

PROBLEM OF SETTLING MATERNAL LEGAL STATUS IN HUNGARY

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Abstract. The study is intended to present the changed Hungarian regulation related to the maternal legal status and the potential problems arising in connection with it.

The author presents the legal provisions of the maternal status stipulated by the Book Four on Family Law of the Act V of 2013 on Civil Code which entered into force 15th March 2014, including the administrative and judicial channels; furthermore, the study covers special issues in connection with the maternity, such as using incubators, giving birth in incognito and the substitute maternity – surrogate motherhood and problems which may arise in connection with them. Contrary to the paternity, the maternal status is not based on presumptions because - by the nature of birth - it can be usually decided clearly who the child's mother is: the one who gave birth to the child. So, the maternity is a matter of fact and it is not a presumption. So, taking the clarity of motherhood into consideration, legislator did not consider necessary to stipulate it in the legal regulation in the past. Now, the Civil Code states that the woman giving birth to the child shall be considered the mother of that child.

This clarification has significance in the assisted reproduction procedure in which ovum donor is used because in these situations woman who gives birth to the child and "the biological mother" are two different people.

The study focuses on the situations when maternal status may be at issue; furthermore, focuses on the methods of arranging these disputes and reasons why the legislator has considered necessary to define the legal definition of maternal status taking into account that the principle of „mater semper certa est“ is not unequivocal in any case.

Keywords: maternal legal status, reproduction procedure, substitute maternity, giving birth in incognito, establishing maternity by way of judicial process.

Introduction

The up-to-dateness of the topic can be attributed to the fact that in Hungary on 15th March 2014 the Act V of 2013 on Civil Code entered into force, in the Book Four on Family Law of which the regulation related to the maternal legal status got a profound regulation compared to the previous regulation. In connection to this, I examine the changed regulation related to the maternal legal status from a substantive and procedural law point of view, and the potential problems which may arise in connection with it.

The study covers special issues regarding maternity such as using incubators, anonymous birth, the question of substitute maternity and surrogate motherhood and problems which have arisen in this field.

The aim of the research is to analyse the question in which situations the maternal status may be at issue, what kind of methods for arranging these disputes are available, and the reasons why the legislator has considered necessary to define the legal definition of maternal status.

The research object is the maternal status.

Research methods are as follows: analysis of scientific literature, analysis of legal acts, statistical analysis, systematic and comparative analysis, specification and generalization, logical abstract.

Legal status of mothers

Contrary to the paternity, the maternal status is not based on presumptions, because – by the nature

of birth - it can be usually decided clearly who the child's mother is: who gave birth to the child. So, the maternity is a matter of fact and it is not a presumption. So, taking the clarity of motherhood into consideration, legislator did not consider necessary to stipulate it in the legal regulation in the past. But now, the Civil Code states that the woman giving birth to the child shall be considered the mother of that child. (Civil Code Section 4:115 (1))

This clarification has significance in the assisted reproduction procedure in which ovum donor is used (Szeibert 2013). In these situations woman who gives birth to the child and "the biological mother" are two different people.

Hereinafter, the study focuses on the situations when maternal status may be at issue; furthermore, on methods of arranging these disputes and reasons why the legislator has considered necessary to define the legal definition of maternal status.

Maternity in case of child who was exposed, found or placed in incubator

Nowadays, giving birth in hospital is the most common way of childbirth. In this case the institutional frameworks and the administrative duties associated with the health service insure that the woman giving birth and the fact of birth can be verified. For the planned case of giving birth outside the hospital – commonly known as home birth – special legal regulation (Government Decree No. 35/2011 (21st of March) on professional rules, conditions and ground for refusal of giving birth outside hospital) defines the necessary conditions, the profes-

sional requirements and the administrative tasks associated with the birth.

There may be exceptional situations when mother's personality is not clear, for example in case of child exposed or found – when parents are known – or when the mother identifies herself with false, stolen or borrowed identity card during childbirth.

