InterAcción y PerspectivA

Revista de Trabajo Social

ISSN 2244-808X
D.L. pp 201002Z43506

Enero-Junio 2023
Vol. 13 No. 1

Universidad del Zulia
Facultad de Ciencias Jurídicas y Políticas
Centro de Investigaciones en Trabajo Social

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Interacción y Perspectiva
Revista de Trabajo Social
Vol. 13 Nº1 76-88pp.
enero-junio

Dep. Legal pp 201002Z43506
ISSN 2244-808X
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ARTÍCULO DE INVESTIGACIÓN

Implicaciones jurídicas y sociales del establecimiento de la paternidad /DOI: 10.5281/zenodo.7382864

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Resumen

El establecimiento de la paternidad y la maternidad no sólo tiene una gran importancia jurídica sino también una gran importancia social. Sin embargo, hasta la fecha, existen lagunas en la legislación rusa en la regulación legal del establecimiento de la paternidad y, en algunos casos, la maternidad. Algunas cuestiones no resueltas relacionadas con el origen del niño se resuelven en el marco de las posiciones jurídicas de diversas instancias judiciales, lo que diversifica aún más los diversos puntos de vista sobre estos temas ya que la práctica judicial no es homogénea. El objetivo del estudio fue identificar los problemas de regulación jurídica del origen de los hijos, la determinación de la paternidad y la maternidad, e investigar las fuentes históricas y la práctica judicial sobre las cuestiones mencionadas. El tema fue estudiado desde la posición de los métodos científicos generales de cognición (análisis sistemático, teórico e histórico) y métodos científicos privados, como la jurisprudencia comparada, el análisis lógico, técnico y jurídico, la concreción y la interpretación. Se analizó la historia de la institución del establecimiento de la paternidad, se estudió la legislación rusa que regula las cuestiones del origen de los niños y el aspecto legal del establecimiento de la paternidad y la maternidad, así como la práctica judicial. Partiendo de los resultados obtenidos, los autores han formulado posiciones doctrinales sobre este tema

Palabras clave: establecimiento de la paternidad, establecimiento de la maternidad, reproducción humana.

Abstract

Legal and social implications of establishing paternity

Legal and social implications of establishing paternity
The establishment of paternity and maternity is not only of great legal importance, but also of great social importance. However, to date, there are gaps in Russian legislation in the legal regulation of the establishment of paternity and, in some cases, maternity. Some unresolved issues related to the origin of the child are resolved within the framework of the legal positions of various judicial instances, which further diversifies the various points of view on these issues since judicial practice is not homogeneous. The purpose of the study was to identify the problems of legal regulation of children’s origin, the establishment of paternity and maternity, and to investigate historical sources and judicial practice on the above issues. The topic was studied from the position of general scientific methods of cognition (systematic, theoretical, and historical analysis)

and private scientific methods, such as comparative jurisprudence, logical, technical, and legal analysis, concretization, and interpretation. The history of the institution of paternity has been analyzed; the Russian legislation regulating the issues of children's origin and the legal aspect of establishing paternity and maternity have been studied, as well as judicial practice. According to the results obtained, the authors have formulated doctrinal positions on this issue.

Keywords: establishing paternity, establishing maternity, human reproduction

Recibido: 03/10/2022 Aceptado: 25/11/2022

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1.- Introduction

The history of the origin and development of the institution of establishing paternity in Russia begins with the times of Ancient Rus, which indicates the rather serious importance of the legal, sociological and philosophical aspects of this institution. At any historical period and in any legal system, the law could not ignore the relations that regulated the relationship between a child and its parents.

Since Russia was a patriarchal country, for a long time children were classified as legitimate and illegitimate. Only legitimate children, i.e. those who were born in a legal marriage, had a legal relationship with their parents. The status of a legitimate child was a necessary act for the recognition and assimilation of such a child into society. The illegitimate child, on the contrary, did not have a surname, was deprived of the estate status of the father, and had no rights to any inheritance. Officially, no kinship was recognized for illegitimate children, including with the biological mother.

