

# **FAMILY ACT**

## **Part One BASIC PROVISIONS**

### *Scope of the Act*

#### Article 1

This Act makes provisions with respect to: marriage and marriage relations, relations in nonmarital cohabitation, parent-child relations, adoption, foster care, guardianship, support, property relations in the family, protection from domestic violence, proceedings regarding family relations and personal name.

### *Family*

#### Article 2

- (1) The family is entitled to special protection of the state.
- (2) Everyone has a right to have his/her family life respected.

### *Marriage*

#### Article 3

- (1) Marriage is the cohabitation of a man and a woman governed by law.
- (2) Marriage may be concluded only upon the free consent of future spouses.
- (3) Spouses have equal rights.

### *Nonmarital cohabitation*

#### Article 4

- (1) Nonmarital cohabitation is the sustained cohabitation of a man and a woman between whom there are no marriage impediments (cohabitees).
- (2) Cohabitees have the rights and duties of spouses under the conditions of this Act.

### *Birth, Mother and Child*

#### Article 5

- (1) The woman has the right to freely decide on birth.

(2) The mother and the child are entitled to special protection of the state.

### *Child*

#### Article 6

(1) Everyone is under the obligation to act in the best interest of the child in all activities related to the child.

(2) The state is obliged to undertake all necessary measures to protect the child from neglect, from physical, sexual and emotional abuse and from every form of exploitation.

(3) The state is obliged to respect, protect and advance the rights of the child.

(4) A child born out-of-wedlock has the same rights as a child born in marriage.

(5) An adopted child has the same rights in relation to his/her adopters as a child has in relation to his/her parents.

(6) The state is under the obligation to provide a child not under parental care with protection in a family environment whenever possible.

### *Parents*

#### Article 7

(1) The mother and the father have joint parental rights.

(2) Parents are equally entitled to exercise parental rights.

(3) The abuse of parental rights is prohibited.

(4) Adopters have the legal status of parents.

### *Support*

#### Article 8

(1) Mutual support is the right and duty of family members determined by virtue of this Act.

(2) Waiving the right to support has no legal bearing.

### *Property Relations*

#### Article 9

Property relations in the family are governed by law, and may also be regulated by consent, in accordance with this Act.

### *Domestic Violence*

#### Article 10

(1) Domestic violence is prohibited.

(2) Everyone has the right to protection from domestic violence in accordance with law.

### *Age of Majority and Legal Capacity*

#### Article 11

(1) Majority is obtained by reaching eighteen years of age.

(2) Full legal capacity is obtained by reaching the age of majority or by concluding a marriage with court permission before reaching the age of majority.

(3) The court may also permit a minor to obtain full legal capacity if he/she has reached sixteen years of age, has become a parent and has reached the physical and mental maturity to provide independently for his/her own personality, rights and interests.

(4) The court decides upon the permissions referred to in paragraphs 2. and 3. of this Article in non-contentious proceedings.

### *Guardianship Authority*

#### Article 12

(1) The activities of family protection, family aid and guardianship, in terms of this Act, are performed by a centre for social services (further: guardianship authority).

(2) When the guardianship authority decides on administrative matters while performing the activities prescribed by this Act, it performs these activities as entrusted.

(3) The minister responsible for family protection prescribes the manner in which the activities of guardianship authority are organized, the standards of professional activities and the contents and the procedure of record keeping and documentation.

## *Personal Name*

### Article 13

- (1) Everyone has the right to a personal name.
- (2) A personal name is acquired at birth.
- (3) A personal name may be changed under the conditions of this Act.

## *Supervision*

### Article 14

- (1) The activities of the guardianship authority are supervised by the ministry responsible for family protection.
- (2) The professional activity of the guardianship authority is supervised by the ministry responsible for family protection.
- (3) The minister responsible for family protection prescribes the manner of supervision over the professional activity of the guardianship authority.

## **Part Two MARRIAGE**

### **I. MARRIAGE CONCLUSION**

#### Opposite Sexes, Statement of Will and Competence

### Article 15

Marriage is concluded when two persons of the opposite sex give statements of will before a registrar.

## *Cohabitation*

### Article 16

Marriage is concluded in order to realize the cohabitation of the spouses.

## **Marriage impediments**

### *Marriageability*

#### Article 17

Marriage may not be concluded by an already married person.

### *Inability to Reason*

#### Article 18

Marriage may not be concluded by a person unable to reason.

### *Blood Relationship*

#### Article 19

Marriage may not be concluded between blood relatives in a straight line, and among blood relatives in a lateral line, marriage may not be concluded between: a brother and a sister, a brother and a sister by the same mother or by the same father, an uncle and a niece, an aunt and a nephew, or children of brothers and sisters by the same mother or by the same father.

### *Adoptive Relationship*

#### Article 20

A relationship based on adoption (adoptive relationship) is a marriage impediment in the same way as blood relationship.

### *In-law Relationship*

#### Article 21

(1) Marriage may not be concluded between in-law relatives of first degree in a straight line: a father-in-law and a daughter-in-law, a son-in-law and a mother-in-law, a stepfather and a stepdaughter or a stepmother and a stepson.

(2) The court may, for justified reasons, permit marriage conclusion between in-law relatives referred to in paragraph 1 of this Article.

### *Guardianship*

#### Article 22

Marriage may not be concluded between a guardian and a ward.

*Minority*

Article 23

(1) Marriage may not be concluded by a person who has not reached eighteen years of age.

(2) A court may, for justified reasons, permit a minor who has reached sixteen years of age, and who has reached the physical and mental maturity necessary to perform the rights and duties of marriage, to conclude a marriage.

*Free Will*

Article 24

Marriage may not be concluded by a person who's will is not free.

**II. EFFECTS OF MARRIAGE**

*Cohabitation, Respect and Help*

Article 25

Spouses are under the obligation to cohabit and to mutually respect and help each other.

*Choice of Work and Profession*

Article 26

Spouses are free to decide independently from each other on their profession and work.

*Place of Residence and Joint Household*

Article 27

Spouses determine the place of their residence and decide on managing the joint household consensually.

*Support*

Article 28

Act. Spouses are under the obligation to support each other under the conditions of this

### *Property Relations*

#### Article 29

(1) The property of spouses may be joint or separate.

(2) Spouses may, under the conditions of this Act, regulate their property relations by a nuptial contract.

## **III. TERMINATION OF MARRIAGE**

### *Modes of Termination of Marriage*

#### Article 30

(1) A marriage is terminated by the death of a spouse, by annulment, or by divorce.

(2) A marriage is terminated by annulment or divorce on the day the annulment or divorce judgment becomes final.

(3) A marriage is terminated by annulment if it is null and void or voidable, in accordance with this Act.

### Nullity of Marriage

#### *Opposite Sexes, Statement of Will and Competence*

#### Article 31

A marriage is null and void if concluded by two persons of the same sex, if the spouses' statements of will were not affirmative, or if the marriage was not concluded before a registrar.

#### *Cohabitation*

#### Article 32

(1) A marriage is null and void if it was not concluded in order to realize the cohabitation of the spouses.

(2) A marriage between persons referred to in paragraph 1 of this Article will not be annulled if cohabitation has subsequently been established.

### *Marriageability*

#### Article 33

(1) A marriage is null and void if concluded within the duration of a former marriage of one of the spouses.

(2) The new marriage shall not be annulled if the former marriage has been terminated in the meantime.

### *Inability to Reason*

#### Article 34

(1) A marriage is null and void if concluded by a person unable to reason.

(2) If the person referred to in paragraph 1 of this Article subsequently becomes able to reason, the marriage is voidable.

### *Kinship*

#### Article 35

(1) A marriage is null and void if concluded between blood relatives, adoptive relatives or in-law relatives between which conclusion of marriage is not permitted.

(2) A marriage between in-law relatives referred to in paragraph 1 of this Article need not be annulled if there are justifiable reasons for it.

### *Guardianship*

#### Article 36

A marriage is null and void if concluded between a guardian and a ward.

### **Voidable Marriage**

#### *Minority*

#### Article 37

(1) A marriage is voidable if concluded by a minor without court permission.

(2) The marriage of a minor need not be annulled if conditions of Article 23 paragraph 2 of this Act are met.

### *Duress*

#### Article 38

(1) A marriage is voidable if a spouse consented to its conclusion under duress.

(2) Duress exists when the other spouse or a third person caused, by force or threat, justifiable fear in the spouse, which made him/her consent to the conclusion of marriage.

(3) Fear is considered justifiable when it is obvious from the circumstances that the life, body or another important good of one or the other spouse or a third person is endangered.

### *Error*

#### Article 39

(1) A marriage is voidable when one spouse consented to its conclusion in error regarding the personality or an important personal characteristic of the other spouse.

(2) An error regarding the personality exists when the spouse thought he/she was concluding marriage with one person, and he/she concluded marriage with another person (error in physical personality), or when he/she concluded marriage with the person he/she wanted to conclude it with, but that person was not the one he/she had presented himself/herself to be (error in civil personality), and the spouse in error would not have concluded marriage had he/she known of that.

(3) An error regarding an important personal characteristic exists when the personal characteristic is such that a spouse in error would not have concluded marriage had he/she known of it.

## **Divorce**

### *Divorce Agreement*

#### Article 40

(1) Spouses have the right to divorce if they conclude a written divorce agreement.

(2) The divorce agreement must include a written agreement on the exercise of parental rights and a written agreement on the division of joint property.

(3) The agreement on the exercise of parental rights may be in the form of an agreement on joint exercise of parental rights or an agreement on independent exercise of parental rights.

### *Action for Divorce*

#### Article 41

Each spouse has the right to divorce if the marriage relations are seriously and permanently disturbed or if the cohabitation of the spouses cannot be objectively realized.

## **Part Three PARENT-CHILD RELATIONS**

### **I. FAMILY STATUS OF THE CHILD**

#### **1. Maternity and Paternity**

##### *Maternity*

#### Article 42

A child's mother is the woman who gave birth to the child.

##### *Establishment of Maternity by Court Decision*

#### Article 43

(1) If the woman who gave birth to a child is not entered in the register of births as the child's mother, her maternity may be established by a final court judgment.

(2) The child and the woman claiming to be the child's mother have the right to establishment of maternity.

##### *Contesting Maternity*

#### Article 44

(1) The maternity of the woman entered in the register of births as a child's mother - can be contested.

(2) The child, the woman entered in the register of births as the child's mother, the woman claiming to be the mother, if she, by the same action, requests the establishment of her maternity, and the man considered to be the father of the child under this Act, have the right to contest maternity.

(3) Maternity established by a final court judgment may not be contested.

(4) Maternity may not be contested after the adoption of the child.

(5) Maternity may not be contested after the death of the child.

### *Paternity*

#### Article 45

(1) The husband of the child's mother is to be considered the father of a child born in marriage.

(2) The husband of the child's mother is to be considered the father of a child born within three hundred days after the termination of marriage, if the marriage was terminated due to the death of the husband and if the mother has not concluded another marriage in this period.

(3) The husband in the new marriage of the child's mother is to be considered the father of the child born in that marriage.

(4) The man whose paternity has been established by acknowledgment or by a final court judgment is to be considered the father of a child born out-of-wedlock.

### *Who May Acknowledge Paternity*

#### Article 46

A man who has reached sixteen years of age and who is able to reason may acknowledge paternity.

### *When Paternity May be Acknowledged*

#### Article 47

(1) Paternity may be acknowledged only if the child is alive at the moment of acknowledgment.

(2) Exceptionally, acknowledgment of paternity before childbirth is effective, if the child is born alive.

### *Consent of Mother*

#### Article 48

(1) A mother has to give consent to the acknowledgment of paternity if she has reached sixteen years of age and is able to reason.

(2) If the mother cannot give her consent, the consent of the child is sufficient, provided that the consent has been given in accordance with Article 49 paragraph 1 of this Act.

### *Consent of Child*

#### Article 49

(1) A child has to give consent to acknowledgment of paternity if he/she has reached sixteen years of age and is able to reason.

(2) If the child cannot give his/her consent, the consent of the mother is sufficient.

### *Consent of Child's Guardian*

#### Article 50

If neither the mother nor the child can give their consent, the consent to acknowledgment of paternity is given by the child's guardian, with prior consent of the guardianship authority.

### *How Paternity Can be Acknowledged*

#### Article 51

(1) A statement on acknowledgment of paternity may be given before a registrar, a guardianship authority or a court.

(2) A statement on acknowledgment of paternity may also be given in a will.

### *Revocation of Acknowledgment*

#### Article 52

Neither a statement on acknowledgment of paternity nor a statement on consent to acknowledgment of paternity may be revoked.

### *Nullity of Acknowledgment*

#### Article 53

The statement on acknowledgment of paternity and the statement on consent to acknowledgment of paternity are both null and void if the conditions for their validity, as specified by this Act, have not been met.

### *Voidable Acknowledgment*

#### Article 54

The statement on acknowledgment of paternity and the statement on consent to acknowledgment of paternity are both voidable if given under duress or in error.

### *Establishment of Paternity by Court Decision*

#### Article 55

(1) If paternity is not established by acknowledgment, it may be established by a final court judgment.

(2) The child, the mother, and the man claiming to be the child's father have the right to establishment of paternity.

### *Contesting Paternity*

#### Article 56

(1) The paternity of a man entered in the register of births as the child's father - can be contested.

(2) The child, the mother, the mother's husband, and the man claiming to be the father, if he, by the same action, requests the establishing of his paternity, have the right to contest paternity.

(3) Paternity may not be contested after it has been established by a final court judgment.

(4) Paternity established by acknowledgment may not be contested by those who have consented to acknowledgment of paternity.

(5) Paternity may not be contested after the adoption of the child.

(6) Paternity may not be contested after the death of the child.

## **2. Maternity and Paternity in the Case of Biomedically Assisted Conception**

### *Maternity*

#### Article 57

(1) The mother of a child conceived through biomedical assistance is the woman who gave birth to the child.

(2) If a child is conceived through biomedical assistance by a donated ovum, the maternity of the woman who donated the ovum may not be established.

### *Paternity*

#### Article 58

(1) The mother's husband is to be considered the father of a child conceived through biomedical assistance, provided he has granted written consent to the procedure of biomedically assisted fertilization.

(2) The mother's cohabitee is also to be considered the father of a child conceived through biomedical assistance, provided he has granted written consent to the procedure of biomedically assisted fertilization.

(3) The paternity of the man considered to be the child's father in terms of paragraphs 1 and 2 of this Article may not be contested.

(4) The man considered to be the child's father in terms of paragraphs 1 and 2 of this Article has the right to contest paternity only if the child was not conceived through the procedure of biomedically assisted fertilization.

(5) If a child is conceived through biomedical assistance by donated semen cells, the paternity of the man who donated the semen cells may not be established.

## **II. CHILD UNDER PARENTAL CARE**

### **1. Rights of the Child**

#### *Origin*

#### Article 59

(1) A child, independent of his/her age, has the right to know who his/her parents are.

(2) A child's right to know who his/her parents are may only be limited by this Act.

(3) A child who has reached the age of fifteen and who is able to reason has the right to inspect the register of births and other documentation related to his/her origin.

#### *Life with Parents*

#### Article 60

(1) A child has the right to live with his/her parents and the right to be taken care of by his/her parents, in preference to all others.

(2) The right of a child to live with his/her parents may be limited only by a court decision, when that is in the best interest of the child.

(3) A court may decide to separate a child from his/her parent if there are reasons for the parent to be fully or partially deprived of his/her parental rights or in case of domestic violence.

(4) A child who has reached the age of fifteen and who is able to reason has the right to decide which parent he/she is going to live with.

#### *Personal Relations*

##### Article 61

(1) A child has the right to maintain personal relations with the parent he/she does not live with.

(2) The right of a child to maintain personal relations with the parent he/she does not live with may be limited only by a court decision, when that is in the best interest of the child.

(3) A court may decide to limit the right of a child to maintain personal relations with the parent he/she does not live with if there are reasons for the parent to be fully or partially deprived of his/her parental rights or in case of domestic violence.

(4) A child who has reached the age of fifteen and who is able to reason may decide on maintaining personal relations with the parent he/she does not live with.

(5) A child has the right to maintain personal relations with relatives and other persons he/she is particularly close with, if that right has not been limited by a court decision.

#### *Development of the Child*

##### Article 62

(1) A child has the right to be provided with the best living and health conditions for his/her proper and full development.

(2) A child who has reached the age of fifteen and who is able to reason may give consent to a medical intervention.

#### *Education of the Child*

##### Article 63

(1) A child has the right to education in accordance with his/her abilities, wishes and inclinations.