In the latter case mother's false data will be recorded in the birth certification, so the identification means the real problem. Registration including inaccurate data can be arranged by way of administrative procedure during the registration procedure.

In case of child found, if the parents are not clear, fictitious parents will be registered (Act I of 2010 on registration procedure Section 61 (5) and Decree of Ministry of Public Administration and Justice No. 32/2014 (19th of May) on detailed rules on registration procedure tasks, Section 26 (2)) and both of maternal and paternal status will be unfilled. Furthermore, the child shall be seemed found also in the case when his/her mother does not identify herself at time of childbirth, either within 30 days from its announcement and leaves the child in the hospital without supervision (Act on registration procedure Section 61 (5)).

After finding children exposed or found criminal procedure shall be commenced; moreover, their adoption shall take place after determining suitability for adoption by the guardian authority.

Furthermore, we should talk about children placed in incubator. By using incubator the children may be saved whose parents cannot bring up or do not want to bring up them. Although, by using incubators human lives can be saved, until entry into force of the Act XXII of 2005 on amending certain acts in favour of newborns placed in incubator operated by medical institutions the former Criminal Code classified placing child in incubator as criminal offense of changing family status (Act IV of 1978 on Criminal Code (former Criminal Code) Section 193).

The legal regulation mentioned created such a legal environment which made situation of children placed in incubator in medical institution easier solvable by amending the Family Act with a provision according to which parental consent was not needed to the adoption in case of children placed in incubator in order to bring up them by other person (Act IV of 1952 on Family Act Section 48 (5) c)).

The Civil Code also includes this provision (Civil Code Section: 4:127 (1) e)) ensuring a six-week long “cooling-off period” for the parents to reclaim the child placed in incubator, so “waiver made by implicit conduct may be revoked”.

The abovementioned rule on the adoption made it possible that mother's known personality – by the nature of childbirth – remained unknown *and the maternal status became unfilled*. Lack of mother re-

sults that the presumption of paternity shall not be applicable, so family status of child placed in incubator remains unsettled in full, but presumption of parental consent to the adoption ensures that the child may grow up in a family.

In terms of protection of life the legal solution mentioned seems unproblematic, but using incubators raise several ethical and legal questions which were reflected in the investigation carried out in 2012 by the Commissioner for Fundamental Rights (Report made by the Commissioner for Fundamental Rights in case No. AJB-5441/2012 available:

<http://www.ajbh.hu/documents/10180/111959/201205441.pdf>).

If we focus on issues existing in the field of family law, one of the central controversial questions is the consent to the adoption or its absence. Taking into account that being anonymous is one of the essential elements of placing in incubator, it shall not be revealed who has placed the child in the incubator: the mother, father or other person, furthermore whether the parents agree. So, it is only a presumption that the child has been placed there by his parent in order to bring him/her up by other person.

Further problem is that the legal regulation requires parental consent to the adoption. Since it is unknown who has placed the child in the incubator, the question is whether “implied consent” of both parents may be presumed on the basis of placing child in incubator and expiring the six-week period thereafter.

In my opinion, the six-week period for reclaiming the child may solve such situations when the child has not be placed by the parent or the parent has not acted by his own choice. During this six-week waiting period parents may reconsider their decision and resolve their situation in life which has forced them to abandon their child.

So, taking into account that a parent who places his/her child in incubator does not commit criminal offense and adoption does not require the parents' consent, arranging situation of child placed in incubator has become easier.

From registration point of view, children exposed, found and placed in incubator are not different. In case of infants put in incubator or other places, fictitious parents will be registered in the birth certification if parents' personality remains unknown.

Giving birth in incognito as an option

During social debates in connection with using incubators; furthermore, in the investigation carried out in 2012 by the Commissioner for Fundamental Rights mentioned possibility of introducing giving birth in incognito and anonymous prenatal care was arisen. According to the supporters of giving birth in incognito this option is more efficient than placing in incubator: childbirth itself would take place

under medical supervision, however incubators are found in small number in the country, and theoretically giving birth in incognito would be possible in all hospitals.

