

UDC: 347.632:340.13(497.22)

## LEGAL PRINCIPLES FOR ESTABLISHING PATERNITY – GENERAL REVIEW

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### Abstract:

The article suggests the amendments made in the Civil Code of Georgia which is concern the issues of legal regulations on establishing paternity for illegitimate children. According to this law, for establishing paternity it is mandatory to make the biological and anthropological medical research, the so called DNA analysis which specifies genetic information.

The mentioned article outlines quite clearly the opinion how important it is to determine the issue of paternity for a child and lonely mother in order a child's rights to be protected in future from legal and moral viewpoint.

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### I.

Marriage occupies the important place in human life. It gives origin to new life. Family is the first cell for uniting society. It includes the union of spouses, their relations and responsibility towards each other, children, surrounding people and society. According to the Article 36 of the Constitution of Georgian, the government assists the family welfare.

Unfortunately, in the last period the number of illegitimate children has increased significantly. Consequently, the number of lonely mothers has increased recently in Georgia. On average about 3000 babies are left in care of only mothers.

In Georgia, where marriage is greatly appraised, lonely mothers feel very humiliated. In most cases mother is not able to protect her own rights. According to statistics, the percentage of the birth facts of illegitimate children is rather big. Relevantly, the number of lonely mothers is rather alarming. It is also important that ascertainment of the origin of illegitimate children makes lots of problems for children as well as their mothers. And those men who start the relationship without marriage have to realize well that after a baby is born, they have to take the responsibility of a father.

According to the current legislation, different rules apply to establishing paternity for legitimate and illegitimate children. The article discusses the case related to the fact of

establishing paternity when parents are not in registered marriage. To establish paternity for illegitimate children the legislation considers certain principles and procedures for legal regulation.

There are often cases when a child is born illegitimately; it is possible that parents be married in church but not registered according to the rule established by the legislation. According to the first part of the Article 1190 of the Civil Procedural Code, the origin of an illegitimate child is ascertained if both parents submit the relevant application to the territorial service if the Agency.

According to the Article 1197 of the Civil Code of Georgia, a child has the right to live and be brought up in the family. Parents are authorized and obliged to bring their children up, take care of their physical, mental, spiritual and social development; to bring them up as honored members of society.

Existence of both parents is necessary for all children to be brought up in harmony and all of them have the right to have both parents. According to the law, the government is obliged to ensure children's conditions. Nowadays, one of the most important problems that Georgia faces is to overcome the difficulties in the demographic development of the country and find the right ways to solve the problems.

The circumstance which is related to the fact of paying great attention to the norms and principles of protecting human rights by the international organizations is pretty welcoming which, in its turn, is reflected in various types of contracts, declarations, resolutions and conventions. Among them should be distinguished the principles of recognizing women's rights and gender equality which still remains a problematic issue.

In the article is discussed the case when a father of an illegitimate child denies paternity and thus breaches a child's right.

For the purpose of establishing paternity the court often addresses the expertise. There are several kinds of expertise: graphic, forensic, urological, etc. The graphic expertise is appointed to identify whether an individual is the author of the card according to which established, according to which paternity is recognized. Forensic expertise is more often appointed for establishing paternity. Biological expertise identifies the blood group and paternity. Urological expertise is appointed when a defendant denies paternity for the reason of his sterility.

Recently the nongovernment organization "National Network of Protecting from Violence" - worked out the project which considers the establishment of paternity on the basis of DNA analysis, according to which the second parent takes the obligation of bringing

up a child. The Parliament of Georgia discussed the mentioned project and made certain amendments in it considering the existing flaws in the Article 1190 of the Civil Code of Georgia. In December 9, 2011 it was finally enacted. According to this regulation, the issue of establishing paternity is ascertained by the biological (genetic) or anthropological analysis; the issue of establishing paternity is solved by the court.

In the process of working on the regulation, the experience of European countries was studied. Establishment of paternity through the DNA analysis is acknowledged by the leading countries of the world. Namely, the DNA analysis is widely implemented in Germany and the USA.

Nowadays, there is the possibility of complex analysis of DNA (deoxyribonucleic acid). A child adopts half of DNA from mother and half from father that is based on the presumable comparison of the fragments of father's and child's DNA. Every individual has a unique genetic type. This is the polymeric molecule which carries genetic information. The DNA molecule is placed in the nucleus of a human's cell and a human's nuclear cell, no matter of what part of a body it is - hair, skin, saliva or other, contains one and the same genetic information what is called our genome. As a result of studying the genome, a human is identified, his or her genetic profile is determined, compared and the final conclusion is drawn.

This analysis is the serious evidence. In case father refuses to make DNA analysis, according to the Civil Procedural legislation, paternity is established on the basis of the relevant evidences and all the legal responsibilities are obliged to him, be it a child's alimony, inheritance or any other issues.

It became necessary to make some amendments as a woman who has given birth to an illegitimate child illegally suffers from discrimination. In this case all legal, psychological, economic responsibilities are taken by mother and father who does not acknowledge paternity takes no responsibility.

The mentioned amendments protect desperate lonely mothers from committing a crime. In most cases, mothers of illegitimate children leave them in maternity houses, sell them, make abortions, and even kill their children as they are afraid of the responsibilities towards them.

The mentioned amendments not only protect a child and his/her biological mother but also establish paternity. The adjudication made by the court will protect a child's interests as in this case it is a child who is unprotected.

The amendments made in the law oblige mother as well as father to share responsibilities towards their child equally as any individual has the right of having information about his or her origin. Consequently, an illegitimate child born has the right to know who his or her father or mother is.

The Civil Code of Georgia was adopted in 1997. Since then a lot of technologies have been implemented in the scientific field. This gives the possibility to get answers as accurate as 99.99%. The mentioned percentage exactly identifies a child's biological parents on both sides.

It should be mentioned that nowadays it is the possibility to make the complex DNA analysis. The DNA analysis is one of the most modern, reliable diagnostic methods. If paternity is not ascertained by the DNA analysis, the court takes into consideration the fact of cohabitation before a child was born or the fact of parents' mutual care and financial support of a child.

According to the mentioned law, all fathers have the right to be aware of the existence of their child. Consequently, adjudication should be made considering a child's interests not to violate his/her legal rights.

Thus, by making amendments in the law, the government of Georgia acknowledges the responsibility towards future generation, recognizes one of the most important rights of a child – develop harmoniously, be brought up and live in the family environment. The government also puts special emphasis on children left without parents' care protects their rights considering their interests. Consequently, the mentioned amendments will contribute to regulating children's and parents relations.

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