However, the development of human society, the gradual harmonization of individual rights and freedoms, and the state's need for human reproduction gradually exacerbated the problems of legal recognition of illegitimate children, and the subsequent development of science, technology, and medicine and the appearance of artificially conceived children exposed the problems of establishing and recognizing their parents. Gradually, a situation developed when the legislator began to lag behind the

development of medical technologies, which caused the appearance of scientific papers in the field of establishing kinship between children and their parents.

2. Methods

In the course of the study, we analyzed legislation and scientific literature, a comparative analysis of international approaches to solving the problem of legal regulation of establishing paternity (maternity), and a generalization of the opinions of scientists on the studied problem. Various sources of information were used to formulate and solve the problem, namely, strategic planning acts, regulatory legal acts, statistical information posted on government websites, monographs, and articles, including those published in journals indexed by Scopus and Web of Science, containing provisions on the problem of establishing paternity (maternity) in the Russian Federation (RF).

We used general scientific methods of cognition, including the principle of objectivity, and consistency, as well as such methods as theoretical and historical analysis. Along with general scientific methods of cognition, private scientific methods were used, such as comparative jurisprudence, logical and technical legal analysis, and concretization. The methodological basis of the study was the method of the theory of cognition.

3. Results

The history of the development of Russian legislation on the establishment of paternity and maternity can be divided into several stages.

The first stage (pagan), according to A.M. Akhmedkhanova (2003) lasted until 988.

Before the adoption of the Christian faith, Russian family law consisted mainly of legal customs regulating both marriage and the birth of illegitimate children. It was only after the adoption of Christianity that pagan traditions were replaced by religious postulates, which, as K.A. Kirichenko (2007) points out, provided for the separation of children into legitimate and illegitimate ones, depending on whether a church marriage was concluded.

The second stage (until about the beginning of the 18th century) was associated with the adoption of Christianity in Russia.

The second period was characterized by the spread of Christian prescriptions on family legal relations and the strongest influence of the church on marriage relations. Moreover, following the Cathedral Code of 1649, the birth of a child out of wedlock was a criminal offense and was strictly prohibited. Recognition of an illegitimate child was impossible under any circumstances, including the subsequent marriage between its parents. To avoid punishment and shame, mothers began to kill illegitimate children. However, subsequently, to eliminate such barbaric cases, special homes "for shameful babies" began to be created throughout the territory of the Russian state.

The third stage was connected with the reign of Peter I, during which, for the first time, the procedure for legalizing illegitimate children began to be regulated. Thus, in 1715, Peter I adopted a Military Article, where the duties of a father to support his illegitimate child, as well as the child's mother, were registered at the legislative level. As historians mention, the state care of foundlings began with the order of Peter I on the construction of houses in cities "to preserve the lives of shameful babies, to whom wives and girls give birth illegitimately and whom, for the sake of shame, they sweep away in various obscene places." In the future, according to the Decree of Catherine II, "No one who declares an illegitimate baby should be shamed for it." The Church also called for the preservation of the lives and health of "unhappily born children."

The fourth stage can be called Soviet (1917-1991), when there were no legal principles regarding the establishment of the origin of kinship. Soviet legislative reforms show opposite approaches to this issue, starting with giving cohabitation the status of a legal relationship and ending with a complete ban on unmarried mothers filing lawsuits to establish paternity. The legislator's desire to provide full legal protection to "illegitimate" children sometimes reached absurd situations. For example, at some point, one child could simultaneously have several fathers. For instance, in article 144 of the Family Code (FC) of the Russian Soviet Federative Socialist Republic (RSFSR) of 1918, a provision was fixed according to which, if the court while reviewing the case found that the person indicated as the father of a particular child in the application of the child's mother at the time of conception had close relations with the child's mother, but at the same time she had a relationship with other people, the court decided on involving all of them as defendants and imposed on all of them the obligation to participate in the costs associated with pregnancy, childbirth, birth and maintenance of the child, i.e. the court established solidarity obligations of all men who cohabited with the mother of the child. Subsequently, judicial practice formulated a different legal position, according to which the obligations of men to pay child support were shared between all alleged fathers of the child if it was impossible to establish biological kinship.