In Hungary there has been an attempt to introduce giving birth in incognito, but the bill related (Bill No. T/10326, available:

<http://www.parlament.hu/irom39/10326/10326.pdf>)

has not been adopted so far. The bill would have made possible to place infant in safe place ensuring the fast finding and care in case of lack of incubator. In connection with giving birth in incognito the bill stipulated that mother's data should be managed by the hospital in order to control the medical insurance and mother's consent to the adoption – which could be revoked until children's age of six weeks – should be included in a separate statement.

Giving birth in incognito exists in several foreign countries (French, Austria, Czech Republic, Greece, Luxembourg) where mother's personal data are usually managed separately (for example mother shall put the document containing her data in a closed envelop) and mothers shall abandon their child in a separate statement. Most countries determine a period during which mothers may change their will in order to bring their child up or may participate in open adoption procedure in order to adopt child by other relative.

So, by introducing giving birth in incognito, the legal environment will be similar to the placement in incubator but – taking the examples of foreign countries into account – mother should give her consent to the adoption. It raises the questions: if mother's personality may be considered as unknown in possession of such legal statement; furthermore, if child's family status is not arranged in full and fictitious parents may be registered in the birth certification knowing the date and place of birth. If we focus on the significance and name of this possibility, the answer for all three questions is yes; and statements needed to the adoption – even if it includes the blood mother's personal data – may be considered a document which shall be used exclusively during the adoption.

Maternity in case of assisted reproduction procedure Reproduction procedure

Assisted reproduction procedure refers to medical methods, interventions in which insemination in order to have child happens with medical assistant and not or not in full in natural way.

In Hungary the Health Act includes the types of reproduction procedure, general conditions of their use; furthermore, the rules on donating human gametes and embryo. Detailed rules on the reproduction procedure and the right to dispose with hu-

man gametes and embryo are included in Decree No. 30/1998 (24th of June) of the Ministry for National Economy (Hereinafter: Decree of the Ministry for National Economy) on carrying out special procedures intended to reproduction procedure, dispose of human gametes and embryos and their frozen storage Spouses, partners of opposite sex and single women can participate in reproduction procedure if they cannot have children in natural way most probably. The procedure is initiated at the request contained in the private document of full probative value which is completed with information derived from physician carrying out the intervention and applicants' joint statement of consent (or the single woman's statement of consent). The procedure itself takes place on the basis of mentioned.

Who shall be considered mother in case of reproduction procedure?

From family legal status point of view participants' statement of consent has decisive effect on formation of presumption of paternity, but mother also shall give her statement of consent. However, mother's status establishes by giving birth and it does not create by making the statement.

Development of medical science ensures that both the woman's ovum who wishes child and other woman's ovum or embryo can be used in the reproduction procedure. Therefore, biological "mother" and mother giving birth and bringing up the child are separated from each other.

It is at issue: if the woman who gives birth and the genetic mother are not the same people, who shall be considered mother. In case of donating ovum or embryo who shall be considered mother legally: the donor or the woman who gives birth.

Essence of donating ovum and embryo is to help women who cannot have child in natural way. So, the essence of this possibility would terminate if donor also was entitled to mother status. The Family Act did not include that woman giving birth should be considered mother, but in connection with action for judgement of maternity it stipulated that if the origin was consequence of reproduction procedure, establishing maternity by way of judicial process should not be initiated against the woman who had donated human gametes or embryo (Family Act Section 39 (3)) The Family Act did not include any provision for the right of woman donating ovum or embryo to sue for establishing own maternity.

At time of creating the Civil Code, it was important to stipulate that woman giving birth to the child shall be considered the mother of that child. Taking into account that the Family Act excluded establishing maternity against only the donor, theoretically the donor woman would sue for establishing her maternity by way of judicial process. So, the Civil

Code stipulates that no action may be brought by a woman who made a donation of gamete or embryo for the procedure (Civil Code Section 4:115 (4)).

