notary public or by means of approval. However, the parties can notify the relevant authorities of their choice of matrimonial property regime in written at the time of marriage application.

It is obligatory that the marital property contract be signed by the parties and by their legal representatives when necessary.

*C. Extraordinary property regime*

*I. Upon request of one of the spouses*

*1. Decision*

**Article 206-** Upon request of one of the spouses, the judge can order a separation of property if there is a valid ground to that end.

A valid ground shall exist especially in the following circumstances:

1. If the other spouse is deep in debt or their share of the common property is seized,
2. If the other spouse has endangered the interests of the requesting party or of the marital union,
3. If the other spouse withholds the consent required for an act of disposal on the common property without a valid ground,
4. If the other spouse refuses to provide the requesting party with information on the income, assets, debts or their common property,
5. If the other spouse permanently lacks mental competence.

If one of the spouses permanently lacks mental competence, his/her legal representative can

request separation of property based on this ground.

*2. Jurisdiction*

**Article 207-** The court where one of the spouses has domicile shall be the competent court of jurisdiction.

*3. Renouncing separation of property*

**Article 208-** Spouses can always adopt the former or another property regime through a new marital property contract.

If there is no longer a ground for transition to separation of property regime, the judge can decide to revert to the former property regime upon request of one of the spouses.

*II. In case of compulsory execution*

*1. Bankruptcy*

**Article 209-** If one of the spouses having agreed on the community of property goes bankrupt, the regime shall be turned into separation of property ipso facto.

*2. Confiscation*

**Article 210-** If the creditor having commenced execution proceedings against one of the spouses having agreed on the community of property incurs losses in enforcement of confiscation, the creditor can demand separation of property of the judge.

Request of the creditor shall be directed at both spouses.

The court competent of jurisdiction shall be where the creditor has domicile.

*3. Reverting to the former regime*

**Article 211-** If the creditor is satisfied, the judge can order reestablishment of community of property upon request of one of the parties.

The spouses can agree on participation in acquisitions through marital property contract.

*III. Dissolution of the former regime*

**Article 212 –** If the spouses opt for separation of property, dissolution of the former regime between the spouses shall be conducted as per this regime unless otherwise stipulated in the law.

*D. Protecting creditors*

**Article 213 –** Establishment, modification of the property regime or dissolution of the former one shall not exonerate the property on which the creditors of one of the spouses or of the community can get their due.

The spouse having taken on such property shall be personally liable for debts. However, if the said spouse proves that the said property does not suffice to pay the debt, they can elude responsibility to that extent.

*E. Jurisdiction in division of property regime lawsuits*

**Article 214 –** The following courts shall be the courts of competent jurisdiction for lawsuits regarding division of property regime between the spouses or heirs:

1. In the case that property regime is terminated due to death, the court where the deceased had the latest domicile,

2. In case of divorce, nullity of marriage or in case the judge rules for separation of property, the courts that are competent for these lawsuits,

3. In other circumstances the court where the defendant spouse has domicile.

*F. Management of the property of one spouse by the other one*

**Article 215** – In the case that one of the spouses hands over management of the property to the other one explicitly or implicitly, provisions of procuracy shall apply unless otherwise agreed.

*G. Inventory*

**Article 216**- One of the spouses can always demand of the other one that an inventory of the property be made through an authenticated deed.

If this inventory has been made within one year as of the receipt of the property, this inventory shall be considered accurate unless proven otherwise.

*H. Debts between the spouses*

**Article 217**- Property regime shall not prevent debts between the spouses from being due and payable. However, if payment of a debt can put the spouse in debit in difficulty in such a way as to endanger the union of marriage, the said spouse can ask for time for the payment. If the conditions entail, the judge shall make sure that the spouse making the request be incumbent to give guarantee.

SECTION TWO

PARTICIPATION IN THE ACQUIRED PROPERTY

*A. Ownership*

*I. Scope*

**Article 218**- Participation in the acquired property regime shall encompass the acquired property and personal property of each one of the spouses.

*II. Acquired property*

**Article 219**- Acquired property shall comprise assets which are acquired by each spouse in return for recompense during the matrimonial property regime.

Acquired property of a spouse shall comprise especially the following:

1. Acquisitions in return for the efforts made,
2. Benefits received from social security or social welfare institutions or funds and the like that aim to help the personnel,
3. Compensation paid for the loss of earning capacity,
4. Income derived from personal properties,
5. Assets corresponding to the acquired properties.

*III. Personal properties*

*1. As per law*

**Article 220**- The following shall constitute personal properties as per law:

1. Goods utilized only for personal use of one of the spouses,
2. Properties that belonged to one of the spouses at the beginning of the property regime or properties that one of the spouses inherited subsequently or properties acquired in an unrequited manner,
3. Receivables of non-pecuniary damages,
4. Assets corresponding to the acquired properties.

*2. As per the contract*



**Article 221-** Through marital property contract, spouses can agree on the fact that properties acquired by way of performing a profession or operation of an enterprise that should be included in the acquired properties shall be deemed personal properties.

Through marital property contract, spouses can also agree on the fact that revenue derived from personal properties is not included in the acquired properties.

*IV. Proof*

**Article 222** – Any person claiming that a certain property belongs to one of the spouses shall be obliged to prove his/her claim.

Properties, ownership of which cannot be proven shall be deemed to be joint ownership of the spouses.

All the properties of a spouse shall be deemed acquired property until proven otherwise.

*B. Management, enjoyment and act of disposal*

**Article 223** – Each one of the spouses shall have the right to manage, enjoy and carry out an act of disposal on the acquired properties within legal boundaries.

Unless otherwise agreed, one of the spouses shall not carry out an act of disposal on the property with joint ownership without the consent of the other party.

*C. Liabilities to third parties*

**Article 224** – Each one of the spouses shall be liable for their own debts with all their assets.

*D. Termination of the property regime and dissolution*

*I. Moment of termination*

**Article 225** – Matrimonial property regime shall be terminated by death of one of the spouses or adoption of another property regime.

If the court rules for dissolution of marriage due to nullity or divorce or separation of property, the property regime shall be terminated as of the date of the lawsuit.

*II. Reclaim of the properties and debts*

*1. In general terms*

**Article 226** – Each one of the spouses shall reclaim his/her properties from the other spouse.

During dissolution if there is a property with joint ownership, one of the spouses can enjoy facilities stipulated by law and also demand that the said property be granted to him/her by paying the share of the other one and proving that it is in his/her best interests.

Spouses can make arrangements regarding their mutual debts.

*2. Value increment share*

**Article 227** – If one of the spouses has contributed to acquisition, improvement or maintenance of a property that belongs to the other one free of charge or without getting an appropriate amount of recompense, the said spouse shall have a right to claim an amount in proportion to value increment share of this property during dissolution and the amount shall be calculated based on the value of the said property during dissolution. If there is a loss in value, initial value of the contribution shall be taken as the basis.

If such a property is sold off, the judge shall determine the sum to be paid to the other spouse in an equitable manner.

Through a written agreement spouses can renounce taking a share of the value increment and change the share rate.

*III. Calculating shares of the spouses*

*1. Separation of personal properties and acquired properties*

**Article 228-** Personal properties and acquired properties of spouses shall be separated based on their status at the time of termination of property regime.

Instead of full payment made or compensation paid for loss of earning capacity to one of the spouses by social security or social welfare institutions; if the said spouse was endowed with revenue for life as per the procedures of social security or social welfare institutions, the value of the revenue for the upcoming period as cash fund at the time of termination of the property regime shall be taken and taken into account as personal property of the same amount during dissolution.

*2. Assets to be added*

**Article 229-** The following shall be added as assets to the acquired properties:

1. Unrequited acquisitions obtained by one of the spouses except for ordinary gifts without consent of the other spouse within the year preceding termination of the property regime,

2. Alienation of properties undertaken by one of the spouses in order to decrease the amount to be granted to the other spouse during marital property regime.

In disputes regarding such acquisitions and alienation of properties, the court decision can be asserted towards third parties enjoying the said acquisitions and alienation of properties provided that they are notified of the lawsuits.

*3. Offsetting personal properties and acquired properties*

**Article 230-** If debts stemming from personal properties of one of the spouses are paid out of acquired properties or debts stemming from acquired properties are paid out of personal properties, offsetting can be requested at the time of dissolution.

Each debt shall put the property it is related to under obligation. If it is unclear where the debt stems from, it shall be deemed to be stemming from acquired properties.

If contribution is made by one category of property to the other in terms of acquisition, improvement or maintenance of the property, offsetting shall be conducted as per contribution rate and value of the property at the time of dissolution in case of an increase or a decrease in value or if the said property is sold off, it shall be done in an equitable manner.

*4. Residual value*

**Article 231-** Residual value shall be the amount obtained after debts related to properties are subtracted from the total value of acquired properties of both spouses including the amounts acquired through adding and offsetting.

Decrease in value shall not be taken into account.

*IV. Determination of the value*

*1. Current market rate*

**Article 232-** Current market rates of properties shall be taken as the basis in division of property regime.

*2. Earning value*

*a. In general terms*

**Article 233** – Participation receivable and share to be obtained from an increase in value for an agricultural enterprise run by one of the spouses in person and as the owner or entire allocation of which a surviving spouse or one of the descendants is right to request shall be calculated based on their earning value.

Owner or heirs of the agricultural enterprise can demand that share of increase in value or

contribution amount for the other spouse be calculated based only on current market rate of the enterprise.

Provisions of law of succession regarding calculation and payment of shares to the heirs out of earnings of the enterprise shall apply *mutatis mutandis*.

*b. Special conditions*

**Article 234-** If special conditions require so, the calculated value can be increased by an appropriate amount.

Especially living conditions of the surviving spouse, purchase value of the agricultural enterprise and investments made by the spouse who is owner of the agricultural enterprise or financial situation shall be among special conditions.

*3. Moment of assessment*

**Article 235-** Acquired properties available at the time of dissolution of the property regime shall be taken into account with their value at the time of dissolution.

The value to be added to the acquired property shall be calculated taking the date when the property is alienated as the basis.

*V. Participation in the residual value*

*1. As per law*

**Article 236-** Each one of the spouses or their heirs shall be right holders of half of the residual value. Receivables shall be exchanged.

In case of divorce due to adultery or attempt at life, the judge may decide to revoke or reduce the share of the spouse at fault in residual value in an equitable manner.

*2. As per the contract*

*a. In general terms*

**Article 237-** About participation in residual value another principle can be adopted through a marital property contract.

Such contracts shall not prejudice reserved shares of noncommon children of spouses and their descendants.

*b. In case of nullity, divorce or separation of property through court decision*

**Article 238-** If the court rules for nullity or dissolution of marriage due to divorce or separation of property, agreements that are different from regulation on participation in residual value in the law shall only be valid if this is clearly stipulated in marital property contract.

*VI. Payment of participation receivable and value increase share*

*1. Payment and deferral*

**Article 239-** Participation receivable and value increase share can be paid in cash or in kind. For payment in kind, current market rate of the properties is taken as the basis. Economic integration of enterprises and units dedicated to performing a profession shall be observed.

If immediate payment of participation receivable and value increase share is to cause serious difficulties for the spouse in debit, she/he can ask for a deferral.

Unless otherwise agreed, interest shall be applied to participation receivable and value increase share as of termination of dissolution. The debtor can also be asked to provide guarantee if the conditions require so.

*2. Matrimonial home and household goods*

**Article 240-** To continue his/her life, the surviving spouse can demand that he/she be granted the right of habitation or usufruct on the matrimonial property that belonged to the deceased spouse and both spouses lived together by setting off the participation receivable and paying an extra amount if it is not enough without prejudice to other regimes adopted through marital property contract.

Under the same conditions, the surviving spouse can request right of property on household goods.

If there are valid grounds, right of property on the matrimonial property can be granted instead of right of usufruct or habitation upon request of the surviving spouse or legal heirs of the deceased spouse.

The surviving spouse shall not enjoy these rights on sections of the property where the legator performed a profession or art and on sections of the property which are necessary for the descendants to perform the same profession or art. Provisions of law of succession for agricultural immovables shall be reserved.

