

VOLUNTARY PROCEDURE FOR ESTABLISHING PATERNITY UNDER THE LEGISLATION OF THE RUSSIAN FEDERATION

^aLEISAN NAFISOVNA KHASIMOVA, ^bBULAT ILSUROVICH YUSCAEV

Kazan Federal University, 18 Kremlyovskaya street, Kazan 420008, Russia

e-mail: ^ahasimov_1@mail.ru, ^brussia@prescopus.com

Abstract: Analysis of the procedure for establishing motherhood, existing in our country, leads to the conclusion that it is easy to prove the relationship of mother and child. Unlike the establishment of motherhood, the establishment of a link between a child and his or her intended father is a more complex procedure. On the basis of the analysis of the current civil and family legislation of the Russian Federation, based on the theoretical provisions on the legal regulation of the establishment of the origin of children, the mechanism of establishing paternity on a voluntary basis is studied, as well as a set of problems associated with its assessment, interpretation and application. The general methodological basis was the general scientific (dialectical) method of cognition, comparative legal, logical methods, which allowed to consider the problems of development of family legislation in the field of legal regulation of paternity in the Russian Federation. The article presents the authors' own views and analyzes the theoretical studies of scientists in this field.

Key words: parental legal relationship, rights of the child, establishment of paternity, presumption of paternity, birth registration.

1 Introduction

At the present stage of civilization development there are global transformations in all spheres of social life, economy and health care. The existing transformations do not detract from the relevance of one of the main family legal presumptions set out in paragraph 2 of article 48 of the RF Family Law: the father of the child is the mother's husband (under certain conditions, former or deceased) (Matveeva, 2014, p. 39).

In legal science, the voluntary establishment of paternity is regarded as a legal act on the part of the father of a child who is not married to his mother. The purpose of this legal act is to create a parental relationship between the father and the child.

According to V. M. Antokolskaya, voluntary recognition of paternity can be considered as a unilateral transaction (Antokolskaya, 2016, p. 240-243). From a legal point of view, such a judgment has the right to exist, because all the necessary conditions are met here. Thus, in the case of voluntary recognition of paternity, the person actually carries out the will, and acts without any coercion from anyone's side. This action generates legal relations.

Accordingly, these legal relations are also subject to the rule of legal capacity: the alleged father, recognized by the court as incapable, is deprived of the opportunity to recognize himself as the father of the child without the consent of a guardian or guardianship authorities (Krasnova, 2016).

2 Methods

The object of the study is the relationship to establish the origin of children under the legislation of the Russian Federation, in particular, the relationship to establish legally significant facts of paternity on a voluntary basis.

The subject of the study is the norms of family, civil, international private law of the Russian Federation, regulating the grounds and procedure for establishing paternity on a voluntary basis, as well as a set of problems associated with their assessment, interpretation and application. And also, judicial practice, special literature related to the research topic. The laws and regulations of the Russian Federation formed the regulatory basis for the work.

At the present stage of development of social relations, against the background of ongoing social changes in society and the liberalization of family values, there is a crisis of traditional family. Various forms of de facto marriages are becoming more common, and the number of children born out of wedlock is increasing. This is due to the weakening of the social role of

motherhood and fatherhood in the minds of modern parents. The theoretical and practical significance of the study of the issues of voluntary establishment of paternity is also high due to the fact that the problems of establishing paternity often arise in practice when using assisted reproductive technologies for both or one parent.

3 Results and Discussion

In accordance with the law, in order to establish paternity of a man who is not married to the mother of a child, the parents of the child must jointly submit an application to the civil registry office at the place of state registration of the birth of the child or at the place of residence of one of the parents of the child. This statement provides the basis for establishing the paternity of a particular person in respect of the child, therefore, must comply with the legal requirements.

Currently, the legislation allows send an application, drawn up both in traditional written form and in the form of an electronic document, which is sent to the registry office through the portal of unified public services. This greatly facilitates the document flow, however, the application made in electronic form must contain a simple electronic signature of the person sending such an application (Shumakova & Tabulawa, 2016, p. 161-164).

