Negar y establecer la paternidad *de lege lata* según el DIP rumano vs. *de lege ferenda* según el Reglamento del Consejo en materia de filiación y sobre la creación de un certificado de filiación europeo

Denying and establishing paternity de lege lata according to the Romanian private international law vs. de lege ferenda according to the Council Regulation in matters of parenthood and on the creation of a European Certificate of Parenthood

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Resumen: El estudio presenta un análisis del procedimiento para negar la paternidad y establecer la paternidad, tal como se llevan a cabo actualmente en Rumania según el derecho internacional privado rumano, respectivamente en antítesis, los procedimientos para establecer la filiación de *lege ferenda* según la Propuesta de un Reglamento del Consejo sobre jurisdicción, ley aplicable, reconocimiento de resoluciones judiciales y aceptación de documentos auténticos en materia de filiación y sobre la creación de un certificado europeo de filiación.

Ab initio, se presentan aclaraciones preliminares sobre las disposiciones del derecho internacional privado rumano con referencia a la filiación, la filiación del hijo del matrimonio en el derecho internacional privado rumano, la ley aplicable al hijo nacido dentro del matrimonio, la forma de interpretar las disposiciones del Código Civil rumano sobre la determinación de la ley aplicable a la filiación del niño nacido dentro del matrimonio, el alcance de la ley de filiación, la ley aplicable a la legitimación de un niño nacido antes del matrimonio, respectivamente propuestas de *lege ferenda*.

A continuación, el artículo aborda las referencias relativas a la filiación del niño fuera del matrimonio en el derecho internacional privado rumano, respectivamente sede legal de las disposiciones

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relativas a la filiación del niño fuera del matrimonio en el derecho internacional privado rumano, la ley aplicable a la filiación del hijo fuera del matrimonio, el campo de la ley aplicable a la filiación del hijo fuera del matrimonio, así como la ley aplicable a la filiación como resultado de la reproducción humana con un tercer donante, respectivamente la ley aplicable a la filiación como resultado de la reproducción humana con un tercer donante en el caso de un hijo nacido dentro del matrimonio, así como la ley aplicable a la filiación como resultado de la reproducción humana con un tercer donante en el caso de un hijo extramatrimonial.

A continuación, los autores presentan las debidas aclaraciones sobre la dicotomía de las disposiciones del derecho internacional privado rumano y la correspondencia con el reglamento propuesto por el Consejo sobre la filiación, señalando la jurisdicción, la ley aplicable y el reconocimiento.

En el corolario, se destaca un estudio de caso, un elemento de jurisprudencia, que denota la jurisprudencia en Rumanía, respectivamente, la hipótesis de solución de *lege ferenda* de la situación, en virtud de la propuesta de Reglamento en materia de filiación.

Palabras clave: Filiación en el derecho internacional privado rumano, negación de la paternidad, establecimiento de la paternidad, propuesta de Reglamento en materia de filiación, dicotomía

Abstract: The study presents an analysis of the procedure for denying paternity and establishing paternity, as they are currently carried out in Romania according to Romanian private international law, respectively in antithesis, the procedures for establishing filiation de *lege ferenda* according to the Proposal for a regulation of the council on jurisdiction, the applicable law, the recognition of court decisions and the acceptance of authentic documents in matters of filiation and on the creation of a European certificate of filiation.

Ab initio, preliminary clarifications are presented regarding the provisions of Romanian private international law with reference to filiation, the filiation of the child of the marriage in Romanian private international law, the law applicable to the child born in wedlock, the way of interpreting the provisions of the Romanian Civil Code regarding the determination of the law applicable to the filiation of the child born in wedlock, the scope of the filiation law, the law applicable to the legitimization of a child born before marriage, respectively proposals de *lege ferenda*.

Next, the paper addresses references regarding the filiation of the child out of wedlock in the Romanian private international law, respectively the legal seat of the provisions regarding the filiation of the child out of wedlock in the Romanian private international law, the law applicable to the filiation of the child out of wedlock, the field of the law applicable to the filiation to the child out of wedlock, as well as the law applicable to filiation as a result of human reproduction with a third donor, respectively the law applicable to filiation as a result of human reproduction with a third donor in the case of a child born in wedlock, as well as the law applicable to filiation as a result of human reproduction with a third donor in the case of a child out of wedlock.

The authors then present due clarifications regarding the dichotomy of the provisions of Romanian private international law and the correspondence with the Council's proposed regulation on filiation, noting the jurisdiction, the applicable law, and the recognition.

In the corollary, a case study is highlighted, a case-law element, which denotes the case-law in Romania, respectively the hypothesis of de *lege ferenda* solution of the situation, by virtue of the proposal for the Regulation in matters of parenthood.

Keywords: filiation in Romanian private international law, denial of paternity, establishment of paternity, proposal of the Regulation in matters of parenthood, dichotomy.