(2) A child who has reached the age of fifteen and who is able to reason may decide which secondary school he/she will attend.

## *Legal Capacity of the Child*

### Article 64

(1) A child who has not reached fourteen years of age (a young minor) may undertake legal operations whereby he/she acquires exclusively rights, legal operations whereby he/she does not acquire either rights or obligations and legal operations of small significance.

(2) A child who has reached fourteen years of age (senior minor) may undertake, in addition to legal operations referred to in paragraph 1 of this Article, all other legal operations with the prior or subsequent consent of his/her parents, or the consent of the guardianship authority for legal operations set out in Article 193, paragraph 3 of this Act.

(3) A child who has reached the age of fifteen may undertake legal operations whereby he/she manages and disposes of his/her income or property acquired through his/her own work.

(4) A child may undertake other legal operations when so provided for by law.

## *Opinion of the Child*

### Article 65

(1) A child who is able to form his/her own opinion has the right to free expression of this opinion.

(2) A child has the right to duly receive all information necessary to form his/her own opinion.

(3) Due attention must be given to a child's opinion in all issues concerning the child and in all proceedings where his/her rights are decided on, in accordance with the age and maturity of the child.

(4) A child who has reached the age of ten may freely and directly express his/her opinion within every court or administrative proceedings where his/her rights are decided on.

(5) A child who has reached ten years of age may address the court or an administrative body, by himself/herself or through another person or institution, and request assistance in realization of his/her right to free expression of opinion.

(6) The court and the administrative body are to determine a child's opinion in cooperation with a school psychologist or guardianship authority, family counseling service or other institution specialized in mediating family relations, and in the presence of a person the child chooses himself/herself.

## *Duties of the Child*

### Article 66

(1) A child has the duty to help his/her parents in accordance with his/her age and maturity.

(2) A child who earns wages or has income from property has the duty to partially provide for his/her own support, the support of his/her parent and minor brother or sister, under the conditions of this Act.

## **2. Parental Rights**

### *Meaning of Parental Rights*

#### Article 67

Parental rights are derived from the duties of the parents and exist only to the extent necessary for the protection of the personality, rights and interests of the child.

### **Content of Parental Rights**

#### *Taking Care of the Child*

#### Article 68

(1) Parents have the right and duty to take care of the child.

(2) Taking care of the child includes protection, raising, upbringing, education, representation, and support of the child and management and disposal of the child's property.

(3) Parents have the right to receive all information on their child from educational and medical institutions.

#### *Protecting and Raising the Child*

#### Article 69

(1) Parents have the right and duty to protect and raise the child by personally taking care of his/her life and health.

(2) Parents may not subject the child to humiliating actions and punishments which insult the child's human dignity and have the duty to protect the child from such actions by other persons.

(3) Parents may not leave a child of pre-school age unsupervised.

(4) Parents may temporarily entrust the child to another person only if that person meets the requirements for being a guardian.

### *Upbringing of the Child*

#### Article 70

Parents have the right and duty to develop a relation based on love, trust and mutual respect with the child, and to direct the child towards adopting and respecting values of emotional ethical and national identity of his/her family and the society.

### *Education of the Child*

#### Article 71

(1) Parents are under the obligation to provide elementary education to child, and have the duty to take care of further education of the child according to their possibilities.

(2) Parents have the right to provide the child with education that is in accordance with their religious and ethical beliefs.

### *Representation of the Child*

#### Article 72

(1) Parents have the right and duty to represent the child in all legal operations and in all proceedings exceeding the limits of the child's legal capacity and capacity to be a party in the proceedings (legal representation).

(2) Parents have the right and duty to represent the child in all legal operations and in all proceedings within the limits of the child's legal capacity and capacity to be a party in the proceedings, unless otherwise specified by the law (voluntary representation).

(3) Parents have the right to undertake legal operations whereby they manage and dispose of the income acquired by a child under fifteen years of age.

### *Support of the Child*

#### Article 73

Parents have the right and duty to support the child under the conditions of this Act.

### *Management and Disposal of the Child's Property*

#### Article 74

Parents have the right and duty to manage and dispose of the child's property under the conditions of this Act.

## **Exercise of Parental Rights**

### *Joint Exercise of Parental Rights*

#### Article 75

(1) Parents exercise parental rights jointly and consensually when they cohabitate.

(2) Parents also exercise parental rights jointly and consensually when they do not cohabitate, if they conclude an agreement on joint exercise of parental rights, and if the court finds that this agreement is in the best interest of the child.

### *Agreement on Joint Exercise of Parental Rights*

#### Article 76

(1) In an agreement on joint exercise of parental rights the child's parents agree in writing to perform parental rights and duties jointly and with mutual consent, which has to be in the best interest of the child.

(2) The agreement on joint exercise of parental rights includes an agreement on what is to be considered as the child's residence.

### *Individual Exercise of Parental Rights*

#### Article 77

(1) One parent exercises parental rights alone when the other parent is unknown, has died, or is fully deprived of parental rights or legal capacity.

(2) One parent exercises parental rights alone when the child lives with this parent only, and the court has not yet made a decision on the exercise of parental rights.

(3) One parent exercises parental rights alone on the basis of a court decision when the parents do not cohabitate, and have not concluded an agreement on the exercise of parental rights.

(4) One parent exercises parental rights alone on the basis of a court decision when the parents do not cohabitate, and have concluded an agreement on joint or independent exercise of parental rights, but the court finds that this agreement is not in the best interest of the child.

(5) One parent exercises parental rights alone on the basis of a court decision when the parents do not cohabitate, if they conclude an agreement on independent exercise of parental rights, and the court finds that this agreement is in the best interest of the child.

### *Agreement on Independent Exercise of Parental Rights*

#### Article 78

(1) An agreement on independent exercise of parental rights includes the parents' agreement on entrusting the common child to one parent, the agreement on the amount of contribution by the other parent to the support of the child, and the agreement on the manner of maintaining personal relations of the child with the other parent.

(2) An agreement on independent exercise of parental rights transfers the exercise of parental rights to the parent to whom the child is entrusted.

(3) The parent who does not exercise parental rights has the right and duty to support the child, to maintain personal relations with the child, and to decide, jointly and consensually with the parent exercising the parental rights, on issues that significantly influence the child's life.

(4) The issues considered to be of significant influence to the child's life, in terms of this Act, are specifically: the education of the child, larger medical interventions on the child, the change of the child's residence, and the disposal of the child's property of great value.

## **Supervision over the Exercise of Parental Rights**

### *Preventive Supervision*

#### Article 79

Preventive supervision over the exercise of parental rights is performed by the guardianship authority, when it makes decisions, placed in its competence by virtue of this Act, which enable the parents to exercise parental rights.

### *Corrective Supervision*

#### Article 80

(1) Corrective supervision over the exercise of parental rights is performed by the guardianship authority when it makes decisions that correct parents in the exercise of parental rights.

(2) In performing corrective supervision the guardianship authority makes decisions that:

1. warn the parents of deficiencies in the exercise of parental rights;
2. refer parents for consultation to a family counseling service or an institution specialized in mediating family relations;
3. request that parents submit an account on managing the child's property;

(3) In performing corrective supervision the guardianship authority also initiates court proceedings in accordance with law.

## **Deprivation of Parental Rights**

## *Full Deprivation of Parental Rights*

### Article 81

(1) A parent who abuses his/her rights or grossly neglects duties that comprise a part of his/her parental rights may be fully deprived of parental rights.

(2) A parent abuses rights that comprise a part of parental rights:

1. if he/she physically, sexually or emotionally abuses the child;
2. if he/she exploits the child by forcing him/her to excessive labor, or to labor that endangers the moral, health or education of the child, or to labor that is prohibited by law;
3. if he/she instigates the child to commit criminal acts;
4. if he/she accustoms the child to indulge in bad habits;
5. if he/she in any other way abuses rights that comprise a part of parental rights.

(3) A parent grossly neglects duties that comprise a part of parental rights:

1. if he/she abandons the child;
2. if he/she does not at all take care of the child he/she lives with;
3. if he/she avoids to support the child or to maintain personal relations with the child he/she does not live with, or impedes the maintaining of personal relations of the child with the parent the child does not live with;
4. if he/she intentionally and unduly avoids to create conditions for cohabitation with the child who is living in a social service institution for user accommodation;
5. if he/she in any other way grossly neglects duties that comprise a part of parental rights.

(4) A court decision on full deprivation of parental rights deprives the parent of all rights and duties that comprise parental rights, except the duty of supporting the child.

(5) A court decision on full deprivation of parental rights may prescribe one or more measures for protecting the child from domestic violence.

## *Partial Deprivation of Parental Rights*

### Article 82

(1) A parent who exercises the rights or duties that comprise a part of his/her parental rights unconscionably may be partially deprived of parental rights.

(2) A court decision on partial deprivation of parental rights may deprive the parent of one or more rights and duties that comprise parental rights, except the duty of supporting the child.

(3) A parent who exercises parental rights may be deprived of the rights and duties of protecting, raising, upbringing, educating and representing the child, as well as of managing and disposing of the child's property.

(4) A parent who does not exercise parental rights may be deprived of the right to maintain personal relations with the child and of the right to decide on issues that significantly influence the child's life.

(5) The court decision on partial deprivation of parental rights may prescribe one or more measures for protecting the child from domestic violence.

### *Restoration of Parental Rights*

#### Article 83

Parental rights of a parent may be restored when the reasons for which he/she was fully or partially deprived of his/her parental rights cease to exist.

### **Termination of Parental Rights**

#### *When the Parental Rights are Terminated*

#### Article 84

(1) Parental rights are terminated:

1. when the child reaches eighteen years of age;
2. when the child acquires full legal capacity before becoming of age;
3. when the child is adopted;
4. when the parent is fully deprived of parental rights;
5. when the child or parent dies.

(2) Parental rights are not terminated to a parent when his/her child is adopted by his/her spouse.

### **Prolongation of Parental Rights**

#### *When the Parental Rights are Prolonged*

#### Article 85

Parental rights may be prolonged after the child reaches maturity, if the child, due to illness or impediments in psychophysical development, is unable to take care of himself/herself and of the protection of his/her rights or interests, or if he/she endangers his/her own rights and interests by his/her actions.

#### *When Prolonged Parental Rights are Terminated*

#### Article 86

Prolonged parental rights may be terminated when the reasons for their prolongation are terminated.

#### *Entry of Court Decision into Public Records*

##### Article 87

(1) A final court decision on deprivation or restoration of parental rights, as well as a decision on prolongation or termination of prolonged parental rights, is to be entered into the register of births.

(2) If the child owns immovable property, the decision from paragraph 1 of this article is also to be entered into the public record of rights on immovable property.

### **Part Four ADOPTION**

#### **I. ESTABLISHMENT OF ADOPTION**

##### *Competency*

##### Article 88

Adoption is established by a decision of the guardianship authority.

#### **General Eligibility of the Adoptee**

##### *Interest of the Adoptee*

##### Article 89

A child may be adopted if it is in his/her best interest.

##### *Minority of the Adoptee*

##### Article 90

(1) Only a minor may be adopted.

(2) A child may not be adopted before reaching the third month of life.

(3) A minor who has acquired full legal capacity may not be adopted.

### *Family Status of the Adoptee*

#### Article 91

The following may be adopted:

1. a child who has no living parents;
2. a child whose parents are unknown, or their dwelling place is unknown;
3. a child whose parents are fully deprived of parental rights;
4. a child whose parents are fully deprived of legal capacity;
5. a child whose parents gave their consent to adoption.

### *Blood Relationship*

#### Article 92

A blood relative in a straight line may not be adopted, and among relatives in a lateral line, a brother, a sister, or a brother or sister of the same mother or father may not be adopted.

### *Adoptive Relationship*

#### Article 93

- (1) A child already adopted may not be adopted.
- (2) A spouse or a cohabitee of the adopter may adopt his/her formerly adopted child.

### *Guardianship*

#### Article 94

A guardian may not adopt his/her ward.

### *Consent of the Adoptee's Parents*

#### Article 95

- (1) A child may be adopted only with the consent of his/her parents.

(2) A parent gives his/her consent to adoption with or without designating the adopters.

(3) A parent may not give his/her consent to adoption before the child reaches his/her second month of life.

(4) A parent may withdraw his/her consent to adoption within thirty days from the day the consent was given.

(5) A parent can use his/her right from paragraph 4 only once.

#### *When the Consent of a Parent of the Adoptee is not Necessary*

##### Article 96

The consent of a parent to adoption is not necessary:

1. if the parent is fully deprived of parental rights;
2. if the parent is deprived of the right to decide on issues that significantly influence the child's life;
3. if the parent is fully deprived of legal capacity.

#### *Consent of the Adoptee's Guardian*

##### Article 97

If a child is under guardianship, the consent to adoption is given by his/her guardian.

#### *Consent of the Adoptee*

##### Article 98

A child who has reached ten years of age and who is capable of reasoning has to give his/her consent to adoption.

### **General Eligibility of the Adopter**

#### *Age of the Adopter*

##### Article 99

(1) The difference in age between the adopter and the adoptee must not be less than eighteen years nor more than forty-five years.

(2) Exceptionally, the minister responsible for family protection may grant adoption to a person who is less than eighteen years older than the adoptee or to a person who is more than forty-five years older than the adoptee, if such an adoption is in the best interest of the child.

### *Personal Characteristics of the Adopter*

#### Article 100

(1) Only a person for whom it has been established that he/she possesses personal characteristics upon which it may be concluded that he/she will exercise his/her parental rights in the best interest of the child may adopt.

(2) The following persons may not adopt:

1. a person fully or partially deprived of parental rights;
2. a person fully or partially deprived of legal capacity;
3. a person suffering from an illness that may have detrimental effects on the adoptee;
4. a person convicted for a criminal act belonging to the group of criminal acts against marriage and family, against sexual freedom and against life and body.

### *Marital Status of the Adopter*

#### Article 101

(1) Spouses or cohabitantes may adopt together.

(2) Notwithstanding paragraph 1 of this Article, a person who is the spouse or the cohabitee of the child's parent may adopt.

(3) Exceptionally, the minister responsible for family protection may grant adoption to a person who lives alone, if there are particularly justified reasons for doing so.

### *Training of the Adopter*

#### Article 102

(1) Only a person who has been trained for adoption according to a special program may adopt, except in the case of a spouse or a cohabitee of the child's parent or adopter.

(2) The minister responsible for family protection prescribes the program of training for adoption.

### *Citizenship of the Adopter*

## Article 103

(1) A foreign citizen may adopt a child under the condition:

1. that adopters cannot be found among domestic citizens;
2. that the minister responsible for family protection gave his consent to adoption.

(2) It is to be considered that adopters cannot be found among domestic citizens if more than one year has passed from the day of entry of data on the future adoptee in the Unified Personal Register of Adoptions.

(3). Exceptionally, the minister responsible for family protection can grant adoption to a foreign citizen before the time limit set in paragraph 2 of this Article, if that is in the best interest of the child.

## II. EFFECTS OF ADOPTION

### *Adoptee-Adopters Relations*

#### Article 104

Adoption results in the establishment of the same rights and duties between the adoptee and his/her offspring and the adopters and their relatives, as between a child and his/her parents and other relatives.

### *Adoptee-Parents Relations*

#### Article 105

(1) Adoption terminates the parental rights of parents, unless the child is adopted by the spouse or the cohabitee of the child's parent.

(2) Adoption terminates the rights and duties of the child towards his/her relatives and the rights and duties of the relatives towards the child.

## III. TERMINATION OF ADOPTION

### *Modes of Termination of Adoption*

#### Article 106

(1) Adoption terminates by annulment, if it is null and void or voidable.

(2) Adoption may not be rescinded.

### *Nullity of Adoption*

#### Article 107

An adoption is null and void if, at the occasion of its establishment, the conditions for its validity as specified by this Act have not been met.

#### *Voidable Adoption*

#### Article 108

An adoption is voidable if the consent to adoption was given under duress or in error.

#### *Consequences of Termination*

#### Article 109

After the termination of an adoption, the guardianship authority decides on the care of the child.

### **Part Five FOSTER CARE**

#### **I. ESTABLISHMENT OF FOSTER CARE**

#### *Competency*

#### Article 110

- (1) Foster care is established by a decision of the guardianship authority.
- (2) The guardianship authority may also establish occasional foster care.

(3) The minister responsible for family protection prescribes additional conditions for the establishment of foster care.

#### **General Eligibility of the Foster Child**

#### *Interest of the Foster Child*

#### Article 111

Foster care may be established if it is in the best interest of the child.

