

# COMPARATIVE STUDY OF GUARDIANSHIP, PARENTAL AUTHORITY, LEGITIMATION, ADOPTION, ILLEGITIMATE CHILDREN IN GERMAN AND POLISH LAWS

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## I — GUARDIANSHIP

### A. *Some Provisions of Private International Law*

It is a principle of Continental Private International Law that the guardianship over a minor is determined by the law of the country of which he is a subject (Art. 1. of the Hague Convention of 12.6.1902).

According to article 23 of the Einführungsgesetz zum BGB (Introductory Law to the German Civil Code) the German Court may in certain circumstances appoint a guardian over a non German child. The provisions of this article reads as follows :

«A guardianship or a curatorship may be established within Germany even over a foreigner in so far as the government of the country of which he is a subject does not assume care of him provided the foreigner requires guardianship or curatorship under the laws of that country or has been declared within Germany a person incapable of managing his affairs. The German Guardianship Court may undertake provisional measures of the guardianship or curatorship has not yet been established.»

It follows therefore that the answer to the question whether it is necessary to appoint a guardian is to be looked for in the national law of the person concerned.

The fact that the home country does not assume care has to be established *ex officio* (para. 12 of the Gesets uber die Angelen-

heiten der Freiwillig Gerichtsbarkeit). A decision of the home authorities (in view of the person concerned having gone abroad) cancelling the guardianship or curatorship which has already been established in that country constitute a sufficient proof to this effect. In the absence of any such evidence the consular authorities of the home country have to be approached.

Polish Private international law provides (Art. 24) that Polish Law and Polish authorities are competent in all cases relating to guardianship when a person is to be placed under guardianship; curatorship or should get an assistant; this power can be transferred to the authorities of a foreign country if a Pole resides abroad and a proper care has been assured.

Guardianship or curatorship over a stateless person residing in Germany is subject to German law. This follows from Art. 29 of the *Einführungsgesetz* which reads :

«Insofar as the laws of the country of which a person is subject have been declared decisive; the legal relations of the stateless persons shall be determined by the laws of the country in which they have their habitual residence or, in the absence of such residence where they are staying or were staying at relevant time.»

The nationals of the Baltic Countries (Estonia, Latvia, Lithuania) are usually regarded by the German Courts as *de facto* stateless and consequently German provisions on guardianship are applied to them in accordance with the above quoted article 29 of the *Einführungsgesetz*.

#### B. *Some Provisions of the German Law concerning guardianship*

Under the German Law the guardianship shall be established *ex-officio* when a minor is not under the parental authority. The guardian is appointed by the Guardianship Court (para. 1774 BGB). The guardian should be appointed in the following succession of priority :



- a) person designated by the father in his last will
- b) person designated by the mother of a legitimate child in her last will
- c) grandfather on the father's side.
- d) grandmother on the mother's side.
- e) any other suitable person. (para. 1776 and 1779 BGB).

When there is no suitable person the Jugendamt may be appointed guardian (para. 41 Jugendwahhhfahrtsgesetz). The Jugendamt is the statutory guardian of an illegitimate child (para. 35), but only if the child is of German nationality (para. 1).

A guardian remains under the supervision of the Guardianship Court who may change the guardian at any time if he does not fulfil his duties in a proper way (para. 1837 and 1886 BGB). The Guardianship Court can order that the ward be located with a suitable family or in an Educational Institute or a Home of Correction in order to be brought up (para. 1838 BGB).

### *C. Certain provisions of Polish law concerning guardianship*

Minors beyond the control of parents are taken care of by establishing guardianship for them (art. 4 of the Polish Guardianship Law of 1946). A Guardian is appointed by the guardianship authority; i.e. the borough court (art. 1 and 6). Guardianship authority supervises the activities of the guardian art. (43). Unless there are objections from the point of view of interests of the minor, a person designated by the father or mother, may be appointed the guardian (art. 11). Otherwise, the guardian should be appointed from among those next-of-kin, relatives by marriage, personal friends or family friends, who are best suited to take over the care of the child, (art. 12).

The guardianship authority releases the guardian if he is not able to exercise his duties or, while executing them commits acts or makes commitments contrary to the interests of the child (art. 38). Any disposition of the guardian that may concern the child to be sent to a third party or to the House of Correction or concerning its future trade, must be confirmed by the guardianship

authority. Such disposition may also be issued by the guardianship *ex officio*.