I.Preliminary clarifications on the filiation of the child of the marriage in Romanian private international law[1]

1. Section II "Parentage" (S. 2603-S. 2606 Civil Code) of Chapter II "Family" (S. 2585-S. 2612 Civil Code), Book VII entitled "Private international law provisions of the Civil Code (S. 2557-S. 2663 Civil Code) regulates in subsection I "Parentage of the child of the marriage" (S. 2603-S. 2604 Civil Code).

Article 2603 with the marginal title: "Applicable law" states: "The parentage of a child of the marriage is established according to the law which, at the time of the child's birth, governs the general effects of the marriage of his or her parents. (para. 1) If, prior to the child's birth, the marriage of the parents has ceased or been dissolved, the law which, at the time of the cessation or dissolution, governed its effects shall apply. (para. 2) This law shall also apply to the denial of paternity of the child born of the marriage and to the acquisition of the child's name." (para. 3)

Article 2604 with the marginal heading "Legitimation of the child" which states: "If the parents are entitled to legitimise by subsequent marriage the child born previously, the conditions required for this purpose are those laid down by the law applicable to the general effects of marriage. "

From the provisions of S. 2603-S.2604 Civil Code we note that in general terms it is "the law applicable to the general effects of marriage".

The marginal headings of the Sections making up Subsection II 'Effects of marriage' (Section 2589- Section 2596 Civil Code) are:

- Section 2589 Civil Code with the marginal heading "Law applicable to the general effects of marriage";
- Section 2590 Civil Code with marginal title "Law applicable to the matrimonial property regime";
- Section 2591 C. Civ. with marginal heading "Convention on the choice of law applicable to the matrimonial property regime".
- Section 2592 of the Civil Code with the marginal heading "Objective determination of the law applicable to the matrimonial property regime"; Section 2592 of the Civil Code with the marginal heading "Objective determination of the law applicable to the matrimonial property regime".
- Section 2593 of the Civil Code with the marginal heading "Scope of the law applicable to the matrimonial property regime".
- Section 2594 of the Civil Code with the marginal heading 'Law applicable to the formal requirements of the marriage contract;
- Section 2595 of the Civil Code with the marginal heading 'Protection of third parties';
- Section 2596 of the Civil Code with the marginal heading "Change of habitual residence or nationality".

[1] N-C., ANITEI. *Ce lege aplicăm filiației copilului din căsătorie conform dispozițiilor art. 2603 C. civ. român?/What law do we apply to the filiation of the child from the marriage according to the provisions of art. 2603 Romanian Civil Code?,* Revista Universul Juridic, nr 5/2020; N-C., ANITEI. *Legea aplicabilă legitimării copilului născut anterior căsătoriei conform art 2.604 Cod civil român/ The law applicable to the legitimation of the child born before the marriage according to art 2.604 Romanian Civil Code* Article presented at International Scientific Conference "Exploration, education and progress in the third millennium", Galați, Romania, May 7 th -8th, 2020.

2. Analysing from a literal and grammatical point of view the marginal names of the articles that make up Subsection II "Effects of marriage" (S.2589-S.2596 Civil Code) we observe that only S. 2589 Civil Code bears the marginal name of "Law applicable to the general effects of marriage" which leads us to think that the Romanian legislator in the provisions of S. 2603- S.2604 Civil Code in the last part, stipulating: "... of the law applicable to the general effects of marriage" without listing the articles or article to which it refers, refers to the only article which bears the marginal title of "Law applicable to the general effects of marriage", namely Section 2589 of the Civil Code, which also applies by analogy to the provisions of Sections 2603 and 2604 of the Civil Code.

Studying the provisions of Section 2589 (1) to (3) of the Civil Code, we note that only paragraph (1) can be applied by analogy to the provisions of Sections 2603 to 2604 of the Civil Code.

II. How do we interpret the provisions of Section 2603 of the Civil Code? Reference to the law applicable to the filiation of the child of the marriage

3. The provisions on determining the law applicable to the filiation of a child of the marriage are contained in S. 2.603-2.604 of the Civil Code. [2]

According to the provisions of S. 2.603 (1) of the Civil Code - the filiation of a child of the marriage is determined according to the law which, at the time of his or her birth, governs the general effects of the marriage of his or her parents.

Studying the provisions of S. 2589 (1) Civil Code and applying them by analogy to S. 2603 (1) Civil Code, we observe that the filiation of the child of the marriage at the date of birth is governed by one of the following laws in the following order, with no possibility of derogation:

1 the law of the spouses' common habitual residence, and in default,
2. the law of the common nationality of the spouses, and failing that,
3. the law of the State in whose territory the marriage was celebrated.

Studying the provisions of Section 2589 (1) of the Civil Code, it is clear that the law of the State of the marriage is the law of the State of the marriage. and applying them by analogy to Section 2603 (1) of the Civil Code, we note that the filiation of the child of the marriage at the date of birth is governed by one of the following laws, with due regard for the following order, without any possibility of derogation:

4. 1. The law of common habitual residence of the spouses applies in the following cases:

   a. the spouses have common nationality (e.g. two spouses who are French citizens);
   b. the spouses have different citizenships (e.g. a Romanian citizen spouse and a French citizen spouse);
   c. the spouses are stateless.