When submitting a joint application by the parents of the child, the father who is not in a registered marriage with the mother of the child, must confirm the recognition of paternity and attach supporting documents to the application. The mother's consent to paternity is also attached to the application. The significance of the mother's consent to paternity is that it prevents the recognition of paternity by a person who has nothing to do with the child. The mother of the child has the opportunity to protect the interests of the minor. Thus, if the behavior of the biological father clearly indicates that it can cause harm to the child, the mother has the right to prevent the recognition of paternity.

The statement states the following:

- surname, name, patronymic, date and place of birth, citizenship, place of residence of the person who recognizes himself as the father of the child; surname, name, patronymic, sex, date and place of birth of the child, as well as details of the birth certificate (when establishing paternity after the state registration of the birth of the child);
- surname, name, patronymic, date and place of birth, citizenship, place of residence of the child's mother; details of the record of the marriage act (in the case of the child's mother's marriage to his father after the birth of the child);
- surname, name, patronymic of the child after the establishment of paternity; details of documents certifying the personalities of the father and mother of the child.

If the parents make such an application before the birth of the child, it will be a confirmation of the consent of the future child's parents to assign him the surname of one of the parents, as well as the name.

The law provides for the conditions under which the father of the child has the right to apply alone: in the event of the death of the mother or her recognition by the court as incapable, in the event of impossibility to establish her location, as well as the deprivation of the mother's parental rights. The applicant in this case must obtain written consent to the establishment of paternity against him from the guardianship authorities.

If the guardianship authorities refuse to give consent to the establishment of paternity, the refusal can be challenged by the applicant in court.

If future parents have reason to believe that for any reason they will not be able to file a joint application to the civil registry office after the birth of the child, the law provides for the

possibility to establish the paternity of the child before his birth. As obstacles to the submission of a joint application after the birth of a child can be considered being at death, illness, a long trip of the father of the unborn child. In this case, the parents-to-be apply for paternity during the mother's pregnancy. The application shall be accompanied by a document confirming the pregnancy of the mother. In the presence of such statement the state registration of establishment of paternity is made simultaneously with the state registration of the fact of birth of the child.

In considering issues relating to the voluntary establishment of paternity, we have found that these are actions aimed at establishing a legal link between a child and a person who is not married to the mother of the child. However, the voluntary establishment of paternity, according to the family law, also refers to the recognition of the mother's spouse as the father of the child.

When establishing paternity by persons whose marriage is registered, the presumption of paternity applies. This means that the spouse of the child's mother is automatically recognized as his father, unless otherwise is proved. In order to register the mother's spouse as the child's father, it is sufficient to provide a marriage certificate.

The presumption of paternity pursuant to the provisions of the Convention "On the rights of the child" under the legislation of the Russian Federation is also valid during the period established by the RF Family Law. It is 300 days from the date of divorce, annulment or the death of the spouse of the child's mother. The father of the child, within the meaning of the legislator will be considered a deceased or former spouse of the mother of a minor. (Rabets, 2016, p. 21). For example, there are cases in practice when the child's mother went to court with the claim about an exception of the record of father, produced in Assembly record about a birth, because the father of the child was recognized as the mother's former husband, since the child was born within 300 days from the date of divorce. The court considered such a statement not contrary to the law.

Certain legal problems arise in determining the origin of children who were born with the help of assisted reproductive technologies (ART). In this case, there may be no genetic link between the child and the potential applicant parents. Who, then, should be recorded as the parents of the newborn? The family code of the Russian Federation regulates these legal relations as follows. Thus, if the child was born using the art method, so the persons who are married and have agreed to the use of artificial insemination or embryo implantation will be registered as the parents of the newborn.

In accordance with the position of the Supreme Court of the Russian Federation, there is no parental relationship between a child born using donor material and a donor. When challenging and (or) establishing maternity or paternity, the donor is not entitled to refer to the fact that he is the biological parent of the child.

However, such legal regulation is insufficient, as it creates certain legal gaps. In particular, there is no single answer to the question of whether a husband, who until his wife's pregnancy has given consent to the conception of her child with the help of fertilization of her gametes cells with the cells of the donor, can challenge the agreement in court, on the basis of the fact, that it had defects of the will. For example, articles 311-320 of the French Civil Code provide for this possibility (Corral, 2001).