### *3. Lawsuits against third parties*

**Article 241-** If assets or estate of the spouse in debit do not cover participation receivable during dissolution, the payee or his/her heirs can demand unrequited acquisitions that should have been taken into consideration while calculating the acquired property from third parties who enjoyed such acquisitions, limited with the amount of difference between the assets / estates of the spouse and the participation receivable.

The right to lawsuit shall cease to be within one year as of the date when the payee or heirs become aware of the fact that their rights are prejudiced and within five years as of termination of property regime under any circumstances.

Except for provisions of the paragraph above and rules of jurisdiction, provisions for action for reduction in law of succession shall apply *mutatis mutandis*.

## SECTION THREE

### SEPARATION OF PROPERTY

#### *A. Management, enjoyment and act of disposal*

**Article 242-** Each one of the spouses shall have the right to manage, enjoy and carry out an act of disposal on their own assets within legal boundaries.

#### *B. Other provisions*

**Article 243-** About proof, liabilities for debts and allocation of property with joint ownership provisions for separation of property with distribution regime shall apply.

## SECTION FOUR

### SEPARATION OF PROPERTY WITH DISTRIBUTION

#### *A. Management, enjoyment and act of disposal*

##### *I. In general terms*

**Article 244-** Each one of the spouses shall maintain his/her right to manage, enjoy and carry out an act of disposal on his/her own property.

##### *II. Proof*

**Article 245-** Any person claiming that a certain property belongs to one of the spouses shall be obliged to prove his/her claim.

Properties, ownership of which cannot be proven shall be deemed to be joint ownership of the spouses.

#### *B. Liabilities for debts*

**Article 246-** Each one of the spouses shall be liable for their own debts with all their assets.

*C. Termination of the property regime and dissolution*

*I. Moment of termination*

**Article 247-** Mal property regime shall be terminated by death of one of the spouses or adoption another property regime.

If the court rules for dissolution of marriage due to nullity or divorce or separation of property, the property regime shall be terminated as of the date of the lawsuit.

*II. Reclaim of the properties and giving property with joint ownership*

*1. In general terms*

**Article 248-** Each one of the spouses shall reclaim his/her properties from the other spouse.

When separation of property with distribution regime is terminated, one of the spouses can demand that the property with joint ownership be granted to him/her by paying the share of the other one and proving that it is in his/her best interests.

*2. Right arising from contribution*

**Article 249-** If one of the spouses has contributed to acquisition, improvement or maintenance of a property that is not shared free of charge or without getting an appropriate amount of recompense, the said spouse shall have a right to claim an amount in proportion to his/her contribution in an equitable manner.

The same request shall also be valid for assets corresponding to the property that is not shared.

*III. Properties that are allocated for the family*

*1. Rule*

**Article 250-** Properties acquired by one of the spouses after establishment of separation of property with distribution regime and allocated for the common use and enjoyment of the family and investments aiming to guarantee the future of the family or other corresponding assets shall be shared between the spouses equally in the case that the property regime is terminated. During apportioning, economic integration of enterprises shall be observed.

Unless otherwise understood by non-pecuniary damages receivables, properties acquired by inheritance and explicit declaration of intent of the party having enabled unrequited acquisitions, this provision shall not apply to properties acquired through dispositions inter vivos or mortis causa.

*2. Actions contrary to apportioning*

**Article 251-** If one of the spouses disposes of a property gratuitously in order to reduce the share of the other, the judge shall determine the offsetting amount to be paid to the other spouse in an equitable manner.

Within the year preceding termination of the property regime unrequited acquisitions obtained without consent of the other spouse except for ordinary gifts shall be deemed to aim at reducing the share of the said spouse.

The court decision in such disputes regarding acquisitions can be asserted towards third parties enjoying the acquisitions provided that they are notified of the lawsuit.

*3. Dismissal of the request for apportioning*

**Article 252-** In case of divorce due to adultery or attempt at life, the judge may decide to

revoke or reduce the share of the spouse at fault in an equitable manner.

*4. Apportioning method*

**Article 253-** It is of essence that apportioning be executed in kind. If it is not possible, the shares shall be offset by means of adding the necessary amount. The amount to be paid by one of the spouses to the other one shall be calculated based on current market rate of the properties at the time of dissolution. Debts arising from acquisition of the said properties shall be deducted.

If immediate payment of offsetting amount is to cause serious difficulties for the spouse in debit, he/she can ask for a deferral.

Unless otherwise agreed, interest shall be applied to the offsetting amount as of termination of dissolution. The debtor can also be asked to provide guarantee if the conditions require so.

*IV. Matrimonial home and household goods*

*1. In case of nullity or divorce*

**Article 254-** In case of dissolution of marriage due to nullity or divorce, the spouses can come to an agreement on who will continue to live in the house and use household goods allocated for common use of the family and to be shared between the spouses. The spouse having obtained the right to live in matrimonial home can demand that this right be annotated on the land registry.

If the spouses cannot agree on who will live in matrimonial home and who will continue to use household goods, along with the decision of nullity or divorce the judge shall also decide ex officio who will have the said right by taking into account the specifics of the case, social and economic conditions of the spouses and interests of children if any. The judge shall determine duration of stay and use and notify the directorate of land registry so that they put an annotation on the land registry.

Unless otherwise decided by the judge, the right shall cease to be when the period determined comes to an end. However, in the case that there is a change in the circumstances of the party enjoying the said right before this period expires, the other party can ask the judge to review the said decision.

If the spouses live in a rented house, the judge can decide that the spouse who is not the official tenant of the house continue to live in the house. In this case, along with the decision of nullity or divorce the judge shall decide ex officio that necessary arrangements be made in order to guarantee the rights of the tenant arising from the contract.

*2. In case of death*

**Article 255-** In case of death of one of the spouses, if household goods and matrimonial home are to be shared, the surviving spouse can demand that he/she be granted the right of property by setting off her right to inheritance and share and paying an extra amount if they are not enough.

If there are valid grounds, upon request of the surviving spouse or other legal heirs of the deceased spouse, the judge can decide to grant right of usufruct or habitation instead of right of property.

The surviving spouse shall not enjoy these rights on sections of the property where the legator performed a profession or art and on sections of the property which are necessary for the descendants to perform the same profession or art. Provisions of law of succession for agricultural immovables shall be reserved.

SECTION FIVE  
COMMUNITY OF PROPERTY

*A. Property*

*I. Scope*

**Article 256-** Community of property regime shall encompass properties of community and personal properties of spouses.

*II. Properties of community*

*1. General community of property*

**Article 257-** In general community of property, properties of spouses except for those that are deemed personal as per law and revenues shall constitute their property of community.

The spouses shall own the properties of community as an undivided whole.

Neither spouse shall have right of disposition on the share of community on his/her own.

*2. Limited community of property*

*a. Community of acquired properties*

**Article 258-** Spouses can agree on a community of only acquired properties through property regime.

Revenues of other properties shall be included in this community.

*b. Other communities of property*

**Article 259 –** Spouses can exclude certain assets or types of assets especially immovable properties, income of one of the spouses, properties used by one of the parties to perform a profession or art through a property regime.

Unless otherwise specified in the contract, revenues of these properties shall not be included in the community.

*III. Personal properties*

**Article 260-** Personal properties shall be determined through a property regime contract, unrequited acquisitions of a third party or by law.

Personal goods of each one of the spouses and non-pecuniary damages receivables shall be deemed personal properties as per law.

Assets that can be demanded by one of the spouses as reserved share shall not be acquired as personal property by the legators if the said assets are included in the community of property through a property regime contract.

*IV. Proof*

**Article 261-** If one of the spouses does not prove his/her personal properties, all the assets shall be deemed property of community.

*B. Management and disposition*

*I. In properties of community*

*1. Ordinary management*

**Article 262-** Spouses shall manage properties of community for the benefit of union of marriage.

Each one of the spouses can put the community under obligation and carry out acts of disposal on the common properties within the boundaries of ordinary management.

*2. Extraordinary management*

**Article 263-** About issues that are not ordinary spouses shall put the community under obligation or carry out acts of disposal on the properties only by receiving consent of the other one or

together.

For third parties who are not aware of or not in a position to be aware of lack of such consent, it shall be assumed that the consent exists.

Provisions regarding representation of the union of marriage shall be reserved.

*3. Performing a profession or an art using property of community*

**Article 264-** If one of the spouses performs a profession or an art using the property of community with the consent of the other spouse, the said spouse can undertake all kinds of legal actions regarding this profession or art.

*4. Acceptance or disclaimer of inheritance*

**Article 265-** One of the spouses shall not renounce inheritance that could be part of property of community without consent of the other one and shall not accept inheritance that is deeply in debt.

If it is not possible to receive consent of the other spouse or request is denied by the said spouse without a valid ground, the spouse making the request can file a lawsuit with the court of his/her domicile.

*5. Liability and management expenses*

**Article 266-** In case of termination of community of property, each one of the spouses shall be liable as proxies for actions regarding property of community.

Management expenses shall be paid out of property of community.

*II. Personal properties*

**Article 267-** Each one of the spouses shall have the right to manage and carry out acts of disposal on his/her personal properties.

If there are revenues that fall under the category of personal properties, management expenses shall be paid out of these revenues.

*C. Liabilities to third parties*

*I. Community debts*

**Article 268-** Each one of the spouses shall be liable for the following debts with their personal properties and property of community:

1. Debts incurred based on the authority to represent the union of marriage or manage the property of community,
2. Debts incurred due to performance of a profession or an art by using the property of community or revenues included in the property of community,
3. Debts giving rise to personal liabilities for the other spouse,
4. Debts incurred by spouses making an agreement with third parties as to property of community being also liable besides personal properties.

*II. Personal debts*

**Article 269-** Each one of the spouses shall be liable for all other debts with their own personal properties and half of the value of the property of community.

Requests stemming from enrichment of community shall be reserved.

*D. Debts between the spouses*

**Article 270 –** The property regime shall not prevent debts between the spouses from being due and payable. If payment of a debt is to put the spouse in debit into difficulty in such a way as to



endanger union of marriage, the said spouse can ask for time for the payment. The spouse making the request can be asked to provide guarantee if the conditions require so.

*E. Termination of the property regime and dissolution*

*I. Moment of termination*

**Article 271** – Property regime shall be terminated by death of one of the spouses, adoption of another property regime or filing a bankruptcy lawsuit against one of the spouses.

If the court rules for dissolution of marriage due to nullity or divorce or separation of property, the property regime shall be terminated as of the date of the lawsuit.

When determining the scope of properties of community and personal properties, the date when the community of property is terminated shall be taken as the basis.

*II. Adding to personal properties*

**Article 272** – Instead of full payment made or compensation paid for loss of earning capacity to one of the spouses by social security or social welfare institutions; if the said spouse was endowed with revenue for life as per procedures of social security or social welfare institutions, the value of the revenue for the upcoming period as cash fund at the time of termination of the property regime shall be taken and taken into account as personal property of the same amount during dissolution.

*III. Offsetting between personal properties and property of community*

**Article 273** – If debts of one of the spouses stemming from personal properties are paid out of properties of community or if debts arising from properties of community are paid out of personal properties, an offsetting can be requested during dissolution.

Each debt shall put the property it is related to under obligation. If it is unclear where the debt stems from, it shall be deemed to be stemming from properties of community.

*IV. Value increase share*

**Article 274-** If contribution is made to acquisition, improvement or maintenance of personal properties or assets that fall under another category with properties of community, provisions regarding value increase share shall apply to participation regime in the acquired properties.

*V. Determining the value*

**Article 275** – When the property regime is terminated, moment of dissolution shall be taken as the basis when assessing the properties of community available.

*VI. Apportioning*

1. In case of death or adoption of another property regime

**Article 276-** In case of death of one of the spouses or termination of community of property due to adoption of another property regime, half of the properties of community shall be granted to each spouse and their heirs.

Another apportioning rate can be agreed upon through a property regime contract.

Such agreements shall not prejudice reserved shares of descendants.

2. In other circumstances

**Article 277-** In case of divorce or nullity of marriage or separation of property as per a court decision, each one of the spouses shall reclaim the other one's share to be deemed his/her own

personal property in participation in acquired properties regime out of properties of community.

The remaining properties of community shall be shared between the spouses in half.

Agreements regarding changing legal apportioning shall only be valid if this is clearly stipulated in property regime contract.