2. The law of common nationality of spouses applies only if the spouses are not habitually resident (e.g. one of the spouses is resident in Romania and the other spouse is resident in Spain) but are necessarily of the same nationality (e.g. both Spanish spouses).
3. The law of the State in whose territory the marriage was celebrated applies in the following cases:

   a. the spouses have different residences (one spouse resides in Italy and the other spouse resides in Italy);
   b. the spouses have different citizenships (one spouse of Romanian nationality and the other spouse of Italian nationality);
   c. the spouses are stateless.

[2] The Civil Code takes over, with minor amendments, the previous provisions contained in Law No 105/1992 (Articles 25-27).

By specifying that the law of general effect of the parents' marriage applies from the "date of birth (of the child)", the mobile conflict of laws is resolved, giving priority to the old law.

According to S. 2.603 (2) of the Civil Code, if before the birth of the child (i.e. for a conceived and unborn child n.n.) the parents' marriage was terminated (either by the death of the spouses or by the death of one of the spouses n.n.) or the filiation of the child (considered to be from the marriage n.n.) was dissolved (by divorce n.n.), the law that governed the effects of the parents' marriage at the date of termination or dissolution of the marriage shall apply. [3]

The provision in Section 2603 (2) of the Civil Code addresses a possible mobile conflict of laws in this area.

In conclusion, the provisions of S. 2603 (1) and (2) also resolve mobile conflicts of laws that may arise in relation to the law governing the filiation of the child of the marriage, in the sense that:

— in para. (1) - specifies that the law of general effect of the marriage is applicable "at the date of the birth of the child", thus giving priority to the old law, but in the subsequent case the law of general effect of the marriage may change;
— in para. (2) - specifies that if before the birth of the child (i.e. for a conceived and unborn child n.n.) the marriage of the parents has ended (either by the death of the spouses or by the death of one of the spouses n.n.) or has been dissolved (by divorce n.n.), the filiation of the child (considered to be from the marriage n.n.) is governed by the law which, at the date of termination or dissolution, applies the law governing the general effects of marriage at the date of termination or dissolution of the marriage.

Studying para. (3) of Art. 2603 of the Civil Code can be interpreted in two ways: it refers to "the law indicated" in para. (2) of Art. 2603 of the Civil Code; or to "the law indicated in para. (1) and para. (2) of Art. 2603 Civil Code, depending on the situation under consideration.[4]

I tend to believe that the "law indicated" has the following situations in mind:

1. the paternity of the child of the marriage is established according to the law which, at the time of his birth, governs the general effects of the marriage of his parents, i.e. according to the provisions of S. 2589 (1) of the Civil Code (we have explained the possibilities in the previous section);
2. the acquisition of the name by the child of the marriage shall be determined in accordance with the law which, at the date of birth, governs the general effects of the marriage of his parents, i.e. in accordance with the provisions of Section 2589 (1) of the Civil Code (see above for possibilities);
3. the termination of the paternity of the child of the marriage if the parents' marriage has been terminated or dissolved before the birth of the child is governed by the law which, at the time of termination or dissolution, governed the general effects of the parents' marriage, i.e. according to the provisions of Section 2589 (1) of the Civil Code; (we have described the possibilities in the previous section);
4. the acquisition of the name by the child of the marriage if the marriage of the parents has ceased or has been dissolved before the birth of the child is governed by the law which, at the time of the termination or dissolution, governed the general effects of the marriage of his parents, i.e. according to the provisions of Section 2589 (1) of the Civil Code; (we have described the possibilities in the previous point).

[3] D.-A. Sitaru, *Private international law. General part. Special part-Conflictual norms in different branches and institutions of private international law*, C.H. Beck Publishing House, Bucharest, 2013, p.224.

[4] *Idem*; N., DIACONU. *Private International Law*, Publishing House "Romania Mare" Foundation, Bucharest, 2019, p.186.

III. Scope of filiation law[5]

5. The scope of the law applicable to the filiation of a child of the marriage results from the provisions of Section 2603 of the Civil Code.

According to Section 2603 of the Civil Code, the law applicable to the filiation of a child of the marriage regulates the following aspects:

1. establishment of filiation from the mother;
2. the establishment of filiation with the father;
3. the establishment of paternity;
4. the effects of filiation.

1. The establishment of filiation with the mother takes into account the following aspects: the modalities and conditions for establishing filiation with the mother (including recognition), contesting maternity, etc..
2. The establishment of parentage in relation to the father concerns the following aspects: the modalities and conditions for establishing paternity (including recognition), presumption of paternity, legal time of conception of the child, etc...

Where filiation involves the drawing up of a document (e.g. acknowledgement of paternity), the external form of the document is subject to the law applicable to the formal requirements of a legal act under Article 2639 of the Civil Code.