Substitute maternity

“Decision” of maternity may arise in case of surrogate maternity – which is not legally ruled in Hungary. Essence of this solution existing among reproduction procedure that a woman gives birth and “wishing parents” bring the infant up as own child. There are several variations for the child’s biological origin; it is also possible that new life is created by inseminating substitute mother’s ovum. So, it is possible that substitute mother giving birth is in biological relation with the child. Independently from origin of gametes, in case of surrogate maternity using expression of “who gave birth” to fill the maternal status is not clear.

In case of using or banning/allowing this possibility its specific rules and name are different in the countries. Where the legal regulation is better worked out, expression of surrogate mother or gestational mother is used; but, for example, in Germany, where the surrogate maternity is prohibited, it is called Ersatzmutter or Leihmutter (Navratyil 2012). In Hungary expressions of “dajkaanya” and “béraanya” exist; the former refers to selfless help undertaken without compensation which was included in the Health Act as well (Health Act Section 183 (2)), the latest one covers the woman who undertakes to give birth for compensation.

In Hungary the original text of the Health Act (Health Act, Section 183 and 184 which did not enter into force) would have regulated the substitute maternity as “dajkaanyaság”. Only spouses and partners of different sex would have been entitled to this possibility by implanting embryos created with their own human gametes. The Health Act stipulated three alternative conditions for the woman who wanted to take part in the procedure: inability to pregnancy bodily of woman giving ovum; pregnancy would endanger her life or physical integrity or in case of implanting embryo is not likely to be born a healthy child from the embryo.

The Health Act included conditions for the “dajkaanya” too: she should be close relative of one of the members of the couple creating the embryo (This time definition of close relatives was included by the Section 685 b) Act IV of 1959 on Civil Code (hereinafter: former Civil Code)); furthermore, she should be a person of legal capacity and suitability for giving birth healthy child; moreover she should have at least one life-born child; finally should be at least 25 and under 40 at time of implanting the embryo.

Procedure would have been used in possession of permission defined in the ministerial decree and specialist proposal; the permission would have be-

en given on the basis of spouses’/partners’ joint request and statement of consent given by the woman undertaking the pregnancy. In case of marriage or cohabitant partnership the spouse or partner of “dajkaanya” also should have given general statement of consent under the Health Act. Medical information for parties and thereafter their statement of consent would have been necessary to start the invention.

The Act excluded using pregnancy of “dajkaanya” for consideration or on a business basis and included: consideration for carrying embryo deriving from other’s human gametes shall not be asked or given; furthermore, prohibited encouraging advertisement of the pregnancy of “dajkaanya” and promotion of the procedure in other way (Health Act Section 184 which did not enter into force).

So, in case of pregnancy of “dajkaanya”, the legislator would have legally considered mother whose ovum had been used in order to create embryo.

The provisions of the Health Act would have entered into force 1st January in 2000. It did not happen and the rules were completely removed from the Act by the amending legal regulation (Act CXIX of 1999 on modifying Acts on state organisation, real estate register, health care and fishing). The Constitutional Court adopted its Decision 108/B/2000 on reviewing constitutionality of amending legal regulation and violating the Constitution by nonfeasance because of lack of enforcement and family law rules of the legal institution at issue. The Constitutional Court did not consider the repealing legal regulation unconstitutional on formal grounds and did not declare a conflict with the Fundamental Law.

Taking the Decision No. 750/B/1990 into account, the Constitutional Court highlighted that there does not exist such a fundamental right relating to the artificial insemination to which everybody could be entitled without discrimination.

Several civil organisations dealt with this issue; furthermore the ombudsman carried out an investigation in connection with it and the lack of regulation (OBH 34449/2005 and OBH 6369/2008) which – similar to the new Civil Code - did not changed the legal environment; in Hungary requisition of “dajkaanya” is not permitted. Legal definition of mother excludes that a woman asking another woman to be pregnant and to give birth instead of her may be considered mother.