Cardinal changes in state policy related to the establishment of kinship between parents and children occurred in 1944 when Decree No. 118/11 of the Presidium of the Supreme Soviet of the USSR "On increasing state assistance to pregnant women, mothers of many children and single mothers, strengthening the protection of maternity and childhood, on the establishment of the honorary title "Mother Heroine" and the establishment of the Order "Maternal Glory" and the medal "Medal of maternity" dated 08.07.1944 was adopted (Supreme Soviet of the USSR, 1944). The provisions of this decree completely crossed out the norms of the Soviet family legislation of the previous years. In particular, this decree completely banned the establishment of paternity concerning illegitimate children both administratively and judicially, and a dash was always placed in the "father" column in the child's birth certificate if the child was born out of wedlock. The legislative novelty allowed biological fathers to withdraw from the maintenance and upbringing of their children, which had a significant impact on the formation of the negative role of the father in the child's life in the public consciousness and undoubtedly provoked a further crisis of the family institution.

In 1968, a new Code on Marriage and Family of the RSFSR was adopted, the provisions of which restored the institution of the voluntary and judicial establishment of paternity of children born out of wedlock.

Having analyzed the history of the development of the institution of establishing paternity in the USSR, it should be concluded that during the Soviet period, the image of the father as an irresponsible parent and educator was gradually formed in the public consciousness, which still has negative consequences for the development of family legal relations and has an impact on judicial practice, for example, in determining who gets custody of a child if the parents live separately.

The fifth period is modern (from 1991 to the present). After 1991, a colossal reform of the system of marriage and family relations was carried out. Currently, the main source of regulation of family legal relations in Russia is the Russian Federation Family Code (RF FC), adopted in 1995. For the first time, it enshrined the provision that children born out of wedlock were fully equated with children born in marriage, and such children would have absolutely the same rights and obligations towards their parents as children born in marriage. However, at the same time, the state registration of paternity in the relevant authorities is a prerequisite for the emergence of a legal relationship between the father and the child. Currently, consanguinity and recognition at the state level are two inherent circumstances that give rise to mutual rights and obligations of parents and children. If the child's parents are not in a registered marriage and there is no father's declaration of paternity, then the child's origin from a particular person can only be established in court. Thus, modern Russian legislation provides for two ways of establishing paternity: voluntary procedure and judicial order.

If we talk not only about establishing paternity but about establishing kinship in general, then it can be argued that at this stage the Russian legislator recognizes not only biological kinship but also the so-called social kinship. As K.A. Kirichenko (2007: 23) believes, "Such legal institutions as adoption, recognition of paternity or maternity in the absence of a biological connection with the child, as well as surrogacy should not be regarded as kinship, since they only generate legal relations equated to kinship". However, if we turn to legal terminology, we can notice a pluralistic approach to understanding kinship. In particular, the provisions of Article 1147 of the Civil Code of the RF equate the adopted person and the adoptive parent to "relatives by origin", i.e. blood relatives, i.e. the legislator equates social and blood kinship. Most Russian researchers understand kinship as a lasting relationship of individuals arising from the origin (blood or social) of one person from another, as well as a relationship aimed at the functional replacement of such relationships. This relationship can be classified on several grounds.

If we consider kinship from the point of view of the presence or absence of a biological connection, then it can be: biological or social. Biological kinship refers to a relationship based either on the community of genes (genetic kinship) or by bearing and giving birth to a child by a woman (gestational kinship). Social kinship is based on the connection of one person with another, arising by a social nature, not biological. For example, when a

husband consents to the artificial insemination of his wife, he automatically becomes the father of the child born, and in this case, we should talk about social kinship.

