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### **The problem of legal regulation and determination of the origin of a child in international legal relations**

**Abstract:** It is considered the issues of legal regulation of the establishment of parenthood in private international law. It is studied the family law of the Republic of Tajikistan, which regulates relations with foreigners and stateless persons. The article informs an acceptability of the territorial principle to establish the origin of the child in international family relationships. Particular attention is paid to the problems of surrogate motherhood. It is given the proposals to amend the family law of the Republic of Tajikistan.

**Keywords:** legal regulation; origin of child; maternity; paternity; rules on surrogacy; citizenship; Family Code.

The issues of the establishment of the origin of child in the legislation of different countries are different. It concerns both the collision referencing the determination of the regulation of maternity and paternity and domestic national legislation of individual countries. It should noted, the fact that many countries do not allow the use of assisted reproductive technologies, as a result, not all countries are able to establish the origin of the child in the legal sphere.

There are several connecting factors governing the establishment of the origin of child. First, it is the personal law of the child, parents' personal law, the law of a person applying for the establishment of the origin of child from a particular person (lexfori-law of the court), the law that is most favorable to the child.

Personal child law, in turn, can manifest itself in the following variants: the law of child's citizenship, the right of the state of nationality of child at birth, the personal law of child at the time of his/her birth.

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In the legislation of some countries as a connecting factor, regulating the child's origin is indicated on the child's citizenship law.

Another case is the manifestation of the personal law of the child at the time of his/her birth (for example: Ukraine). Such law can be a citizenship law of the place of residence, the law of the state in which the legal relationship is most closely connected. In fact, this is a common point of contact in relation of the connecting factor – the law of the child's citizenship. These connecting factors are correlated as general and particular.

In the legislation of other countries as collision principle is shown the law of the state in which a child is citizenship in birth (Kazakhstan, Kyrgyzstan, Russia, Bulgaria, Tajikistan, Azerbaijan, Italy, and others) (6). Example, Art. 152.1 of the Family Code and to establish paternity (maternity) as a conflict of principle stated law of the State the child is, required to comply with the laws of the country in which the child is recognized at birth. An indication of the time of birth prevents changes to the applicable law, if later the child's nationality is other than at birth. In this case, the situation is more predictable, but it may not be in the best interests of child (1).

Thus, in accordance with Part 1 of Article 173 of the Family Code of the Republic of Tajikistan origin of the child is determined by the laws of the State in which the child was born. In turn, the Constitutional Law “On Citizenship of the Republic of Tajikistan” from 1995, in fixing its standards the possibility of acquiring the nationality of the child primarily on the principle of blood, establishes that a child whose parents at the time of his birth are citizens of the Republic of Tajikistan, is a citizen of the Republic of Tajikistan, regardless of place of birth (Article 16 of the Law). If there is a foreign element in family relationships in the form of different nationalities of the child's parents , one of whom at the time of birth of the child is a citizen of the Republic of Tajikistan, the child is a citizen of the Republic of Tajikistan , if he was born on the territory of the Republic of Tajikistan, and if he was born outside of the Republic of Tajikistan , but parents or one of them at that time had a permanent residence in the territory of the Republic of Tajikistan ( Article 17 of the Law). At the same time, the Family Code contains a provision that the procedure for

establishing the paternity (maternity) in the territory of the Republic of Tajikistan is determined by the laws of the Republic of Tajikistan (Part 2 st.173 SK PT). So, the law establishes as a principle of conflict in determining the applicable law to the origin of child's nationality, and the parents' nationality if it is the same for both. However, if one parent is from a different nationality, one that is a citizen of Tajikistan, it is applied in the Republic of Tajikistan family law. In this case, there is a contradiction between the first and second part of Article 173 of SK PT, as in the first case, the law refers to the connecting factor to the citizenship of the child, and the second shows the application of the collision territorial claims. I would like to note that, in practice, determining the origin of child whose parents are foreigners by referencing child's citizenship is possible only in case of a given action of diplomatic mission or consular office of a foreign state, which in turn are in accordance with the norms of international law of those countries that have sent diplomatic services, therefore, the competent authorities shall apply the norms of these states.

Another case where the connecting factor is applied to the personal law of the child is to determine the origin of citizens in the territory of the Republic of Tajikistan. In other cases, our bodies registrar's office or the courts are not obliged to apply the procedure and grounds for the establishment of maternity and paternity of a foreign state on the territory of the republic. Especially since there are requirements which, although provided by foreign laws, but are not regulated by our standards. For example, the rules of surrogacy.

As we can see, regulatory consolidation as a connecting factor applicable to the law of the child's citizenship does not reflect the real possibility of its application. The territorial principle of establishing the origin of the child, in our opinion, at the present stage of development of international family relationships is more appropriate and practically justified. Parents - foreigners who are staying on the territory of the Republic of Tajikistan determined to establish the origin of the child, seems to suggest that there are certain times in this state and must obey its laws. Also, it should not be forgotten that the child can not be taken out of the country without identity

documents, which are prepared by parents. These documents are recognized and accepted in many states as legal identity documents.

