

# INTERREPUBLIC AND INTERNATIONAL REGULATION OF PATERNITY AND MATERNITY IN YUGOSLAV SOCIALIST LAW

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## I. INTRODUCTION

The necessity for the introduction of the interrepublic collision law arose with the year 1971 when the federal constitutional amendments from XX to XLII were issued, which established new relations between the federation, the republics and the autonomous provinces. The legal competence of the republics and provinces was extended so that each republic and autonomous province regulates its field of family law and others independently and originally, except those belonging under the exclusive competence of the federation. That was a reflexion of the achieved degree of development of a socialist, selfgoverning and social system and an expression of the democratization process in legislation and other fields.<sup>1</sup> Today we have eight different family law regulations in the SFR of Yugoslavia.<sup>2</sup> The interrepublic collision of laws and competences is therefore a new phenomenon in Yugoslav socialist law. In 1979 a federal Law on the settlement of collisions of laws and competences in status, family and inheritance relations was issued.<sup>3</sup>

For the first time in its law history the SFRY passed a law in 1982 which regulates international collisions and carries the name Law on the settlement of the collision of laws with the regulations of other countries in certain relations.<sup>4</sup> Yugoslavia settled the establishing of paternity and maternity also in some bilateral agreements signed with foreign countries.

## II. THE REGULATION OF PATERNITY AND MATERNITY IN INTERREPUBLIC COLLISION LAW

### 1. General

The Law on the settlement of collisions of laws and competences in status, family and inheritance relations from 1979 includes in its chapter III entitled " Law used in marriage relations and the relations between parents and children, adoptions and guardianship " in articles 22. - 28. the collision norms which are used in the relations between parents and children. The interrepublic collision law brings in article 28 a collision regulation which is used in establishing or contesting paternity and maternity.

1. Publ. in Ur. list SFRJ, No.29/1971 of 6.7.1971
2. The SFRY is composed of: the SR Bosnia and Herzegovina, the SR Montenegro, the SR Croatia, the SR Macedonia, the SR Slovenia and the SR Serbia, as well as the two autonomous provinces Kosovo and Vojvodina belonging in the composition of SR Serbia. Each republic and auton. province has its own laws in the field of family law.
3. Publ. in Ur. list SFRJ, No.9/1979 of 2.3.1979, further stated as: interrepublic collision law.
4. Publ. in Ur. list SFRJ, No. 43/1982 of 23.7.1982, further stated: collision law.

## 2. Collision regulations for the establishing and contesting of paternity and maternity

The collision norm from article 28 of the interrepublic collision law distinguishes the case when all parties are Yugoslav citizens from the case when the presumed father or the presumed mother is a Yugoslav citizen, but according to the regulations of international law the Yugoslav law must nevertheless be used. It must be stressed that this collision norm uses the expression presumed father or presumed mother for cases of establishing and for cases of contesting paternity or maternity.

In the first case, in which all parties are Yugoslav citizens, the law of that republic respectively autonomous province is used within which the presumed father respectively mother has his or her fixed residence.<sup>5</sup> If a person does not have the permanent residence within Yugoslavia then subsidiarily the law of that republic is used of which he is citizen.<sup>6</sup>

In the second case, in which the presumed father resp. mother is not a citizen of Yugoslavia, but according to regulations of international law the Yugoslav law must be used<sup>7</sup>, the law of that republic resp. autonomous province is used within which the presumed father resp. mother has his or her permanent residence.

The primary points of connection are thus equal in both cases i.e. the permanent residence of the person who is presumably the father resp. the mother. The subsidiary point of connection is in the first case the republican citizenship of the person who is presumably the father resp. the mother and in the second case the permanent residence of the child and the republican citizenship of the child as the next subsidiary circumstance.

The interrepublic collision law has no special regulations on the recognition and execution of individual deeds issued in various republics and autonomous provinces. Here the constitutional stipulation from art. 250 of the Constitution of the SFRY is in force, from which ensues that any decrees, documents or other individual deeds issued by state organs and authorized organizations in one republic resp. autonomous province are equally valid also in other republics resp. autonomous provinces.