Depending on the time and circumstances of establishing kinship ties, primary and secondary kinship can be distinguished. Primary kinship, as a rule, is established between parents and the child and occurs when registering the child with the registry office after the birth of the child. Secondary kinship is formed in a situation when biological parents, for some objective reasons, cannot ensure that the interests of the child will be served (for example, the parents have not been identified, have died, or have been deprived of parental rights), and other persons, "adaptive" parents, wish to replace such persons.

The doctrine also distinguishes the following types of kinship: consanguinity, legal kinship, marital kinship, etc. Consanguinity is based on the origin of one person from another (biological kinship). It can be direct (the origin of one person from another) and lateral (the origin of several persons from one common ancestor). Marital kinship emerges based on marriage between people (social kinship). Legal kinship arises based on a legally fixed connection between people, and these people may not be blood relatives.

In addition to establishing paternity, special attention should be paid to establishing maternity. Under paragraph 1 of Article 48 of the RF FC, the origin of the child from the mother is established based on documents confirming the birth of the child by the mother in a medical institution. If the birth of a child occurred outside a medical institution, the relationship is established based on medical documents, witness statements, and other evidence. In the case of childbirth outside a medical institution and in the absence of medical workers, the registration of the fact of the birth of a child by a particular woman is made based on an application by a person who was present at the birth. If a child is born on a ship, the captain is obliged to draw up an appropriate certificate in the presence of two witnesses and a doctor, as well as make an entry in the ship's log (Article 32 of the Code of Inland Water Transport of the RF No. 24-FZ dated 07.03.2001 (State Duma of the Federal Assembly of the Russian Federation, 2001)). In the absence of the above-described evidence, the fact of the child's origin from a particular woman is established based on a court decision. During the trial, any evidence may be taken into account, including expert opinions, explanations of persons participating in the case, etc. (Plenum of the Supreme Court of the Russian Federation, 2017).

The provisions of Article 47 of the Civil Code of the RF stipulate the obligation of state registration of the birth of a child (indicating its father and mother), after which the parents acquire the status of legal representatives of the child. A literal interpretation of this norm allows us to conclude that the legal relationship between parents and a child arises only after the official certification of information about the mother and father in the civil registry offices. A long time may pass between the birth of a child and state registration, which means that during this entire period there are no legal relations between the parent and the child, hence, no mutual rights and obligations. At the same time, the fact that without a state certificate of the father and mother, the interests of

the child are not subject to legal protection, clearly contradicts the provisions on the ownership of fundamental rights and freedoms to a person from the moment of birth. Thus, in Russian law, there is a situation when the state registration of birth, which is secondary by nature, is given the importance of a law-forming fact.

From the point of view of Russian law, the term "paternity" does not carry formal legal content and can be viewed from different points of view. First of all, this term means the origin of a child from a specific person. At the same time, in the legal literature, paternity means a special legal relationship between the father and the child, generating certain rights and obligations for both, while the man may not be the biological father. In other words, there are two main approaches to the disclosure of the concept of "paternity": the biological (narrow) approach and the legal (broad) approach. It seems to us that the interests of the child are better served by the connection with the person who brought up the child and carried out other parental functions for a long period than the connection with the biological father. At the same time, given that Russia is a multinational country and some ethnicities are strongly influenced by religious beliefs, this point of view is debatable.

Also controversial, in our opinion, is the issue of automatic recognition by the father of a child born within three hundred days after the dissolution of marriage or from the moment of death of the spouse of the child's mother, who may not be the biological father of the child. In this case, the interests of a man are ensured only by the possibility of challenging this fact in court, and this is a long and costly process.

The modern development of science and, in particular, medicine, contributes to the emergence of new aspects in the issues of establishing the origin of children. At this stage of society's development, the practice of giving birth to children using assisted reproductive technologies has become widespread. Many legal and ethical issues related to this have not yet found a unified solution both in the global community and among Russian scientists.