### *Minority of the Foster Child*

#### Article 112

(1) Foster care may be established only if the child is a minor.

(2) An established foster care may continue after the foster child has reached the age of eighteen, if the child has an impediment in psychophysical development and is unable to take care of himself/herself and of the protection of his/her rights.

### *Family Status of the Foster Child*

#### Article 113

(1) Foster care may be established if the child is without parental care.

(2) Foster care may also be established if the child is under parental care, but has an impediment in psychophysical development or is a child with a behavioral disorder.

(3) A child without parental care in terms of this Act is: a child who has no living parents, a child whose parents are unknown or their dwelling place is unknown, a child whose parents are fully deprived of parental rights or legal capacity, a child whose parents have not yet acquired legal capacity, a child whose parents are deprived of the right to protect and raise or educate the child, and a child whose parents fail to take care of the child or take care of the child in an inappropriate manner.

(4) When foster children are siblings, the foster care is generally established with the same foster parent.

### *Consent of Foster Child's Parents*

#### Article 114

(1) Foster care may be established only with the consent of the child's parents.

(2) Parents' consent to the establishment of foster care is not necessary when the child is without parental care.

### *Consent of Foster Child's Guardian*

#### Article 115

If the child is under guardianship, the consent to the establishment of foster care is given by his/her guardian.

## *Consent of the Foster Child*

### Article 116

A child who has reached ten years of age and who is able to reason has to give his/her consent to the establishment of foster care.

## **General Eligibility of the Foster Parent**

### *Personal Characteristics of the Foster Parent*

#### Article 117

(1) Only a person for whom it has been established that he/she possesses personal characteristics upon which it may be concluded that he/she will take care of the child in the best interest of the child may become a foster parent.

(2) The following persons may not be foster parents:

1. a person fully or partially deprived of parental rights;
2. a person fully or partially deprived of legal capacity;
3. a person suffering from an illness that may have detrimental effects on the foster child;
4. a person convicted for a criminal act belonging to the group of criminal acts against marriage and family, against sexual freedom and against life and body.

### *Training of the Foster Parent*

#### Article 118

(1) A person who has, generally, been trained for foster care according to a special program may become a foster parent.

(2) The minister responsible for family protection prescribes the program of training for foster care.

## **II. EFFECTS OF FOSTER CARE**

### *Rights and Duties of Foster Parents*

#### Article 119

(1) A foster parent has the right and duty to protect, raise, bring up and educate the child.

(2) A foster parent has the duty to take special care to prepare the child for independent life and work.

(3) A foster parent has the right to compensation, in accordance with law.

### *Rights and Duties of Parents*

#### Article 120

Parents of a child given over to foster care have the right and duty to represent the child, to manage and dispose of the child's property, to support the child, to maintain personal relations with the child and to decide on issues significantly influencing the child's life jointly and consensually with the foster parent, unless the parents are fully or partially deprived of parental rights or legal capacity, or they fail to take care of the child or take care of the child in an inappropriate manner.

## **III. TERMINATION OF FOSTER CARE**

### *Modes of Termination of Foster Care*

#### Article 121

(1) Foster care is terminated:

1. when the child reaches eighteen years of age;
2. when the child acquires full legal capacity before becoming of age;
3. when the child is adopted;
4. when the child or the foster parent dies;
5. by rescission of foster care.

(2) Foster care may be prolonged to the child's twenty-sixth year of life, at the longest, if the child is in regular schooling.

(3) In case of death of the foster parent, a person who lived with him/her in the same family household has priority in the establishment of new foster care.

### *Rescission of Foster Care*

#### Article 122

(1) Foster care may be rescinded by a decision of the guardianship authority.

(2) The guardianship authority may decide on rescission of foster care at the request of the foster parent, at the request of a parent or guardian of the foster child or at their consensual request.

(3) The guardianship authority is under the obligation to make a decision on the rescission of foster care if it establishes that the need for foster care has ceased or that foster care is no longer in the best interest of the child.

### *Consequences of Termination*

#### Article 123

(1) After the termination of foster care by the death of the foster parent or by rescission of foster care, the child's parents continue to take care of the child under parental care.

(2) After the termination of foster care by the death of the foster parent or by rescission of foster care, the guardianship authority decides on the care of a child without parental care.

## **Part Six GUARDIANSHIP**

### **I. PLACEMENT UNDER GUARDIANSHIP**

#### *Who is Placed Under Guardianship*

#### Article 124

A child without parental care (a minor ward) or a person of age who is deprived of legal capacity (mature ward) is placed under guardianship.

#### *Decision on Placing Someone Under Guardianship*

#### Article 125

(1) The decision on placing someone under guardianship is made by the guardianship authority.

(2) The decision on placing someone under guardianship must include a guardianship plan.

(3) By the decision on placing someone under guardianship the guardianship authority appoints a guardian and decides on the accommodation of the ward.

(4) The guardianship authority will first try to accommodate the ward in a family of his/her relatives.

(5) If the ward has property, the guardianship authority's standing commission performs an inventory and estimates the value of the of ward's property.

(6) The minister responsible for family protection prescribes the mode of operation, the composition and the funding of the standing commission.

## II. GUARDIAN

### 1. Appointment of a Guardian

#### *Who Can Be Appointed as a Guardian*

##### Article 126

(1) A person who has personal characteristics and abilities necessary to perform the duties of a guardian and who has consented to being a guardian may be appointed as a guardian.

(2) A ward's spouse, relative or foster parent are primarily appointed as a guardian, unless the ward's interest requires otherwise.

#### *Opinion of the Ward*

##### Article 127

A ward who has reached ten years of age and who is able to reason has the right to propose the person to be appointed as his/her guardian.

#### *Who May Not Be Appointed as a Guardian*

##### Article 128

The following persons may not be appointed as a guardian:

1. a person fully or partially deprived of legal capacity;
2. a person fully or partially deprived of parental rights;
3. a person whose interests are adverse to the ward's interests;
4. a person who, given his/her personal relations with the ward, the ward's parents or other relatives, cannot be expected to perform properly the activities of a guardian.

#### *Guardian of More than One Ward*

##### Article 129

A person may be appointed as a guardian of more than one ward, if he/she consents to it and if it is in each wards' interest.

#### *Collective Guardian*

##### Article 130

The manager of a social service institution for user accommodation, or a person employed in such an institution, may be appointed as the guardian of all the wards accommodated in that social service institution, if he/she consents to it and if it is in each wards' interest.

### *Direct Guardian*

#### Article 131

(1) The guardianship authority may decide, if it is in the ward's interest, not to appoint a guardian to a person under guardianship, but to perform the guardianship duties directly.

(2) An expert of the guardianship authority who will perform the activities of the guardian in the name of the guardianship authority is appointed by a ruling on direct performance of guardianship activities.

(3) The expert of the guardianship authority may validly perform the guardianship activities which, when performed by a guardian, are valid only upon an approval from the guardianship authority, only if he/she does not bear guardianship administrative authorizations and under the conditions and in the manner performed by a guardian.

(4) The guardianship authority may perform a legal operation with the ward under its direct care only with the consent of the ministry responsible for family protection.

### *Temporary Guardian*

#### Article 132

(1) The guardianship authority may decide to appoint a temporary guardian to a ward, to a child under parental care, or to a person with legal capacity, if it finds that necessary for the temporary protection of the personality, rights or interests of those persons.

(2) Under the conditions referred to in paragraph 1 of this Article the guardianship authority is under the obligation to appoint a temporary guardian to:

1. a person whose dwelling place is unknown, and who does not have a legal representative or legally entitled person;
2. an unknown owner of property;
3. a person whose interests are adverse to the interests of his/her legal representative, or to persons who have adverse interests and the same legal representative (collision guardian);
4. a foreign citizen who is present or has property in the territory of the Republic of Serbia;
5. a person who requests that a temporary guardian be appointed to him/her and gives a justified reason;
6. any other person when so provided for by law.

(3) The decision on the appointment of a temporary guardian must also state the legal operations or type of legal operations that the guardian may undertake depending on the circumstances of each specific case.

## **2. Relieving a Guardian**

*When the Guardian is Relieved*

Article 133

(1) The guardianship authority is under the obligation to relieve the guardian without delay if it establishes that the guardian has, for any reason, ceased to perform his/her duty, or that the guardian has abused the rights or grossly neglected the duties of a guardian, or that a circumstance has arisen due to which he/she could not have been appointed as a guardian.

(2) The guardianship authority is under the obligation to relieve the guardian within thirty days from the day it establishes that the guardian has been performing the guardianship duties unconscionably or that it would be more useful for the ward to have another person appointed as his/her guardian.

(3) The guardianship authority is under the obligation to relieve the guardian within sixty days from the day the guardian so requests.

#### *Duty of the Guardianship Authority*

##### Article 134

(1) The guardianship authority is under the obligation, upon relieving one guardian, to duly carry out the procedure of appointing a new guardian.

(2) If the ward has property, the guardianship authority's standing commission performs an inventory and estimates the value of the of ward's property.

### **III. EFFECTS OF GUARDIANSHIP**

#### **1. Duties of the Guardian**

##### *Taking Care of the Ward*

##### Article 135

(1) The guardian is under the obligation to take care of his/her ward conscientiously.

(2) Taking care of the ward includes: taking care of the ward's personality, representing the ward, acquiring assets to support the ward and managing and disposing of the ward's property.

##### *Taking Care of the Personality*

##### Article 136

(1) The guardian is under the obligation to take care that the protecting, raising, upbringing and educating of a minor ward lead, as soon as possible, to his/her ability to lead an independent life.

(2) The guardian is under the obligation to take care to eliminate the reasons for which a mature ward was deprived of his/her legal capacity and to enable the ward to lead an independent life as soon as possible.

(3) The guardian is under the obligation to pay visits to the ward and directly gain information on the conditions the ward lives under.

## *Representing the Ward*

### Article 137

- (1) The guardian is under the obligation to represent his/her ward.
- (2) The ward has legal capacity equal to a child under parental care.
- (3) The guardian represents his/her ward the same way a parent represents his/her child.
- (4) The guardian may, but only with prior consent of the guardianship authority:
  1. decide on the education of the ward;
  2. decide on medical interventions on the ward;
  3. give consent to the undertaking of legal operations by a ward over fourteen years of age;
  4. undertake legal operations whereby he/she manages and disposes of the income acquired by a ward under 15 years of age.

## *Acquiring Assets for Supporting the Ward*

### Article 138

- (1) The guardian is under the obligation to undertake all necessary measures to acquire assets for supporting the ward.
- (2) Assets for supporting the ward may be acquired from:
  1. the ward's income;
  2. assets obtained from persons who have the legal obligation to support the ward;
  3. the ward's property;
  4. social security assets;
  5. other sources.

## *Managing the Ward's Property*

### Article 139

- (1) The guardian is under the obligation to manage the property of the ward that the ward has not acquired through work.
- (2) The guardian is independent in performing the operations of regular management of the ward's property.
- (3) A guardian may perform operations that exceed the regular management of the ward's property only with the prior consent of the guardianship authority.

## *Disposing of the Ward's Property*

### Article 140

- (1) The guardian disposes of the property of the ward that the ward has not acquired through work.
- (2) A guardian may dispose of the ward's property only with prior consent of the guardianship authority.
- (3) The guardian may use the principal of the ward's property only for the ward's support or when so required by another important interest of the ward.
- (4) The income from the ward's property may also be used for paying justified expenses incurred in the course of performing guardianship activities or for the payment of the guardian's remuneration, and on the basis of a decision of the guardianship authority.

## *Liability of the Guardian*

### Article 141

- (1) The guardian is liable for the damage that he/she causes to the ward in the course of performing guardianship activities, unless he/she proves that the damage occurred without his/her fault.
- (2) The guardian is culpable when he/she caused the damage intentionally or through gross negligence.
- (3) The guardianship authority is jointly and severally liable for the damage referred to in paragraph 1 of this Article.

## *Reporting to the Guardianship Authority*

### Article 142

- (1) The guardian is under the obligation to submit reports and accounts of his/her work to the guardianship authority at the beginning of each calendar year for the previous year (regular report), when the guardianship authority so requires (special report), and after the termination of guardianship (final report).
- (2) The guardian is under the obligation to submit the regular report by the end of February for the previous year, and the special and final reports within fifteen days from the day the guardianship authority so requests.
- (3) The guardian's report should include data on the personality of the ward, on the conditions of the ward's accommodation, on his/her health, upbringing and education, as well as on all other issues relevant to the ward's personality.

(4) The report should also include data on management and disposal of the ward's property, the ward's income and expenditures over the previous period, and the final state of the ward's property.

(5) The minister responsible for family protection prescribes the manner of submitting the report and of accounting.

## **2. Rights of the Guardian**

### *Right to Compensation for Expenses*

#### Article 143

(1) The guardian has the right to compensation for justified expenses incurred in the course of performing guardianship activities.

(2) The compensation for the guardian's expenses is paid primarily from the ward's income, unless this would endanger the ward's support.

### *Right to Remuneration*

#### Article 144

(1) The guardian has the right to remuneration.

(2) The guardian's remuneration is paid primarily from the ward's income, unless this would endanger the ward's support.

(3) The minister responsible for family protection prescribes the conditions for compensating the guardian for his/her expenses and for his/her remuneration.

## **IV. TERMINATION OF GUARDIANSHIP**

### *Modes of Termination of Guardianship*

#### Article 145

(1) Guardianship is terminated:

1. when a minor ward reaches eighteen years of age;
2. when a minor ward acquires full legal capacity before becoming of age;
3. when a minor ward is adopted;
4. with a final court decision on the restitution of parental rights or on the acquiring or restitution of legal capacity to a minor ward's parent;
5. with a final court decision on the restitution of legal capacity to a mature ward;
6. when the ward dies.

(2) Guardianship may also terminate when a parent who failed to take care of the child or took care of the child in an inappropriate manner, starts to take care of the child in an appropriate manner.

(3) With the termination of the guardianship, the rights and duties of the guardian are also terminated.

(4) The guardianship does not terminate with the death or relieving of the guardian.

## **V. DEPRIVATION OF LEGAL CAPACITY**

### *Full Deprivation of Legal Capacity*

#### Article 146

(1) A person of age who, due to illness or impediments in psychophysical development, is not able to reason normally and is thus unable to take care of himself/herself and to protect his/her rights or interests, may be fully deprived of legal capacity.

(2) The legal capacity of the person referred to in paragraph 1 of this Article is equal to the legal capacity of a young minor.

### *Partial Deprivation of Legal Capacity*

#### Article 147

(1) ) A person of age who, due to illness or impediments in psychophysical development, directly endangers his/her own rights and interests or the rights and interests of other persons by his/her actions may be partially deprived of legal capacity.

(2) The legal capacity of the person referred to in paragraph 1 of this Article is equal to the legal capacity of a senior minor.

(3) A court decision on partial deprivation of legal capacity will determine the legal operations that a person partially deprived of legal capacity may and may not undertake independently.

### *Restoration of Legal Capacity*

#### Article 148

Legal capacity may be restored to a person of age that has been deprived of legal capacity when the conditions due to which he/she was fully or partially deprived of his/her legal capacity cease to exist.

*Decisions on the Deprivation and Restoration of Legal Capacity*

Article 149

(1) The court decides on the deprivation of legal capacity and on the restoration of legal capacity in non-contentious proceedings.

(2) A final court decision on the deprivation or restoration of legal capacity is delivered to the guardianship authority without delay.

*Entry of Court Decision into Public Records*

Article 150

(1) A final court decision on the deprivation or restoration of legal capacity is to be entered into the register of births.

(2) If the person deprived of legal capacity owns immovable property, the decision from paragraph 1 of this Article is also to be entered into the public record of rights on immovable property.

**Part Seven  
SUPPORT**

**I. SUPPORT OF THE SPOUSE**

*Who is Entitled to Support*

Article 151

(1) A spouse who lacks sufficient means of support, and who is unable to work or is unemployed, has the right to support from his/her spouse in proportion to the spouse's capacities.

(2) A spouse who was aware at the moment of the conclusion of a null and void or voidable marriage of the reason making the marriage null and void or voidable does not have the right to support.

(3) The spouse does not have the right to support if the acceptance of his/her request for support would present manifest injustice for the other spouse.

## **II. SUPPORT OF THE COHABITEE**

### *Who is Entitled to Support*

#### Article 152

(1) A cohabitee who lacks sufficient means of support, and who is unable to work or is unemployed, has the right to support from his/her cohabitee in proportion to the cohabitee's capacities.

(2) Provisions of this Act governing the support of the spouse apply accordingly to the support of the cohabitee.