*VII. Apportioning method*

*1. Personal properties*

**Article 278-** In the case that community of property is terminated by death of one of the spouses, the surviving spouse can demand that the properties that can be deemed personal in participation in acquired properties regime be granted to him/her to the credit of his/her share.

*2. Matrimonial home and household goods*

**Article 279-** If matrimonial home or household goods of spouses are part of properties of community, the surviving spouse can demand that their ownership be granted to him/her to the credit of his/her share.

If there are valid grounds, upon request of the surviving spouse or other legal heirs of the deceased spouse, right of usufruct or habitation instead of ownership can be granted on these properties.

If property regime is terminated due to a reason other than death, each one of the spouses can bring forward the same requests by proving existence of best interests.

*3. Other assets*

**Article 280-** One of the spouses can demand that other assets be granted to him/her to the credit of his/her share by proving existence of best interests.

*4. Other apportioning rules*

**Article 281-** In other circumstances provisions regarding joint ownership and apportioning inheritance shall apply mutatis mutandis.

CHAPTER TWO  
KINSHIP  
PART ONE  
ESTABLISHMENT OF PARENTAGE  
SECTION ONE  
GENERAL PROVISIONS

*A. Establishment of parentage in general*

**Article 282-** Parentage between mother and child is established by birth.

Parentage between father and child is established by way of marriage to mother, acknowledgment or decision of the judge.

Parentage can also be established through adoption.

*B. Jurisdiction and proceeding*

*I. Jurisdiction*

**Article 283 –** Lawsuits regarding parentage shall be filed with the courts where one of the parties has had domicile during the case or at birth.

*II. Proceeding*

**Article 284-** In cases regarding parentage, Code of Civil Procedure shall apply without prejudice to the following rules:

1. The judge shall inquire about material facts ex officio and appraise the proofs freely.

2. Parties and third parties shall be obliged to give consent to research and inquiries that are obligatory for establishment of parentage and do not pose a danger in terms of health. If the defendant does not consent to research and inquiries stipulated by the judge, the judge can decide that the expected result is to the detriment of the defendant in line with the circumstances and conditions.

SECTION TWO  
PATERNITY OF HUSBAND

*A. Presumption of paternity*

**Article 285** – Father of the child born while marriage continues or within three hundred days as of dissolution of marriage shall be husband.

After this period expires, establishment of paternity shall only be possible if mother proves that she got pregnant during marriage.

In the case that husband is deemed to be absent, three-hundred-day duration shall start as of the date when he was last heard from or it is learnt that there is a death risk.

*B. Renunciation of parentage*

*I. The right to sue*

**Article 286** – The husband can file a lawsuit for renunciation of parentage and refute presumption of paternity. This lawsuit shall be filed against the mother and the child.

The child shall also have a right to sue. This lawsuit shall be filed against the mother and the husband.

*II. Proof*

*1. Conception during marriage*

**Article 287**- If the child is conceived during marriage, the plaintiff shall prove that the husband is not the father.

If a child is born within a hundred and eighty days at least as of the date of marriage and within three hundred days at most as of dissolution of marriage, the said child shall be deemed to be conceived during marriage.

*2. Conception before marriage or during separation*

**Article 288** – If the child is conceived before marriage or during separation, the plaintiff shall not need to put forth any other proof.

However, if there is convincing proof that the husband engaged in sexual intercourse with his wife during pregnancy, presumption of paternity shall be valid.

*III. Lapse of time*

**Article 289**- The husband shall be obliged to file a lawsuit within one year (...) <sup>(1)</sup> as of the date he finds out about the birth and the fact that he is not the father or that the mother engaged in sexual intercourse with another person during pregnancy.<sup>(1) (1)</sup>

The child shall be obliged to file a lawsuit within one year at the latest as of the date he/she comes of age.

If the delay has a valid ground, one-year duration shall start as of the date this ground no longer exists.

*C. Conflict of presumptions*

**Article 290**- If the child is born within three hundred days as of dissolution of marriage and the mother is remarried, the husband from the second marriage shall be deemed father.

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<sup>(1)</sup> The phrase “...in any circumstances within five years as of the date of birth...” featuring in this paragraph was abolished by Constitutional Court Decision dated 25/6/2009 and P.: 2008/30, D.: 2009/96

If this presumption is refuted, the husband from the first marriage shall be deemed father.

*D. The right to sue of those concerned*

**Article 291-** In the case that the husband dies or is deemed to be absent or permanently loses his mental competence before the period to file a lawsuit expires; descendants, mother, father or person claiming to be father of the husband can file a lawsuit for renunciation of parentage within one year as of the date they find out about the birth, death of the husband, the fact that he permanently lost his mental competence or declaration of absence.

The curator to be appointed for a child who is not of age shall file a lawsuit for renunciation of parentage within one year (...) <sup>(1)</sup> as of the date he/she is notified of decision of appointment. <sup>(1)(1)</sup>

Provisions regarding the lawsuit for renunciation of parentage to be filed by the husband shall apply mutatis mutandis.

*E. Subsequent marriage*

*I. Condition*

**Article 292-** The natural child born out of wedlock shall ipso facto be subject to provisions that marital children are subject to if the mother and father marry each other.

*II. Notification*

**Article 293-** The spouses shall be obliged to notify the registrar of their domicile or where the marriage took place of their common nonmarital children at the time of or after marriage.

Not having notified the registrar of such fact shall not prevent the said child from being subject to provisions that marital children are subject to.

About children whose parentage was established by acknowledgment or court decision, the registrar shall take necessary actions ex officio if the mother and father of the children marry each other.

*III. Objection and annulment*

**Article 294-** Legal heirs of the mother and father, the child and the public prosecutor can object to establishment of parentage through subsequent marriage. The complainant shall be obliged to prove that the husband is not the father.

Descendants of the child shall also have the right to object if the child is deceased or permanently lost mental competence.

Provisions regarding annulment of acknowledgment shall apply mutatis mutandis.

SECTION THREE  
ACKNOWLEDGMENT AND COURT DECISION

*A. Acknowledgment*

*I. Conditions and form*

**Article 295-** Acknowledgment shall take place through a written application to be made to the registrar or court by the father or through a statement to be made by the father in a formal deed or will.

If the person making the statement for acknowledgment is a minor or person under legal disability, consent of the parental guardian or guardian shall also be necessary.

The child having parentage to another man shall not be acknowledged until after this parentage is invalidated.

*II. Notification*

**Article 296-** The registrar, civil magistrate, notary public having been notified of the fact or the judge opening the will shall notify the civil registration of birth where the father and the child are registered of acknowledgment.

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<sup>(1)</sup> The phrase "...in any circumstances within five years as of the date of birth..." featuring in this paragraph was abolished by Constitutional Court Decision dated 10/10/2013 and P.: 2013/62, D.: 2013/115 published in the Official Gazette.

The civil registration of birth where the child is registered shall notify the child, the mother and authority of guardianship if the child is under guardianship of acknowledgment.

*III. Action for annulment*

*1. The acknowledger's right to sue*

**Article 297-** The acknowledger can file a lawsuit for annulment of acknowledgment due to fallacy, deception or intimidation.

Action for annulment shall be brought against the mother and the child.

*2. The right to sue of those concerned*

*a. In general terms*

**Article 298-** The mother, the child and descendants of the child if the child dies, the public prosecutor, the Treasury and those concerned can file a lawsuit for annulment of acknowledgment.

The lawsuit shall be filed against the acknowledger and the heirs of the acknowledger in case of death.

*b. Burden of proof*

**Article 299-** The plaintiff shall be obliged to prove that the acknowledger is not the father.

In the lawsuit for annulment filed by the mother or the child against the acknowledger claiming that he is not the father, the burden of proof shall arise after the acknowledger presents convincing proof as to the fact that he engaged in sexual intercourse with the mother during pregnancy.

*3. Lapse of time*

**Article 300-** The right to sue of the acknowledger shall cease to be within one year as of the date when the reason for annulment is learnt about or effects of fear fade away and in any circumstances within five years as of acknowledgment.

The right to sue of those concerned shall cease to be within one year as of the date when the plaintiff finds out about acknowledgment and the fact that the acknowledger cannot be the father of the child and in any circumstances within five years as of acknowledgment.

The child's right to sue shall cease to be within one year as of the date he/she comes of age.

If there is a valid ground for delay even if the above-mentioned periods have expired, a lawsuit can be filed within one month as of the date this ground no longer exists.

*B. Court decision*

*I. The right to sue*

**Article 301-** The mother and the child can demand that the parentage between the child and the father be established by court.

The lawsuit shall be filed against the father and heirs of the father if the father is deceased.

The paternity suit shall be reported to the public prosecutor and Treasury, the curator shall be notified if the lawsuit is filed by the mother and the mother shall be notified if the lawsuit is filed by the curator.

*II. Presumption*

**Article 302-** The fact that the defendant engaged in sexual intercourse with the mother between day three hundred and one hundred and eighty shall be deemed presumption of paternity.

If it is established that the defendant engaged in sexual intercourse with the mother during actual pregnancy even if it didn't happen within the set period, the same presumption shall be valid.

If the defendant proves that it is impossible for him to be the father or that a third person being the father is more likely than his own possibility, the presumption shall be invalidated.

*III. Lapse of time*

**Article 303-** Paternity suit can be filed before or after the child's birth. The mother's right to sue shall cease to be within one year as of the date of birth.

**(Annulled paragraph two: Through Constitutional Court Decision dated 27/10/2011 and P.: 2010/71, D.: 2011/143.)<sup>(1)</sup>**

If there is parentage between the child and another man, one-year duration shall start as of the date this parentage is invalidated.

If there are valid grounds after one-year period expires, a lawsuit can be filed within one month as of the date the grounds in question no longer exist. <sup>(2)(2)</sup>

*IV. Financial rights of the mother*

**Article 304-** The mother can demand that the following expenses be covered by the father or heirs along with paternity suit or separately:

1. Delivery expenses,
2. Six week living expenses before and after the birth,
3. Other expenses entailed by pregnancy and birth.

Even if the child is stillborn, the judge can decide that these expenses be covered.

Payments made to the mother by third parties or social security institutions shall be deducted from the compensation in an equitable manner.

SECTION FOUR  
ADOPTION

*A. Adoption of minors*

*I. General conditions*

**Article 305-** Adoption of a minor shall be contingent on the fact that the adopter has taken care of the minor and provided the minor with education for one year.

It is necessary that adoption be in the best interests of the minor in any circumstances and interests of other children of the adopter not be prejudiced in an inequitable manner.

*II. Joint adoption*

**Article 306-** Spouses can only adopt together, those who are not married shall not adopt together.

It is necessary that spouses be married for at least five years or turned 30.

One of the spouses can adopt the child of the other spouse if they have been married for at least two years or if the said spouse has turned thirty.

*III. Adoption as a single person*

**Article 307-** If an unmarried person has turned thirty, he/she can adopt as a single person.

The spouse having turned thirty can adopt on his/her own if he/she proves that joint adoption is impossible as the other spouse permanently lacks mental competence or has been absent for more than two years or has led a separate life for more than two years through court decision.

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<sup>(1)</sup> This decision came into effect one year after the date 7/2/2012 when it was published in the Official Gazette.

<sup>(2)</sup> This paragraph was abolished by Constitutional Court Decision dated 15/3/2012 and P.: 2011/116, D.: 2012/39 from the point of "children", and it was ensured that this decision came into effect one year after the date 21/7/2012 when it was published in the Official Gazette.

*IV. Consent and age of the minor*

**Article 308-** It is necessary that the adopted child be at least eighteen years younger than the adopter.

The minor with mental competence shall not be adopted without consent.

The minor under guardianship can be adopted through permission of guardianship authorities regardless of whether the minor has mental competence.

*V. Consent of the mother and father*

*1. Form*

**Article 309-** Adoption shall necessitate consent of the mother and father of the minor.

Consent shall be granted verbally or in written and be written down in the minutes in the court where the minor or his/her mother and father has domicile.

The consent granted shall be valid even if adopters or their names have not been determined or their names have not been specified yet.

*2. Time*

**Article 310-** Consent shall not be given until six weeks have passed as of the birth of the minor.

Consent can be withdrawn within six weeks through the same procedures as of the date when it was written down in minutes.

Consent granted again after withdrawal shall be final.