The possibility of artificial reproduction of a person for the first time in Russian history was officially enshrined in Article 17 of the Fundamentals of the Legislation of the USSR and the Union Republics on Marriage and Family, approved by the USSR Law No. 2834-VII of 27.06.1968: "A husband who consented to artificial insemination of his wife with the help of a donor is registered as the father of the child she gave birth to and has no right to challenge the registration" (Supreme Soviet of the USSR, 1968).

Currently, there is no single law regulating issues in the field of the use of artificial reproduction methods during the conception of a child.

A literal interpretation of the norms of family law allows us to assert that only persons who are married in a registered marriage can resort to assisted reproduction methods (clause 4 of Article 51 of the RF FC). At the same time, Article 55 of the Fundamentals of the Legislation of the RF on Health Protection contains provisions regulating the right of men and women to use reproductive auxiliary technologies, regardless of whether they are married or not. As you can see, this provision contradicts the RF FC. It seems that in the interests of the child, both the man and the woman, both married or

unmarried, who have given their consent in writing to the use of artificial insemination or embryo implantation, in the case of the birth of their child as a result of the use of these methods, should be registered as its parents in the birth register.

At the present stage, there are three main methods of fertilization using reproductive technologies: artificial insemination, embryo implantation, and embryo implantation into the body of a surrogate mother. There is no legal definition of the concept of "artificial insemination". The issue of establishing paternity and maternity with this method of a child's conception is regulated in paragraph 4 of Article 51 of the RF FC, which states that parents who have consented to artificial insemination are subsequently registered as the parents of this child. However, the father who consented to artificial insemination has the right to challenge paternity if it later turns out that conception did not occur as a result of the use of reproductive technologies. This right is enshrined in paragraph 30 of Resolution No. 16 of the Plenum of the Supreme Court of the RF. It also states that the challenge of paternity is also possible in cases where consent to the use of artificial reproduction methods was given unknowingly or involuntarily, or when the person did not consent to the use of donor biological material in the application of these methods, etc.

Besides, Russian family legislation does not regulate the issue of so-called "post-mortem paternity" (from Lat. post-mortem, "posthumous" (Merriam Webster Dictionary, n.d.)), when the conception of a child occurred with the help of the father's gametes (using male germ cells) when the father is dying or at any point after his death. In our opinion, based on ethical considerations, the conception of a child under such circumstances should occur under the following conditions:

1) the man dies after his entry into the artificial insemination program and after his genetic material has been taken with his consent (during his lifetime);

2) there is written permission from the man for the possibility of fertilization with the help of his gamete cells after his death.

The next method of artificial reproduction of a person is artificial embryo implantation or in vitro fertilization (IVF). Currently, this method is quite widespread, known all over the world, is an ordinary medical procedure, and is used in many clinics. The first pregnancy carried out with the help of in vitro fertilization was carried out in the UK in November 1977. As a result of this procedure, a girl, Louise Brown, was born in 1978 and became the first person in history to appear in this way (Gadzhimagomedova & Kurbanalieva, 2018).

For the legal qualification of the fact of the birth of a child in this way, two conditions must be met:

1) mutual written consent of both the man and the woman for embryo implantation;

2) the fact of the birth of a child by a woman who had an embryo implanted.

The essence of this method is the preliminary fertilization of a female egg in the laboratory, bringing it to a certain stage of development and subsequent insertion of the

embryo into the uterine cavity. Thus, artificial embryo implantation is one of the methods of fertilization with the help of assisted reproductive technologies, in which an embryo is implanted in the female applicant, as a result of which the female applicant carries and gives birth to a child. With this method of conception, the issue of establishing the origin of a child from specific parents is regulated by paragraph 4 of Article 51 of the RF FC, which states that persons who have consented to the use of the embryo implantation method are subsequently registered as the parents of the child conceived in this way.