## II — PARENTAL AUTHORITY

### A. *Certain provisions of Private International Law*

According to German Private International Law the legal relation between the parents and a legitimate child shall be determined by the laws of the country of which the father or should the father be dead, the mother, is a subject. The legal relations between the illegitimate child and his (her) mother shall be judged by the law of the country of which the mother is a subject. (Art. 19 and art. 20 of the *Einführungsgesetz zum BGB* and the pertinent judgements of the German Courts). German law has to be applied; however if the citizenship of the father or of the mother does not exist any more and the child's German citizenship, however, continues to exist.

Under the Polish Private International Law the relationships between the parents and their legitimate children are determined by the laws of the country of which they are subjects. If they are subjects of various countries; the law of the country of their last mutual citizenship is decisive (art. 19). Relations between an illegitimate child and his (her) mother are determined by the laws of the country of which they are subjects. If they are subjects of various countries the law of the country of their last mutual citizenship is decisive (art. 20).

So far as stateless persons residing in Germany are concerned; German law has to be applied (art. 29 *Einführungsgesetz BGB*).

### B. *Certain provisions on Parental Authority under the German Law*

Parental authority consists of the right and duty of

- a) care of the child's person
- b) care of the child's property
- c) the right to represent the child



By virtue of his parental authority; the father has the right and the duty to take care of the person and property of his child (para 1627 BGB). The mother has the right and duty to take care of the person of the child but she has no right to represent the child. In case of disagreement the will of the father prevails (para. 1634). Only when the father is unable to exercise his parental authority, the mother does exercise this authority, (para. 1685). After the death of the father the mother has the full parental authority (para. 1684.1). The same applies when the father has forfeited his parental authority and the marriage has been dissolved (paras 1684.2 and 1680). The mother loses her parental authority when she marries again (para. 1697). The mother of an illegitimate child has no parental authority over the child. She has the right and the duty to take care of the person of the child but she has no right to represent it (para. 1707).

The care of the person of the child comprises both the right and the duty to bring up the child, to supervise it and to determine his (her) abode (para. 1631).

Parental authority as a whole is untransferable. Parents, may transfer only a part of their authority e.g. the education to another person; they cannot however; relinquish their rights attaching to the relationship and such contracts are considered by law all void and against good morals. Thus for instance, the whole parental authority is transferred to the adopting person; the rights and duties, however relating to the relations are not affected by the adoption contract. Parents cannot relinquish their rights to children as a whole as they are correspondingly their duties.

In discharging the parental authority the parent is subject to the supervision of the Guardianship Court. This supervision is not a permanent one; i.e. the Court intervenes only in certain circumstances so far as it has learned of them. The Jugdamt has to report all cases where intervention of the Guardianship Court is necessary (para. 1675 BGB).

In cases where the spiritual or physical welfare of the child is endangered (para. 1666 BGB) applies; this paragraph reads :

«If the spiritual or physical welfare of the child is endangered by the fact that the father either misuses his right to the

care of the child's person or the child is neglected by him or the father is to be charged of an injurious or immoral conduct - the Guardianship Court shall undertake the necessary measures in order to divert the danger. The Guardianship Court may, in particular, in order that the child be located with a suitable family or in an Educational Institute or a House of Correction where it will be brought up.

Had the father infringed his duty or procuring maintenance for his child and there exist material danger for the future maintenance - the father shall be deprived of the right of managing the property (of the child) and the right of usufruct.)

When the property of the child is endangered the Guardianship Court has to take the necessary steps to divert the danger (para. 1667).

According to the Reichsjugendwohlfahrtsgesetz (para. 56 and 63) the Guardianship Court may order that a child has to be put under a protective surveillance (Schutzaufsicht) or to be located with a suitable family or in an educational institution (Fuersorgeziehung).

These measures provided for by the Reichsjugendwohlfahrtsgesetz in order to divert the danger to the physical; spiritual or moral welfare of the child may be applied irrespectively of whether or not a personal guilt of the parent executing the parental authority has been established in this connection. The Reichsjugendwohlfahrtsgesetz applies only to children of German nationality (para. 1) except in so far as the powers and duties of the Jugendamt are also provided by the BGB.

Under the Juvenile Court Act (Reichsjugendgerichtsgesetz) if a juvenile has committed an offence educational measures may be ordered by the Court (Jugendgericht).

The educational measures are :

1. The issuance of instructions (Erteilung von Weisungen)
2. protective surveillance (Schutzaufsicht)
3. protective education (Fuersorgeerziehung)



the requirement for imposition of protective surveillance and protective education are governed by the provisions of juvenile welfare (*Jugendwohlfahrtsgesetz*) (para. 56 sqq.).