Also, the issues of how to establish the origin of children who were born outside the Russian Federation with the help of human reproduction methods are not fully resolved. There is no clear answer to the question of which country's law should be applied. After all, the legislation of different states apply different approaches.

Moreover, there are States that oppose the development of art methods. There, the origin of the child is established only on the basis of the biological relationship of the child with his parents. In

some EU member States, there is no legal regulation of these relations at all (Rubellin-Devichi, 1996, p. 410).

Surrogacy is widely used in the world as a way to give birth to a child for infertile couples. The issues of surrogate reproductive tourism at the international level are very relevant. (Diel, 2014, p. 232).

Technological, social, moral, spiritual changes in the sphere of social relations entail the development of a new world concept of kinship, which is already woven into the legal doctrine and legislation that determines the procedure for establishing the origin of children. (Andorno, 2007, p. 100).

Natural-biological status of the parent is replaced by social status. However, these changes, as well as the ways and consequences of ART, raise many questions and are not fully accepted by European society (Cirillo, 1998, p. 665).

Within the meaning of the new concept of kinship, the intention of a man or woman to become a parent with the help of ART is fundamental. This intention is considered as the basis for establishing paternity and motherhood of biological parents (persons) who are parties to the contract on surrogacy. This intention is also crucial for the recognition of the paternity of a man who is not the genetic father of a child. (Todorova, 2010).

4 Summary

Within the meaning of paragraph 2 of article 17 of the Law on acts of civil status, a document confirming the fact and time of termination of marriage is the basis for establishing paternity. This document is also considered as a basis for entering information about the father of the child in the register of state registration of the fact of birth. Such documents may include, for example, a certificate of divorce, a court decision on the annulment of marriage, a court decision on the Declaration of a citizen as deceased, a certificate of the death of the mother's spouse. To overcome the presumption of paternity is possible only in court, namely in civil proceedings. For example, the court came to such a decision when considering an administrative claim for refusal to issue a birth certificate. According to the presumption of paternity, as the father of the child the former spouse of the mother is declared, even if the mother and the actual father of the child have submitted a joint application to the registry office.

At the same time, in practice, there may be situations in which the use of the presumption of paternity is very problematic. For example, when a marriage is dissolved because the husband is declared missing, the presumption is not valid even if the child is born within 300 days of the dissolution of the marriage. The position of the legislation is similar to the situation when a spouse cannot be the father of a newborn due to objective circumstances, for example, in the case of long-term separation.

For example, the mother of the child, whose father was recognized as the spouse of the mother on the basis on the presumption of paternity, filed a lawsuit to the court, indicating that the actual father of the child is another person. She does not live with the husband since 2003, and the marriage is officially terminated in 2014, that was proved in the court. Guided by the evidence presented, the court found it correct to satisfy the claim and amended the birth certificate.

Also, the legislator decided to establish paternity in respect of an adult person. This is important for the conditions and nature of the mutual rights and obligations of an adult and his or her parent (father), such as inheritance relations. In addition, there may be alimony obligations with an adult child, if paternity was established about him. For these reasons, as well as from the principles of justice, the RF Family Law allows such establishment of paternity only with the consent of an adult child.

5 Conclusion

In the Russian Federation, the issues of establishing paternity on a voluntary basis are regulated in sufficient detail, since the importance of legal relations generated by the establishment of paternity and its consequences can hardly be overestimated.

Under the current legislation, the formal preservation of family relations between parents at the time of the birth of a child is not a basis for entering information about the parent as the father of the child. The presumption of paternity is maintained by the absence of a legal dissolution of marriage. Even if at the time of the birth of the child the spouses have ceased family relations, or if the child is born as a result of infidelity of the spouse, the presumption of paternity is valid. Its effect is due to a legally registered marriage. Therefore, the father of the child will be recognized as the man who is legally married to the mother of the newborn at the time of the birth of the child.

In addition, under the current legislation, the voluntary establishment of paternity involves the filing of a joint application by parents who are not spouses. The law also specifically regulates situations relating to the possibility of the father of a child to apply for paternity alone, with the consent of the guardianship authority or the court, if the mother is dead, incapacitated, deprived of parental rights or her location is unknown.

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