*3. Not seeking for consent*

*a. Conditions*

**Article 311-** Consent of the mother or father shall not be sought for in the following circumstances:

1. If it is unknown who he/she is or where he/she resides or if he/she permanently lacks mental competence,

2. If he/she does not undertake due diligence for the minor.

*b. Decision*

**Article 312-** If the minor is placed in an institution to be adopted in the future and consent of the mother or father is lacking, upon request of the adopter or intermediary institution for adoption and before placement of the minor as a rule, the court where the minor resides shall decide whether to seek for the said consent or not.

In other circumstances, decision about this matter shall be made at the time of adoption procedures.

In the case that consent of the mother or father is not sought for as they do not undertake due diligence for the minor, he/she shall be notified of the decision about this issue in written.

*B. Adoption of persons of age and under legal disability*

**Article 313- (Amended first sentence: 3/7/2005-5399/1 art.)** Through express assent of descendants of the adopter a person of age or under legal disability can be adopted in the following circumstances.

1. If the person in question is in constant need of help due to a physical or mental disability and has been cared for by the adopter for at least five years,<sup>(1) (1)</sup>

2. If the person in question was cared for as a minor for at least five years and provided with education by the adopter,

3. If there are other valid grounds and the person to be adopted has lived for at least five years

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<sup>(1)</sup> Through article 1 of Law No 6462 and dated 25/4/2013 the phrase «defect» featuring in this clause was amended as «disability».

together with the adopter as a family,

A married person can only be adopted with the consent of his/her spouse.

Other provisions regarding adoption of minors shall apply *mutatis mutandis*.

*C. Provisions*

**Article 314** – Rights and obligations of the mother and father shall pass onto the adopter.

The adopted child shall be legal heir to the adopter.

If the adopted child is a minor, he/she shall take on the surname of the adopter. If the adopter wishes, he/she can rename the child. The adopted child who is of age can take on surname of the adopter if he/she wishes.

In the register of minors who are jointly adopted by the spouses and who do not have mental competence names of adoptive spouses shall be written down as parents.

In order not to prejudice inheritance and other rights of the adopted child and to maintain family ties, all kinds of links are established between the former family tree of the adopted child and family tree of the adopter. In addition, the final decision about the adopted child shall be written down in both registries.

Records, documents and information regarding adoption shall not be disclosed under any circumstances unless there is a court decision or the adopted child wants.

*D. Form and procedure*

*I. In general terms*

**Article 315-** The decision regarding adoption shall be made by the court where the adopter has domicile and for joint adoption by the court where one of the spouses has domicile. Adoptive relationship shall be established by court decision.

Death of the adopter or his/her loss of mental competence following the application made for adoption shall not constitute an obstacle for adoption if this does not affect other conditions.

If the minor comes of age following the application, provisions regarding adoption of minors shall apply provided that its conditions have already been met.

*II. Inquiry*

**Article 316-** The decision regarding adoption shall be made only after a thorough inquiry is made about all kinds of conditions and circumstances of essence, and the adopted child and the adopter are heard and experts' opinions are received when necessary.

The inquiry should especially focus on clarifying personalities of the adopted child and adopter, their mutual relationship, the ability of the adopter to educate, reasons for adoption and developments as for family relations and care relations.

If the adopter has descendants, their opinions and stance on adoption shall also be appraised.

*E. Revocation of adoptive relationship*

*I. Grounds*

*1. Lack of consent*

**Article 317-** If the consent is not received without a legal ground, the persons to grant consent can demand that the judge revoke adoptive relationship if interests of the child are not be prejudiced by this act.

*2. Other shortcomings*

**Article 318-** If adoption is flawed due to a substantive shortcoming, the public prosecutor or anyone concerned can demand that adoptive relationship be revoked.



If shortcomings no longer exist or if they are only procedural and revocation of adoptive relationship is to prejudice interests of the adopted child severely, this action shall not be taken.

*II. Lapse of time* <sup>(1)</sup>

**Article 319-** The right to sue shall cease to be within one year (...) <sup>(1)</sup> as of the date the reason for revocation of adoptive relationship is learnt about. <sup>(1)</sup>

*F. Intermediation for adoption procedures* <sup>(2)</sup>

**Article 320-** Intermediation for adoption of minors can only be undertaken by institutions authorized by the President of the Republic. <sup>(2)</sup>

Matters regarding conducting intermediary activities shall be regulated by regulations issued by the President of the Republic. <sup>(2)</sup>

SECTION FIVE  
PROVISIONS OF PARENTAGE

*A. Surname*

**Article 321-** If mother and father are married, the child shall take on (...) <sup>(3)</sup> surname of the family. <sup>(3)(3)</sup>

*B. Mutual obligations*

**Article 322-** Mother, father and child shall be obliged to help one another, to show respect and consideration as necessitated by peace and integrity of the family and to protect dignity of the family.

*C. Personal relationship with the child*

*I. With mother and father*

*1. Rule*

**Article 323-** Each one of mother and father shall have the right to establish an appropriate personal relationship with the child who is not under custody of him/her.

*2. Limitations*

**Article 324-** Each one of mother and father shall be obliged to refrain from damaging the other's personal relationship with the child and preventing education and upbringing of the child.

If peace of the child is at stake due to personal relationship or mother and father use their rights in defiance of their obligation stipulated in paragraph one or they don't take care of the child as they should or if there are other important reasons, the right to establish personal relationship can be denied or withdrawn.

*II. With third parties*

**Article 325-** If there are extraordinary circumstances, the right to establish personal relationship with the child can be granted to third parties and especially relatives of the child to the extent it is in line with interests of the child.

Limitations stipulated for mother and father shall apply for third parties *mutatis mutandis*.

*III. Jurisdiction*

**Article 326-** For all regulations regarding establishment of a personal relationship with the child, the court where the child has domicile shall also be the court of competent jurisdiction.

Authorization rules for divorce and maintenance of the union of marriage shall be reserved.

Until a regulation is made regarding personal relationship with the child, personal relationship

<sup>(1)</sup> The phrase "...in any circumstances within five years as of adoption procedures..." was abolished by Constitutional Court Decision dated 27/12/2012 and P.: 2012/35, D: 2012/203 and this decision came into effect within six months as of the date this decision was published in the Official Gazette.

<sup>(2)</sup> The phrase "by the Council of Minister" featuring in paragraph one of this article was amended as "by the President of the Republic" and the phrase "through bylaw" featuring in paragraph two of this article was amended as "through regulation to be issued by the President of the Republic" through article 139 of Decree Law no. 700 and dated 2/7/2018.

<sup>(3)</sup> The phrase "if not married that of the mother" featuring in sentence one of this article was abolished by Constitutional Court Decision dated 2/7/2009 and P.: 2005/114, D.: 2009/105.

shall not be established without consent of the person having the right of custody or the person taking care of the child.

*D. Covering care and education expenses of children*

*I. Scope*

**Article 327-** Expenses necessary for care, education and protection of children shall be covered by mother and father.

If mother and father are poor or exceptional circumstance of the child entails extraordinary expenses or there is any other extraordinary ground, they can spend an appropriate amount out of properties of the child for care and education expenses with permission of the judge.

*II. Term*

**Article 328-** Care obligation of mother and father shall continue by the time the child comes of age.

If education of the child is ongoing even though he/she is of age, mother and father shall be obliged to take care of the child until the end of his/her education to the extent permitted by their conditions.

*III. The right to sue*

**Article 329-** Mother or father taking care of the child de facto can file an alimony lawsuit on behalf of the child against the other one.

For a minor without mental competence the alimony lawsuit can also be filed by a curator to be appointed or guardian when necessary.

Minor with mental competence can also file an alimony lawsuit.

*IV. Determination of the amount of alimony*

**Article 330-** The amount of alimony shall be determined by taking into account the child's needs and living conditions of mother and father and their ability to pay. When determining the amount of alimony, revenues of the child shall also be taken into consideration.

Alimony shall be paid in cash on a monthly basis.

Upon request, the judge can make a decision about the amount of alimony to be paid in the form of revenue in the upcoming years as per social and economic conditions of the parties.

*V. Change of conditions*

**Article 331-** In case of a change of conditions, the judge shall redetermine the amount of alimony or revoke it upon request.

*VI. Interim measures*

*1. In general terms*

**Article 332-** When a lawsuit for alimony is filed, the judge shall take the necessary measures during the course of the trial upon request of the plaintiff.

If parentage is established, the judge may decide that the defendant store up an appropriate amount of alimony or pay it ad interim.

*2. Before establishment of paternity*

**Article 333-** If alimony is requested along with paternity suit and the judge is of the opinion that there is a strong probability of paternity, the judge may decide on an appropriate amount of alimony for the child's needs before the decision.

*VII. Giving guarantee*

**Article 334-** If mother and father do not fulfill their alimony obligations persistently or it is

established that they are getting ready to flee, they spend their assets randomly or waste them, the judge may decide that an appropriate guarantee be given for future alimony obligations or other measures be taken when necessary.

## SECTION SIX CUSTODY

### *A. In general terms*

#### *I. Conditions*

**Article 335-** The child who is not of age is under custody of mother and father. Custody shall not be relieved of mother and father without a legal ground.

If the judge does not deem appointment of a guardian necessary, children of age who are under legal disability shall also remain under custody of mother and father.

#### *II. If mother and father are married to each other*

**Article 336-** Mother and father shall have custody together as long as the marriage continues.

If common life is terminated or judicial separation has taken place, the judge can award custody to one of the spouses.

In case of death of one of mother and father, custody shall be awarded to the surviving spouse and in case of divorce, it shall be given to the party who is left with the child.

#### *III. If mother and father are not married to each other*

**Article 337-** If mother and father are not married to each other, mother shall have the custody.

If mother is deceased, a minor, under disability or if custody is relieved of the mother, the judge may appoint a guardian or award custody to father as per interests of the child.

#### *IV. Stepchildren*

**Article 338-** Spouses shall also be obliged to take care of their stepchildren who are not of age.

The spouse shall help the other one having custody of his/her own child properly. The said spouse shall represent the child for his/her needs to the extent entailed by the conditions.

### *B. Scope of custody*

#### *I. In general terms*

**Article 339-** Mother and father shall make the necessary decisions about case and education of the child by taking the child's interests into account and implement them.

Mother and father shall enable the child to put his/her life in order in line with his/her maturity and take into account the child's opinions about important issues as much as possible.

The child shall not abandon home without consent of his/her mother and father and shall not be taken from them without a valid ground.

The child shall be named by mother and father.

#### *II. Education*

**Article 340-** Mother and father shall educate their child in line with their resources and ensure

and maintain physical, mental, psychological, moral and social development of the child.

Mother and father shall provide the child especially those with physical and mental disabilities with general education and vocational training in line with the child's abilities and tendencies. <sup>(1)</sup>

*III. Religious education*

**Article 341-** Mother and father shall have the right to determine religious education of the child.

All kinds of contracts limiting the rights of mother and father about this issue shall be invalid. The child who is of age shall be free to choose his/her own religion.

*IV. Representation of the child*

**Article 342-** Mother and father shall be legal representatives of their child to third parties within the scope of custody.

Well-intentioned third parties may assume that each one of the spouses takes action with the consent of the other one.

Except for issues that are subject to permission of guardianship authorities, provisions with regards to representation of those under legal disability shall also apply to representation when custody is in question.

*V. Child's capacity to act*

**Article 343-** The capacity to act of the child under custody shall be similar to that of a person under guardianship.

The child shall be liable for his/her debts with his/her own assets regardless of rights of mother and father on their child's assets.

*VI. Representation of the family by the child*

**Article 344-** If the child under custody has mental competence, he/she can undertake legal transactions on behalf of the family with consent of his/her mother and father; mother and father shall incur the debts stemming from such action.

*VII. Legal transactions between the child and mother and father*

**Article 345-** The child incurring the debts as a result of a legal transaction to be undertaken between the child and mother or father or between the child and a third party for the benefit of mother and father shall be subject to participation of a curator and approval of the judge.

*C. Protection of the child*

*I. Protection measures*

**Article 346-** If interests and development of the child are at stake and mother and father cannot come up with a solution or cannot afford a solution, the judge shall take the appropriate measures for protection of the child.

*II. Placement of children*

**Article 347-** If physical and mental development of the child is deemed to be at stake or the child is abandoned morally, the judge may take the child from his/her mother and father and place with a family or in an institution.

