

Mariya P. Petrova

Assistant Professor, Varna Free University “Chernorizets Hrabar”,
Chayka Resort, Varna, Bulgaria

The right to security of the child as legal consequence of its established parentage

Summary

The children profit from the protection of their rights and legal interests, recognized and guaranteed to them from the state through the legal rules, which settle the methods for establishment of the parent-child legal connection.

The purpose of the present research is to point the interconnection between the non/established parentage of a single person and its personal security.

Keywords: paternity, established parentage, family code, descent, child, security of the person

In the modern society, „security“ term is one of the most widely used terms. It has a lot of meanings and is a subject to different definitions, each one coming from different researching goals. In the most common meaning, the term is explained as protection from danger or lack of danger, it is related with the necessity of the person of its necessity of social life, as well as with the possibility of a certain person or community to protect its values from danger. The security is also perceived as state of lack of threats and confidence of the single person, that its rights and legitimate interests are protected from possible dangers. In addition, in the theory, the security of the person is placed on first level, in line with the four remaining levels of security and is reviewed as equally important with the security of the group of persons, accordingly – of the state, of the community of states and of the security of the world.

With a view to these criteria, the security of the person can be reviewed as recognized and guaranteed by the state possibility of the person, to perform and protect its rights and interests.

The purpose of the present research is to point the interconnection between the non/established parentage of a single person and its personal security.

The necessity of the children to have established parentage comes from the rule of Art.47 of the Constitution of the Republic of Bulgaria (CRB), which fact from its side premises the performance of the obligation of their parents to bring up and educate them, with the help of the state. More over, it has no meaning if the children are born in or out of the marriage of their parents (Art. 47, par. 3 of CRB)

In particular, the parental obligation for care, education, support and supervision of the child are established in Chapter nine “Relations between parents and children” of Family Code of the Republic of Bulgaria (FCRB), mainly in Art. 125, as so as in Chapter ten “Support” of FCRB.

The parental rights and obligations arise from legal connection, established according to the law – from established parentage and from adoption.

The parentage of a child is stated in Chapter six of FCRB.

It is accepted, that the mother of the child is the woman, which gave birth to the child, also including the cases of assisted reproduction (by argument from Art. 60 of FCRB).

The parentage from the mother can also be established through fathering (by argument of art.64 of FCRB), possibly with claim for establishing of parentage, when the fathering is contested (by the order of Art. 66, par. 2 of FCRB), or with declaratory suit (under Art. 68 of FCRB). In the different hypothesis, the parentage from the mother are dependent or not from legally stipulated term. This way, the fathering can be performed before the birth of the child, in the moment of its birth or later, including after the death of the child, in the cases when it has left descending heirs.

In case of establishing of the parentage of the child in the hypothesis of Art. 66, par. 2 of FCRB, if the fathering is contested, the woman, which contested the child, is restricted with term of three months, counted since the day of receiving of the message for the contestation, in which term she has right to lay a claim for establishing of the maternity.

In case of the hypothesis of Art. 68 of FCRB, the establishment of the motherhood is not limited by any term. The claim can be laid by the mother, by the child or by the father.

The parentage from the father is established through the presumption of fathering, settled in different hypothesis in Art. 61 of FCRB, including in the cases of assisted reproduction.

The father is the husband of the mother, if the child is born during the marriage or not later than three hundred days of its ceasing, as long as the mother is not into new marriage. In that case, the new husband of the mother is accepted as a father of the child. In case of announced absence of the husband or in case of declared death of the husband, the three hundred days term is counted since the date of the last news from the husband, respectively – since the date of its supposed death. In this type of establishing of fatherhood, the husband of the mother is also father of the child when the child is conceived in the conditions of assisted reproduction, if the husband of the mother have given informed written agreement for its performance.

The fatherhood, as well as the motherhood, can be established through fathering of the child (by argument from Art. 64 of FCRB). For this type of establishing of parentage, the same rules, as for establishing of parentage through fathering from the mother, are into effect.

The fatherhood can also be established with claim under Art. 66, par. 2 of FCRB, when the fathering is contested. In this case, the rules are the same as the one, which are into effect for the mother.

The rule of Art. 69 of FCRB gives another possibility for establishing of parentage from the father. In this case, the legislator envisaged different terms for the entitled persons to bring up that suite. When the claim is brought up by the mother, the term is three years since the day of birth of the child, and when the legal proceedings are made by the child, the term is up to three years from the day of reaching the age of majority. In both hypothesis, the term is counted since the day of birth of the child.

After the parentage of the child is established, the rights and the obligations, which follow from the rules of the Constitution, of the Family Code, and the other legal and sub-legal acts, which settle the family law matters, automatically arise for the mother and the father.

The security for protection of the legal rights and legal obligations arise for the child not only as an individual, but as a child of specified parents, which are

obliged to take the care for it, its education, and its support. Their responsibility in case of non-performance of their obligations is also settled – mainly through the penalties, envisaged in the Family code (through limitation or deprivation of parent rights).

The protection of the child is also settled in special law – Child Protection Act (CPA). The measures for child protection are pointed in Art. 4, par. 1 of this legal act.

The measures under Art. 4, par. 1, p. 1, 3, 9 and 13 are interest for the present research. They guarantee the child protection in cases of established parentage: for “cooperation, support and services in family environment” (p. 1), for “informing for the rights and obligations of the children and the parents” (p. 9), for “taking temporary measures for child protection in the cases and at the conditions of Art. 12 of Convention for the competence, the applicable law, recognizing, performance and cooperation in connection with the parentage responsibility and the measures for children protection, established in Hague on 19.10.1996 (ratified by law – SG, is. 9, dated 2006) (SG, iss. 15 dated 2007)” (p. 13). One of these measures also guarantee the taking of the care and the education of the child from adoptive parents, when the child has no established parentage, or when they are left without parents, through the measures for “adoption”(under p. 3).

Important note is, that regardless the established parentage of the child from its parents, the state also envisages and guarantees protection in other cases, which are not dependent of the created parent-child legal connection, including the cases of established parentage through some of the reviewed hypothesis, as well as in case of adoption.

Such are the measures for “placement in the family of kinsfolk or relatives” (p. 2) for “placement in foster family”(p. 4) , for “granting social services – resident type” (p. 5) , for “placement in specialized institution” (p. 6), for “special cares for disabled children”(p. 12).

The other measures for child protection under Art. 4, par. 1 of CPA, which accent on the security of the child, take special place in the present research: for “police protection” (p. 7), for “specialized protection on public places” (p. 8), for “providing preventive measures for security and protection of the child” (p. 10), as so as for “providing legal assistance from the state” (p. 11).

In fine, several conclusions can be made.

The children profit from the protection of their rights and legal interests, recognized and guaranteed to them from the state through the legal rules, which settle the methods for establishment of the parent-child legal connection.

That protection does not depend on if the child is born during the marriage of its parents or not, if its parents are established under Chapter six “Parentage”, or under Chapter eight “Adoption” of FCRB.

It is also envisaged and guaranteed by the state when the child has no established parentage and is not adopted.

Therefore, the established parentage is not the ground for providing the security of the children, but is only one of the prerequisites for the protection of the child and for providing its security.

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