3. The paternity of a child of a marriage is governed by the law governing filiation (art. 2603 C civil. para. (3)).

In those cases in which the establishment or contestation of paternity involves the intervention of the court, the law of filiation also applies:

— determination of the scope of the persons who may bring the civil status action (legal standing);
— the statute of limitations of the right of action.[6]

Procedural matters (*ordinatoria litis*) are subject to the law of the forum.
With regard to evidence in paternity proceedings, the following clarifications are necessary:

a. the admissibility of evidence (the possibility of using certain means of proof), the burden, object and probative value of evidence are subject to the law of parentage;
b. the taking of evidence is governed by the law of the forum (lex fori), according to S. 1090 (5) Code of Civil Procedure.

The law of the place where the document (document) was drawn up, invoked under Article 1090 para. (4) Code of Civil Procedure is the one that regulates the proof of filiation (as an element of civil status) and the probative value of the civil status document (in the sense of an *instrumentum* document).

[5] D.-A. Sitaru,*Idem*, pp.224-225; N., DIACONU. *Idem*, pp.186-187; I., NISTOR. O., CĂPĂȚINĂ. Chronique de jurisprudence roumaine, in Clunet nr 2/1968, pp.417-419; O., CĂPĂȚINĂ. Conflicts of laws, in I.C.J., *Legal relationships between parents and children*, Editura Academiei, Bucharest, 1985, pp.202-205.

[6] "See, for the traditional solution in Romanian law, in the sense that the statute of limitations in actions relating to the establishment or denial of filiation are governed by the law that applies to the substance of the legal relationship between parents and children, and not by the procedural law of the court seised. "O., CĂPĂȚINĂ. D., IANCULESCU. *Theoretical examination of judicial practice concerning relations with elements of foreignness between parents and children*, in S.C.J., no.4/1984, p345 apud D.-A. Sitaru, *Idem*, pp.224-225, footnote 2.

4. The effects of filiation have in view:

— the acquisition of the name by the child is regulated in para. (3) of art. 2603 of the Civil Code, which states that the law governing filiation applies. We note that this paragraph enshrines the exception in S. 2576 Civil Code which governs the law applicable to the person's name;
— The relationship (personal and property) between parents and child, including the parents' obligation to maintain the child, to educate him and to administer his property. It should be noted that the provisions of Section 2612 of the Civil Code apply to the maintenance obligation between parents and children of the marriage, which states that "the law applicable to the maintenance obligation shall be determined in accordance with EU law".

IV. Law applicable to the legitimation of a child born before the marriage according to S. 2604 of the Romanian Civil Code[7]

6. Studying the provisions of Section 2589 (1) of the Civil Code and applying them by analogy to Section 2604 of the Civil Code, we observe that for the legitimation by subsequent marriage of a child born before the marriage, the parents are entitled to proceed, subject to compliance with the conditions required for this purpose, to one of the following laws applicable to the legitimation of the child in the following order, without the possibility of derogation:

1. the law of the spouses' common habitual residence, and failing that,
2. the law of the common nationality of the spouses, and failing that,
3. the law of the State in whose territory the marriage was celebrated.

Studying the provisions of Section 2589 (1) of the Civil Code, it is clear that the law of the State of the marriage is the law of the State of the marriage. and applying them by analogy to Section 2604 of the Civil Code, we note that for the legitimation by subsequent marriage of a child born earlier, the parents are entitled to proceed to the fulfilment of the conditions required for this purpose by one of the following laws:

1. The law of common habitual residence of the spouses applies in the following cases:

   a. the spouses have common citizenship (for example two spouses who are Spanish citizens);
   b. the spouses have different citizenships (e.g. a Romanian citizen spouse and a Spanish citizen spouse);
   c. the spouses are stateless.

2. The law of common nationality of spouses applies only if the spouses are not habitually resident (e.g. one spouse resides in Romania and the other spouse resides in Spain) but are necessarily of the same nationality (e.g. both spouses are Spanish).
3. The law of the State in whose territory the marriage was celebrated applies in the following cases:

   a. the spouses have different residences (one spouse resides in Italy and the other spouse resides in Spain);

[7] N-C ANITEI. *Legea aplicabilă legitimarii copilului născut anterior căsătoriei conform art 2604 Cod civil roman/ The law applicable to the legitimation of the child born before the marriage according to art 2604 Romanian Civil Code* Article presented at International Scientific Conference "Exploration, education and progress in the third millennium", Galați, Romania, May 7th -8th, 2020.

b the spouses have different citizenships (one spouse of Romanian nationality and the other spouse of Italian nationality);
c. the spouses are stateless.

Section 2.604 of the Civil Code contains provisions relating to the "legitimation of the child".

7. We agree with the opinion of the specialist literature[8] that the scope of the applicable law does not only refer to the conditions of legitimation, but implicitly includes the right of the parents themselves to proceed with the legitimation of the child, even if the latter aspect does not result explicitly from the wording of S. 2604 Civil Code.