However, it is possible that “the genetic mother adopts child given birth by another woman through open adoption” (Katonáné 2013). It is needed to highlight that for the case of donating ovum for a specific person the Health Act determines the scope of persons for whom donor may offer ovum (Health Act Section 171 (4)).

So, if in Hungary parties concluded an agreement for mandating “dajkaanya” – over the cri-

minal law consequences and question of validity and enforceability of the contract - "dajkaanya" would be the child's mother legally and her husband would be the father. If the insemination was carried out with human gametes of the "wishing father" (Navratyil uses „wishing parents" under the German „Wunscheltern" (2012), he could not sue for husband's alleged paternity ruled out and establishing own paternity on basis of rules on plaintiff legitimisation arising in connection with appealing against the presumption or on basis of being donor. Furthermore, the "wishing mother" would not be entitled to sue even if her own ovum has been used because of the prohibition to bring an action stipulated for donors. This situation could be solved only through the open adoption (Navratyil 2012).

In several foreign countries reproduction procedure abovementioned exists, but rules of participation are different. It is possible that there is not any biological relationship among the child and "wishing parents"; furthermore, we can find such regulation which allows substitute mother to ensure ovum needed to the procedure. Foreign bibliographies call full substitute maternity when embryo is created with human gametes of "wishing parents". If substitute mother ensures ovum, it is called partial or genetically substitute maternity (Navratyil 2012).

Taking the „mater semper certa est" into account legal rules of maternal status shall be stipulated for both cases when there is biological relationship among the "dajkaanya" and the child and when this kind of relationship does not exist among them. In countries which allow this possibility, the following legal solutions exist for the maternal status. According to one of them, the "wishing mother" shall be considered child's mother without special procedure. Several countries use a control element which is the court in usual: courts control the legality of agreement concluded by the parties and declare the parental status of "wishing parents". The third solution is in connection with the adoption. In the latest case the "dajkaanya" is the child's mother but the "wishing mother" adopts the child after giving birth (Navratyil 2012).

Suit for judgement of maternity

The study has already revealed that maternity is a question which can be decided easily. If the genetic mother and the mother giving birth is not the same person, according to the Civil Code woman giving birth shall be considered the child's mother. For such rare case when mother is not known or her personality is debatable, establishing maternity by way of judicial process is offered by the law.

The Family Act included rules on action for a positive declaration according to which the child – or in case of his death, his descendent – could ask

the court to declare the person designated as mother. Action for judgement of maternity could be initiated by the person who identified herself as mother (Family Act 40 (1)-(2)). The Civil Code includes similar rules on the action for a positive declaration. As a new element – which has been already mentioned in connection with the reproduction procedure – the Civil Code excludes that woman donating ovum or embryo brings action for own maternity.

May courts declare that the woman registered in the birth certification is not the child's mother? In the specialized bibliography it is known as action for a negative declaration. The Family Act did not regulate it, but specialists considered that this kind of action could be initiated as well (Csiky-Filo 2003). The Civil Code regulates separately the action for a negative declaration: the child, or his/her descendant after the child's death, or the natural mother may bring action requesting the court to establish that the person shown in the registry of births as the mother is not the woman who gave birth to the child, provided that the wrong entry of maternity cannot be remedied by way of an administrative procedure (Civil Code Section 4:116).

What are the typical cases of the action for judgement of maternity?

If the mother is unclear because the woman giving birth has presented other's personal documents or false ones, mother's real identity will be at issue. If the identity becomes clear, registration in birth certification may be remedied by way of an administrative procedure instead of judicial process. If mother's personality is not be arranged by way of an administrative procedure, action for a negative judgement of maternity can be initiated and real owner of the stolen identity card will be the plaintiff.