There are no legal definitions of the concepts of "surrogacy" and "surrogate mother" in the family legislation of Russia. At the same time, there are legally fixed requirements for a surrogate mother: age from 20 to 35 years, good mental and somatic health, and having a healthy child of her own (Part 10 of Article 55 of the Law on the Basics of Public Health Protection in the RF). Based on these requirements, it can be formulated that a surrogate mother is a physically and mentally healthy woman aged 20 to 35 years, who has a healthy child and has given written consent to fertilization using assisted reproduction methods for further bearing and giving birth to a child for another family.

According to the provisions of clause 2, paragraph 4, Article 51 of the RF FC, persons who have given written consent to the implantation of an embryo to another woman for its gestation and birth can be registered as the parents of the child after its birth only with the consent of the surrogate mother. It follows from the above that the emergence of parental rights for a person awaiting the birth and transfer of a child to them completely depends on the will of the surrogate mother, which makes this method of giving birth to a child questionable from a legal point of view and in doctrine it causes a lot of controversies. The literature describes cases when a woman who carried a child refused to transfer the newborn to the genetic parents. *Thus, from the judicial practice of the court of St. Petersburg, a case is known when a surrogate mother refused to transfer twins born with the help of surrogacy to family N. Everything went well until the moment when the surrogate mother was no longer satisfied with the terms of the contract and she demanded a significant increase in the amount for the second child. Having been refused, she stopped answering calls, moved to another place of residence, and gave birth to twins in a maternity hospital not specified in the contract. Then the surrogate mother refused to give the children away to their biological parents. The biological parents sued the woman, and the court eventually sided with them, recognizing the actions of the surrogate mother as unfair, and ordered her to give the children to N.*

Despite the judicial legal position, the Russian legislator recognizes the fact of bearing and giving birth to a child as more significant than its genetic origin, which, it seems to us, creates many legal problems that seriously affect the interests of biological parents.

The provision enshrined in paragraph 2 of paragraph 4 of Article 51 of the RF FC also does not resolve another important question: when should a surrogate mother consent or refuse to give the child away to genetic parents? Moreover, based on the literal interpretation of the norms of positive law, the surrogate mother can change her mind

up to the implementation of the corresponding entry in the civil registry offices. It follows from this that any agreements with the surrogate mother on the mandatory transfer of the child are not mandatory. The highest judicial instance of the RF in Resolution No. 16 indicated that if the surrogate mother refuses to give the child away, this circumstance cannot serve as an unconditional basis for refusing to satisfy the claim of potential parents for recognizing their child's parents and transferring the child to them for upbringing. Thus, this issue is controversial and will depend on the specific circumstances in each case.

Russian family law also allows for the voluntary establishment of paternity, which is a legal action of the father of a child who is not married to the child's mother, aimed at the emergence of mutual rights and obligations between him and the child. Like any legal action, the establishment of paternity presupposes that the subject has full consciousness and free will. Consequently, a person recognized by the court as incapacitated due to a mental disorder cannot voluntarily recognize paternity. In addition, the establishment of paternity at the request of the guardian of an incapacitated person is impossible, since the above action is an expression of personal will. At the same time, this rule should not apply to underage parents, which directly follows from part 3 of Article 62 of the RF FC, which indicates the right of minors to recognize and challenge their maternity and paternity on general grounds.

Sometimes it is difficult or impossible to submit a joint application for establishing paternity after the birth of a child. For example, during pregnancy, the mother of the father of the unborn child is sent on a business trip involving a risk to life, is drafted into the army, during mobilization, or the father is seriously ill, etc. In such cases, the law grants the right to expectant parents to file a joint application before the birth of the child (part 3 of Article 50 of the Law on Acts of Civil Status). In this case, the state registration of paternity under the circumstances is carried out simultaneously with the state registration of the birth of the child. A pre-submitted application has serious legal significance because, at the birth of a child, the applicant will be registered as the father on the birth certificate, even if he is no longer alive. If such an application is subsequently withdrawn, the very fact of its submission in court proceedings will be of significant importance.