## **III. SUPPORT OF A CHILD'S MOTHER**

### *Who is Entitled to Support*

#### Article 153

(1) A child's mother who lacks sufficient means to support has the right to support from the child's father, in the period from three months before childbirth until one year after childbirth.

(2) A mother does not have the right to support if the acceptance of her request for support would present manifest injustice for the father.

## **IV. SUPPORT OF THE CHILD, PARENTS AND OTHER RELATIVES**

### *Support of a Minor Child*

#### Article 154

(1) A minor child has the right to support from his/her parents.

(2) A minor child has the right to support from other blood relatives in straight ascending line if his/her parents are not alive or if they lack sufficient means of support.

(3) The duty of a minor child to partially provide for the needs of his/her support from his/her own income or property is subsidiary to the duty of his/her parents and blood relatives.

### *Support of a Mature Child*

#### Article 155

(1) A mature child who is unable to work and who lacks sufficient means of support has the right to support from his/her parents for the duration of such a state.

(2) A mature child who is in regular schooling has the right to support from his/her parents in proportion to their capacities, until he/she reaches twenty-six years of age at the latest.

(3) A mature child in terms of paragraphs 1 and 2 of this Article has the right to support from blood relatives in straight ascending line in proportion to their capacities if his/her parents are not alive or lack sufficient means of support.

(4) A mature child does not have the right to support if the acceptance of his/her request for support would present manifest injustice for his/her parents or other blood relatives.

### *Support of a Parent*

#### Article 156

(1) A parent who is unable to work and lacks sufficient means of support has the right to support from his/her mature child or other blood relative in a straight descending line or from his/her minor child who earns wages or has income from property, in proportion to his/her capacities.

(2) A parent does not have the right to support if the acceptance of his/her request for support would present manifest injustice for his/her child or other blood relative.

### *Support of a Sibling*

#### Article 157

A minor sibling has the right to support from his/her mature sibling or minor sibling who earns wages or has income from property, if the parents are not alive or lack sufficient means of support.

### *Support of Adoptive Relatives*

#### Article 158

The provisions of this Act governing the support of children, parents and other blood relatives apply accordingly to support of adoptive relatives.

## *Support of In-Law Relatives*

### Article 159

(1) A minor stepchild has the right to support from his/her stepmother or stepfather.

(2) A minor stepchild has not the right to support if the marriage between his/her parent and stepmother or stepfather has ceased by annulment or divorce.

(3) A stepmother or stepfather who is unable to work and who lacks sufficient means of support has the right to support from his/her mature stepchild in proportion to his/her capacities.

(4) A stepmother or stepfather does not have the right to support if the acceptance of his/her request for support would present manifest injustice for the stepchild.

## **V. DETERMINATION AND TERMINATION OF SUPPORT**

### *Criteria for Determining Support*

#### Article 160

(1) Support is determined in accordance with the needs of the support creditor and the capacities of the support debtor, with cognizance of a minimum amount of support.

(2) The needs of the support creditor depend on his/her age, health, education, property, income, and other circumstances that significantly affect the determination of support.

(3) The capacities of the support debtor depend on his/her income, possibility to get employed and earn wages, his/her property, his/her personal needs, obligation to support other persons and other circumstances that significantly affect the determination of support.

(4) The minimum amount of support is the amount of remuneration for foster children or persons in family placement, periodically determined by the ministry responsible for family protection, in accordance with law.

### *Manner of Determining Support*

#### Article 161

(1) Generally, support is determined in terms of money.

(2) Support may also be determined in other terms, but only if the support creditor and debtor so agree.

### *Amount of Support*

#### Article 162

(1) The support creditor may, at his/her own choice, request that the amount of support be determined as a fixed monthly amount of money or as a percentage of the regular monthly pecuniary income of the support debtor.

(2) If the amount of support is determined as a percentage of the regular monthly pecuniary income of the support debtor (salary, compensation of salary, pension, royalties), the amount of support, generally, may be no less than 15% and no more than 50% of the regular monthly pecuniary income of the support debtor, less the amount of taxes and contributions to compulsory social insurance.

(3) If the support creditor is a child, the amount of support must enable the child to maintain at least the same standard of living as the parent-support debtor.

### *Duration of Support*

#### Article 163

(1) The support may last for a definite or an indefinite period of time.

(2) The support of a spouse after the termination of a marriage may not last longer than five years.

(3) Exceptionally, the support of a spouse after the termination of a marriage may be prolonged after the time limit of five years, if particularly justified reasons prevent the spouse-support creditor from working.

### *Change in the Amount of Support*

#### Article 164

The amount of support may be reduced or increased if the circumstances on basis of which the previous decision was made change.

### *Right to Recovery*

#### Article 165

(1) A person who has actually provided support without being legally obliged to do so has the right to recovery from the person who, according to this Act, was under the obligation to provide support.

(2) If more than one person were under the obligation to provide support at the same time, their obligations are joint and several.

### *Priority of Support*

#### Article 166

- (1) A spouse realizes his/her right to support primarily from the other spouse.
- (2) Blood relatives realize their mutual right to support in the order of inheritance according to the law.
- (3) In-law relatives realize their mutual right to support after the blood relatives.
- (4) If there is more than one support creditor, a child's right to support has priority.
- (5) If more than one person is under the obligation to provide support at the same time, their obligation is several.

### *Termination of Support*

#### Article 167

- (1) Support is terminated:
  1. when the duration of support expires;
  2. by the death of the support creditor or debtor.
- (2) Support may terminate:
  1. when the support creditor acquires enough assets for support, unless the support creditor is a minor;
  2. when the support debtor loses the capacity to provide support or providing support becomes manifestly unjust for him/her, unless the support creditor is a minor.
- (3) The support of a spouse is also terminated when the support creditor concludes a new marriage or nonmarital cohabitation.
- (4) A spouse whose right to support has been terminated may not re-effect his/her right to support from the same spouse.

## **Part Eight PROPERTY RELATIONS**

## **I. PROPERTY RELATIONS BETWEEN SPOUSES**

### **1. Separate Property**

#### *Acquisition*

#### Article 168

(1) The property that a spouse acquires before concluding a marriage is his/her separate property.

(2) The property that the spouse acquires during marriage by the division of joint property or by inheritance, gift, or other legal operation whereby exclusively rights are acquired, is his/her separate property.

#### *Managing and Disposing*

#### Article 169

Each spouse independently manages and disposes of his/her separate property.

#### *Increase of Value*

#### Article 170

(1) If, during cohabitation in marriage, the value of the separate property of one spouse slightly increases, the other spouse has the right to a pecuniary claim in proportion to his/her contribution.

(2) If, during cohabitation in marriage, the value of the separate property of one spouse considerably increases, the other spouse has the right to a share in such property in proportion to his/her contribution.

### **2. Joint Property**

#### **Notion of Joint Property**

### *Acquisition*

#### Article 171

(1) The property that the spouses have acquired through work during their cohabitation in marriage is their joint property.

(2) Spouses may regulate their property relations in another way by a nuptial contract.

### *Games of Chance*

#### Article 172

The property acquired in games of chance during cohabitation in marriage is joint property, unless the spouse who won the premium proves that he/she invested his/her separate property in the game.

### *Intellectual Property Rights*

#### Article 173

(1) The property acquired by using intellectual property rights during cohabitation in marriage is joint property.

### *Managing and Disposing*

#### Article 174

(1) Spouses manage and dispose of their joint property jointly and consensually.

(2) It is to be considered that one spouse always undertakes operations of regular management with the consent of the other spouse.

(3) A spouse may not dispose of his/her share in joint property nor may he/she burden it with legal operations *inter vivos*.

### *Increase of Value*

#### Article 175

If, after the termination of cohabitation in marriage, the value of joint property increases, each spouse has the right to pecuniary claim or to a share in the increased value in proportion to his/her contribution.

### *Entry into Public Records*

#### Article 176

(1) It is to be considered that the spouses have divided their joint property if both spouses are entered as co-owners of determined shares into the public record of rights on immovable property.

(2) It is to be considered that the entry has been made for both spouses even when only one spouse is entered, unless a written agreement on division of joint property or a nuptial contract was concluded after the entry, or a court decided on the rights of the spouses regarding immovable property.

## **Division of Joint Property**

### *Notion of Division*

#### Article 177

The determination of the co-owner's or co-creditor's share of each spouse in joint property is to be considered as the division of joint property in terms of this Act.

### *Time of Division*

#### Article 178

The division of joint property may take place for the duration of the marriage or after its termination.

### *Consensual Division*

#### Article 179

The spouses may conclude an agreement on the division of joint property (consensual division).

### *Court Division*

#### Article 180

(1) If the spouses cannot reach an agreement on the division of joint property, the division of joint property is to be made by a court (court division).

(2) It is presumed that the shares of both spouses in the joint property are equal.

(3) A larger share of one spouse in acquiring joint property depends on his/her realized income, household activity, care of the children, care of the property, and other circumstances significant for the preservation of or increase in the value of joint property.

(4) A larger share in acquiring joint property is determined in the same proportion for all rights and obligations at the moment of termination of cohabitation in marriage.

(5) A larger share of one spouse in acquiring a certain right from joint property may be established only if this right is economically independent of other rights from joint property, and the spouse participated in acquiring that right with income from his/her separate property.

### *Right to Division*

#### Article 181

The right to division of joint property belongs to: the spouses, heirs of a deceased spouse, and creditors of a spouse whose claims could not be settled from the spouse's separate property.

### *Division of Things for Spouse's Personal Use*

#### Article 182

(1) Things for personal use of one spouse are part of that spouse's exclusive property and are not to be calculated in his/her share, provided their value is not disproportionately large in comparison to the value of joint property and the other spouse's things for personal use.

(2) If the value of things referred to in paragraph 1 of this Article is disproportionately large, they are part of that spouse's exclusive property and are to be calculated as part of his/her share.

### *Division of Things for a Child's Personal Use*

#### Article 183

(1) Things for a child's personal use are part of the exclusive property of the spouse exercising parental right and are not to be calculated in his/her share.

(2) If the parents exercise their parental rights jointly, they have joint property rights on things for the child's personal use.

### *Division of Things Used for Exercising a Trade or a Profession*

#### Article 184

Things used for exercising a trade or a profession of a spouse are part of his/her exclusive property and are to be calculated in his/her share.

#### *Division of Household Objects*

#### Article 185

Household objects that have been in the possession of one spouse after the termination of cohabitation in marriage for at least three years are part of that spouse's exclusive property and are to be calculated in his/her share.

### **Liability for Obligations**

#### *Liability for Personal Obligations*

#### Article 186

Each spouse is liable for his/her personal obligations undertaken before or after the conclusion of the marriage with his/her separate property as well as his/her share in joint property.

#### *Liability for Joint Obligations*

#### Article 187

(1) Spouses are jointly and severally liable with their joint and separate properties for obligations undertaken to satisfy the needs of cohabitation in marriage, as well as for obligations which, by law, burden both spouses.

(2) A spouse who has settled a joint obligation from his/her separate property has the right to reimbursement from the other spouse in proportion to his/her share in their joint property.

### **3. Spouses' Contracts**

#### *Nuptial Contract*

#### Article 188

(1) Spouses or future spouses may regulate property relations regarding their existing or future property by a contract (nuptial contract).

(2) A nuptial contract must be concluded in a written form and must be certified by a judge, who is under the obligations to read the contract to the spouses prior to its certification, and advise them that such a contract excludes the legal regime of joint property.

(3) A nuptial contract pertaining to immovable property is to be entered into the public record of rights on immovable property.

### *Contract on Management and Disposal of Joint Property*

#### Article 189

(1) Spouses may conclude a contract on the grounds of which one of them manages and disposes of their entire joint property or some parts of this property.

(2) The contract referred to in paragraph 1 of this Article may pertain: only to management or only to disposal or only to certain operations of management and disposal.

(3) Management also includes disposal within the framework of regular management operations, unless otherwise specified.

(4) A contract on management and disposal of joint property pertaining to immovable property is to be entered into the public record of rights on immovable property.

### *Gift Contract*

#### Article 190

(1) If a marriage is terminated by divorce or annulment, the usual gifts exchanged between spouses during cohabitation in marriage are not to be returned.

(2) Gifts of a value which is disproportionately large in comparison to the value of joint property of the spouses, exchanged between spouses during cohabitation in marriage are to be returned.

(3) A spouse does not have the right to the return of the gift if the acceptance of his/her request for the return of the gift would present manifest injustice for the other spouse.

(4) Gifts are to be returned in the condition they were in at the moment of the termination of cohabitation in marriage.

## **II. PROPERTY RELATIONS BETWEEN COHABITEES**

### *Joint Property*

## Article 191

(1) The property that the cohabitees have acquired through work during their nonmarital cohabitation is their joint property.

(2) The provisions of this Act governing property relations between spouses apply accordingly to property relations between cohabitees.

### **III. PROPERTY RELATIONS BETWEEN CHILD AND PARENT**

#### *Managing a Child's Property*

##### Article 192

(1) A child independently manages the property that he/she acquires through work.

(2) Parents have the right and duty to manage the property that the child has not acquired through work.

#### *Disposing of a Child's Property*

##### Article 193

(1) A child independently disposes of the property that he/she acquires through work.

(2) Parents have the right to dispose of the property that the child has not acquired through work.

(3) Parents may dispose of immovable property and movable property of considerable value only with the prior or subsequent consent of the guardianship authority.

(4) Parents may use the principal of the child's property only for the child's support or when so required by another important interest of the child.

(5) Parents may also use the income from a child's property for their own support or for the support of another common minor child.

#### *Right to Residence (habitatio)*

##### Article 194

(1) The child and the parent exercising parental rights have the right to residence in the apartment owned by the child's other parent if the child and the parent exercising parental rights do not have property rights to an unoccupied apartment.

(2) The right to residence lasts until the child acquires maturity.

(3) The child and the parent do not have the right to residence if the acceptance of their request for the right to residence would present manifest injustice for the other parent.

#### **IV. PROPERTY RELATIONS AMONG MEMBERS OF A FAMILY COMMUNITY**

##### *Joint Property*

##### Article 195

(1) The property acquired jointly with spouses or cohabitantes through work by members of their family during cohabitation in the family community, is their joint property.

(2) Members of the family in terms of paragraph 1 of this Article are blood, in-law and adoptive relatives of spouses or cohabitantes who live together with them.

(3) Provisions of this Act on property relations between spouses apply accordingly to property relations among members of a family community, except for provisions in Article 176 paragraph 2 (entry into public records) and article 180 paragraph 2 (presumption of equal shares).

##### *Application of the Act Governing Property-Law Relations and Application of the Act Governing Obligations*

##### Article 196

Provisions of the Act governing property-law relations and of the Act governing obligations apply to property relations between spouses, cohabitantes, child and parent and members of a family community, when these relations are not regulated by this Act.

#### **Part Nine PROTECTION FROM DOMESTIC VIOLENCE**

##### *Domestic Violence*

##### Article 197

(1) Domestic violence, in terms of this Act, is the behavior by which one family member endangers the physical integrity, mental health or tranquility of another family member.

(2) Domestic violence, in terms of paragraph 1 of this Act, is in particular:

1. inflicting or attempting to inflict a bodily injury;
2. incitement of fear by threatening to murder or inflict a bodily injury to a member of the family or another person close to him/her;
3. forcing to sexual intercourse;
4. abetting to sexual intercourse or sexual intercourse with a person who has not reached fourteen years of age or an incapable person;
5. restricting of freedom of movement or communication with other persons;
6. insulting, as well as any other insolent, unscrupulous or malevolent behavior.

(3) Members of the family, in terms of paragraph 1 of this Act, are:

1. spouses or former spouses;
2. children, parents and other blood relatives, in-law or adoptive relatives, and persons related by foster care;
3. persons who live or have lived in the same family household;
4. cohabitees or former cohabitees;
5. persons who have been or still are in a mutual emotional or sexual relation, or have a common child, or the child is to be born, although they have never lived in the same family household.

### *Protective Measures*

#### Article 198

(1) A court may order one or more protective measures against domestic violence pertaining to a family member who acts violently, temporarily prohibiting or limiting the maintenance of his/her personal relations with another family member.

(2) Protective measures against domestic violence are:

1. the issuance of a warrant for eviction from a family apartment or house, regardless of a right to property or a lease to immovable property;
2. the issuance of a warrant for moving into a family apartment or house, regardless of a right to property or a lease to immovable property;
3. prohibition of getting closer to a family member than a certain distance;
4. prohibition of access to the vicinity of the place of residence or workplace of a family member;
5. prohibition of further molestation of a family member.

(3) A protective measure against domestic violence may not last longer than one year.