If the child remaining within the family impairs the peace of the family to such an extent that they cannot be expected to bear it and if there is no other solution as per the conditions, the judge can take the same measures upon request of mother and father or the child.

If mother and father and the child cannot afford it, the expenses entailed by these measures shall be covered by the State.

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<sup>(1)</sup> Through article 1 of Law No 6462 and dated 25/4/2013 the phrase «defective» featuring in this clause was amended as «disabled».

Provisions regarding alimony shall be reserved.

*III. Revocation of custody*

*1. In general terms*

**Article 348-** If other measures taken to protect the child are inconclusive or if it is established beforehand that these measures are inadequate, the judge shall decide on revocation of custody in the following circumstances:

1. (**Amended: 1/7/2005-5378/38 art.**) Inexperience, illness of mother and father, being somewhere else or a similar reason causing mother and father not to fulfill his/her duties of custody properly.

2. Mother and father not taking care of their child adequately or heavily neglecting their obligations towards him/her.

If both mother and father are relieved of custody, a guardian shall be appointed for the child.

Unless otherwise specified in the decision, revocation of custody shall include all the children present and to be born.

*2. In case mother and father are remarried*

**Article 349-** The mother or father having custody remarrying shall not necessitate revocation of custody. However, as per interests of the child the person having custody may change and as per conditions, custody can be revoked and a guardian may be appointed for the child.

*3. Obligations of mother and father in case of revocation of custody*

**Article 350-** In the case that custody is revoked, obligations of mother and father to cover care and education expenses of the child shall continue.

If mother and father cannot afford it, these expenses shall be covered by the State.

Provisions regarding alimony shall be reserved.

*IV. Change of conditions*

**Article 351-** In case of change of conditions, it is necessary that measures taken to protect the child be adapted to new conditions.

If the reason entailing revocation of custody no longer exists, the judge may award custody back ex officio or upon request of mother or father.

SECTION SEVEN  
PROPERTIES OF CHILDREN

*A. Management*

*I. In general terms*

**Article 352-** Mother and father shall have the right and be obliged to manage properties of their children as long as they have their custody. As a rule, they shall not be held to account and give guarantee.

If mother and father do not fulfill their obligations, the judge shall intervene.

*II. In case of dissolution of marriage*

**Article 353-** The spouse having the custody after dissolution of marriage shall be obliged to submit a book showing the inventory of the child's properties to the judge and notify the judge of important changes in the said assets or investments made.

*B. Right of usufruct*

**Article 354-** Mother and father can make use of the child's properties unless their custody is

revoked due to their fault.

*C. Disbursement of revenues*

**Article 355-** Mother and father can spend revenues of the child's properties primarily for care, upbringing and education of the child and to meet family needs to the extent permitted by equity.

Surplus revenues shall be included in properties of the child.

*D. Partial disbursement of the child's properties*

**Article 356-** Payments in the form of capital, compensations and similar deeds can be used partially for care of the child to the extent necessitated by ordinary needs.

If there is an obligation for care, upbringing and education of the child, the judge may provide mother and father with the authority to resort to other properties of the child as per amounts determined by the judge.

*E. Free properties of the child*

*I. Acquisitions*

**Article 357-** Mother and father shall not spend revenues of acquisitions made on the condition that an investment account yielding interest or savings account is opened or mother and father do not make use of it for their own benefit.

Unless otherwise stipulated by the person enabling the acquisitions, mother and father shall have the right to manage these acquisitions.

*II. Reserved share*

**Article 358-** Reserved share of the child can exclude management by mother and father through dispositions mortis causa.

If management is conferred to a third person by the legator, it can be stipulated in the disposition that the said person be brought to account at certain times before the civil magistrate.

*III. Property and personal gain conferred for a profession or an art*

**Article 359-** Management of a part of the child's property or his/her own personal gain conferred to a child by his/her mother and father for performance of a profession or an art and the right of usufruct shall lie with the child.

If the child lives in the same house as his/her mother and father together, his/her mother and father may demand that the child make an appropriate amount of contribution for his/her care.

*F. Maintenance of the properties of the child*

*I. Measures*

**Article 360-** If mother and father do not show due diligence to manage the properties of the child irrespective of the reason, the judge shall take the appropriate measures for maintenance of the properties.

The judge can give instructions especially about management of the properties. If the judge is of the opinion that information and account provided at certain times is not enough, the judge may decide that the properties be handed over or a guarantee be given.

*II. Relieving mother and father of management*

**Article 361-** If endangerment of properties of the child cannot be prevented in any other way, the judge may decide that management be handed over to a curator.

If properties of the child, management of which does not belong to mother and father are at stake, the judge may decide to take the same measures.

If the judge has doubts about whether revenues of or a certain amount allocated out of the properties of the child are to be spent as per law, the judge may also entrust their management to a curator.

*G. Termination of management*

*I. Alienation of properties*

**Article 362-** When the rights of custody or management of mother and father are terminated, properties of the child shall be alienated to the child who is of age, his/her guardian or curator along with the account of the properties.

*II. Liability of mother and father*

**Article 363-** Mother and father shall be liable as trustees in restitution of properties of the child.

In line with the principle of honesty, they shall be liable to retribute only the amount they received in return for the properties alienated to other people.

They shall not be liable to pay compensation for the amounts spent for the child or for the family as per law.

PART TWO  
FAMILY  
SECTION ONE  
ALIMONY OBLIGATION

*A. Alimony obligators*

**Article 364-** Everyone shall be obliged to pay alimony to one's ascendants, descendants and siblings who may be driven to poverty without help.

Alimony obligations of siblings shall depend on whether they are affluent.

Provisions regarding debts incurred for care of spouse and mother and father shall be reserved.

*B. The right to sue*

**Article 365-** Alimony lawsuit shall be filed taking into account the sequence for heirdom.

The lawsuit shall be about requesting an appropriate amount of maintenance payment that can be afforded by the opposing party and that is necessary for subsistence of the plaintiff.

If requesting alimony from one or a few of the obligators is contrary to the principle of equity, the judge may reduce or revoke their alimony obligation.

The lawsuit can also be filed by official institutions or institutions working for public wellbeing that take care of the alimony payee.

Upon request, the judge can make a decision about the amount of alimony to be paid in the form of revenue in the upcoming years as per social and economic conditions of the parties.

The court of competent jurisdiction shall be the court where one of the parties has domicile.

*C. People in need of protection*

**Article 366-** Care of people in need of protection shall be provided by institutions charged with their care. The institutions can request the expenses made from relatives who are alimony obligators.

SECTION TWO  
HOUSEHOLD ORDER

*A. Conditions*

**Article 367-** If the community comprising many people living together as a family has a household head determined as per law, contract or customs, the household head shall have the authority to manage the house.

The authority to manage the house shall encompass all that live together as household within the scope of kinship by blood or kinship by marriage, labor, apprenticeship or similar reasons or protection and surveillance.

*B. Provisions*

*I. Household order and surveillance*

**Article 368-** People living together shall be subject to household order. Interests of each household member shall be observed in an equitable manner.

Each household member shall enjoy liberties necessary especially for their studies, education, religious beliefs, profession and art.

The household head shall be liable to protect and ensure security of the goods of people living together in the house.

*II. Responsibility*

**Article 369-** The household head shall be liable for the damages done by the minor, person under disability, person with mental disorder or weakness of mind who are also members of the household unless the household head proves that the said persons were under surveillance as necessitated by the conditions with due diligence or that he/she couldn't prevent the damages even if due diligence was shown.

The household head shall be liable to take the necessary measures to make sure that members of the household with mental disorder or weakness of mind do not pose a danger or cause a loss for themselves or others.

In case of emergency, the household head shall demand necessary measures be taken by the competent authority.

*III. Offsetting receivable of the descendant*

*1. Conditions*

**Article 370-** Descendants who are of age and allocate their efforts or revenues to the family and who live together with their mother and father or grandmother and grandfather can demand an appropriate amount in return.

In case of dispute, the judge shall decide on the amount, the form of payment and its securing.

*2. Request*

**Article 371-** The descendant can request this amount in case of death of the debtor.

The payee can request this receivable while the debtor is alive in the case that they no longer live together or the enterprise has passed in to other hands, executive proceedings are initiated against the debtor or the debtor goes bankrupt.

This receivable is not time barred. However, it can be requested until distribution of inheritance of the debtor at the latest.

SECTION THREE  
FAMILY PROPERTIES

*A. Family foundation*



**Article 372-** A family foundation can be established as per provisions of law of persons and law of succession in order to spend the amounts necessary for education and studies, equipment and support and for similar purposes.

It is forbidden that a property or right be allocated so that it is handed down from one generation of the same descent to the next. Such an allocation shall not be undertaken by way of establishing a foundation either.

*B. Community of family properties*

*I. Formation*

*1. Conditions*

**Article 373-** Relatives can establish a community of family properties with a part of or the whole inheritance or by putting forth other properties.

*2. Form*

**Article 374-** It is necessary that community of family properties contract be drawn up officially and be signed by all the sharers or their representatives.

*II. Term*

**Article 375-** Community of family properties can be established for a fixed or indefinite term. If the duration is not determined, each one of the sharers can leave this community provided that a notice is given six months beforehand.

For a community regarding an agricultural enterprise, this notice shall only be valid for the end of ordinary harvest season depending on where the products are cultivated.

*III. Provision*

*1. Joint enterprise*

**Article 376-** Community of family properties shall join the sharers together in order to engage in economic activities.

Unless otherwise agreed, each one of the sharers shall have equal rights.

As long as the community continues, the sharers shall not demand their shares, nor can they carry out acts of disposal on those shares.

*2. Management and representation*

*a. In general terms*

**Article 377-** Community of family properties shall be managed jointly by all the sharers.

Each one of the sharers can undertake ordinary management work without the need for participation of other sharers.

*b. The manager's authority*

**Article 378-** The sharers can appoint one of them as manager of the community.

The manager shall manage the community and represent it in transactions related to community.

Unless representative of the community is registered with trade register, it cannot be asserted towards well-intentioned third parties that other sharers do not have a representative authority.

*3. Common properties and personal properties*

**Article 379-** The sharers shall be joint owners of the properties being a part of the community.

The sharers shall be jointly and severally liable for debts of the sharers.

Unless otherwise agreed, properties excluded by the shares from the community and unless otherwise decided properties obtained through unrequited acquisitions or by inheritance during the

course of community shall be their personal properties.

*IV. Termination of community*

*1. Grounds*

**Article 380-** Community shall be terminated in the following circumstances:

1. If all the sharers come to an agreement or make a notice about termination,
2. If duration of community expires unless it is explicitly or implicitly extended,
3. If share of one of the sharers is seized and is to be sold,
4. If one of the sharers goes bankrupt,
5. If one of the sharers has a request that is based on a valid ground.

*2. Termination notice, insolvency, marriage*

**Article 381-** If one of the sharers makes a termination notice or goes bankrupt or seized share of one of the sharers is to be sold, the remaining sharers can sustain the community among themselves by paying the share of the sharer having left or the share of the payees.

The sharer who got married can demand that his/her share of community be paid to him/her without the need for termination notice.

*3. In case of death*

**Article 382-** In case of death of one of the sharers, his/her heirs who are not included in the community can only demand that the amount corresponding to the share of the deceased sharer be paid to them.

If the deceased sharer appointed his/her descendant co-heir, they can be included in the community with the consent of the other sharers.

*4. Apportioning rules*

**Article 383-** Apportioning properties of community or calculating the properties of the sharer having left the community shall be conducted based on the value and state of the properties of community at the time of apportioning the properties or leaving the community.

Apportioning and settlement of account shall not be requested at an inconvenient time.

*V. Community of family properties with dividend share*

*1. Matter*

**Article 384-** The sharers can concede representation of the community and operation of the properties of community to one of the sharers though a contract to be made amongst themselves and on condition that a certain amount be given to them out of annual proceeds.

If the said amount is not established through a contract, it shall be determined in an equitable manner by taking into account the average amount of proceeds brought about by the properties in the long run and work of the sharer operating the properties and expenses made by him/her.

*2. Specific grounds for termination*

**Article 385-** If the sharer undertaking representation and operation does not operate the properties properly or does not fulfill his/her obligations, the sharers shall have a right to request termination of the community.