The procedural aspects of parentage proceedings are governed by the law of the forum.[9] Section 2604 of the Civil Code introduces into the field of the law of filiation the special institution of the legitimation of a child born before the subsequent marriage of their parents. According to the provisions of this article, where the parents are entitled to legitimise a child born before their marriage by subsequent marriage, the conditions required for this purpose are those laid down by the law applicable to the general effects of marriage.

We propose, *de lege ferenda*, to amend the provisions of S. 2603- S. 2604 Civil Code in order to stipulate that only the provisions of S. 2589 (1) Civil Code apply to these two articles as follows:

— S. 2603 with marginal designation: "Applicable law" provides: "The parentage of a child of a marriage shall be determined according to the law which, at the date of his birth, governs the general effects of the marriage of his parents according to S. 2589 (1) Civil Code. If, before the birth of the child, the marriage of the parents has ceased or has been dissolved, the law which, at the time of the cessation or dissolution, governed the general effects of the marriage shall apply. (2) The law referred to in paragraph (1) or paragraph (2) shall also apply, depending on the situation, to the denial of paternity of the child born of the marriage, as well as to the acquisition of the name by the child." (paragraph 3);
— Section 2604 of the Civil Code with the marginal heading "Legitimation of the child", as amended, could provide: "Where the parents are entitled or entitled to proceed to legitimisation by subsequent marriage of a child born before the marriage, the conditions required for this purpose are those laid down in Section 2589 (1) of the Civil Code concerning the law applicable to the general effects of marriage.

V. Parentage of a child out of wedlock in Romanian private international law. The legal ground of the provisions relating to the filiation of children out of wedlock in Romanian private international law [10]

8. Section 2605 of the Civil Code with the marginal heading "Applicable law" provides: "The parentage of a child out of wedlock shall be determined according to the national law of the child from the date of birth. If the child has more than one nationality, other than Romanian, the law of the nationality which is most favourable to him/her shall apply (paragraph 1). (1) shall apply in particular to the recognition of parentage and its effects and to the contesting of the recognition of parentage." (paragraph 2)

[8] D.-A. Sitaru, *Idem*, p.225.

[9] N. Diaconu, *Private International Law*, Publishing House "Romania Mare" Foundation, Bucharest, 2019, p.186.

[10] N.-C. Anitei, *Biennial International Conference Family Institution. Tradition, Reform, standardization and perspectivesconferința internațională bienală organizată de Institutul de Cercetări Economice și Sociale "Gheorghe Zane" al Academiei Române, Filiala Iași/ "Gheorghe Zane" Institute of Economic and Social Research - Romanian Academy, Iasi Branch · Asociația Internațională de Drept și Științe Conexe/ International Association of Law and Related Sciences, Michigan State University College of Law. Asociația "Vespasian V. Pella", Iași/ "Vespasian V. Pella" Association, Iasi, Romania · Centrul de Cercetări în Științe Sociale și Umaniste, Lumen, Iași /Centre for Research in Social and Humanistic Sciences, Lumen, Iasi, Romania, 8 noiembrie 2019* .

9. Section 2606 of the Civil Code with the marginal heading "Liability of the father" provides: "The right of the mother to hold the father of the child born out of wedlock liable for the expenses incurred during pregnancy and for those arising from the birth of the child is subject to the national law of the mother."

VI. Law applicable to the filiation of the child out of wedlock

10. From the provisions of S. 2.605 (1), sentence (I) of the Civil Code, we note that the filiation of a child out of wedlock is governed by the national law of the child at the time of birth. By applying the national law of the child at the date of birth (*lex patriae*), the Romanian legislator has resolved the conflict of laws in favour of the old law, thus seeking to eliminate fraud in this area.

11. From the provisions of S. 2.605 (1), sentence (II) of the Civil Code, we note that if the child has more than one foreign nationality, but not Romanian nationality, the law that is more favourable to him/her shall apply.

12. The literature[11] considers that sentence (II), para. (1) of S. 2605 Civil Code does not constitute an exception to sentence (I), para. (1) of S. 2605 Civil code, because in this area the national law of the child is still applicable, except that, among the laws of several foreign nationals that the child has, the one that is more favourable to him is preferred (*mitior lex*).

13. However, the solution of applying the more favourable law is an exception to the provision of Section 2.568 (2) of the Civil Code, according to which the national law of a foreigner who has more than one nationality is the law of the State whose nationality he has and with which he is most closely connected, in particular by his habitual residence.[12]

14. The doctrine[13] states that "in the case of a child with multiple foreign nationality, the localisation of his or her filiation outside marriage within the sphere of the law of his or her habitual residence is waived and the application of that foreign national law which best satisfies the child's interests is made".

15. The character of "law more favourable to the child" is qualified by the court of the forum according to the general rule established by S. 2558 Civil Code.

