

Determination and denial of parenthood with a foreign element

Abstract

This thesis deals with a significant, still current and well-known institute of family law, which is the determination and denial of parenthood, even in connection with a foreign element. Foreign element in so-called paternal disputes (in connection with the increase in travel and tourism in general) appears more and more often and is one of the pitfalls that may occur in determining and denying parenthood (others may include issues related to artificial insemination).

This thesis deals with the historical development of the determination and denial of parenthood from Roman law to the description and analysis of the current legislation in the Czech Republic in the area of the determination and denial of parenthood, as well as examining whether there is a foreign element in them (and what are these possible specifics). For this reason, the individual decisions of the ECHR and the Constitutional Court are analyzed in this thesis because they significantly influence the procedures of the courts of first instance. Furthermore, the thesis describes the decisions of the Court of First Instance – specifically the District Court for Prague 8, which deals with paternal disputes with a foreign element.

Thesis also briefly describes *de lege ferenda* considerations, both in the case of national legislation reflected in the Civil Code and in the case of transnational regulation that could arise within the European Union for its individual Member States. According to the proposed amendment to the Civil Code, marriage will no longer be a union of a man and a woman, but a union of two people. However, the main purpose of marriage – the establishment of a family, the proper upbringing of children and mutual support and assistance will remain unchanged. The father of the child will still be the man (even in the case of the marriage of two women), the mother of the child will be the woman who gave birth to the child. In the section on *de lege ferenda* considerations, the work also discusses the possible emergence of an EU regulation governing the determination and denying of parenthood with a foreign element, for the sake of simplifying and streamlining the judicial process when it can be considered that harmonization would, both for better and faster judicial work and for international cooperation on paternity and maternity issues. Simplifying the current legislation on determining and denying paternity with a foreign element while maintaining current legal certainty would be useful both to

simplify and speed up the work of the courts and to increase legal certainty for parents and children.