(4) The time spent in custody as well as any detainment related to a criminal act or offense is counted in the time of duration of the protective measure against domestic violence.

### *Prolongation of a Protective Measure*

#### Article 199

A protective measure against domestic violence may be prolonged until the reasons for which it had been ordered cease to exist.

### *Termination of a Protective Measure*

#### Article 200

A protective measure against domestic violence may be terminated before the expiry of its duration if the reasons for which it had been ordered cease to exist.

## **Part Ten FAMILY RELATIONS PROCEEDINGS**

### **I. PROCEEDINGS BEFORE COURTS**

#### **1. Common Provisions**

##### *Scope of This Part of the Act*

#### Article 201

Provisions of this part of the Act govern special litigation proceedings regarding family relations.

##### *Application of the Act Governing Litigation Proceedings*

#### Article 202

Provisions of the Act governing litigation proceedings apply to court proceedings regarding family relations, unless otherwise specified by this Act.

##### *Composition of the Panel*

#### Article 203

(1) Proceedings regarding family relations are to be adjudicated in the first instance by a panel composed of one judge and two lay judges, and in the second instance, by a panel composed of three judges.

(2) Judges referred to in paragraph 1 of this Article are to be persons who acquired special knowledge in the field of rights of the child.

(3) Lay judges referred to in paragraph 1 of this Article are to be selected from the ranks of experts with experience in working with children and youth.

(4) The program and the manner of acquiring special knowledge referred to in paragraph 2 of this Article are prescribed consensually by the minister responsible for family protection and the minister responsible for the judiciary.

### *Urgency of the Proceedings*

#### Article 204

(1) Proceedings regarding family relations are urgent if they pertain to a child or a parent exercising parental rights.

(2) In the proceedings regarding family relations the action is not delivered to the defendant for an answer.

(3) The court will, generally, carry out the proceedings referred to in paragraph 1 of this Article through no more than two hearings.

(4) The first hearing is to be scheduled to take place within fifteen days from the day the action or motion was filed in court.

(5) The court of second instance is under the obligation to make a decision within thirty days from the day the appeal was delivered to the court.

### *Investigative principle*

#### Article 205

In the proceedings regarding family relations the court may determine facts even if they are beyond contest among the parties, and may also independently investigate facts which none of the parties had presented.

### *Excluding the Public*

#### Article 206

(1) In the proceedings regarding family relations the public is excluded.

(2) Data in court records are privileged and all participants in the proceedings who have had access to such data are under the obligation to maintain confidentiality.

*Decision on Costs*

Article 207

Courts have discretion to decide on the costs of proceedings regarding family relations, taking into account the reasons of justice.

*Revision*

Article 208

Revision is always allowed in proceedings regarding family relations, unless otherwise specified by this Act.

**2. Proceedings in Matrimonial Dispute**

*Territorial Jurisdiction*

Article 209

In a matrimonial dispute the territorial jurisdiction of the court is determined by the Act governing litigation proceedings.

*Initiation of Proceedings*

Article 210

(1) Proceedings for determining the existence or nonexistence of a marriage, as well as for the annulment and divorce of a marriage (matrimonial dispute) are initiated by action.

(2) Proceedings for a divorce are also initiated by a motion for a consensual divorce.

*Action for Establishing the Existence or Nonexistence of Marriage*

Article 211

The action for establishing the existence or nonexistence of a marriage can be initiated by spouses, persons having legal interest in the establishment of the existence or nonexistence of the marriage and the public prosecutor.

*Action for Annulment of a Null and Void Marriage*

Article 212

(1) The action for annulment of a marriage for causes listed in Articles 31 through 33, Article 34 paragraph 1 and Articles 35 and 36 of this Act can be initiated by spouses, persons having legal interest in the annulment of the marriage and the public prosecutor.

(2) In cases referred to in paragraph 1 of this Article, a marriage may also be annulled after its termination.

(3) The right to initiate action for the annulment of a null and void marriage does not lapse with time.

*Proving Nullity (Marriageability)*

Article 213

(1) In the proceedings for annulment of a marriage concluded within the duration of a former marriage of one of the spouses, the existence of the former marriage can be proven by an excerpt from the register of marriages.

(2) If the plaintiff cannot prove the existence of the former marriage by an excerpt from the register of marriages, the court must direct the plaintiff to initiate litigation within a certain time limit to establish the existence of the former marriage, and if he/she fails to do so, it is to be considered that the action has been withdrawn.

(3) If the defendant contests the validity of the former marriage entered in the register of marriages, the court must direct the defendant to initiate litigation within a certain time limit to annul the former marriage, and if he/she fails to do so, it is to be considered that his/her statement has been withdrawn.

*Subsequent Disappearance of the Cause of Nullity (Marriageability)*

Article 214

The court shall deny a claim for the annulment of a marriage if the former marriage ended before the conclusion of the trial of action.

*Action for Annulment of a Voidable Marriage (Minority)*

Article 215

(1) A spouse who was under age at the time the marriage was concluded has the right to initiate action, within one year from becoming of age, for the annulment of a marriage concluded without court permission.

(2) The parents of a minor spouse, or his/her guardian, have the right to initiate action, before the minor spouse becomes of age, for the annulment of a marriage concluded without court permission.

*Action for Annulment of a Voidable Marriage (Duress and Error)*

Article 216

A spouse who has concluded a marriage under duress or in error has the right to initiate action for the annulment of the marriage within one year from the day the duress ceased or the error was noticed.

*Action for Annulment of a Voidable Marriage (Inability to Reason)*

Article 217

A spouse who was unable to reason at the time the marriage was concluded, and who subsequently becomes able to reason, has the right to initiate action for the annulment of the marriage within one year from the day the inability to reason ceased to exist or from the day the decision on restoration of legal capacity became final.

*Heirs and Guardian*

Article 218

(1) The right to action for annulment of a marriage is not transferred to a spouse's heirs.

(2) A spouse's heirs may continue already initiated proceedings for establishing the grounds for annulment of a marriage.

(3) The guardian of a minor spouse or of a spouse without legal capacity may initiate action for annulment of a marriage only with prior consent of the guardianship authority.

*Action for Divorce*

Article 219

The action for divorce may be initiated by both spouses.

*Heirs and Guardian*

## Article 220

(1) The right to action for divorce is not transferred to a spouse's heirs.

(2) A spouse's heirs may continue already initiated proceedings for establishing the grounds for divorce.

(3) Heirs of spouses who initiated a matrimonial dispute by a motion for consensual divorce may continue already initiated proceedings for establishing the grounds for divorce.

(4) The guardian of a spouse without legal capacity may initiate action for divorce only with prior consent of the guardianship authority.

## *Proxy*

### Article 221

(1) If the action in a matrimonial dispute is submitted by a party's proxy, the authorization must be certified and issued for the purpose of representation in the matrimonial dispute only.

(2) The authorization must include claims as to the type of action and the grounds for initiating the action.

(3) In a matrimonial dispute initiated by a motion for consensual divorce, both spouses may not be represented by the same proxy.

## *Waiving a Claim*

### Article 222

In a matrimonial dispute, waving the claim has the same legal effect as withdrawal of action.

## *Withdrawal of Action*

### Article 223

(1) In a matrimonial dispute, the plaintiff may withdraw the action until the conclusion of the trial of action without the defendant's consent, and until the final completion of the proceedings with the defendant's consent.

(2) A motion for consensual divorce may be withdrawn by one or both spouses until the final conclusion of the proceedings.

(3) If the action or motion in accordance with paragraphs 1 and 2 of this Article is withdrawn after a judgment at the first instance was given, the court will issue a ruling determining that the judgment has no legal bearing and that the proceedings are canceled.

### *Judgment and Court Settlement*

#### Article 224

- (1) In a matrimonial dispute, no judgment may be pronounced by default nor on the grounds of admission or waiver.
- (2) In a matrimonial dispute, parties may not conclude a court settlement.

### *Divorce Judgment Based on a Divorce Agreement*

#### Article 225

- (1) The agreement of the spouses on the exercise of parental rights is entered in the wording of the divorce judgment, if the court finds this agreement to be in the best interest of the child.
- (2) The agreement of the spouses on the division of joint property is entered in the wording of the divorce judgment when the divorce is based on a divorce agreement.

### *Judgment in Matrimonial Dispute*

#### Article 226

- (1) In its judgment on a matrimonial dispute the court is under the obligation to decide on the exercise of parental rights.
- (2) In its judgment on a matrimonial dispute the court may decide on full or partial deprivation of parental rights.
- (3) In its judgment on a matrimonial dispute the court may order one or more protective measures against domestic violence.

### *Challenging a Judgment*

#### Article 227

- (1) A judgment on a divorce on grounds of a divorce agreement can be challenged only due to gross violations of the litigation procedure or if the divorce agreement has been concluded under duress or in error.
- (2) A final judgment in a matrimonial dispute cannot be challenged by extraordinary legal remedies in the part pertaining to the decision on the annulment or divorce of the marriage.

### *Death of Parties*

#### Article 228

(1) If, in the course of a matrimonial dispute, one or both spouses die, the court of first instance will issue a ruling determining that the proceedings are canceled.

(2) Provision of paragraph 1 of this Article does not affect the right of heirs to continue the proceedings in accordance with Articles 218 and 220 of this Act.

## **The Mediation Procedure**

### *Scope of the Mediation Procedure*

#### Article 229

The mediation procedure (hereinafter: mediation) includes the procedure for attempt at reconciliation (hereinafter: reconciliation) and the procedure for attempt at consensual termination of dispute (hereinafter: settlement).

### *When Mediation is Carried Out*

#### Article 230

(1) Mediation is regularly carried out with the proceedings in a matrimonial dispute initiated by the action of one spouse.

(2) Mediation in a matrimonial dispute is not carried out:

1. if one of the spouses does not agree to mediation;
2. if one of the spouses is unable to reason;
3. if the dwelling place of one of the spouses is unknown;
4. if one or both spouses live abroad.

### *Who Carries Out Mediation*

#### Article 231

(1) Mediation is generally carried out by the court.

(2) The action for annulment or divorce of marriage is delivered together with the summons for the mediation hearing.

(3) The judge who manages mediation may not participate in decision-making in a subsequent phase of the proceedings, unless the mediation has been successful.

### *How Mediation is Carried Out*

#### Article 232

(1) Upon receiving the action for annulment or divorce of marriage, the court schedules a mediation hearing, which is held before an individual judge only.

(2) The judge who conducts mediation is under the obligation to recommend to the spouses to undergo psycho-social counseling as well.

(3) If the spouses agree to psycho-social counseling, the court is to entrust mediation, at the spouses' proposal or with their consent, to the competent guardianship authority, marriage or family counseling service, or other institution specialized in mediating family relations.

(4) Entrusting is performed by delivering the action for annulment or divorce of marriage.

## **Reconciliation**

### *When Reconciliation is Carried Out*

#### Article 233

Reconciliation is to be carried out only in a matrimonial dispute initiated by action for divorce.

### *Purpose of Reconciliation*

#### Article 234

The purpose of reconciliation is to resolve the troubled relation between spouses without conflict and without divorce.

### *Summoning to Reconciliation*

#### Article 235

(1) Both spouses are to be summoned to reconciliation.

(2) Proxies may not represent spouses in reconciliation nor may they attend reconciliation.

### *When Reconciliation is Successful*

#### Article 236

If the spouses reconcile, it is to be considered that the action for divorce has been withdrawn.

### *When Reconciliation is Unsuccessful*

#### Article 237

(1) If one or both spouses, although duly summoned, fail to answer the summons to reconciliation, it is to be considered that reconciliation has been unsuccessful, and the settlement proceedings will continue.

(2) If reconciliation, in terms of paragraph 1 of this Article, fails, but the court or institution entrusted with mediation finds that a chance for reconciliation still exists, reconciliation may be continued.

#### *Report on Reconciliation*

#### Article 238

(1) The court or institution entrusted with mediation proceedings is to make a report on reconciliation which includes statements of the spouses that they have reconciled or that reconciliation failed.

(2) The institution entrusted with mediation proceedings is under the obligation to inform the court in which the action for divorce has been initiated on the results of reconciliation and deliver the report on reconciliation to this court.

#### *Duration of Reconciliation*

#### Article 239

(1) The court or institution entrusted with mediation proceedings is under the obligation to carry out reconciliation within two months from the date the action has been delivered to this court or institution.

(2) If the institution entrusted with mediation proceedings fails to inform the court on the results of reconciliation within three months from the date the action for divorce has been delivered to this institution, reconciliation proceedings are to be carried out by the court.

(3) The court is under the obligation to schedule a reconciliation hearing within fifteen days from the day of the expiry of the time limit referred to in paragraph 2 of this Article.

### **Settlement**

#### *When Settlement is Carried Out*

#### Article 240

Settlement is carried out in a matrimonial dispute initiated by action for the annulment of marriage or action for divorce, in which reconciliation of spouses failed.

### *Purpose of Settlement*

#### Article 241

(1) The purpose of settlement is to resolve the troubled relation between spouses without conflict after the annulment of marriage or divorce.

(2) The court or institution entrusted with mediation proceedings is to endeavor that the spouses reach an agreement on the exercise of parental rights and an agreement on the division of joint property.

### *Summoning to Settlement*

#### Article 242

Both spouses and their proxies are to be summoned to the settlement.

### *When Settlement is Successful*

#### Article 243

(1) If the spouses reach an agreement on the exercise of parental rights and an agreement on the division of joint property, it is to be considered that settlement was successful.

(2) If the spouses reach only an agreement on the exercise of parental rights or only an agreement on the division of joint property, it is to be considered that settlement was partially successful.

(3) If the settlement is successful or partially successful, the agreement of the spouses on the division of joint property is entered in the wording of the judgment on the annulment or divorce of marriage.

(4) If the settlement is successful or partially successful, the agreement of the spouses on the exercise of parental rights is entered in the wording of the judgment on the annulment or divorce of marriage, if the court finds this agreement to be in the best interest of the child.

### *When Settlement is Unsuccessful*

#### Article 244

(1) If one or both spouses, although duly summoned, fail to answer the summons to settlement, it is to be considered that settlement has been unsuccessful, and the proceedings on the action for the annulment or divorce of marriage will continue.

(2) If settlement, in terms of paragraph 1 of this Article, fails, but the court or institution entrusted with mediation finds that a chance for reaching a settlement still exists, settlement may be continued.

### *Report on Settlement*

#### Article 245

(1) The court or institution entrusted with mediation proceedings is to make a report on settlement which includes the agreement of the spouses on the exercise of parental rights and on the division of joint property, or the statements of the spouses that the settlement failed.

(2) The institution entrusted with mediation proceedings is under the obligation to inform the court in which the action for the annulment or divorce of marriage has been initiated on the results of settlement and deliver the report on settlement to this court.

### *Duration of Settlement*

#### Article 246

(1) The court is under the obligation to carry out settlement within two months from the date reconciliation proceedings were terminated or the date the action for the annulment of marriage has been delivered to this court.

(2) The institution entrusted with mediation proceedings is under the obligation to carry out settlement within two months from the date reconciliation proceedings were terminated or the date the action for the annulment of marriage has been delivered to this institution.

(3) If the institution entrusted with mediation proceedings fails to inform the court on the results of settlement within three months from the date reconciliation proceedings were terminated or the date the action for the annulment of marriage has been delivered to this institution, settlement proceedings are to be carried out by the court.

(4) The court is under the obligation to schedule a settlement hearing within fifteen days from the day of the expiry of the time limit referred to in paragraph 3 of this Article.

## **3. Proceedings in Maternity and Paternity Dispute**

### *Territorial Jurisdiction*

#### Article 247

In a maternity and paternity dispute the territorial jurisdiction of the court is determined by the Act governing litigation proceedings.

### *Initiation of Proceedings*

#### Article 248

The proceedings for establishing or contesting maternity (maternity dispute), for establishing or contesting paternity and for annulment of acknowledgment of paternity (paternity dispute) are initiated by action.

*Action to Establish Maternity*

Article 249

(1) A child may initiate action to establish maternity regardless of the time limit.

(2) A woman claiming to be a child's mother may initiate action to establish her maternity within one year from the day of learning that she gave birth to the child, and no later than ten years from the birth of the child.

*Action to Contest Maternity*

Article 250

(1) A child may initiate action to contest maternity regardless of the time limit.

(2) A woman entered in the register of births as a child's mother may initiate action to contest her maternity within one year from the day of learning that she did not give birth to the child, and no later than ten years from the birth of the child.