VII. Scope of the law applicable to the filiation of a child out of wedlock

16. The scope of application of the law governing the filiation of a child out of wedlock is governed, in principle, by the provisions of Article 2.605 para. (2) of the Civil Code. It is clear from these provisions that the national law of the child at the time of birth applies in particular to the recognition of filiation and its effects, and to challenges to the recognition of filiation.

An analysis of this text shows that the scope of application is not limitative, since the use of the adverb "in particular" indicates that it applies specifically to the following situations:

(a) recognition of parentage and its effects;
(b) contesting the recognition of parentage, but other situations may also be considered.

Therefore, the following situations fall, in principle, within the scope of the law applicable to the filiation of a child out of wedlock:[14]

[11] D.-A. Sitaru,*Idem*, p.226.
[12] *Ibidem*; N., DIACONU. *Idem*, p.187.
[13] D.-A. Sitaru, *Idem*, p.226.
[14] D.-A. Sitaru. *Idem*, pp.226-227.

1. Establishing parentage

   a. The establishment of filiation with the mother concerns the following aspects: the modalities and conditions for establishing filiation with the mother (including recognition), for contesting maternity, etc.;
   b. The establishment of parentage in relation to the father concerns the following aspects: the modalities and conditions for establishing paternity (including recognition), presumption of paternity, legal time of conception of the child, etc..

Recognition of parentage;

2. Contestation of recognition of parentage;
3. The effects of filiation have in view:

   — Acquisition of the name by the child;
   — the parents' obligation to support the child;
   — parents' obligation to educate the child;
   — the parents' obligation to administer the child's property;
   — to the maintenance obligation between parents and children out of wedlock, the special law applies according to art. 2612 of the Civil Code which states that "the law applicable to the maintenance obligation is determined according to the regulations of EU law".

4. Establishing the paternity of a child out of wedlock;
5. Presumption of filiation towards the alleged father out of wedlock;
6. Limitation period for establishing filiation outside marriage.

VIII. Law applicable to the father's remarriage

17. From the provisions of Article 2.606 of the Civil Code we note that the mother's national law regulates the right of the mother to hold the father of the child out of wedlock liable for the expenses incurred during pregnancy and for those incurred during the birth of the child (Section 428 of the Civil Code n.n.).

18. We note that the legislator, in the best interests of the child, ensures maximum protection for the mother by requiring the father of the child out of wedlock to pay for the expenses incurred during pregnancy and those arising from the birth of the child according to his national law, which he is presumed to know best, and not according to the child's national law.

19. In conclusion, the liability of the father outside the marriage is governed by the mother's national law.

IX. Law applicable to parentage following human reproduction with a third-party donor[15]

20. We agree with the literature[16] that the regime of filiation in the case of medically assisted human reproduction with a third-party donor[17] is subject to the law of the State of origin:

[15] Draft Law National In Vitro Fertilisation and Embryotransfer Programme http://www.medicinareproductiva.ro/proiect-lege-fertilizare.php consulted on 25 April 2021.

[16] D.-A. Sitaru,*Idem*, p. 227.

[17] For substantive law aspects see S. 441-S.447 Civil Code.
Medically assisted human reproduction with a third-party donor.
Regime of filiation.

1. law applicable to the filiation of the child of the marriage;
2. the law of filiation of the child out of wedlock.

The law applicable to parentage as a result of human reproduction with a third party donor in the case of a child of the marriage is in the following order, without any possibility of derogation:

1. the law of the spouses' common habitual residence, and failing that,
2. the law of the common nationality of the spouses, and failing that,
3. the law of the State in whose territory the marriage was celebrated.

The following matters fall within its scope:

1. the regime and conditions of filiation;
2. the personal and property relations between the child and the parents;
3. the acquisition of a name by the child.

The law applicable to filiation as a result of human reproduction with a third party donor in the case of a child out of wedlock is:

Article 441 -

(1) Medically assisted human reproduction with a third-party donor does not determine any filiation link between the child and the donor.

(2) In this case, no action for liability may be brought against the donor.

(3) Parents within the meaning of this section can only be a man and a woman or a single woman.

Conditions

Article 442 -

(1) Parents who, in order to have a child, wish to have recourse to medically assisted reproduction with a third-party donor must give their consent in advance, under conditions ensuring complete confidentiality, before a notary public who will explain to them expressly the consequences of their act with regard to filiation.

(2) Consent shall not be effective in the event of death, divorce or de facto separation occurring prior to the moment of conception achieved through medically assisted human reproduction. It may be revoked at any time, in writing, including in front of the doctor called upon to provide assistance for the third-party donor reproduction.

Challenge to parentage

Article 443 -

(1) No one may contest the filiation of the child for reasons relating to medically assisted reproduction, nor may the child thus born, contest its filiation.

(2) However, the mother's husband may contest the paternity of the child, in accordance with the law, if he has not consented to medically assisted reproduction carried out with the help of a third-party donor.

(3) If the child has not been conceived in this way, the provisions on the denial of paternity shall remain applicable.