It is necessary to point out that :

- a) only the Court may deprive the parents of their parental authority
- b) in principle the Court intervenes *ex officio* but sometimes it also acts upon application (para. 57 and 45 R.J.W.G.)
- c) before making a decision the Court has to hear the *Jugendamt* (para. 43 R.J.W.G.).

If the whole parental authority has been withdrawn the Child gets a guardian (*Vermund*) if only a part - a *curator* (*Pfleger*). (See : para. 1773 and 1909 BGB).

#### C. *Certain provision on parental authority under the Polish Law*

The parents exercise the parental authority jointly; in case of disagreement the guardianship authority decides (Art. 20 of the Polish Family Law of 1946); in case of death of one party; the remaining party exercises the parental authority; in case of divorce or annulment of marriage; parental authority is exercised by the party to whom the care of the child has been entrusted by the Court (art. 21).

If the parents exercising parental authority are guilty of neglect or any action which could endanger the wellbeing of the child; the guardianship authority can issue orders to avert such danger (art. 40). The guardianship authority may deprive the parents or one of the parents of their parental authority if they are not able to exercise it or if they become guilty of such abuse or neglect which does not allow for the further entrusting of them with the parental authority or if the person performing parental authority remarried and particular circumstances require to deprive him or her of parental authority (art. 42).

If the parents infringe their duties in respect of care of the child's property the guardianship authority may take the necess-

ary steps to preserve this property and even deprive the parents of the right of administration of such property (art. 45).

### III — LEGITIMATION

#### A. *Certain provisions of the Private International Law*

According to art. 22 EG BGB; the legitimation of an illegitimate child shall be determined by the German laws if the father at the time of legitimation is in possession of German citizenship. If the father belongs to a foreign country while the child has German citizenship; the legitimation shall be ineffective unless the child or a third person to whom the child is in a domestic (familienrechtlich) relation give their consent as required by German Laws. Art. 22 EG. BGB has to be interpreted in this sense (RG. 125.268) that legitimation is always determined by the laws of the country of which the father is a subject at the time of legitimation.

Under the Polish Private International Law; legitimation of an illegitimate child is determined by the law of the country of which the father is a subject at the time of legitimation or should the father be dead at that time; by the law of the country or which he was a subject at time of his death. (Art. 22).

When the father is stateless and resided in Germany, German law shall be applied (art. EG. BGB).

#### B. *Legitimation under the German Law*

Under the German law an illegitimate child may be legitimated as a result of a subsequent marriage of his (her) parents (per subsequens matrimonium) or by a decision of the state authority (per rescriptum principis).

##### a) *Legitimation per subsequens matrimonium.*

An illegitimate child acquires the legal status of a legitimate one when the father marries the mother (para. 1719 BGB).

It is presumed that the husband of the mother is the father of the child if he cohabited with her between the 302 and the 181 st day preceding the birth of the child (para. 1720.171). This pre-



sumption may only be refuted if it can be proved that it was obviously impossible that the child could originate from this cohabitation (para. 1720). *Exceptio plurium concubentium* is not admissible.

A child who has to be considered to be a legitimate child of another person (para. 1591 BGB; para. 23 Marriage Law) cannot be legitimated by a marriage contracted by the mother with its actual progenitor.

If the husband acknowledges; in a public document; that he was the father of the child; it is presumed that he cohabited with the mother within the period between 302 and 181 st day preceding the child's birth (para. 1720).

The presumptions of cohabitation and of fatherhood may be refuted by any third person who has a legal interest in the child not being considered legitimated. In this respect the position of a child born before the marriage differs from that of a child born during the marriage. Legitimacy of the latter may be only refuted by the father and the public prosecutor. That is why it is in the interest of the child legitimated per subsequens matrimonium to have his (her) legitimacy established by a court judgement (see para. 643 ZOP).

An illegitimate child becomes legitimated even if the subsequent marriage of his (her) parents is later declared void (para. 1721 BGB; para 25 Marriage Law). Legitimation per subsequens matrimonium is not conditional on anybody's consent. Its legal effects are independent from the will of the persons concerned.

A child legitimated per subsequens matrimonium acquires the legal status of a legitimate child with effect from the date of the marriage.

The effects of the legitimation extend also to the descendants of the child even if the child died before the marriage of his (her) parents (para. 1722).