(3) A woman who claims to be a child's mother may initiate action to contest the maternity of the women entered in the register of births as the child's mother within one year from the day of learning that she gave birth to the child, and no later than ten years from the birth of the child.

(4) A man considered to be the child's father under this Act may initiate action to contest maternity within one year from the day of learning that the woman entered in the register of births as the child's mother did not give birth to the child, and no later than ten years from the birth of the child.

*Action to Establish Paternity*

Article 251

(1) A child may initiate action to establish paternity regardless of the time limit.

(2) A mother may initiate action to establish paternity within one year from the day of learning that the man she considers to be the child's father did not acknowledge paternity, and no later than ten years from the birth of the child.

(3) A man claiming to be a child's father may initiate action to establish his paternity within one year from the day of learning that the mother or the child's guardian did not consent to his acknowledgment of paternity, and no later than ten years from the birth of the child.

### *Action to Contest Paternity*

#### Article 252

(1) A child may initiate action to contest paternity regardless of the time limit.

(2) A mother may initiate action to contest paternity of the man considered to be the child's father under this Act within one year from the day of learning that he is not the father, and no later than ten years from the birth of the child.

(3) A mother's husband may initiate action to contest his paternity within one year from the day of learning that he is not her child's father, and no later than ten years from the birth of the child.

(4) A man claiming to be a child's father may initiate action to contest paternity of the man considered to be the child's father under this Act within one year from the day of learning that he is the child's father, and no later than ten years from the birth of the child.

(5) A man considered to be the father of a child conceived through biomedical assistance may initiate action to contest his paternity within one year from the day of learning that the child was not conceived through a procedure of biomedically assisted fertilization, and no later than ten years from the birth of the child.

### *Action to Annul an Acknowledgment of Paternity*

#### Article 253

(1) The action to annul a statement on acknowledgment of paternity, as well as a statement on consent to acknowledgment of paternity, for the causes listed in Articles 46 through 51 of this Act, may be initiated by persons who gave the statement, persons having a legal interest in the annulment of the statement and the public prosecutor.

(2) A person who gave the statement on acknowledgment of paternity or a statement of consent to acknowledgment of paternity under duress or in error, may initiate action to annul the statement within one year from the day the duress ceased or the error was noticed.

### *Heirs and Guardian of the Plaintiff*

#### Article 254

(1) The right to action in a maternity and paternity dispute is not transferred to the heirs.

(2) A plaintiff's heirs may continue already initiated proceedings for establishing the grounds to establish or contest maternity or paternity, or for annulment of acknowledgment of paternity.

(3) The guardian of a minor plaintiff or a plaintiff without legal capacity may initiate action in a maternity and paternity dispute only with prior consent of the guardianship authority.

### *Defendant's Heirs*

#### Article 255

(1) If the defendant in a maternity and paternity dispute is no longer alive, action is initiated against the defendant's heirs.

(2) If the defendant has no other heirs, action is initiated against the Republic of Serbia as the heir.

### *Co-litigants*

#### Article 256

(1) The child and the woman claiming to be the child's mother are the parties in the proceedings for establishing maternity.

(2) The parties in the proceedings for contesting maternity are: the child, the woman claiming to be the child's mother, the woman entered in the register of births as the child's mother and the man considered to be the child's father under this Act (mandatory and unique co-litigants).

(3) The parties in the proceedings for establishing paternity are: the child, the mother, the man claiming to be the child's father, and the man the mother considers to be the child's father (mandatory and unique co-litigants).

(4) The parties in the proceedings for contesting paternity are: the child, the mother, the man considered to be the child's father under this Act, and the man claiming to be the child's father (mandatory and unique co-litigants).

(5) The parties in the proceedings for annulment of acknowledgment of paternity are: the person who gave a statement on acknowledgment of paternity, the person who gave a statement of consent to acknowledgment of paternity, and the person having legal interest in the annulment of statement but only if conditions for annulment of acknowledgment are at issue (mandatory and unique co-litigants).

(6) If the action in a maternity and paternity dispute does not include all those who are to be parties to the proceedings, the court is under the obligation to instruct the plaintiff to sue the person who is not included in the action or to invite this person to join the action as the new plaintiff.

(7) If the plaintiff fails to amend the action so as to include all those who are to be parties to the proceedings within the time limit set by the court, or if such persons fail to join the action as plaintiffs, it is to be considered that this action is withdrawn, and if the action is returned to the court without correction, the court is to reject it.

### *Proxy*

#### Article 257

(1) If the action in a maternity and paternity dispute is submitted by a party's proxy, the authorization must be certified and issued for the purpose of representation in this dispute only.

(2) The authorization must include claims as to the type of action and the grounds for initiating the action.

### *Judgment and Court Settlement*

#### Article 258

(1) In a maternity and paternity dispute, no judgment may be pronounced by default nor on the grounds of admission or waiver.

(2) In a maternity and paternity dispute, parties may not conclude a court settlement.

### *Death of Parties*

#### Article 259

(1) If, in the course of a maternity and paternity dispute, the plaintiff or the defendant die, the court of first instance will issue a ruling determining that the proceedings are canceled.

(2) Provision of paragraph 1 of this Article does not affect the right of heirs to continue the proceedings in accordance with Article 254 paragraph 2 of this Act.

### *Decision on the Exercise or Deprivation of Parental Rights and Protection from Domestic Violence*

#### Article 260

(1) In its judgment on a maternity and paternity dispute the court is under the obligation to decide on the exercise of parental rights.

(2) In its judgment on a maternity and paternity dispute the court may decide on full or partial deprivation of parental rights.

(3) In its judgment on a maternity and paternity dispute the court may order one or more protective measures against domestic violence.

## **4. Proceedings in a Dispute over the Protection of a Child's Rights and in a Dispute over the Exercise or Deprivation of Parental Rights**

### *Territorial Jurisdiction*

## Article 261

The child may initiate action in a dispute over the protection of his/her rights and in a dispute over the exercise or deprivation of parental rights before a court of general territorial jurisdiction or before a court on the territory of which the child has residence or a dwelling place.

### *Initiation of Proceedings*

## Article 262

Proceedings in a dispute over the protection of a child's rights and in a dispute over the exercise or deprivation of parental rights is initiated by action.

### *Action for the Protection of a Child's Rights*

## Article 263

(1) The action for the protection of a child's rights may be initiated by: the child, the child's parents, the public prosecutor and the guardianship authority.

(2) The action for the protection of a child's rights may be initiated with regard to all rights which are granted to the child by this Act and are not protected by some other proceedings.

(3) All children's, health and educational institutions or social service institutions, judicial and other state authorities, associations and citizens, have the right and duty to inform the public prosecutor or the guardianship authority on reasons for the protection of a child's rights.

### *Action for Exercise or Deprivation of Parental Rights*

## Article 264

(1) Action for the exercise of parental rights may be initiated by: the child, the child's parents, and the guardianship authority.

(2) Action for the deprivation of parental rights may be initiated by: the child, the other parent, the public prosecutor and the guardianship authority.

(3) Action for the restitution of parental rights, besides persons referred to in paragraph 2 of this Article, may be initiated by the parent who has been deprived of parental rights.

(4) All children's, health and educational institutions or social service institutions, judicial and other state authorities, associations and citizens, have the right and duty to inform the public prosecutor or the guardianship authority on reasons for the deprivation of parental rights.

### *Collision Guardian and Temporary Representative of the Child*

## Article 265

(1) If adverse interests exist between the child and the child's legal representative, the child is to be represented by a collision guardian.

(2) A child who has reached the age of ten and who is able to reason has the right to request from the guardianship authority, personally or through another person or institution, to appoint a collision guardian for him/her.

(3) A child who has reached the age of ten and who is able to reason has the right to request from the court, personally or through another person or institution, to appoint a temporary representative for him/her, due to the existence of adverse interests between him/her and his/her legal representative.

### *Duty of the Court*

#### Article 266

(1) In a dispute over the protection of a child's rights and in a dispute over the exercise or deprivation of parental rights the court is always under the obligation to act in the best interest of the child.

(2) If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights a child as a party has not been adequately represented, the court is under the obligation to appoint a temporary representative to the child.

(3) If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights, the party is a child able to form his/her own opinion, the court is under the obligation to:

1. take care that the child duly receives all necessary information;
2. allow the child to directly express his/her opinion, and pay due attention to the child's opinion, in accordance with the age and maturity of the child;
3. determine the child's opinion in a manner and place that is in accordance with the child's age and maturity,

unless that would be manifestly in contrast to the best interest of the child.

### *Duty of the Collision Guardian or Temporary Representative*

#### Article 267

If the collision guardian or temporary representative determines that in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights he/she is representing a child able to form his/her own opinion, he/she is under the obligation to:

1. take care that the child duly receives all necessary information;
2. give explanations to the child concerning the possible consequences of actions he/she undertakes;
3. convey to the court the child's opinion, if the child did not express his/her opinion before the court directly,

unless that would be manifestly in contrast to the best interest of the child.

### *Duty of Others*

#### Article 268

(1) Provisions of Articles 265 through 267 of this Act are applied in other court proceedings concerning family relations as well, if these proceedings also pertain to a child's rights.

(2) Authorities conducting other proceedings are under the obligation to apply provisions of Articles 265 through 267 of this Act, if these proceedings also pertain to a child's rights.

### *Particular Urgency of Proceedings*

#### Article 269

(1) Proceedings for the protection of a child's rights and proceedings for the deprivation of parental rights are particularly urgent.

(2) The first hearing is to be scheduled to take place within eight days from the day the action was filed in court.

(3) The court of second instance is under the obligation to make a decision within fifteen days from the day the appeal was delivered to the court.

### *Findings and Expert Opinion*

#### Article 270

Before coming to a decision on the protection of a child's rights or on the exercise or deprivation of parental rights, the court is under the obligation to ask for the findings and expert opinion of the guardianship authority, family counseling service or another institution specialized in mediating family relations.

### *Judgment and Court Settlement*

#### Article 271

(1) In a dispute over the protection of a child's rights and in a dispute over the exercise or deprivation of parental rights, no judgment may be pronounced by default nor on the grounds of admission or waiver.

(2) In a dispute over the protection of a child's rights and in a dispute over the exercise or deprivation of parental rights, parties may not conclude a court settlement.

### *Decision on Exercise of Parental Rights*

#### Article 272

(1) The agreement of the parents on joint or independent exercise of parental rights is entered in the wording of the judgment on the exercise of parental rights, if the court finds this agreement to be in the best interest of the child.

(2) If the parents have not concluded an agreement on the exercise of parental rights or the court finds their agreement not to be in the best interest of the child, the decision on entrusting the common child to one parent, on the amount of contribution by the other parent to the support of the child, and on the manner of maintaining the personal relations of the child with the other parent is made by the court.

(3) When the court makes a decision on the joint or independent exercise of parental rights, and the child is not staying with the parent who should exercise parental rights, the court is to order the child to be given immediately to the parent who should exercise parental rights.

### *Decision on the Exercise or Deprivation of Parental Rights and on Protection from Domestic Violence*

#### Article 273

(1) In its judgment on a dispute over the protection of a child's rights the court may decide on the exercise or deprivation of parental rights.

(2) In its judgment on a dispute over the exercise of parental rights the court may decide on full or partial deprivation of parental rights.

(3) In its judgment on a dispute over the protection of a child's rights or on a dispute over the exercise or deprivation of parental rights the court may order one or more protective measures against domestic violence.

## **5. Proceedings in a dispute over the Annulment of an Adoption**

### *Territorial Jurisdiction*

#### Article 274

In a dispute over the annulment of an adoption, the court on the territory of which the guardianship authority through which the adoption took place is located, has territorial jurisdiction.

### *Action for Annulment of an Adoption*

#### Article 275

(1) Action for annulment of an adoption for causes listed in Articles 89 through 103 of this Act can be initiated by the adopters, the adoptee, the parents or guardian of the adoptee, persons having legal interest in the annulment of the adoption and the public prosecutor.

(2) The person who has given a statement of consent to adoption under duress or in error has the right to initiate action for annulment of the adoption within one year from the day the duress ceased or the error was noticed.

### *Judgment on Annulment of Adoption*

#### Article 276

(1) The court delivers the judgment on the annulment of adoption to the guardianship authority through which the adoption took place.

(2) On grounds of the judgment referred to in paragraph 1 of this Article, the guardianship authority through which the adoption took place is to issue a ruling on the annulment of the ruling on the new entry of birth for the adoptee.

(3) On grounds of the ruling referred to in paragraph 2 of this Article, the first entry of birth for the adoptee becomes valid again.

## **6. Proceedings in a Dispute over Support**

### *Territorial Jurisdiction*

#### Article 277

In a dispute over support the territorial jurisdiction of the court is determined by the Act governing litigation proceedings.

### *Initiation of Proceedings*

#### Article 278

(1) Proceedings in a dispute over support are initiated by action.

(2) Action for support may be initiated by a person who is considered to be the support creditor or the support debtor in terms of this Act.

(3) Action for the support of a child may also be initiated by the guardianship authority.

*Initiation of Proceedings for the Support of a Spouse or Cohabitee*

Article 279

(1) Action for support of a spouse may be initiated during a marriage or during a nonmarital cohabitation.

(2) Action for support of a spouse may be initiated until the conclusion of the trial of action in the matrimonial dispute at the latest.

(3) Exceptionally, a former spouse who, for justified reasons, failed to initiate action for support within the matrimonial dispute, may initiate action within one year from the day of the termination of marriage or the day when the last actual allowance for support was given, at the latest.

(4) In the case referred to in paragraph 2 of this Article, the action for support may be accepted only if the conditions on which the right to support depends existed at the time the marriage was terminated and still exist at the moment of conclusion of the trial of action in the dispute over support.

(5) Action for support of a cohabitee may be initiated within one year from the day of the termination of the nonmarital cohabitation or the day when the last actual allowance for support was given.

*Particular Urgency of Proceedings*

Article 280

(1) Proceedings in a dispute over support are particularly urgent.

(2) The first hearing is to be scheduled to take place within eight days from the day the action was filed in court.

(3) The court of second instance is under the obligation to make a decision within fifteen days from the day the appeal was delivered to the court.

*Departure from the Principle of Disposal*

Article 281

The court is not bound by the limits of the claim for support.

*Records and Documentation on Support*

Article 282

(1) The court is under the obligation to immediately deliver the judgment on support to the guardianship authority on the territory of which the support creditor has residence or a dwelling place.

(2) The guardianship authority is under the obligation to keep records and documentation on supported persons.

(3) The minister responsible for family protection prescribes the manner of keeping records and documentation.

## **7. Proceedings in a Dispute over Protection from Domestic Violence**

### *Territorial Jurisdiction*

#### Article 283

In a dispute over protection from domestic violence, besides the court of general territorial jurisdiction, the court on the territory of which the family member who was subject to domestic violence has residence or a dwelling place has also territorial jurisdiction.

### *Initiation of Proceedings*

#### Article 284

(1) Proceedings in a dispute over protection from domestic violence are initiated by action.

(2) Action for ordering a protective measure against domestic violence, as well as for the prolongation of a protective measure against domestic violence may be initiated by: a family member who was subject to domestic violence, his legal representative, the public prosecutor and the guardianship authority.

(3) The action for terminating a protective measure against domestic violence may be initiated by the family member against whom this measure has been ordered.

### *Particular Urgency of Proceedings*

#### Article 285

(1) Proceedings in a dispute over protection from domestic violence is particularly urgent.

(2) The first hearing is to be scheduled to take place within eight days from the day the action was filed in court.

(3) The court of second instance is under the obligation to make a decision within fifteen days from the day the appeal was delivered to the court.

### *Guardianship Authority*

#### Article 286

If the guardianship authority failed to initiate the proceedings in a dispute over the protection from domestic violence, the court may ask the guardianship authority to provide help in acquiring the necessary evidence and state its opinion on the appropriateness of the required measure.

### *Departure from the Principle of Disposal*

#### Article 287

(1) The court is not bound by the limits of the claim for protection from domestic violence.

(2) The court may order a protective measure against domestic violence which has not been demanded if it finds that by such a measure the protection is best achieved.

### *Effect of Appeal*

#### Article 288

The appeal does not withhold the enforcement of a judgment on ordering or prolonging a protective measure against domestic violence.

### *Records and Documentation on Domestic Violence*

#### Article 289

(1) The court is under the obligation to immediately deliver the judgment in a dispute over protection from domestic violence both to the guardianship authority on the territory of which the family member who was subject to domestic violence has residence or a dwelling place and to the guardianship authority on the territory of which the family member against whom the measure has been ordered has residence or a dwelling place.