It should also add that the second part of Article 173 of the UK RT indicating the use of the child's citizenship law, requires compliance with the order establishing paternity and maternity in the legislation of the Republic of Tajikistan (Part 2 st.173 SK PT) Therefore, in our opinion, should excluded item 1 st.173 SK PT, but at the same time should add a new paragraph 2 of this article the norm as follows:

“The establishment of parenthood, committed to the diplomatic missions and consular offices of a foreign state, located in the territory of the Republic of Tajikistan, in compliance with the laws of the foreign state on the competence of decision-making bodies to establish the origin of child, and to the applicable law in this case, it is recognized as valid in the Republic of Tajikistan”.

Personal law defines the child as a collision principle in establishing the origin of a child is not limited to nationality, and can manifest itself in the form of a law of the place of residence, the so-called domicile. In accordance with Article 24 of the Law “On International Private Law in Venezuela”, in 1998 the establishment of origin, as well as the relationship between parents and children will be governed by the residence the child (4).

The personal law of child may also be referred to as the law of its normal location. For example, Article 50 of the Law “On International Private Law of Georgia” from 1998 regulates legal relations connected with the origin of the child, subordinate - Nyaya law of the country where the child has the usual location. Determining of the origin of a child from one parent to subordinate is the right of country to which this parent belongs (5).

As for the other conflicts of the principle of determining the origin of the establishment of the child, it should be noted that the embodiments of the personal law of the parents in the laws of foreign countries is manifested in the form of the personal law of the mother, the right to citizenship of a person who seeks to establish or contest paternity or maternity, at the time of birth or at the time voluntary acknowledgment of paternity or maternity.

Thus, for consistency with Article 311-14 of the French Code of Civil determining the origin of a child is governed by the personal law of mother on the day of birth (2). It should be noted that the voluntary paternity or maternity is governed by their personal law or personal law of a child. Article 964 of the Civil Code of Iran IR contains a provision that the relationship between parents and children are regulated by the national law of the father, except in the case where the origin of a child is established only with respect to his/her mother, and in this case, the relationship between the child and his/her mother are governed by the national law of the latter.

In this case, the establishment of origin of the child applies the conflict formula attached to the personal law of the mother.

In §1 of Article 62 of the Law “The International Private Law of Belgium” 2004 year is fixed that establishing or challenging of paternity of maternity entity is governed by the law of the nationality of the state, at the same time of birth of child or if the setting is result of a voluntary act, at the same time of such act (3). In this case, the conflict of law’s principle is law nationality of the person who seeks to establish or contest paternity or maternity, at the time of birth or at the same time of voluntary acknowledgment of paternity or maternity.

In addition to the main conflict of the legislation of foreign countries provide additional connecting factors. For example, in establishing the origin of Georgia’s juvenile law provides for other than personal law and personal law of the child's parents. If the mother is married, the origin of the child can be set in accordance with the law of the country in which the birth of a child based general effects of marriage. If the marriage is stopped due to the death of one spouse, the time of termination of marriage is given a decisive value. If parents are not married, the duties of the father of a pregnant subject to the law of the country where it has a common location (5).

In some countries, the judge is granted with the right to determine the origin of the child, connecting factors with the proposed legislation. For example, in accordance with Article 52 of the Code of International Law of Tunisia in 1998 a judge must apply the law most favorable to the establishment of origin of the child, of

the following: the law of nationality of the defendant or the law of the place of residence or the law of the child's citizenship or the law of his domicile. And the challenge of origin subject to the law by virtue of which it is installed.

In determination of the origin of child, in some countries, up to now, it can be faced with the phenomenon as the separation of children on the legitimate and illegitimate, and as a result the application of different principles of conflict of laws.

For example , § 21 of the Federal Law “On International Private Law” of Austria in 1978 stipulates that the conditions of origin of the child marriage and its challenges to be determined according to the personal law, who had a spouse at the time of birth or , if the marriage was terminated before that, at the time termination of the marriage . For differing personal law of the spouses is crucial that personal law which is more favorable for the breeding origin of the child. When a child is born in wedlock is subject to the application of conflict binding to the personal law of the parents, which is the legislation of Austria recognizes the nationality of natural persons. In the case of the various nationalities in the child’s parents applied the law that is most favorable to the juvenile.

In accordance with § 25 of the Act to establish the conditions and the acknowledgment of paternity in relation to a child outside of marriage are determined according to his personal law at the time of birth. Thus, in this case to determine the origin of an illegitimate child with applicable conflict of laws principle is the nationality of the child at the time of his birth.

However, if the child has changed citizenship is derived from the father, determined by the personal law of a later child , if the establishment or, as appropriate, recognition is permissible according to the latest personal law of the minor, and not according to the personal law at the time of birth. It should be noted that the law according to which paternity has been established or recognized is also decisive for his challenge.

In addition, despite the fact that in legislation of the Republic of Tajikistan there is no separation of children born in wedlock and illegitimacy, all the same procedure for establishing the origin of the child facilitated by his parents’ marital status. In this

case, there are a variety of presumptions, assumptions, enshrined in legislation, the presence or absence of certain legal facts to which the law binds the offensive legal consequences (7). At particular, there is a presumption of maternity women who gave birth and presumption of paternity of a husband of the child's mother, which were formulated in the Roman law. If a child was born from persons who are not married to each other or to voluntary recognition of both of his/her parents or persons specified in the court of his origin. But, of course, on the amount of child rights in determining the origin is not affected.

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