The fact that the child became legitimated is officially stated by the Guardianship Court who also orders that the register of

births be rectified accordingly (para. 31 Personenstandsgesets). The statement of the Guardianship Court cannot be effectively used as evidence against anybody. Only a judgement of a Landgericht establishing the legal status of the child as a result of proceedings to which both the father and the child were the parties (see above) has such effect.

b) *Legitimation per rescriptum principes*

An illegitimate child may be declared legitimate by a decision of the State Authority :

Following are the legal requirements of this kind of legitimation :

- 1) The child must be illegitimate (para. 1723).
- 2) The father must submit an application which has to be put down before a judge or a notary and has to contain a recognition of the child; by the father (paras. 1723, 1725, 1730).
- 3) Consent of the child; of the child's mother and of the wife of the father (para. 1726).
- 4) The Declaration cannot take place after the death of the child.
- 5) The parents cannot be related in a degree which constitutes a marriage prohibition (consanguinity) under (para. 4) Marriage Law (para. 9 of the Verordnung of 23.4.1938).

The legitimation takes place by a decision of the State Authority. The competent authority is the President of the Landgericht. The decision declaring the child to be legitimated is an act of grace. It may be refused even if all legal requirements have been met. (para. 1734). The decision retains its validity even if it was wrongly assumed that all the legal requirements had been fulfilled (para. 1735). It may, however, be withdrawn when it turns out that the applicant is not the father of the child. The decision in such cases was made by the Reichsjustizminister; and now; is made by the corresponding State Authority. The withdrawal



cannot be ordered if the child died and left no descendants (para. 1735 a).

In relation to the father the child acquires the status of a legitimate one (para. 1736). The effects of the legitimation extend also to the descendants of the child but not to the relatives of the father or to the spouses of both father and the child (para. 1737). The child does not become a member of the family of the father.

The relations of the child to his (her) mother and her family remain, in principle, unaffected (para. 1737). The mother loses, however, the right and the duty to care for the child's person (para. 1738).

### *C. Legitimation under the Polish Law*

Under the Polish Family Law of 1946 a child born before parents entered the conjugal state, is considered, owing to this marriage, as a child born in wedlock. The descendants of the child also benefit by it, even if death of the child occurred before the marriage of his (her) parents (art. 63).

The father may acknowledge as his; a child born out of wedlock. The acknowledgement is drawn up in form of a document put before the Guardianship Authority, a Registrar or a notary, or in the last will (art. 64).

A child acknowledged by his (her) father has the legal status of a child born in wedlock (art. 68).

The mother; as well as the child, can sue for depriving the acknowledgement of its effectiveness. Such action can be based only on the fact that the person acknowledging is not child's father. (Art. 66). The final date for bringing such action is, for the mother, six months, for the child one year from the moment it comes of age, and if the news of the acknowledgement reached him later, six months from the moment he received the news of acknowledgement. The action can be brought against the person acknowledging and if he is no longer living or the place of his residence is not known, against the curator appointed by the guardianship authority (art. 67).

In addition to the two above mentioned kinds of legitimation, the Polish law knows also the so called «equalization». A child born out of wedlock may be given equal status with a legitimate child by order of the Guardianship Authority, of his (her) parents although not legally married actually lived together as a married couple and treated the child as if he (she) were born in wedlock (art. 69).

#### IV — ADOPTION

##### *Certain provisions of Private International Law*

Under German International Law (see art. 22 of the *Einführungsgesetz zum BGB* and Judgement of the *Reichsgericht* No. 125.268) adoption shall be determined by the Laws of the country of which the adopting person is a subject at the time of the adoption.

This principle is also accepted in other Continental countries, e.g. in Poland (art. 23 of the Polish Private International Law). In short; adoption must be performed in compliance with the national law of the adopting person.

When the adopting person is stateless and resides in Germany German law shall be applied (art. 29 EG BGB).

Whenever during the proceeding in an adoption case, guardianship or curatorship have to be established in order that the adopted person should be legally represented special provisions of the international private law concerning guardianship have also be complied with (see above).

Para. 1747 BGB states that the adoption of a child under 21 years of age is only permissible with the consent of the parents or if the child is illegitimate with the consent of his mother.

According to Section 2 of para. 1746 BGB this consent is not necessary if :

- (a) either the parents or the mother of the child are «permanently incapable of giving a declaration» or,
- (b) their whereabouts cannot be traced.



