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Nadia Cerasela ANIȚEI

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THE FILIATION OF THE CHILD BORN OUT OF WEDLOCK IN ROMANIAN PRIVATE INTERNATIONAL LAW

Nadia-Cerasela ANITEI¹

Abstract

The legal origin of the provisions referring to the filiation of the child born out of wedlock in Romanian private international law lies in S.2605 and S.2606 Civil Code.

*S.2605 of the Civil Code with the marginal name "**Applicable law**" provides: "The filiation of the child born out of wedlock is established according to the national law of the child from the date of birth. If the child has several citizenships, other than the Romanian one, the law of the citizenship which is most favourable to him/her is applied. (Paragraph 1) The law provided in (1) shall apply in particular to the recognition of filiation and its effects, as well as to the challenge of recognition of filiation. " (Paragraph 2)*

*S.2606 of the Civil Code, with the marginal name "**Father's liability**", provides: "The mother's right to demand that the father of the child born out of wedlock be liable for expenses during pregnancy and childbirth is subject to the mother's national law."*

The article aims to show which is the law that governs the filiation of the child born out of wedlock and which is the law that governs the father's liability.

Keywords

Child; mother; father; the law governing the filiation of the child born out of wedlock; the law governing the father's liability; Romanian Civil Code.

¹ PhD Professor, Faculty of Law, Social and Political Sciences, "Dunărea de Jos" University, Galați, Romania, e-mail: nadia.anitei@ugal.ro; ncerasela@yahoo.com

1. The law applicable to the filiation of the child born out of wedlock

From the provisions of S.2,605 (1), thesis (I) of the Civil Code, we observe that the ***filiation of the child born out of wedlock is governed by the national law of the child from the date of birth***. *The Romanian legislator applying the national law of the child from the date of birth (lex patriae), has solved the conflict of laws in favour of the old law, thus aiming to eliminate fraud in the law in the field.*

From the provisions of S.2,605 (1), thesis (II) of the Civil Code, we notice that ***if the child has several foreign citizenships, but not Romanian citizenship, the law that is more favourable to him/her applies***.

Research literature (Sitaru, 2013, p. 226) considers that the thesis (II), par. (1) from S.2605 of the Civil Code does not constitute an exception from thesis (I), par. (1) from S.2605 of the Civil Code, because in this field the national law of the child applies as well, except that, among the laws of several foreign citizenships that the child has, the one that is more favourable to him/her is preferred (*mitior lex*).

However, the solution of applying the more favourable law is an exception to the provision provided by S.2.568 (2) of the Civil Code according to which, the national law of the foreigner who has several citizenships is the law of the state the citizenship of which she/he holds and to which he/she is most closely related, especially through his/her habitual residence (Sitaru, 2013, p. 226; Diaconu, 2019, p. 187).

The doctrine (Sitaru, 2013, p. 226) states that *"in case of a child with several foreign citizenships, the location of his/her out of wedlock filiation within the scope of the law where he/she has his/her habitual residence has been waived and the application of the foreign national laws that best meets the child's interests has been applied."*

The character of *"law more favourable to the child"* is qualified by the court of the forum according to the general rule established by S.2558 Civil Code.

2. The scope of the law applicable to the filiation of the child born out of wedlock

The scope of application of the law of filiation of the child born out of wedlock is regulated, in principle, by the provisions of S.2,605 (2) of the Civil Code. From these provisions it is observed that the national law of the child from the date of birth applies especially to the recognition of the filiation and its effects, as well as to the contestation of the recognition of the filiation.

Analysing this text, we find that the scope is not limited, because by using the adverb "especially" it is showed that it applies especially to the following situations:

a) recognition of filiation and its effects;

b) contesting the recognition of filiation but other situations may be taken into account as well.

Therefore, the scope of the law applicable to the filiation of a child born out of wedlock includes, in principle, the following situations (Sitaru, 2013, pp. 226-227):

1. Establishment of filiation

a. *The establishment of filiation with regard to the mother* takes into account the following aspects: the modalities and conditions for establishing the filiation in relation to the mother (including recognition), for contesting maternity, etc.;

b. *The establishment of filiation with regard to the father* takes into account the following aspects: the modalities and conditions for establishing paternity (including by recognition), the presumption of paternity, the legal time of conception of the child, etc ..

2. Recognition of filiation;

3. Contesting the recognition of filiation;

4. The effects of parentage take into account:

- *acquisition of the name by the child;*
 - *the obligation of the parents to support the child;*
 - *the obligation of the parents to educate him/her;*
 - *the obligation of the parents to administer his/her property;*
 - *to the maintenance obligation between the parents and the children*
- born out of wedlock, the special legislation according to S.2612 of the Civil Code which provides that "*The law applicable to the maintenance obligation is determined according to the regulations of EU law.*"

5. Establishing the paternity of the child born out of wedlock;

6. Presumption of filiation in relation to the alleged father born out of wedlock;

7. The limitation period for establishing out of wedlock filiation.

3. The law applicable to the father's liability

From the provisions of S. 2.606 of the Civil Code we note that the national law of the mother regulates the right of the mother to ask the father of the child born out of wedlock to be liable for expenses during pregnancy and for those occasioned by the birth of the child (S.428 Civil Code n.n.).

We note that the legislator takes into account the best interests of the child and provides maximum protection for the mother and can act by requiring the father of the child born out of wedlock to be liable for the expenses occurred during pregnancy and during the birth of the child according to its national law which is assumed he knows best and not according to the national law of the child.

In conclusion, the national law of the mother applies to the father's non-marital liability.

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