In case of child exposed or found, fictitious parents will be registered into the birth certification. If the mother occurs for the child, after acknowledging maternity, clarifying mother's identity and circumstances of giving birth and pregnancy (pregnancy book, medical reports and certifications) real mother's data may be registered into the birth certification. If mother's personality is at issue, "supposed" mother will have the right to initiate action for judgement of maternity.

Moreover, establishing maternity by way of judicial process may ensure solution for cases when a mother or a child states that children exchange has happened after giving birth.

Rules of bringing suit, respondents in maternity suit and legal effects of any change in maternity

Civil Codes includes separate rules on maternity suit: on bringing suit by the entitled party in person,

respondents in maternity suit and legal effects of any change in maternity. Rules on suit to establish origin are stipulated by the Code of Civil Procedure, but several issues – such bringing suit by the entitled party in person which has been already included by the Family Act - are regulated by the family law. In connection with bringing suit by the entitled party in person it is stated that a minor of limited legal capacity or any person whose capacity in respect of making legal statements relating to descent has been partially limited shall be entitled to bring action with the consent of his/her legal representative. If the legal representative is unavailable for any extended period of time to give consent or refuses to consent, the guardian authority may do so in his stead. If the entitled party is incompetent, the action may be brought in his/her name by the legal representative with the guardian authority's consent (Civil Code Section 4:117 (1)-(3)).

If the plaintiff is the child or his/her descendant, the action shall be brought against the mother or the person shown in the registry of births as the mother. If the plaintiff is the mother, respondent shall be the child or the person shown in the registry of births as the mother. Taking into account that change in maternity status basing on the woman's marriage has an effect on the presumption of paternity, according to the experts, suit shall be brought against the husband whose presumption of paternity may be effected by the maternity suit (Koros 2007). So, the Civil Code stipulates that the husband who is to be considered the father of the child by way of presumption based on wedlock shall also be named as defendant in the action. If the party against whom the action is to be brought is no longer alive, the guardian appointed by the court shall be named as the defendant in the action

(Civil Code Section 4:118 (1)-(4)).

According to the Civil Code if descent results from a reproduction procedure, maternity may not be established by way of judicial process against a woman who made a donation of gamete or embryo for the procedure.

In connection with the event of any change in maternity, the Civil Code stipulates that the child shall have the option to decide to take up the name of his/her biological mother or to keep his/her existing surname (Civil Code Section 4:118 (5)).

Effect of results of maternity suit on paternal status

By changing maternal status in the maternity suit, paternal status may change as well if the presumption of paternity bases or based on the woman's marriage (her subsequent wedding). If the women registered into the birth certification is not be considered the child's mother, presumption of paternity basing on mother's marriage or (subsequ-

ent wedding) shall not be applied. In an averted position, if maternity is declared by the way of judicial process, mother's marriage will create presumption of paternity against the husband.

In my opinion – theoretically – change in paternal status may occur in case of presumption of paternity which is based on perfect statement of paternity because this kind of statement shall include the mother as well; man has made statement of paternity for a child given birth by a defined person.

Furthermore, mother's consent is needed to the perfect statement. If the court declares in final judgement that the woman registered in the birth certification is not the child's mother, it may have effect on presumption of paternity basing on the perfect statement of paternity.

Conclusion

1. Studying the subject, it was proved that the principle of „mater semper certa est“ does not seem to be unequivocal in every case.
2. The Civil Code makes it clear that the woman giving birth to the child shall be considered the mother of that child – which definition in the past could only be deduced from the legal system. This situation being clear at first sight includes need for further legal development to help life circumstances of people, in particular in connection with creating the legal conditions of giving birth in incognito and permitting substitute maternity.
3. In my opinion, in the future legislation's tasks will be to create safe conditions for previous period of giving birth in incognito - not only for following it -for the mother and her child. Give birth in incognito in hospitals shall be ensured taking into consideration that women who want give birth in secret often use false personal documents as solution for these kinds of events because they have not other possibility for hospital care.
4. The lack of regulation raises many practical problems: in many cases, women intending to give birth in secret, trying to avoid negative consequences, often use false personal documents, as it is their only chance to receive health care. It can cause further problems in connection with determining the child's origin. This may be solved by institutionalization of anonymous birth, and by rethinking the former bill addressing the issue that has been rejected.
5. Further issue in connection with the reproduction procedure to be solved – although the Act CLXXXI of 2005 ensured to lift the anonymous donation of human gametes (ovum) in certain circumstances and to take part in assisted reproduction procedure for single women under certain circumstances – is the regulation of pre-