#### D. *Adoption under The German Law*

By German Law :

- 1) The adopting person must have no legitime descendants (para. 1741 BGB)
- 2) the adopting person must be at least 50 years of age and must be at least 18 years older than the person to be adopted (para. 1744). A dispensation from these requirements may be granted (para. 1745). The competent court is the Amtsgericht.
- 3) a married couple may jointly adopt a child (para. 1749)
- 4) the adoption contract must be concluded before a court or a notary (para. 1750)
- 5) Consents of parents of the adopted person and of the spouses both of the adopter and the child are required (para. 1746)
- 6) the adoption contract must be approved by the court Amtsgericht (para. 1741).

The adopted person acquires the status of a legitimate child of the adopter but not of his spouse unless he (she) has been also adopted by or is the child of both spouses (para. 1757). The adopted person receives the name of the adopter which may be added to the family name of the adopted person unless the adoption contract provides otherwise (para. 1758). The parents of the child lose their parental authority (para. 1765) which is transferred to the adopting person. The child remains the member of its family. Its rights of inheritance are not affected by the adoption. The adopted person acquires the right of inheritance of the adopting person (unless otherwise provided for in the adoption contract), but the latter does not acquire such rights in respect of the child para (1759).

#### E. *Adoption under the Polish Law.*

The effects of adoption do not extend to the family of the adopting person. (para. 1763). They extend to the descendants of the adopted person. The descendants who are already

living at the time of adoption are not included unless they themselves are also parties to the adoption contract. (para. 1762).

The adoption contract may be annulled by a new contract included by the same persons who were parties to the adoption contracts. Such contract must be also approved by the court. The adoption ceases to be effective as from the date of the court approval. (paras. 1768 - 1770).

The adopting person must be at least 35 years of age and at least 15 years older than the adopted person. A person who has attained 25 years of age can, however, adopt a child under age, whom he has brought up and supported for at least 3 years (Art. 76 of the Polish Family Law of 1946).

A joint declaration of both Parties before a notary is required it must be approved by the guardianship authority (Art. 77).

Consents of spouses of both parties are required. Married couples may jointly adopt a child (Art. 79).

The adopted child receives the name of the adopting person as well as the right of inheritance of him. The parties may arrange so that the name of the adopting person is added to that of the adopted person. They can also exclude the adopted person from inheritance. The effects of the adoption extend also to the children of the adopted person if they are under the parental authority of the latter (Art. 82).

The adopted person does not cease to be a member of his own family but the parental authority is transferred from his parents to the adopting person (Art. 83).

The adoption may be annulled by agreement of the parties which must be approved by the guardianship authority. In exceptional cases an action for annulment may be brought before the court (Art. 84).

#### V — THE RIGHTS OF A CHILD BORN OF A MARRIAGE WHICH IS VOID

Under the German Law, a child born of a marriage which is void is regarded as legitimate to the extent to which it would have



been legitimate if the marriage had been valid (para. 25 Marriage Law).

The child retains the name of the father, his nationality, right of alimony, right of inheritance etc.

The relations between the parents and the child are on the whole subject to the same regulations which apply to a child born of a marriage which was dissolved by divorce.

For instance, the right to the custody of the person of the child is determined by the provisions which would be applicable in case of divorce.

The Guardianship Court decides to which of the parties the custody of the child shall be given, bearing in mind that the order to be made by the Court has to be consistent with the best interests of the child (para. 74 Marriage Law).

The party who knew of its nullity at the time when the marriage was contracted is placed in the position of a party found guilty in divorce proceedings (para. 25 Marriage Law).

Any partner who at the time of contracting the marriage had knowledge of its nullity is barred from the right of administration and usufruct of the child's property and from representing the child in legal matters pertaining to the child's property (para. 25 Marriage Law).

Under the Polish Marriage Law of 1945 a child born from an annulled marriage is regarded as a child born in wedlock. While deciding upon the annulment the court follows the divorce proceedings in regard to the child, its future, its future contacts with parents and distribution of maintenance costs (art. 21).

## VI — ILLEGITIMATE CHILDREN

### A. *Certain provisions of Private International Law*

According to art. 20. EG BGB the legal relation between an illegitimate child and his (her) mother shall be judged by the German laws if the mother is a German citizen. The same applies of

the German citizenship of the mother does not exist anymore and the child's German citizenship, however continues to exist.

Article 20 EG BGB has to be interpreted in this sense (RG. 76.283) that as a rule the legal relations between an illegitimate child and his (her) mother shall be determined by the law of the country of which the mother is a national.