In Russian judicial practice, there are other incidents, for example, the fictitious establishment of paternity. Thus, a foreign citizen who has a child with citizenship in the RF can be granted a long-term residence permit without a temporary residence permit. This provision of the law encourages migrants to use Russian family legislation for their selfish purposes since only a statement from the father and the consent of the mother if the child is a minor are required to establish paternity out of court. Moreover, based on the meaning of part 2 of Article 52 of the Family Code of the RF, the law does not prohibit establishing paternity concerning a person who is not the biological father of a child. Therefore, foreign citizens, upon obtaining the consent of an unscrupulous mother, fictitiously establish paternity to obtain a long-term residence permit. Based on the logical interpretation of the current law, it can be concluded that the fictitious establishment of paternity is a voluntary recognition by a man of the relationship

between him and the child without the purpose of upbringing and maintenance of the latter, and the preservation of the legal connection between such a person and the child contradicts the interests of the child itself.

These gaps in Russian legislation determine the judicial disputes on the establishment of paternity, which are an independent category of cases, the main "beneficiary" of which is not one of the parties to the dispute (the mother and the alleged father), but a minor child. As A.G. Prosvirin (2019) points out, "It is from the point of view of protecting the interests of the child that the judge should distribute the burden of proof and evaluate the evidence presented by the parties".

In the order of special proceedings, the fact of recognition of paternity and the fact of paternity is established. It is possible to submit such claims to the court in cases of death of a person who recognized himself as the father of a child, but was not married to its mother and did not have time during his lifetime to issue a voluntary recognition of his paternity in a pre-trial order. In these cases, some evidence must be presented that reliably confirms the fact of recognition by the father of the child or the origin of the child from a particular person, and there must also be no dispute about the right (Svirin, 2021). Following article 266 of the Civil Procedure Code of the RF, an application for establishing the fact of recognition of paternity is filed at the applicant's place of residence.

In all other cases, paternity cases are heard according to the procedure of claim proceedings. To file a statement of claim regarding the establishment of paternity, the following conditions must be met:

1) absence of a registered marriage between the alleged father and mother of the child at the time of the latter's birth;

2) absence of a joint statement of the parents or the statement of the alleged father of the child on the establishment of paternity to the civil registry offices;

3) the absence of the consent of the guardianship and guardianship authority to establish paternity at the request of the father, if such consent is necessary.

4. Conclusion

Based on the above, we can draw the following conclusions:

1. Kinship in the legal sphere should be understood as a stable legal and factual relationship between people who may or may not have a common genetic origin. However, such a connection arises as a result of an act of legal consolidation and has certain legal consequences.

2. The term "paternity" does not carry formal legal content. On the one hand, "paternity" means the origin of a child from a specific person, on the other hand, "paternity" is a special legal relationship between the father (not always biological) and the child, generating certain rights and obligations for both. Thus, there are two main

approaches to the disclosure of the concept of "paternity": the biological (narrow) approach and the legal (broad) approach. The interests of the child are better served by the connection with the person who brought up the child and carried out other parental functions for a long period than the connection with the biological father.

3. Modern Russian legislation provides for two ways of establishing paternity: voluntary procedure and judicial procedure.

4. In Russia, there is a situation when the state registration of birth, which is an event of a secondary nature, is given the importance of a law-forming fact when establishing paternity.

5. Based on the literal interpretation of the norms of positive Russian law, a surrogate mother can change her decision up to the transfer of the child and the implementation of the corresponding record in the civil registry offices. It follows from this that any agreements with the surrogate mother on the mandatory transfer of the child are null and void and she can keep the child without giving it to her genetic parents. At the same time, judicial practice adheres to a different concept and often resolves the issue in favor of genetic parents.

6. From the point of view of the current positive law of Russia, legal relations between parents and a child arise only after the official certification of information about the mother and father in the civil registry offices. However, a long time may pass between the birth of a child and state registration, which leads to the conclusion that there is no legal relationship between the parent and the child for this entire period, and therefore the interests of the child are not subject to legal protection, which contradicts the interests of the child. The state registration of the birth of a child is by default of a secondary nature, but the legislator attaches importance to it as a law-forming fact.

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