Liability of the father

Article 444 -

A person who, after having consented to medically assisted reproduction with a third-party donor, does not recognize the child thus born out of wedlock shall be liable to the mother and to the child. In this case, the paternity of the child shall be established by a court of law in accordance with Articles 411 and 423.

Confidentiality of information

Article 445 -

(1) Any information concerning medically assisted human reproduction shall be confidential.

(2) However, if, in the absence of such information, there is a risk of serious harm to the health of a person so conceived or of his offspring, the court may authorize its confidential transmission to the doctor or to the competent authorities.

(3) Any of the descendants of the person so conceived may also exercise this right if being deprived of the information requested is likely to be seriously prejudicial to his or her health or to that of a person close to him or her.

Relations between father and child

Article 446 -

The father has the same rights and obligations towards a child born by medically assisted reproduction with a third-party donor as towards a child born by natural conception.

Applicable rules

Article 447 -

The legal status of medically assisted human reproduction with a third -party donor, the confidentiality of information relating thereto and the manner of transmission of such information shall be established by special law.

1. the national law of the child at the date of birth;
2. the law which is more favourable to the child applies if the child has more than one foreign nationality, but not Romanian nationality;
3 the mother's national law (for the father's liability).

The following issues are covered:

1. regime and conditions of filiation;
2. personal and property relations between the child and the parents;
3. acquisition of the name by the child;
4. contestation of filiation;
5. the father's liability;
6. relations between father and child.

X. European and international conventions, treaties and regulations on the filiation of the child and on related matters[18]

21. Romania is party to various European, international and bilateral conventions and regulations which also contain rules of immediate application (uniform provisions) concerning various areas of family relations, including those relating to the filiation of the child. In the following, we have proposed to present such conventions.

A. European Convention on the legal status of children born out of wedlock

The European Convention on the Legal Status of Children born out of Wedlock was concluded in Strasbourg on October 15, 1975, to which Romania acceded by Law 101/1992.[19]

The purpose of the Convention is to:

— the adoption of common rules in the legal field in order to improve the legal status of children born out of wedlock by reducing the differences between the legal status of such children and the legal status of children born in wedlock;
— improving the legal, economic, social, educational, etc. conditions of children born out of wedlock;
— the establishment of certain common rules on the legal status of children born out of wedlock would facilitate the achievement of this objective and at the same time contribute to the harmonization of Member States' legislation in this area.

Article 2 of the European Convention on the Legal Status of Children born out of Wedlock stipulates that "Parentage of all children born out of wedlock shall be established by the sole fact of the child's birth".

As regards filiation with the father, we note that the Convention assigns three articles to it:

— From Article 3 we note that for all children born out of wedlock filiation with the father "may be established or determined by voluntary acknowledgement or by a court decision."

[18] N. C. Anitei, *Conventions, treaties and European and international regulations on the filiation of the child and on some related issues,* Universul Juridic Magazine, no. 12, Universul Juridic Publishing House, Bucharest, 2020 http://revista.universuljuridic.ro/conventii-si-tratate-europene-si-internationale-materia-filiatiei-copilului-si-cu-privire-la-unele-aspecte-conexe-la-care-romania-este-parte-ca-norme-de-aplicare-imediata/

[19] Official Gazette no. 243/30.09.1992.

— From Article 4 we note that voluntary acknowledgement of paternity may not be opposed or contested if these procedures are governed by the domestic law of the State concerned, unless the person who wishes to recognize or who has recognized the child is not biologically the father of that child.
— According to Section 5, scientific evidence capable of establishing or removing paternity shall be admissible in proceedings concerning parentage by the father.
— S. 6 (1) stipulates that both parents (father and mother) of a child born out of wedlock have the same maintenance obligation towards that child as the maintenance obligation that exists towards the child born out of wedlock.

Paragraph (2) of the same article specifies that where "the obligation of maintenance of a child born out of wedlock is incumbent on certain members of the father's or mother's family, the child born out of wedlock also benefits from this obligation".

— S. 7 (1) of the Convention stipulates that where the parentage of a child born out of wedlock is established in relation to both parents, the exercise of parental rights cannot be attributed by operation of law to the father alone.

Paragraph (2) of Article 7 of the Convention states that the exercise of parental rights may be transferred, with the proviso that cases of transfer are subject to national law.

— From the provisions of Article 8 of the Convention, we see that if one of the parents (regardless of whether it is the father or the mother) does not have the exercise of parental rights or of custody of the child born out of wedlock, as an exception, he or she may obtain a right of access in the cases established by law.
— Article 9 of the Convention stipulates that the rights of a child born out of wedlock are the same as those of a child born out of wedlock when he or she comes into the succession of his or her father and mother and the members of their families.
— According to Article 10 of the Convention, if the father and mother marry, the child born out of wedlock will have the legal status of a child born of wedlock.