Upon request of one of the sharers based on a valid ground, the judge may decide that the said sharer participate in management and enjoyment of properties of community along with the sharer undertaking representation and operation.

Rules regarding community jointly run by the sharers shall also apply to community of family properties with dividend share.

*C. Homestead*

*I. In general terms*

**Article 386-** Dwelling houses, immovable properties suitable for agriculture or industry can be turned into homestead along with their extensions.

*II. Establishment*

*1. Conditions*

**Article 387-** Size of the immovable properties to be turned into homestead shall not be more than what is enough for subsistence and accommodation of a family regardless of the right of mortgage on the properties and other properties of the owner.

The owner shall be obliged to operate the immovable property or the facility on it or reside in the dwelling house unless it is deemed to be a temporary exception by the court based on valid grounds.

*2. Procedure and form*

*a. Announcement*

**Article 388-** Creditors and people whose rights may be prejudiced due to establishment of homestead shall be summoned through an announcement to be made by the court before establishment to raise an objection within two months.

The case shall be notified to those whose receivables are guaranteed through mortgage of immovable properties and seized creditors.

*b. Protecting the rights of third parties*

**Article 389-** If the necessary conditions exist in order for the immovable property to be turned into homestead and third parties do not object to establishment of homestead or the objection is deemed to be wrongful, the court shall allow for its establishment.

Unless it is proven that the creditors having raised an objection in due time are no longer relevant and related to the case or mortgages and seizures on the immovables are revoked, establishment of homestead shall not be permitted. Even if the debt has a due date in favor of the objecting party or the pledgee, the debtor who wants to establish a homestead can make the payment immediately.

*c. Putting an annotation on the land registry*

**Article 390-** Turning an immovable property into homestead shall only be possible by putting an annotation on the land registry of the said immovable property regarding the court decision about permission. This matter shall be declared by the court.

*III. Consequences*

*1. Limitation of the right of disposition*

**Article 391-** Immovables turned into homestead shall not be alienated, put in pledge and leased.

Compulsory execution shall not be enforced for homestead and its extensions without prejudice to management by the court.

*2. Taking blood relatives in the homestead*

**Article 392-** The court may decide that the owner of the homestead take in his/her ascendants, descendants and siblings who are in need of help due to poverty and who have nothing that stands in the way of them being taken in the homestead.

*3. Insolvency of the owner*

**Article 393-** If the owner becomes insolvent, a manager shall be appointed by the court to manage the homestead.

The manager shall manage the homestead in the interest of its purpose and creditors.

Creditors shall get their due based on the date on proof of insolvency and the sequence in terms of bankruptcy.

*IV. Termination*

*1. In case of death of the owner*

**Article 394-** Maintaining the homestead as it is after death of the owner shall depend on a disposition mortis causa regarding passing the immovable property on to the heirs as homestead.

If there is no such disposition, annotation on the land registry with regard to homestead shall be removed after death of the owner.

*2. While the owner is alive*

**Article 395-** The owner can terminate the homestead while he/she is alive.

The owner shall apply to court with a petition in order to deregister from the land registry and this request shall be declared by the court.

If no objection is raised within two months as of the date of announcement or the objection is deemed to be unjust, the court shall allow for deregistration.

CHAPTER THREE  
GUARDIANSHIP  
PART ONE  
GUARDIANSHIP SYSTEM  
SECTION ONE  
ORGANS OF GUARDIANSHIP

*A. In general terms*

**Article 396-** Organs of guardianship shall comprise guardianship authorities, guardian and curator.

*B. Guardianship authorities*

*I. Public guardianship*

**Article 397-** Public guardianship shall be conducted by guardianship authorities composed of guardianship board and supervisory authority.

Guardianship board is civil court of peace, supervisory board is civil court of first instance.

*II. Special guardianship*

*1. Conditions*

**Article 398-** Guardianship can be given to a family exceptionally when it is justified by interests of the person under guardianship especially when it is necessary to maintain a community, an enterprise or similar work.

In this case authority, duties and responsibilities of the guardianship board shall be handed over to a family council to be established.

*2. Establishment*

**Article 399-** Special guardianship shall be established by the supervisory authority upon request of two close relatives with capacity to act of the person under guardianship or one relative and

his/her spouse.

*3. Family council*

**Article 400-** Family council shall be composed of at least three relatives of the person under guardianship who are qualified to be guardian and they shall be appointed by the supervisory authority for a four-year term.

Spouse of the person under guardianship can also be a member of the family council.

*4. Guarantee*

**Article 401-** Members of the family council shall give guarantee that they are to fulfill their duties properly.

Special guardianship shall not be established without ensuring guarantee.

*5. Termination*

**Article 402-** If the family council does not fulfill its duties or interest of the person under guardianship necessitates, the supervisory authority can always change the family council or terminate special guardianship.

*C. Guardian and curator*

**Article 403-** The guardian shall be liable to protect all the interests of the minor or person under legal disability under guardianship regarding their personality and asset and to represent them in legal transactions.

Curator shall be appointed to undertake certain work or to manage the assets.

Provisions of this law regarding guardian shall also apply to curator unless otherwise specified.

SECTION TWO  
CIRCUMSTANCES REQUIRING GUARDIANSHIP

*A. Being a minor*

**Article 404-** Each minor not under custody shall be taken under guardianship.

Registrars, administrative authorities, notaries and courts who become aware of such a circumstance necessitating guardianship shall be obliged to notify the guardianship board of this situation.

*B. Restriction*

*I. Mental disorder or weakness of mind*

**Article 405-** Each person of age unable to do their own work due to mental disorder or weakness of mind or in need of constant help for protection and care or who may put others' safety at risk shall be restrained.

Administrative authorities, notaries and courts that become aware of such a situation necessitating guardianship shall be obliged to immediately notify the guardianship board of this situation.

*II. Extravagancy, alcohol or substance abuse, poor lifestyle, poor management*

**Article 406-** Each person of age who runs the risk of driving himself/herself or his/her family to poverty due to extravagancy, alcohol or substance abuse, poor lifestyle or poor management of assets and thus in need of constant protection and care and may put others' safety at risk shall be restrained.

*III. Penalty restricting freedom*

**Article 407-** Each person of age who is sentenced to one year or a long-term penalty restricting freedom shall be restrained.

The authority charged with execution of the penalty shall immediately notify the guardianship board of the fact that such a convict has started to serve his/her sentence so that a guardian can be appointed.

*IV. Upon request<sup>(1)</sup> (1)*

**Article 408-** Each person of age who proves that he/she cannot manage his/her work due to old age, disability, inexperience or serious disease can demand that he/she be restrained.

*C. Procedure*

*I. Hearing the person concerned and expert report*

**Article 409-** A person shall not be restrained without being heard due to extravagancy, alcohol, drug and substance abuse, poor lifestyle, poor management or upon request.

Restriction due to mental disorder or weakness of mind shall only be decided based on an official medical board report. (**Additional phrase:6/12/2019-7196/52 art.**) In order to draw up this report provisions of article 436 shall apply. The judge may hear the person to be restrained by taking into account the medical board report before making a decision.

*II. Announcement*

**Article 410-** When the restriction decision is final, it shall be declared in the domicile and place of registry of the restrained person.

Restriction shall not affect well-intentioned third parties before the announcement.

Provisions regarding consequences of not having mental competence shall be reserved.

### SECTION THREE

#### AUTHORITY

*A. Authority for guardianship procedures*

**Article 411-** Authority for guardianship procedures shall lie with guardianship authorities in the domicile of the minor or person under legal disability.

*B. Change of domicile*

**Article 412-** Person under guardianship shall not change their domicile without permission of the guardianship board.

In case of change of domicile, authority shall pass onto new guardianship authorities. In that case, restriction shall be declared in the new domicile.

### SECTION FOUR

#### APPOINTMENT OF A GUARDIAN

*A. Conditions*

*I. In general terms*

**Article 413-** The guardianship board shall appoint a person of age capable to fulfill this duty as guardian.

When necessary, more than one guardian can be appointed to fulfill these duties together or separately as per their authorities determined by the guardianship board.

More than one person shall not be assigned to undertake guardianship together without their consent.

*II. Priority of the spouse and relatives*

**Article 414-** Unless there are valid grounds that stand in the way, the guardianship board shall give priority to the spouse or close relatives of the person to be placed under guardianship provided

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<sup>(1)</sup> Through article 1 of Law No 6462 and dated 25/4/2013 the phrase «defect» featuring in this clause was amended as «disability».

that they meet guardianship conditions. Closeness of residences and personal relationships shall be taken into account when appointing a guardian.

*III. Request of the people concerned*

**Article 415-** Unless there are valid grounds that stand in the way, the person pointed out by the person to be placed under guardianship or his/her mother or father shall be appointed guardian.

*IV. Obligation to accept guardianship*

**Article 416-** People appointed guardians and living in the domicile of the person under guardianship shall be obliged to accept this post.

In case of appointment by the family council, there is no obligation to accept guardianship.

*V. Reasons for refraining from guardianship*

**Article 417-** The following people may not accept guardianship:

1. People having turned sixty,
2. People that might have difficulties in fulfilling this duty due to their physical disability or permanent disease<sup>(1)</sup>
3. People having parental authority for more than four children,
4. People who already act as guardians,
5. The President of the Republic, members of Turkish Grand National Assembly, Vice Presidents, ministers, judges and prosecutors <sup>(2)(2)</sup>

*VI. Reasons that stand in the way of guardianship*

**Article 418-** The following people shall not be guardians:

1. People under legal disability,
2. People forbidden from public service or leading a dishonorable life,
3. People whose interests conflict considerably with interests of those to be appointed guardians or people having hostility towards one another.
4. Judges of relevant guardianship authorities

*B. Appointment procedure*

*I. Appointment of a guardian*

**Article 419-** The guardianship board shall be obliged to appoint a guardian without delay.

It can be decided to restrain those who are not of age when necessary. However, restriction decision shall bear results after the person in question comes of age.

As a rule children of age who are restrained shall not be placed under guardianship, they shall be left under custody.

*II. Interim measures*

**Article 420-** The guardianship board shall take the necessary measures ex officio before appointment of a guardian if it is entailed by guardianship procedures, capacity to act of the person to be restrained can be revoked temporarily and representative can be appointed.

Decision of the guardianship board shall be declared.

*III. Notification and announcement*

**Article 421-** The guardian shall be immediately notified of the appointment decision.

Decision regarding restriction and appointment of a guardian or leaving the restrained person

<sup>(1)</sup> Through article 1 of Law No 6462 and dated 25/4/2013 the phrase «defects» featuring in this clause was amended as «disabilities».

<sup>(2)</sup> Through article 139 of Decree Law No. 700, dated 2/7/2018 the phrase «and members of the Council of Ministers» featuring in this clause was amended as «members, Vice Presidents, minister».

under custody shall be declared in the domicile and place of registry of the restrained person.

*IV. Refrainment and objection*

*1. Procedure*

**Article 422-** The person appointed guardian can use their right to refrain from guardianship within ten days as of notification of guardianship decision to them.

All people concerned can allege that appointment is unlawful within ten days as of the date they learnt about appointment of a guardian.

If the guardianship board deems refrainment from guardianship or reason for objection justified, they shall appoint a new guardian. If they do not deem it justified, they shall notify the supervisory authority of the case along with their opinion on the matter to make the necessary decision.

*2. Temporary duty*

**Article 423-** The person appointed guardian shall be obliged to fulfill the duties of guardian even if he/she has refrained from guardianship or an objection is raised.

*3. Decision*

**Article 424-** The supervisory authority shall notify the person appointed guardian and the guardianship board of their decision.

If the person appointed guardian is relieved of duty, the guardianship board shall immediately appoint a new guardian.

*V. Assignment*

**Article 425-** When the appointment decision is final, the guardianship board shall undertake the necessary procedures to make sure that the guardian takes up his/her duties.

## SECTION FIVE

### CURATORSHIP AND STATUTORY ADVISORSHIP

*A. Circumstances Requiring curatorship*

*I. Representation*

**Article 426-** The guardianship board shall appoint a representative curator ex officio or upon request of the concerned in the following circumstances or other circumstances specified by law:

1. If a person of age is unable to do his/her own urgent work or appoint a representative due to a disease, being somewhere else or a similar reason,
2. If interests of the legal representative and those of the minor or person under legal disability are conflicting,
3. If there is an obstacle in the way of the legal representative fulfilling his/her duties.