gnancy of “dajkaanya” which affects more branches of law. For this regulatory work origin text of the Health Act and the international practise may be starting point.

6. However, it is unmistakable clear that the question of surrogate motherhood cannot be considered relevant in the Hungarian circumstances.

References

1. Csiky, F. (2003). Magyar családjog, HVG-ORAC Lap-és., Budapes: Könyvkiadó Kft.
2. Katonáné, N. (2013). In: Polgári jog III/IV. kötet - Családjog, (szerk. Dr. Kőrös András), HVG-ORAC Lap-és., Budapest: Könyvkiadó Kft.
3. Kőrös, A. (2007). Családjog kézikönyve (szerk. Dr. Kőrös András), HVG-ORAC Lap-és. Budapest: Könyvkiadó Kft.
4. Navratyil, A. (2012). A varázsló eltöri pálcáját? A jogi szabályozás vonulata az asszisztált humán reprodukciótól a reprodukív klónozásig. Budapest: Gondolat Kiadó.
5. Szeibert, P. (2013). Az új Ptk. Családjogi Könyvének rendelkezései, II. rész, In.: Jegyző és Közigazgatás 2013/5. 1.
6. Report made by the Hungarian Commissioner for Fundamental Rights in case No. AJB-5441/2012 Available: <http://www.ajbh.hu/documents/10180/111959/201205441.pdf>
7. A T/10326. számú törvényjavaslat, letölthető: <http://www.parlament.hu/irom39/10326/10326.pdf>
8. Bill No. T/10326, available: <http://www.parlament.hu/irom39/10326/10326.pdf>

GINČŪ DĒL VAIKO MOTINOS TEISINIO STATUSO PROBLEMAS VENGRIJOJE

Santrauka

Žvelgiant į Vengrijos šeimos teisės įstatymų raidą, kaip 15 metų kodifikavimo proceso rezultatą galima išskirti 2013 m Civilinio kodekso įstatymą V, kuris yra svarbus įvykis Vengrijos šeimos teisės sistemoje. Naujasis Vengrijos Civilinis kodeksas apima šeimos teisės normas. Šeimos teisė kaip savarankiška teisės šaka integruojasi į klasikinę civilinę teisę. Rengiant šeimos teisės įstatymus buvo tikimasi atitikti nacionalinius ir tarptautinius reikalavimus bei atsižvelgiant į socialinius ir ekonominius pokyčius, taip pat buvo dirbama, atsižvelgiant į gausią teismų praktiką. Šeimos teisinis statusas ir pats motinystės statusas buvo taip pat paveiktas įvairių socialinių ir ekonominių pokyčių. Straipsnio autorė pateikia teisinės motinos statuso formavimosi nuostatas ir jos nustatymo – išimtiniais, taip pat pavyzdžių, kada motinos statuso nustatymui reikalaujamas administracinis ir teisminis kelias. Straipsnyje taip pat analizuojamos situacijos, susijusios su motinyste, taip pat pateikiami tokie pavyzdžiai ir atvejai, kai naudojant inkubatorių, gimdoma inkognito, aptariama pakaitinė motinystė - surogatinė motinystė ir iš to kylančios problemos šiose srityse. Straipsnio autorė taip pat pateikia siūlomus sprendimus. Raktiniai žodžiai: motinos teisinis statusas, reprodukcija, pakeista motinystės, gimdymas inkognito, teisminis procesas, nustatant motinystę.

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