The duty of the father of an illegitimate child to defray the costs of the maintenance of the child and his duty to reimburse the mother for expenses caused by pregnancy, confinement and maintenance shall be judged by the laws of the country to which the mother is a national at the time of the child's birth it is not allowed, however, for a claim to be made for more than is justified under the German laws. (Art. 21 EG BGB).

Under the Polish international Private Law the relation between an illegitimate child and his (her) mother shall be judged by the laws of the country of which the mother and the child are nationals or, should they later become nationals, of two different countries, by the laws of the country of their last mutual citizenship. (Art. 20).

The establishment of illegitimate fatherhood and the mutual rights and duties between the father and the child or between the father and the mother are determined by the laws of the country of which the mother and the child were nationals at the time of confinement. But if at that time both the illegitimate father and the mother have their domicile in Poland, Polish law has to be applied if it is more favourable to the child (art. 21).

The legal relation of an illegitimate child to his (her) stateless mother residing in Germany shall be determined by German laws (Art. 29 EG BGB).

#### *B. Position of an illegitimate child under the German Law*

In relation to his (her) mother and her family an illegitimate child has the legal status of a legitimate one (para. 1705 BGB).

An illegitimate child bears the name of his (her) mother. The husband of the mother may give the child the right to bear his



name. Consent of both the child and the mother is necessary (para. 1706).

According to para. 35 Reichsjugendwohlfahrtsgesetz the Jugendamt is the guardian of an illegitimate child. The Guardianship Court may, however, upon application appoint an individual guardian if such arrangement is consistent with the child's welfare (40 RJWG). The mother or the father may be appointed guardian.

Under the German Law in illegitimate child and his (her) father are not considered to be related with each other (para. 1589).

It is presumed that a man is the father of the child if he cohabited with the mother within the period between the 302 and the 181st day preceding the child's birth. This presumption may be refuted if it can be proved that it was obviously impossible that the child could originate from this cohabitation or that the mother cohabited also with other man (*exceptio plurium concubentium*). The second exception cannot be made use of by a person who, after the child's birth, acknowledged that he was the father in an official document made out before an Amtsgericht, a notary or the Jugendamt (para. 1718 BGB, 43, RJWG). Such acknowledgement does not deprive the person who has signed it, of the right to deny cohabitation or the right to submit evidence that it was obviously impossible that the child could originate from this relation.

The mother of an illegitimate child may claim from the father the reimbursement of expenses caused by the confinement, the maintenance costs for six weeks after the child's birth and expenses caused by pregnancy even if they fall beyond the six weeks period. The mother can claim the normal amount of such costs or expenses irrespective of the amount of expenses actually made (para. 1715). This father is obliged to pay for the maintenance of the child, until it is 16 years of age. In some circumstances this duty continues beyond that period (para. 1708).

The admissibility under the German law of a court action for establishment of an illegitimate fatherhood is debatable. It has to be made clear that although the question of fatherhood has to be considered in the course of the court proceedings instituted

as a result of a maintenance claim, this question formally still remains open even if the person concerned was ordered to satisfy the claim.

G. *The position of an illegitimate child under the Polish Law*

Under the Polish Family Law of 1946 the mother as well as the child may bring an action for establishment of the illegitimate fatherhood (art. 46). The person who cohabited with the mother within the time of conception is presumed to be the father of the child. This presumption may be refuted by the evidence of facts showing considerable doubts as the fatherhood of the person concerned (art. 47). The fact that during the period of conception the mother had intercourse with another man does not make the establishment of fatherhood legally impossible (art. 48).

If the child is maintained by a public institute the social welfare authorities may bring an action for the establishment of fatherhood, unless the mother of the child or his (her) legal representative has already done so.

In relation to the mother and her family the child has the status of a child born in wedlock (art. 51). The child bears the family name of the mother. At the request of the child the court when establishing the fatherhood may give the father's name to the child provided that the mother does not object (art. 52). The father may with the mother's consent give his name to the child by making a declaration before a civil registry office (art. 53).

The child has no right of inheritance in respect to its father or his family (art. XXVII) (1) of the introductory regulations to the Family Law.

The mother exercises parental authority over a child born out of wedlock (art. 62).

The father is obliged to cover the expenses of the confinement and of three months' maintenance of the mother, which period may be extended in certain circumstances (art. 54). He is also obliged to provide for the maintenance of the child jointly with the mother (art. 56).

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