(2) The guardianship authority is under the obligation to keep records and documentation both on the persons who were subject to violence and the persons against whom the protective measure has been ordered.

(3) The minister responsible for family protection prescribes the manner of keeping records and documentation.

## **II. PROCEEDINGS BEFORE AN ADMINISTRATIVE BODY**

### **1. Common Provisions**

#### *Scope of This Part of the Act*

##### Article 290

Provisions of this part of the Act govern special administrative proceedings regarding family relations.

#### *Application of the Act Governing General Administrative Proceedings*

##### Article 291

(1) Provisions of the Act governing general administrative proceedings apply to proceedings of the administrative body regarding family relations, unless otherwise specified by this Act.

(2) In the proceedings before a guardianship authority, the methods of expert social work and social protection are to be applied.

### **2. Proceedings for Marriage Conclusion**

#### *Request for Marriage Conclusion*

##### Article 292

(1) Future spouses are to submit an oral or written request for marriage conclusion to the registrar of the municipality in which they wish to conclude the marriage.

(2) The registrar is to make a report on the oral request of the future spouses.

(3) With the request for marriage conclusion, each of the future spouses is to submit an excerpt from the register of births, and if necessary, evidence that the procedure for granting permission for concluding the marriage has been completed.

(4) If a future spouse was married before, he/she is to submit evidence that the former marriage has been terminated, unless this fact is entered in the register of births.

### *Denying the Request for Marriage Conclusion*

#### Article 293

(1) The registrar determines, on the grounds of future spouses' statements, documents submitted, and in other ways, whether all conditions for the validity of marriage provided for by this Act have been met or not.

(2) The registrar is to orally convey to persons who submitted the request that they may not conclude a marriage if he/she determines that all conditions for the validity of marriage provided for by this Act have not been met.

(3) At their request, the registrar is under the obligation to make within eight days a written ruling on the denial of their request for marriage conclusion.

(4) The persons who submitted the request may file an appeal against the ruling on denial of their request for marriage conclusion to the ministry responsible for family protection within fifteen days from the day they received the ruling.

### *Accepting the Request for Marriage conclusion*

#### Article 294

The registrar sets the day when the marriage is to be concluded in agreement with the future spouses when he/she determines that all conditions for the validity of marriage provided for by this Act have been met.

### *Informing on Legal Consequences of Marriage Conclusion*

#### Article 295

The registrar is to have a conversation with future spouses without the presence of the public, where he/she is under the obligation to inform them on legal consequences that arise from the conclusion of a marriage.

### *Counseling Regarding Health*

#### Article 296

(1) The registrar is to advise the future spouses that, by the day of concluding their marriage, they should inform each other about the state of their health, and, if necessary, they should visit an appropriate medical institution, in order to obtain complete information on all data concerning their health, diagnosis and prognosis of illness, treatments and results of treatments.

(2) The registrar is to particularly recommend to future spouses to get informed on the possibilities and advantages of family planning.

### *Counseling Regarding Personal and Property Relations*

#### Article 297

(1) The registrar is to advise future spouses to visit a marriage or family counseling service and get informed on the importance of maintaining harmonious matrimonial and family relations.

(2) The registrar is to advise future spouses to reach an agreement on the surname.

#### *Withdrawal*

#### Article 298

If the persons who submitted the request fail to appear at the agreed time, and fail to justify their default, the registrar is to note that they have desisted from concluding a marriage.

#### *Venue and Manner of Marriage Conclusion*

#### Article 299

(1) Marriage is to be concluded in public, in a solemn manner, and in a room specially designated for this purpose.

(2) The room designated for the conclusion of marriage must be adequately decorated, the flag of the Republic of Serbia is to be visibly placed therein, and the registrar is to wear a cordon in the colors of the flag of the Republic of Serbia over his/her chest.

(3) The registrar may, exceptionally, allow for a marriage conclusion in another venue, if there are particularly justified reasons for doing so, if conditions are provided for in regard to the solemn look of the room, and if it does not insult the dignity of the act of marriage conclusion.

#### *Participants on the Occasion of Marriage Conclusion*

#### Article 300

(1) The future spouses, two witnesses and the registrar are to be present at the marriage conclusion.

(2) Any person having legal capacity may be a witness to a marriage conclusion.

#### *Marriage Conclusion through a Proxy*

#### Article 301

(1) The municipal authority may, exceptionally, allow by a ruling for a marriage conclusion in the presence of one future spouse and a proxy of the other future spouse if there are particularly justified reasons for doing so.

(2) The authorization for marriage conclusion is to be certified and issued for the marriage conclusion only.

(3) The authorization is to include personal data on the mandatory, the proxy and the future spouse who will be present at the marriage conclusion, as well as the date of the certification of authorization.

(4) The authorization is valid for ninety days from the day of certification.

(5) The persons who submitted the request may file an appeal against the ruling on denial of their request for marriage conclusion through a proxy to the ministry responsible for family protection within fifteen days from the day they received the ruling.

### *The Act of Marriage Conclusion*

#### Article 302

(1) Marriage conclusion commences by establishing the identity of the future spouses and the registrar's report that they have acceded to marriage conclusion and that all requirements for the validity of their marriage provided for by this Act have been met.

(2) If the marriage is being concluded through a proxy, the registrar is to read the submitted authorization.

(3) When the registrar determines that there are no objections to the report, he/she is to inform the future spouses, in an appropriate manner, of the rights and duties of marriage, and ask each spouse individually if he/she agrees to conclude a marriage with the other spouse of his/her own free will.

(4) After the affirmative statements of will of the future spouses, the registrar pronounces the marriage concluded.

(5) After pronouncing the marriage concluded, the registrar asks the spouses what they have agreed on their surname.

### *Entry of Marriage into the Register*

#### Article 303

(1) The registrar enters a concluded marriage into the register of marriages and into the register of births for both spouses.

(2) The entry of the marriage into the register of marriages is signed by each spouse, with his/her name and new surname, the proxy with his/her name and surname next to the personal name of the spouse he/she represents, the witnesses and the registrar.

(3) After the signing, the registrar gives to the spouses an excerpt from the register of marriages.

#### *Forwarding the Report on a Concluded Marriage*

##### Article 304

(1) If a spouse's place of birth is different from the place of marriage conclusion, the registrar is to forward a report on the concluded marriage to the competent registrar.

(2) If the marriage has been concluded by a foreign citizen the registrar is to deliver the excerpt from the register of marriages to the ministry responsible for justice, which is to inform the competent foreign diplomatic-consular mission in our country on the conclusion of marriage.

(3) In the case referred to in paragraph 2 of this Article the registrar will deliver, together with the excerpt from the register of marriages, data on the place of residence of the foreign citizen abroad.

### **3. Procedure of Acknowledgment of Paternity**

#### *Statement on Acknowledgment of Paternity*

##### Article 305

(1) The statement on the acknowledgment of paternity is given, generally, to the registrar keeping the register of births for the child and a report is made thereof.

(2) If the statement on the acknowledgment of paternity was given to a registrar who is not competent, or if the statement was given before the guardianship authority or a court, the authority before which paternity has been recognized is under the obligation to deliver, without delay, the report or document containing the statement on the acknowledgment of paternity to the registrar keeping the register of births for the child.

(3) A statement on acknowledgment of paternity may not be given through a legal representative or proxy.

#### *Statement of Consent to Acknowledgment of Paternity*

##### Article 306

(1) When the registrar receives a statement on acknowledgment of paternity, he/she is under the obligation to invite the mother and the child, or the mother or the child, or the child's guardian, to give a statement of consent to acknowledgment of paternity within thirty days.

(2) If, in the report of her child's birth, the mother stated that she considers the man who subsequently acknowledged paternity to be the child's father, the mother's consent in terms of paragraph 1 of this Article is not to be requested.

### *Counseling the Father*

#### Article 307

If the mother and the child, or the mother or the child, or the child's guardian, within thirty days upon receiving the invitation referred to in Article 306 paragraph 1 of this Act, fail to give any statement or state that they refuse to consent to acknowledgment of paternity, the registrar is under the obligation to instruct the man who acknowledged paternity on his right to establish paternity by a court decision.

### *Counseling the Mother*

#### Article 308

(1) When a mother is reporting the birth of a child born out-of-wedlock, the registrar is under the obligation to instruct her on her right to name the man she considers to be the child's father.

(2) If the mother names the man she considers to be the child's father, the registrar is under the obligation to invite this man to give a statement on acknowledgment of paternity within thirty days.

(3) If the man the mother named as the child's father fails to give any statement within thirty days or states that he is not the child's father, the registrar is under the obligation to instruct the mother on her right to establish paternity by a court decision.

### *Determination of Fulfillment of Conditions for the Entry of Acknowledgment of Paternity into the Register*

#### Article 309

(1) The registrar determines, on the grounds of the parties' statements, documents submitted, and in other ways, whether all conditions for an entry of acknowledgment of paternity into the register of births have been met or not.

(2) The registrar is to orally communicate to the mother that the man for whom she stated that she considers him to be the child's father did not acknowledge paternity and is to make an official note thereof.

(3) The registrar is to orally communicate to the man who recognized paternity that all conditions for an entry of acknowledgment of paternity in the register of births provided for by this Act have not been met and is to make an official note thereof.

(4) When the registrar determines that all conditions provided for by this Act have been met, he/she will enter the acknowledgment of paternity into the register of births.

*Entry of Acknowledgment of Paternity into the Register*

Article 310

- (1) The acknowledgment of paternity is entered by the registrar keeping the register of births for the child.
- (2) After the entry of acknowledgment of paternity, the registrar gives to the father an excerpt from the register of births for the child.

**4. Proceedings for Establishment of Adoption**

*Initiation of Proceedings*

Article 311

The proceedings for establishment of adoption may be initiated by the guardianship authority *ex officio*, the future adopters and the child's parents or guardian.

*Request of Adopters for Establishment of Adoption*

Article 312

- (1) The future adopters are to submit a written request for establishment of adoption to the guardianship authority on the territory of which they have joint residence or a dwelling place.
- (2) Foreign citizens submit a written request for the establishment of adoption through the ministry responsible for family protection.
- (3) With the request for establishment of adoption, future adopters are to submit an excerpt from the register of births for each of them, as well as other evidence on their eligibility to adopt a child (general eligibility of adopters).

*Request of the Child's Parent or Guardian for Establishment of Adoption*

Article 313

- (1) The child's parent or guardian is to submit a written request for establishment of adoption to the guardianship authority on the territory of which the child has residence or a dwelling place.
- (2) With the request for establishment of adoption, the child's parent or guardian is to submit an excerpt from the register of births for the child, as well as other evidence on the eligibility of the child to be adopted (general eligibility of adoptee).

(3) When the guardianship authority receives a parent's request for establishment of adoption, it is under the obligation to advise the parent to undergo psycho-social counseling in the guardianship authority, family counseling service, or other institution specialized in mediating family relations.

(4) Within an appropriate time limit after psycho-social counseling has been advised to the parent, the guardianship authority is to invite the parent and the child who has reached ten years of age to submit written statements on consent to adoption before the guardianship authority.

(5) After the parent submits a written statement on consent to adoption, the guardianship authority is under the obligation to appoint a temporary guardian to the child, who is to represent the child in the proceedings for establishment of adoption.

### *General Eligibility of Adopter and Adoptee*

#### Article 314

(1) The guardianship authority determines whether the future adopters are eligible to adopt a child (general eligibility of adopters) and whether the child is eligible to be adopted (general eligibility of adoptee) on the grounds of statements given by future adopters, the child's parent or guardian, the child himself/herself, on the grounds of documents submitted and in other ways.

(2) The decision on general eligibility is made on the grounds of findings and expert opinion of a psychologist, a pedagogue, a social worker, a lawyer and a doctor.

(3) The findings and expert opinion referred to in paragraph 2 of this Article are provided by experts of the guardianship authority.

(4) The guardianship authority may request findings and expert opinion from experts in family counseling services or other institutions specialized in mediating family relations, as well as from medical institutions.

### *Denying a Request for Establishment of Adoption*

#### Article 315

(1) The guardianship authority issues a written ruling on denying the request for establishment of adoption if it determines that the persons who submitted the request are not eligible for adopters (general eligibility of adopters), or that the child is not eligible to be adopted (general eligibility of adoptee).

(2) The guardianship authority is under the obligation to issue the ruling referred to in paragraph 1 of this Article within sixty days from the day a due request was submitted.

(3) The persons who submitted the request for establishment of adoption may file an appeal against the ruling on denial of their request to the ministry responsible for family protection within fifteen days from the day they received the ruling.

## *Unified Personal Register of Adoptions*

### Article 316

(1) When the guardianship authority determines that the future adopters are eligible to adopt a child (general eligibility of adopters) and that the child is eligible to be adopted (general eligibility of adoptee) it is under the obligation to enter data on future adopters and future adoptee without delay into the Unified personal register of adoptions.

(2) The minister responsible for family protection keeps the Unified personal register of adoptions.

(3) The Unified personal register of adoptions is to include records of data on future adopters for whom eligibility for adopting a child has been established (general eligibility of adopters) and future adoptees for whom eligibility for being adopted has been established (general eligibility of adoptee).

(4) The minister responsible for family protection prescribes the manner of keeping the Unified personal register of adoptions.

## *Choice of Future Adopters*

### Article 317

(1) The guardianship authority that established the general eligibility of an adoptee is to choose the future adopters on the grounds of records from the Unified personal register of adoptions and is to issue a special ruling thereof.

(2) The choice of future adopters is not to be made if the child is being adopted by the spouse or cohabitee of the child's parent, or if an adopted child is being adopted by the adopter's spouse or cohabitee.

(3) The choice of future adopters is not to be made if the adopters and the child's parent or guardian consensually make their choice and if the guardianship authority finds that such an agreement is in the best interest of the child.

## *Adaptation*

### Article 318

(1) The guardianship authority that chose the future adopters is under the obligation to direct the child to them for the purpose of mutual adaptation, unless the adopter is a foreign citizen.

(2) The adaptation period may not exceed six months.

(3) The guardianship authority is under the obligation to monitor the success of mutual adaptation of future adopters and the child, and make official notes of its assessments thereof (special eligibility of adopters and adoptee).

## *Denying a Request for Establishment of Adoption*

### Article 319

(1) The guardianship authority issues a written ruling on the denial of request for establishment of adoption if it determines that mutual adaptation was not successful.

(2) The persons who submitted the request for establishment of adoption may file an appeal against the ruling on denial of their request to the ministry responsible for family protection within fifteen days from the day they received the ruling.

## *Ruling on Adoption*

### Article 320

(1) The guardianship authority that chose the future adopters issues a written ruling on adoption:

1. if the future adopters are eligible for adopting a child (general eligibility of adopters);
2. if the child is eligible for being adopted (general eligibility of adoptee) and
3. if it determines that mutual adaptation of future adopters and the child was successful (special eligibility of adopters and adoptee).

(2) The adoption is established on the day the ruling on adoption is issued.

## *Informing on Legal Consequences*

### Article 321

(1) An official of the guardianship authority is to have a conversation with future adopters without the presence of the public, where he/she is under the obligation to inform them of the legal consequences that arise from the establishment of adoption.

(2) The official of the guardianship authority may also have a conversation with the child, if this is in accordance with the age and maturity of the child, in which he/she will inform the child in detail on the forthcoming adoption.

## *Counseling*

### Article 322

(1) The official of the guardianship authority is to advise the future adopters to tell the child the truth on his/her origin as soon as possible.

(2) The official of the guardianship authority is under the obligation to advise the future adopters to undergo psycho-social counseling in the guardianship authority, family counseling service, or other institution specialized in mediating family relations.

*Excluding the Public*

Article 323

(1) In the proceedings for establishment of adoption the public is excluded.

(2) Data from record keeping and documentation on adoption are privileged and all participants in the proceedings who have had access to such data are under the obligation to maintain confidentiality.

*Venue and Manner of Delivering the Ruling*

Article 324

(1) The ruling on adoption is delivered, in a solemn manner, to the adopters and the child's guardian personally.

(2) The child may attend the delivering referred to in paragraph 1 of this Article if that is in accordance with his/her age and maturity.

*Ruling on a New Entry of Birth*

Article 325

(1) The guardianship authority issues a ruling on a new entry of birth for the adoptee on the grounds of the ruling on adoption.

(2) By the ruling on a new entry of birth for the adoptee the data on parents are replaced by the data on the adopters.

(3) The ruling referred to in paragraph 1 of this Article is final, and it annuls the former entry of birth for the adoptee.

*Entry into and Viewing the Register of Births*

Article 326

(1) The ruling on the new entry of birth for the adoptee is delivered without delay to the registrar keeping the register of births for the child.