*II. Management*

*1. As per law*

**Article 427-** The guardianship board shall take the necessary measures for properties, the management of which belongs to no one and shall appoint a management curator especially in the following circumstances:

1. If a person has been absent for a long time and where they reside is not known,
2. If a person is unable to manage their property on their own or unable to appoint a representative for this although there is not a valid ground to place the said person under guardianship,
3. If heirdom rights to an inheritance are not yet clear or interests of the foetus necessitate,



4. If a legal person is devoid of the necessary organs and its management cannot be ensured by other means,

5. If a way to manage or spend money and other aids collected from the public for charity or other work with similar purposes cannot be ensured.

*2. Upon request*

**Article 428-** If a valid ground for restriction upon request exists, a curator can be appointed for a person of age upon their own request.

*B. Statutory advisorship*

**Article 429-** Although there is not a valid ground for restriction, for a person of age for whom it is deemed to be necessary to restrain their capacity to act for their own protection, a statutory advisor shall be appointed to receive their opinion on the following matters:

1. Litigation and accordancy,
2. Purchase, sale of and putting in pledge the immovables and establishing another in rem right on them,
3. Purchase, sale of and putting in pledge commercial papers,
4. Constructional work that is outside of ordinary management boundaries,
5. Lending and borrowing,
6. Withdrawing the principal amount,
7. Donation,
8. Making a commitment in foreign exchange,
9. Vouching for someone.

Authority to manage a person's assets can be revoked under the same conditions without prejudice to right of disposition on their revenues.

*C. Authority*

**Article 430-** Representative curator shall be appointed by the guardianship board located in the domicile of the person for whom a curator is to be appointed.

Management curator shall be appointed by the guardianship board located in the place where the majority of the assets is managed or the properties that constitute the share of the person represented are situated.

*D. Procedure*

**Article 431-** Rules regarding the procedure for restriction shall also apply to appointment of curator and statutory advisor.

The decision regarding appointment of curator or statutory advisor shall only be declared if it is deemed to be necessary by the guardianship board.

SECTION SIX  
RESTRICTION OF FREEDOM FOR PROTECTION

*A. Conditions*

**Article 432-** Each person of age shall be placed with an appropriate institution for treatment, education or rehabilitation or retained unless their protection cannot be ensured by other means due to mental illness, weakness of mind, alcohol or drug abuse, communicable disease that poses severe danger or roguery. Public officials who become aware of such situation shall be obliged to notify the guardianship board of such situation.

Inconvenience caused by the said person for their surroundings shall also be taken into account.

The said person shall be discharged from the institution as soon as their situation permits.

*B. Authority*

**Article 433-** The authority to decide on placement or retainment shall lie with the guardianship board of domicile of the relevant person or with the guardianship board where the said person is located in the case that delay is deemed to be inconvenient.

The guardianship board that decides on placement or retainment shall also be authorized to discharge the said person from the institution.

*C. Notification obligation*

**Article 434-** If a person under legal disability is placed with an institution or retained or other measures regarding guardianship are deemed to be necessary for a person of age, the guardianship board where the said person is located or those concerned prescribed by special laws shall be obliged to notify the guardianship board of domicile of the said situation.

*D. Objection*

**Article 435-** The person who is placed with an institution or their relatives shall have the right to object to the supervision authority within ten days of the date this decision is notified to them.

This right can also be used when the request to discharge such person from the institution is denied.

*E. Procedure*

*I. In general terms*

**Article 436-** Restriction of freedom for protection shall be subject to Code of Civil Procedure without prejudice to the following rules:

1. It is obligatory that when making the decision the relevant person be informed about the reasons and be provided written information as to their right to object to the decision before the supervisory authority.

2. A person placed with an institution shall immediately be notified in written as to the fact that they can object to retainment or denial of discharge request before the supervisory authority within ten days.

3. Each request that necessitates a court decision shall be conveyed to the competent judge without delay.

4. The guardianship board that decides on placement or judge may adjourn handling this request in line with specifics of the case.

5. For those with mental illness, weakness of mind, alcohol or drug abuse, communicable diseases that pose severe danger, a decision can only be made through an official medical board report. **(Repealed phrase:6/12/2019-7196/53 art.) (...)**

6. **(Additional:6/12/2019-7196/53 art.)** In order to make sure that an official medical board report is issued, blood or similar biological samples such as hair, saliva, nail can be taken from the relevant person's body, necessary interventions can be performed and the said person can be placed with a medical institution for maximum twenty days upon preliminary medical report when necessary.

7. **(Additional:6/12/2019-7196/53art.)** For enforcement of decisions made within the scope of this article, force can be used when necessary and necessary medical assistance can be received from health officers.

*II. Proceeding*

**Article 437-** The judge shall decide based on simplified procedure.

Judicial support shall be provided to the person in question when necessary.

(Amended paragraph:6/12/2019-7196/54 art.) The judge shall hear the relevant person and decide on the matter without delay.

PART TWO  
EXECUTION OF GUARDIANSHIP  
SECTION ONE  
DUTIES OF GUARDIAN

*A. Taking office*

*I. Keeping book*

**Article 438-** Upon finalization of appointment to guardianship decision, a person to be assigned by the guardian and the guardianship board shall start to keep book of the assets to be managed without delay.

If the person under guardianship has mental competence, the said person shall be kept available at the time of keeping book if possible.

As may be required by the conditions, upon request of the guardian and the guardianship board the supervisory authority may decide that official book of the assets of the person under guardianship be kept. This book shall bear the same results for the creditors as the official book for inheritance and shall be kept in line with the procedure there.

*II. Preservation of valuable goods*

**Article 439-** Commercial papers, valuable goods, important documents etc. shall be preserved in a safe place under supervision of the guardianship board if there is no inconveniency in terms of asset management.

*III. Selling the movable properties*

**Article 440-** If interests of the person under guardianship require, movable properties other than valuable goods shall be sold by auction upon instruction of the guardianship board. The judge may also decide on bargain sale by taking into account specific situations, quality of the movable property or scantness of the value.

Goods that have special meaning for the person under guardianship or their family shall not be sold unless there is a necessity to that end.

*IV. Depositing money*

*1. Depositing obligation*

**Article 441-** Money that is not necessary for the person under guardianship or asset management shall be deposited in a national bank specified by the guardianship board to yield interest or it shall be converted into stocks and bonds issued by the Treasury.

The guardian who puts off depositing money for more than one month shall be obliged to pay interest loss.

*2. Conversion of investments*

**Article 442-** Investments that are not sufficiently reassuring shall be converted into reassuring investments.

Conversion transaction shall be undertaken at an appropriate time by taking into account interests of the person under guardianship.

*V. Commercial and industrial enterprises*

**Article 443-** If properties of the person under guardianship include commercial, industrial or similar enterprises, the guardianship board shall give the necessary instruction for continuation or

dissolution of such enterprises.

*VI. Selling the immovables*

**Article 444-** Sale of immovables shall only be possible in line with the instruction given by the guardianship board and if interests of the person under guardianship necessitate.

Sale shall be conducted by auction by a person to be assigned by the guardianship board with the guardian available and tender shall be completed through approval of the guardianship board. It is necessary that decision for approval be made within ten days as of the date of tender.

However, the supervisory authority may decide on bargain sale exceptionally taking into account specific circumstances, quality of the immovable property or scantness of the value.

*B. Care and representation*

*I. Care for person*

*1. For minors*

*a. In general terms*

**Article 445-** If the person under guardianship is a minor, the guardian shall be obliged to take the necessary measures to ensure care and education of the minor.

Without prejudice to provisions of power of guardianship authorities, the guardian shall have parental authority to that end.

*b. Restriction of freedom for protection purposes*

**Article 446-** The guardianship board shall decide on placement of minors with an institution upon application of the guardian or in cases where delay is deemed to be inconvenient, the guardian shall decide on the matter in person and notify the guardianship board of the situation.

Apart from that about issues regarding procedure and authority, provisions of restriction of freedom for protection of persons of age regardless of whether there is legal disability or not shall apply.

Child who has not turned sixteen yet cannot apply to court in person about this issue.

*2. For people under legal disability*

**Article 447-** Guardian shall be obliged to protect the person under legal disability and help them with all their personal affairs.

If delay is deemed to be inconvenient, the guardian can place the person under legal disability with an institution in line with provisions of restriction of freedom for protection or retain the said person in such an institution and immediately notify the guardianship board of the situation.

*II. Representation*

*1. In general terms*

**Article 448-** Without prejudice to provisions regarding power of guardianship authorities, the guardian shall represent the person under guardianship for all legal transactions.

*2. Forbidden actions*

**Article 449-** It is forbidden to be a guarantor, establish a foundation and donate substantially on behalf of the person under guardianship.

*3. Receiving opinion of the person under guardianship*

**Article 450-** If the person under guardianship is able to form and express his/her opinions, the guardian shall be obliged to receive his/her opinion as much as possible before making a decision on

important matters.

Approval of the person under guardianship shall not exempt the guardian from liability.

*4. Actions that can be taken by the person under guardianship*

*a. Consent of the guardian*

**Article 451-** Person with mental competence and under guardianship can enter into obligation or waive a right through explicit or implicit permission or subsequent approval of the guardian.

If the action taken is not approved within the period of time set by the other party or by the judge upon request, the other party shall not be bound by it anymore.

*b. Consequence of disapproval*

**Article 452-** For actions disapproved by the guardian, each one of the parties can reclaim what they have given. However, the person under guardianship shall only be liable for the amount spent for his/her own interests or enrichment amount available within the scope of assets at the time of reclaim or the amount disposed of without goodwill.

If the person under guardianship has misled the other party into believing that he/she has capacity to act, he/she shall be liable for the loss the other party incurred.

*5. Profession or art*

**Article 453-** If the person under guardianship is given permission by the guardianship board to perform a profession or an art, the said person shall be authorized to undertake all ordinary actions regarding this issue and shall be liable with all their assets for these actions.

*C. Asset management*

*I. Management and accounting obligation*

**Article 454-** The guardian shall be obliged to manage assets of the person under guardianship with due diligence.

The guardian shall be obliged to keep the accounts about management and submit the said account for review to the guardianship board at times determined by the guardianship board and on a yearly basis in any circumstances.

If the person under guardianship is able to form and express his/her opinions, he/she shall be kept available as much as possible during review of the account by the judge.

*II. Free properties*

**Article 455-** The person under guardianship shall freely manage and use properties that are within his/her own disposition and those that he/she acquired by working with permission of the guardian.

*D. Term of office*

**Article 456-** The guardian shall be appointed for two years as a rule.

The guardianship board can extend this period by two years each time.

After four years the guardian can use his/her right to refrain from guardianship.

*E. The guardian's salary*

**Article 457 –** The guardian may demand that he/she be paid a salary out of assets of the person under guardianship and if not possible by the Treasury. The salary to be paid shall be determined by the guardianship board for each accounting period by taking into account the effort entailed by management and revenues of the assets managed.

SECTION TWO  
DUTIES OF CURATOR

*A. Position of curator*

**Article 458-** Appointment of a curator for someone shall not affect their capacity to act. Provisions regarding statutory advisorship shall be reserved.

Term of office and salary of curator shall be determined by the guardianship board.

*B. Scope of curatorship*

*I. Certain work*

**Article 459-** Curator assigned for a certain work shall be obliged to act in line with instructions of the guardianship board.

*II. Asset management*

**Article 460-** If a curator is charged with management and supervision of an asset, he/she can only perform work related to management and maintenance of the said asset.

Curator being able to perform other work shall depend on special authority to be given by the party represented and if the represented party is not in a position to give such authority, it shall depend on permission of the guardianship board.

SECTION THREE

DUTIES OF GUARDIANSHIP AUTHORITIES

*A. Complaint and objection*

**Article 461-** Each person under guardianship with mental competence and everyone concerned can file a complaint with the guardianship board regarding acts and actions of the guardian.

An objection can be raised against decisions of the guardianship board within ten days as of notification date.