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5. A fixed residence is a place in which someone actually settles ( corpus ) with the purpose of making it his permanent domicile ( animus manendi ). A temporary residence is a place in which someone stays for a shorter or longer time, but without the intention of staying there permanently.
  6. In SFR Yugoslavia we know Yugoslav and republican citizenship. The republican citizenship is regulated by laws on citizenship of individual republics. Only a citizen of Yugoslavia can have a republican citizenship. The Yugoslav citizenship is regulated by the Law on the citizenship of SFRY, publ. Ur.list SFRJ, №. 58 / 1976.
  7. Under " regulations of international law " we understand: collision regulations from the Yugoslav collision law ( esp. art. 41 ), stipulations from bilateral agreements and collision regulations from foreign legislations.

### III. REGULATION OF PATERNITY AND MATERNITY AFFAIRS WITH AN INTERNATIONAL ELEMENT

#### 1. General

Until the passing of the Law on the settlement of the collision of laws with the regulations of other countries in certain relations in 1982 Yugoslav law had no collision regulations for regulating legal relations between parents and children with an international element. Because of the lack of collision regulations Yugoslav law theory proposed various solutions. And from 1956 on Yugoslavia signed bilateral agreements on international legal help with Bulgaria, Czechoslovakia, France, Greece, Hungary, the GDR, Poland, Rumania and the USSR. In the continuation we shall discuss the collision regulations from the new law and the regulation of paternity and maternity in the mentioned bilateral agreements.

#### 2. Regulation of paternity and maternity with an international element according to collision law

In chapter 2 of the Collision Law entitled " Law which must be used " we find in articles 40 - 43 the collision norms for regulating the relations between parents and children and for the liability of maintenance between blood relations and in - laws. But for the admission, ascertaining and contesting of paternity and maternity the following collision norm is known: the law of that country is used of which that person, whose paternity resp. maternity is admitted, ascertained or contested, is a citizen at the time of the child's birth ( art. 41 ).

Thus the *lex nationalis* of the presumable father resp. mother at the time of the child's birth is decisive for these relations. This point of connection is quite unusual since Yugoslavia determined with the bilateral agreements signed with the mentioned countries that the child's *lex nationalis* was decisive for these relations. Since cases may come up in which according to the native law of the presumable father it may not be possible to ascertain his paternity, Yugoslav law theory proposes in such cases to turn to the institution of public order. According to this institution the legislation of a foreign country is not used if its effect would be in opposition to the basis of the social order determined by the Constitution of the SFRY ( art. 4 of the Collision Law ).<sup>8</sup>

In the bilateral agreements on international legal help which Yugoslavia signed with Bulgaria, Czechoslovakia, France, Greece, Hungary, the GDR, Poland, Rumania and the USSR we have the collision regulations for the admitting, ascertaining and contesting of paternity resp. maternity. Decisive is the child's *lex nationalis*, which is by some agreements bound to the time of the child's birth. But in the bilateral agreement signed with Czechoslovakia and the GDR we find also points of connection regarding the form of the admission of paternity and maternity. The prescribed form of that country is regarded as satisfactory within which the admission took place.

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8. See: M. Ilešič, A. Polajner - Pavčnik and D. Wedam - Lukić, *Mednarodno zasebno pravo* ( International private law ), *Zakon s komentarjem* ( Law with comments ), p.64.

## CONCLUSION

The regulation of paternity and maternity is very important in the internal legal intercourse of the SFRY ( the interrepublic and the interprovincial ) as well as in its international legal intercourse. But with the passing of both discussed federal laws respectively their collision regulations on the admitting, ascertaining and contesting of paternity and maternity the conditions are given for a successful solving of the contestable cases which appear in Yugoslav international legal intercourse because of the difference of the legal organizations of foreign countries.

## ZUSAMMENFASSUNG

Die Regelung von Vater- und Mutterschaftsangelegenheiten ist sehr wichtig sowohl im inneren juristischen Verkehr der SFRJ ( im interrepublikanischen und interprovinziellen ) als auch in ihrem internationalen juristischen Verkehr. Mit der Annahme beider diskutierten Bundesgesetze, beziehungsweise ihrer Kollisionsregeln über die Erklärung, Feststellung und Widerlegung von Vater- und Mutterschaft sind die Bedingungen gegeben für eine erfolgreiche Lösung von Streitfällen welche wegen der verschiedenen Einrichtungen innerhalb Jugoslawiens auftreten und Fällen welche wegen der verschiedenen Rechtsordnungen fremder Länder im jugoslawischen internationalen juristischen Verkehr auftreten.

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