(2) After the new entry of birth for the adoptee, only the child and the child's adopters have the right to view the register of births for the child.

(3) Before allowing the child to view the register of births, the registrar is under the obligation to refer the child to psychosocial counseling in the guardianship authority, family counseling service, or other institution specialized in mediating family relations.

### *Records and Documentation on Adoption*

#### Article 327

(1) The guardianship authority is under the obligation to keep records and documentation on adopted children.

(2) The minister responsible for family protection prescribes the manner of keeping records and documentation.

### *Proceedings for Establishment of Fostering*

#### Article 328

(1) Provisions of Articles 311 through 315, Articles 320 and 321, and Articles 323 and 324 of this Act on the proceedings for establishment of adoption are applied accordingly in the proceedings for establishment of fostering.

(2) The minister responsible for family protection prescribes the manner of keeping records and documentation on fostering.

## **5. Proceeding for Placement under Guardianship**

### *Initiation of Proceedings*

#### Article 329

(1) The proceedings for placement under guardianship are initiated by the guardianship authority *ex officio*.

(2) The initiative for initiation of proceedings for placement under guardianship may be submitted by health care and educational institutions or social service institutions, judicial and other state authorities, associations and citizens.

### *Territorial Jurisdiction*

#### Article 330

(1) In the proceedings for placement under guardianship the territorial jurisdiction of the guardianship authority is determined according to the place of residence or dwelling place of the ward.

(2) Territorial jurisdiction for a ward whose residence or dwelling place cannot be established is to be determined according to the place where the ward was found.

### *Excluding the Public*

#### Article 331

(1) In the proceedings for placement under guardianship the public is excluded.

(2) Data from record keeping and documentation on placement under guardianship are privileged and all participants in the proceedings who have had access to such data are under the obligation to maintain confidentiality.

### *Urgency of Proceedings*

#### Article 332

(1) The proceedings for placement under guardianship are urgent.

(2) The guardianship authority is under the obligation to issue an interim conclusion on providing accommodation for the ward within twenty-four hours from the moment of being informed of the existence of a need for guardianship.

(3) If the ward has property, the guardianship authority is under the obligation to make an inventory of the ward's property within eight days from the day of being informed of the existence of a need for guardianship at the latest.

(4) The guardianship authority is under the obligation to issue a ruling on the placement under guardianship immediately, and at the latest within thirty days from the day of being informed of the existence of a need for guardianship over a minor, or from the day of receiving a final court decision on a person of age being deprived of legal capacity.

### *Ruling on Placement Under Guardianship*

#### Article 333

(1) The guardianship authority issues a written ruling on placement under guardianship if it establishes that there are legal reasons for it and delivers this ruling to the guardian without delay.

(2) If the ward has property, a report of the standing commission for inventory and evaluation of the ward's property is also delivered to the guardian, and the property itself is given to the guardian for management and disposal.

(3) The ruling on placement under guardianship determines the rights and duties of the guardian.

(4) It is to be considered that the guardian has been informed of his/her rights and duties with the delivering of the ruling on placement under guardianship (introducing the guardian to his duty).

(5) The guardian or a person having legal interest may file an appeal against the ruling on placement under guardianship to the ministry responsible for family protection within fifteen days from the day he/she received the ruling.

#### *Ruling on Appointment of a New Guardian*

##### Article 334

(1) The guardianship authority issues a ruling on the appointment of a new guardian if it determines that the previously appointed guardian has been relieved from duty or has died.

(2) Provisions of Article 333 of this Act apply to the ruling referred to in paragraph 1 of this Article.

#### *Grievance Regarding Guardian's Work*

##### Article 335

(1) A grievance regarding a guardian's work may be filed with the guardianship authority by a ward who is able to reason or by a person having legal interest therein.

(2) The guardianship authority is under the obligation to reply to the grievance referred to in paragraph 1 of this Article within fifteen days from the day the grievance has been received by the guardianship authority.

#### *Ruling on Relieving a Guardian*

##### Article 336

(1) The guardianship authority issues a ruling on relieving a guardian if it establishes that there are legal reasons for it and delivers this ruling to the guardian without delay.

(2) The guardian or a person having legal interest may file an appeal against the ruling on relieving the guardian to the ministry responsible for family protection within fifteen days from the day he/she received the ruling.

(3) The new guardian is to take over from the former guardian according to the rules for placement under guardianship referred to in Article 333 of this Act.

#### *Ruling on Termination of Guardianship*

#### Article 337

(1) The guardianship authority issues a ruling on termination of guardianship if it establishes that there are legal reasons for it and delivers this ruling to the guardian and the ward without delay.

(2) The guardian or the ward who is able to reason, or a person having legal interest may file an appeal against the ruling on termination of guardianship to the ministry responsible for family protection within fifteen days from the day he/she received the ruling.

#### *Grievance Regarding the Work of the Guardianship Authority*

#### Article 338

(1) A grievance regarding the work of the guardianship authority may be filed by a guardian, a ward who is able to reason or by a person having legal interest therein.

(2) The grievance is filed with the ministry responsible for family protection.

(3) The ministry responsible for family protection is under the obligation to reply to the grievance referred to in paragraph 1 of this Article within thirty days from the day the grievance has been received by the ministry.

#### *Entry into the Register*

#### Article 339

(1) A final ruling on placement under guardianship or a final ruling on termination of guardianship is delivered without delay to the registrar keeping the register of births for the ward.

(2) If the ward owns immovable property, the ruling from paragraph 1 of this Article is also entered into the public record of rights on immovable property.

#### *Records and Documentation on Placement under Guardianship*

#### Article 340

(1) The guardianship authority is under the obligation to keep records and documentation on wards.

(2) The minister responsible for family protection prescribes the manner of keeping records and documentation.

#### *Other Proceedings before the Guardianship Authority*

#### Article 341

(1) The guardianship authority also carries out other proceedings, in accordance with law.

(2) The guardianship authority decides on measures of preventive or corrective supervision over the exercise of parental rights or on determining and changing a child's personal name by a ruling.

(3) The child's parents may file an appeal against the ruling referred in paragraph 2 of this Article to the ministry responsible for family protection within fifteen days from the day they received the ruling.

## **Part Eleven PERSONAL NAME**

### **I. COMMON PROVISIONS**

#### *The Notion*

#### Article 342

- (1) A personal name consists of a name and a surname.
- (2) A personal name is entered in the register of births.
- (3) Everyone is under the obligation to use his/her personal name.

#### *Abbreviated Personal Name*

#### Article 343

(1) A person whose name or surname, or name and surname together, includes more than three words, is under the obligation to use an abbreviated personal name in legal circulation.

(2) The decision on abbreviated personal name is to be communicated to the registrar keeping the register of births for the person having the right to personal name, and is to be noted in the register of births.

### **II. DETERMINING A PERSONAL NAME**

#### *A Child's Name*

#### Article 344

- (1) A child's name is determined by his/her parents.
- (2) Parents have the right for their child's name to be entered in the register of births in the mother tongue and alphabet of one or both parents also.
- (3) Parents have the right to choose their child's name freely, but they cannot give a

child a defamatory name, a name that insults the morality or a name that is contrary to the customs and opinions of the community.

(4) A child's name is determined by the guardianship authority if the parents are not alive, if they are unknown, if they have not determined the child's name within the time limit set by law, if they cannot reach an agreement on the child's name or if they gave the child a defamatory name, a name that insults the morality or a name that is contrary to the customs and opinions of the community.

#### *A Child' Surname*

##### Article 345

(1) A child's surname is determined by the parents according to the surname of one or both parents.

(2) Parents may not give different surnames to their common children.

(3) A child's surname is determined by the guardianship authority if the parents are not alive, if they are unknown or if they cannot reach an agreement on the child's surname.

### **III. CHANGING A PERSONAL NAME**

#### *Who has the Right to Change*

##### Article 346

(1) Every person who has reached fifteen years of age and who is able to reason has the right to change his/her personal name.

(2) A child who has reached the age of ten and who is able to reason has the right to give consent to the change of his/her personal name.

#### *Who Does Not Have the Right to Change*

##### Article 347

The following persons have not the right to change their personal name:

1. a person against whom criminal proceedings are being conducted for a criminal offence prosecuted *ex officio*;
2. a person convicted for a criminal offence prosecuted *ex officio* until the sentence has been executed or while the legal consequences of the conviction still last;
3. a person who intends to avoid an obligation by changing his/her personal name;
4. a person who intends to change his/her name into a defamatory name, a name that

insults the morality or a name that is contrary to the customs and opinions of the community.

### *Change of Spouse's Surname*

#### Article 348

(1) Upon concluding a marriage, spouses may agree that each of them:

1. keeps his/her surname;
2. takes the other spouse's surname instead of his/hers;
3. adds the surname of the other spouse to his/her surname or add his/her surname to the other spouse's surname.

(2) A spouse who changed his/her surname by concluding a marriage may, within sixty days after the termination of the marriage, take back the surname he/she had before concluding the marriage.

### *Change of Child's Surname*

#### Article 349

(1) A child's surname may be changed:

1. upon establishment of maternity or paternity;
2. upon contesting of maternity or paternity.

(2) An adopted child's surname may be changed according to the surname of one or both adopters.

(3) A child who has changed his/her surname by adoption may take back his/her surname after the termination of adoption by annulment.

### *Actual and Territorial Jurisdiction*

#### Article 350

(1) The request for a change of personal name is submitted to the municipal authority on the territory of which the person who submits the request has residence or a dwelling place.

(2) The municipal authority that accepts the request for a change of personal name is under the obligation to inform the competent registrar thereof so that he/she may enter the change of the personal name into the registry of births and marriages, as well as the agency keeping the records on residence of citizens.

(3) The person who submitted the request for a change of personal name may file an appeal against the ruling on denial of his/her request to the ministry responsible for family protection within fifteen days from the day he/she received the ruling.

## IV. PROTECTION OF THE RIGHT TO A PERSONAL NAME

### *Violation of the Right to a Personal Name*

#### Article 351

The right to a personal name may be violated particularly:

1. by preventing the holder of the right to use his/her personal name or part of his/her name, or hindering in another manner the holder in the exercise of the right to a personal name (preventing and hindering the exercise of the right to a personal name);
2. by attributing a different personal name or part of name to the holder, or by claiming that the holder is under the obligation to use a different personal name or part of name, by denominating the holder by a personal name different from his/her personal name, by denying the holder in another manner the right to use his/her personal name (denying the right to a personal name);
3. by a distorted, abbreviated, expanded and similar quoting of the holder's personal name or part of name, unless this is common or indispensable (distortion of a personal name);
4. by denominating oneself, or another person, organization, thing or phenomenon by the holder's personal name or part of name, by quoting another person or by allowing another person to denominate himself/herself by the holder's personal name or part of name, by unauthorized use of the holder's personal name or part of name in another manner without the holder's consent (unauthorized use of personal name).

### *Consent to Use of Name*

#### Article 352

- (1) The holder may also grant consent to use of his/her personal name or part of name for permitted purposes with a compensation.
- (2) Consent of other persons to whom the holder's surname pertains (spouse, child, parent, etc.) is also necessary for the use of the surname if that use would violate the rights of those persons.

### *Binding Nature of Consent*

#### Article 353

Consent granted for a particular use of a personal name, for a specific manner of use or for a use for a specific purpose is not to be considered as consent for a repeated use, for a use in another manner or for a use for another purpose.

### *Revocation of Consent*

## Article 354

(1) If the holder has reserved the right to revoke the consent to the use of his/her personal name, the consent is terminated by revocation.

(2) Even in cases when the holder has not reserved the right to revocation, he/she may revoke the consent if the use of his/her personal name, given the circumstances of the case, would significantly damage his/her interests, without him/her being able to foresee this.

(3) In the case referred to in paragraph 2 of this Article, the injured party has the right to damages caused by revocation of the consent.

### *Actions*

## Article 355

A person whose right to a personal name has been violated may, within litigation proceedings, request from the court to:

1. establish the existence of his/her right to use his/her personal name;
2. order the removal, destruction or alternation of objects by which the right has been violated, the withdrawal of the claim contesting the holder's right to use his/her personal name, or another action necessary to eliminate the state of violation of right;
3. prohibit further exercise or repetition of action that violates the right, under the threat of paying a certain amount of money to the injured party if the action of violation is not terminated or if it is repeated;
4. award compensation of material or immaterial damage;
5. award part of profit acquired by the use of the personal name, in proportion to the contribution the use of the personal name had to the acquiring of profit.

### *Active Legitimation after the Death of the Holder of the Right to a Personal Name*

## Article 356

If the holder of the right to a personal name dies after the violation has taken place, or if the violation takes place after the death of the holder of the right to a personal name, the protection of the right to a personal name may be requested by: the person designated by the deceased to take care of the protection of his/her personal name, the spouse, a child or a parent of the deceased.

## **Part Twelve**

### **TRANSITIONAL AND FINAL PROVISIONS**

## *Application of this Act*

### Article 357

(1) Provisions of this Act also apply to family relations that have arisen before the day this Act goes into effect, unless otherwise provided for by this Act.

(2) Court and administrative proceedings initiated according to the provisions of the Family and Marriage Relations Act (SR of Serbia Official Herald No. 22/80 and 11/80 and Republic of Serbia Official Herald No. 22/93, 25/93, 35/94, 46/95 and 29/01) are to continue pursuant to the provisions of this Act, unless a first instance ruling is made by the day this Act goes into effect.

(3) If a first instance ruling in the proceedings referred to in paragraph 2 of this Article is made before this Act goes into effect, further proceedings are to be carried out pursuant to the provisions of the Family and Marriage Relations Act (SR of Serbia Official Herald No. 22/80 and 11/80 and Republic of Serbia Official Herald No. 22/93, 25/93, 35/94, 46/95 and 29/01).

(4) If the first instance ruling referred to in paragraph 3 of this Article is overturned after this Act goes into effect, further proceedings are to be carried out pursuant to the provisions of this Act.

## *Adoption*

### Article 358

(1) Provisions that were in effect before the day this Act goes into effect apply to adoptions established before this Act goes into effect.

(2) Adoptions established pursuant to the provisions of this Act are to be considered full adoptions in terms of other Acts.

## *Marriage*

### Article 359

(1) A marriage concluded before May 9, 1946 is valid if it was concluded pursuant to regulations which were in effect at the time the marriage was concluded.

(2) A marriage concluded between April 6, 1941 and May 9, 1946 before military authorities, national liberation committees or national committees is recognized as valid if at the time of conclusion the conditions referred to in Articles 15 through 19 of this Act have been fulfilled, and if the marriage has been entered into the register or such an entry was required before May 9, 1947.

(3) The marriages concluded after May 9, 1946 and until May 5, 1955 with the participation of a registrar or another member of the national committee, and without the

participation of the president of the national committee or a designated member of the national committee, are recognized as valid from the day they were concluded if other conditions for the validity of those marriages according to the Basic Marriage Act (Official herald of the SFRY, No. 29/64) are fulfilled.

(4) The provision referred to in paragraph 3 of this Article does not apply to marriages which were pronounced nonexistent by a final court ruling.

#### *Due Application of the Act Governing Non-contentious Proceedings*

##### Article 360

Until the regulation of special non-contentious proceedings by an act, the provisions of the act governing non-contentious proceedings for granting a permission to conclude marriage will be applied accordingly to the proceedings referred to in Article 11, paragraph 3 of this Act.

#### *Time Limits*

##### Article 361

Time limits for initiating actions set by this Act are to be applied to all cases in which time limits have not expired according to the provisions of this Act.

#### *Termination of Validity of Other Acts and Regulations*

##### Article 362

(1) On the day this Act goes into effect, the validity of the Family and Marriage Relations Act (SR of Serbia Official Herald No. 22/80 and 11/88 and Republic of Serbia Official Herald No. 22/93, 25/93, 35/94, 46/95 and 29/01) terminates.

(2) On the day this Act goes into effect the validity of all sub-legal regulations based on the Act referred to in paragraph 1 of this Article terminates.

(3) On the day this Act goes into effect, the validity of provisions of Chapter Five (Deprivation and Restitution of Parental Rights) of the Non-contentious Procedure Act (RS Official Herald No. 25/82 and 48/88, and Republic of Serbia Official Herald No. 46/95) terminates.

#### *Entry into Force and Implementation of this Act*

##### Article 363

This Act enters into force on the eighth day from the day of being published in the "Official Herald of the Republic of Serbia", and is to be applied as of July 1, 2005, except for provisions referred to in Article 203 paragraph 2 and 3 of this Act which are to be applied as of July 1, 2006.

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