*B. Permission*

*I. Of the guardianship board*

**Article 462-** Permission of the guardianship board shall be necessary in the following circumstances:

1. Purchase, sale of and putting in pledge the immovables and establishing another in rem right on them,

2. Purchase, sale of and putting in pledge movable properties that are outside of ordinary management and operation needs or other rights and assets,

3. Constructional work exceeding ordinary management boundaries,

4. Lending and borrowing,

5. Making a commitment in foreign exchange,

6. Drawing up immovable tenancy contract for three or more years or product contract for one year or longer,

7. The person under guardianship performing an art,

8. Without prejudice to power of the guardian to take interim measures in emergencies, litigation, accordancy, arbitration and arrangement of bankruptcy,

9. Property regime contracts, apportioning of inheritance and making transfer of inheritance share agreements,

10. Declaration of insolvency,

11. Ensuring life insurance for the person under guardianship,
12. Drawing up an apprenticeship contract,
13. Placing the person under guardianship with a training, care or health institution,
14. Changing the residence of the person under guardianship.

*II. Of the supervisory authority*

**Article 463-** Following the permission of the guardianship board, permission of the supervisory authority shall be necessary in the following circumstances:

1. Adoption by or of the person under guardianship,
2. The person under guardianship acquiring citizenship of a country or ceasing to be citizen of a country,
3. Taking over an enterprise or its dissolution, engaging in a partnership that requires personal liability or becoming a partner in a company with an important amount of capital,
4. Making agreements for lifelong salary or endowment or providing care until death,
5. Acceptance or disclaimer of inheritance or making an agreement of inheritance,
6. The minor coming of age,
7. Making an agreement between the person under guardianship and the guardian.

*C. Review of report and accounts*

**Article 464-** The guardianship board shall review the report and accounts to be submitted by the guardian at certain times, the board shall demand that they be completed or rectified when necessary.

The guardianship board shall accept or reject the report and accounts and take the necessary measures to protect the interests of the person under guardianship if necessary.

*D. Lack of permission*

**Article 465-** Actions taken by the guardian without receiving permission of competent guardianship authorities although it is stipulated by law shall have the effect of actions taken by the person under guardianship without permission of the guardian.

SECTION FOUR  
LIABILITY OF ORGANS OF GUARDIANSHIP

*A. Due diligence*

**Article 466-** Other people charged with organs of guardianship and guardianship procedures shall be obliged to show due diligence entailed by effective management while fulfilling these duties.

*B. Liability of the guardian*

**Article 467-** The guardian shall be liable for damage done to the person under guardianship due to misdemeanor.

The same provision shall also apply to curators and statutory advisors.

*C. Liability of the State*

**Article 468-** The State shall be directly liable for damages done unlawfully by those assigned in guardianship authorities and shall also be liable for damages that cannot be compensated by

guardians, curators and statutory advisors.

The State compensating for the damages shall seek recourse against those at fault for giving rise to such damages.

Those at fault giving rise to the said damages shall be jointly and severally liable to the State having used its right to recourse.

*D. Duty and jurisdiction*

**Article 469-** Civil court of first instance closest to the location of guardianship authorities shall be the court of competent jurisdiction for cases of recourse against those assigned in guardianship authorities.

Compensation and other recourse cases regarding guardianship shall be tried in civil court of first instance where the guardianship authorities are located.

PART THREE

TERMINATION OF GUARDIANSHIP

SECTION ONE

CIRCUMSTANCES ENTAILING GUARDIANSHIP CEASING TO BE

*A. Minors*

**Article 470-** Guardianship over a minor shall cease to be ipso facto when the minor comes of age.

If the court decides on age of majority, the court shall establish when the minor in question is to come of age and declare it accordingly.

*B. Convicts*

**Article 471-** Guardianship over a person under legal disability due to condemnation to a punishment restricting freedom shall cease to be ipso facto when imprisonment comes to an end.

*C. For other people under legal disability*

*I. Revocation*

**Article 472-** Guardianship over other people under legal disability shall be terminated by decision of the competent guardianship board. Guardianship over other people under legal disability shall be terminated by decision of the competent guardianship board.

When circumstances entailing guardianship cease to be, the guardianship board shall decide to terminate guardianship.

Each one of the people under legal disability and those concerned can make a request to terminate guardianship.

*II. Procedure*

*1. Announcement*

**Article 473-** If restriction is declared, its termination shall also be declared.

Regaining the capacity to act shall not depend on the announcement to be made.

*2. Mental illness or weakness of mind*

**Article 474-** Termination of guardianship over a person restrained due to mental illness or weakness of mind can only be decided if it is established by a medical board report that the reason for restriction has ceased to be.

*3. Extravagancy, alcohol or drug abuse, poor lifestyle, poor management*

**Article 475-** For a person who is restrained due to extravagancy, alcohol or drug abuse, poor lifestyle or poor management of assets to request revocation of guardianship shall depend on not



leading to a complaint for at least one year due to the reasons that brought along guardianship.

*4. Restriction upon request*

**Article 476-** Revocation of guardianship over a person restrained upon their own request shall depend on elimination of the reason that led to restriction.

*D. Curatorship and statutory advisorship*

*I. In general terms*

**Article 477-** Representative curatorship shall be terminated when the work the curator is charged with is completed.

Management curatorship shall be terminated when the reason leading to appointment of a curator is eliminated or when the curator is relieved of duty.

Statutory advisorship shall be terminated by decision of the guardianship board as per provisions regarding revocation of guardianship.

*II. Announcement*

**Article 478-** If appointment is declared or if deemed necessary by the guardianship board, termination of curatorship shall also be declared.

SECTION TWO  
TERMINATION OF GUARDIANSHIP

*A. Loss of capacity to act and death*

**Article 479-** Guardianship shall be terminated if the guardian loses his/her capacity to act or dies.

*B. Expiration of term of office and not extending the duration*

*I. Expiration of term of office*

**Article 480-** Guardianship shall be terminated when the term of office expires unless it is extended.

*II. If there is an obstacle or reason for refrainment*

**Article 481-** If there is a reason that poses an obstacle for guardianship, the guardian shall be obliged to leave his/her post.

If there is a reason for refrainment, the guardian may demand that he/she be relieved of duty before expiration of his/her term of office. However, the guardian shall be obliged to carry on with his/her duties if there are important grounds to that end.

*III. Obligation to carry on with one's duties*

**Article 482-** The guardian whose term of office expires shall be obliged to carry on with necessary duties until the new guardian takes office.

*C. Being relieved of duty*

*I. Grounds*

**Article 483-** If the guardian seriously neglects his/her duties, abuses his/her authorities or engages in acts that betray people's trust or becomes insolvent, he/she shall be relieved of duty by the guardianship board.

If interests of the person under guardianship are at stake due to incompetence of the guardian in fulfilling his/her duties, the guardianship board may relieve the guardian of duty even if he/she is not at fault.

*II. Procedure*

*1. Upon request or ex officio*

**Article 484-** The person under guardianship or anyone concerned with mental competence can demand that the guardian be relieved of duty.

The guardianship board that learns about the reason necessitating dismissal by other means shall be obliged to relieve the guardian of duty ex officio.

*2. Inquiry and warning*

**Article 485-** The guardianship board can relieve the guardian of duty only after making an inquiry about the issue and hearing the guardian.

The guardianship board shall warn the guardian of the fact that he/she might be relieved of duty under less serious circumstances.

*3. Interim measures*

**Article 486-** If delay is deemed to be inconvenient, the guardianship board shall make sure that the guardian is withdrawn temporarily and a curator can be appointed. The guardianship board can impose a lien on properties of the guardian and request his/her detention by taking into account possible loss when necessary.

*4. Other measures*

**Article 487-** The guardianship board shall be obliged to take other measures necessary to protect the person under guardianship besides dismissal and warning.

*5. Objection*

**Article 488-** Those concerned can raise an objection before the supervisory authority against decisions of the guardianship board within ten days as of the date of notification. The supervisory authority shall hold a hearing when necessary and adjudicate this objection.

SECTION THREE  
CONSEQUENCES OF TERMINATION OF GUARDIANSHIP

*A. Final account and handing over assets*

**Article 489-** The guardian whose duty is terminated shall be obliged to submit the final report about management and final account to the guardianship board and keep the assets ready to be handed over to the person under guardianship, his/her heirs or the new guardian.

*B. Review of the report and account*

**Article 490-** Final report and final account shall be reviewed and approved by the guardianship board like other reports and accounts submitted at certain times.

*C. Termination of the duties of the guardian*

**Article 491-** After the final report and final account are reviewed and approved and the assets are handed over to the person under guardianship, his/her heirs or the new guardian, the guardianship board shall hold that duties of the guardian are terminated.

The guardianship board shall notify the person under guardianship, his/her heirs or the new guardian of the final account along with its decision on approval or rejection of the final report and final account by specifying their right to file a compensation lawsuit. In this notification, termination of the duties of the guardian shall also be specified.

*D. Statute of limitations in liability lawsuit*

*I. Ordinary statute of limitations*

**Article 492-** Compensation lawsuit to be filed against the guardian and curator who are liable

shall be time barred within one year as of the date notification is made about the final account.

Term of limitations of the compensation lawsuit to be filed against the State for losses that cannot be compensated shall be one year as of the time it is understood that losses cannot be compensated by the guardian, curator and statutory advisor.

Statute of limitations of the lawsuits to be filed against the State for damages caused by those assigned in guardianship authorities shall be subject to general provisions.

Recourse lawsuit of the State shall be time barred within one year as of the date the right to seek recourse originates.

*II. Extraordinary statute of limitations*

**Article 493-** Compensation lawsuit that is based on a liability ground or miscalculation that cannot be known or understood by the person having incurred the loss before extraordinary statute of limitations starts to be effective can be filed within one year as of the date miscalculation or liability ground is learnt about.

Compensation lawsuits arising from guardianship shall be time barred within ten years in any circumstances as of the date notification is made about the final account.

*E. Receivables of the person under guardianship*

**Article 494-** Receivables of the person under guardianship shall be privileged vis-à-vis the guardian or the State.

*Repealed law*

**TABLE INDICATING ENTRY INTO EFFECT DATE OF CONSTITUTIONAL COURT DECISIONS OR  
LEGISLATION AMENDING OR APPENDING LAW NO 4721**

Number of Amending Law/ Decree Law or Repealing Constitutional Court Decision	Amended or Repealed articles of Law No 4721	Entry Into Effect Date
4778	91, 92	11/1/2003
4963	56, 64, 66, 82, 94	30/7/2003
5253	58, 61, 62, 64, 74, 77, 79, 92, 93	23/11/2004
5378	348	7/7/2005
5399	313	15/7/2005
5650	505, 506	10/5/2007
5737	111	27/2/2008
Constitutional Court Decision dated 27/11/2007 and P.: 2002/162, D.: 2007/89	112	26/1/2008
Constitutional Court Decision dated 25/6/2009 and P: 2008/30, D.: 2009/96	289	7/10/2009
Constitutional Court Decision dated 2/7/2009 P.: 2005/114, D.: 2009/105	321	7/10/2010
6217	138	14/4/2011
	164, 181, 598	1/10/2011
Constitutional Court Decision dated 17/3/2011 P.: 2009/58, D.: 2011/52	713	23/7/2011
Constitutional Court Decision dated 27/10/2011 P.: 2010/71, D.: 2011/143	Paragraph two of article 303	Within one year as of 7/2/2012
6462	313, 340, 408, 417, 674	3/5/2013
Constitutional Court Decision dated 27/12/2012 P.: 2012/35, D.: 2012/203	319	Within six months as of 12/7/2013
Constitutional Court Decision dated 10/10/2013 P.: 2013/62, D.: 2013/115	291	10/12/2013
6518	194	19/2/2014
6537	659, 660, 661, 662, 663, 664, 665, 666, 667, 668	15/5/2014
Constitutional Court Decision dated 29/11/2017 P.: 2017/130, D.: 2017/165	40	20/3/2018
Decree Law/700	37, 104, 320, 417, 593, 609, 620, 851, 913, 940, 997, 998, 1000, 1003, 1012, 1017, 1027	The date (9/7/2018) when the President of the Republic took office after taking an oath following Presidency elections and Turkish Grand National Assembly elections held on 24/6/2018 together

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Number of Amending Law/ Decree Law or Repealing Constitutional Court Decision	Amended or Repealed articles of Law No 4721	Entry Into Effect Date
7181	883	1/1/2020
7196	409,436,437	24/12/2019