B. Other conventions, treaties and regulations relating to parentage tangentially

1. European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children adopted in Luxembourg on May 20,1980 and ratified by Romania by Law no. 216/2003.[20]

Article 1 of the Convention defines the following terms:

"a) child - a person, regardless of nationality, who has not yet attained the age of 16 years and who does not have the right to determine his or her own residence in accordance with the law of his or her habitual residence or nationality or with the domestic law of the requested State;
b) authority - any judicial or administrative authority;

[20] "Although the official translation of the text in the Official Journal (year 2003) was made with the wording "custody of the child" the correct term is custody as translated on the official website of the European Commission. The term "child custody", which is equivalent to sole custody, was the only legally acceptable form of custody in Romania prior to October 1, 2011 but is a subcategory of the broader term custody, which includes both sole and joint custody. While this translation of the term "custody of children" as "entrusting the child" was more or less valid in Romania at the time of publication of the text in the Official Gazette (2003), being the only form of custody legally accepted at that time, the translation is no longer valid after the entry into force of the new Civil Code which allows both sole custody and joint custody." https://ro.wikipedia.org/wiki/Conven%C8%9Bia_european%C4%83_asupra_recunoa%C8%99terii_%C8%99i_execut%C4%83rii_hot%C4%83r%C3%A2rilor_privind_custodia_copiilor_%C8%99i_de_restabilire_a_custodiei_copiilor#Descriere consulted on 1 May 2020.

c) custody decision - any decision of an authority insofar as it decides on the care of the person of the child, including the right to determine his or her residence, and on rights of access;
d) wrongful removal - the removal of a child across an international frontier in violation of a judgment relating to custody given in a Contracting State and enforceable in that State; it shall also be considered wrongful removal:

(i) failure to return a child across an international frontier at the end of the period of exercise of rights of access in respect of that child or at the end of a temporary stay in a territory other than that in which custody is exercised;
(ii) a crossing subsequently declared to be wrongful within the meaning of Article 12."

The member States of the Council of Europe state the following in the preamble to the Convention: "considering that the interests of the child are of decisive importance in matters of custody decisions, considering that the introduction of measures designed to facilitate the recognition and enforcement of custody decisions will have the effect of ensuring better protection of the interests of the child, considering it desirable, to this end, to emphasize that the right of access of parents is the normal corollary of the right of custody, Noting the increasing number of cases in which children have been wrongfully removed across an international frontier and the difficulties encountered in dealing adequately with the problems raised by such cases, desirous of introducing appropriate provisions enabling custody of children to be restored where such custody has been arbitrarily terminated, convinced of the desirability of taking, to that end, measures adapted to different needs and circumstances, desirous of establishing relations of judicial cooperation between their authorities" have decided to adopt this Convention.

XI. Clarification needed on the dichotomy of the provisions of Romanian private international law and the correspondence with the proposal for a Council Regulation on parentage - jurisdiction, applicable law and recognition.

Romanian Private International Law	Proposal for a Council Regulation on Parentage
Jurisdiction Jurisdiction based on the domicile or seat of the respondent **Art. 1.066** (1) Unless otherwise provided by law, the Romanian courts shall have jurisdiction if the respondent is domiciled or, in the absence of domicile, has his habitual residence or principal place of business or, in the absence of a principal place of business, has a secondary place of business or a goodwill in Romania at the time of filing the action. Forum of necessity **Art. 1.070** (1) The Romanian court of the place with which the case has a sufficient connection becomes competent to decide the case, even if the law does not provide for the competence of Romanian courts, if it is proved that it is not possible to bring a claim abroad or that it cannot reasonably be expected to be brought abroad. (2) In the situations referred to in para. (1), if the application is made by a Romanian citizen or stateless person domiciled in Romania or by a legal person of Romanian nationality, the jurisdiction of the Romanian court shall be mandatory.	**Jurisdiction** **Article 6** General jurisdiction The courts of the member state are competent to decide on issues related to filiation: (a) where the child has his habitual residence at the time of the referral to the court or (b)whose citizenship the child holds at the time of referral to the court or (c) in which the respondent has his habitual residence at the time of the referral to the court or (d) in which either parent has their habitual residence at the time of the referral to the court or (e)whose citizenship is held by either parent at the time of referral to the court or (f) in which the child was born. **Article 7** Competence based on the presence of the child When jurisdiction cannot be established on the basis of Article 6, the courts of the Member State where the child is present have jurisdiction.

Romanian Private International Law	Proposal for a Council Regulation on Parentage
	Article 8 Residual jurisdiction Where no court in a Member State has jurisdiction under Article 6 or 7, jurisdiction shall be determined in each Member State by the law of that Member State. **Article 9** *Forum necessitatis* If no court of a Member State has jurisdiction under other provisions of this Regulation, the courts of a Member State may, in exceptional cases, rule on matters of parentage where the proceedings cannot be reasonably initiated or cannot reasonably be carried out or would be impossible in a third country with which the case is closely connected. The case must have a sufficient connection with the Member State of the court seized.
Applicable law The law applicable to the filiation of the child from the marriage: **Article 2603 of the Romanian Civil Code** (1) The filiation of the child from the marriage is established according to the law which, on the date of his birth, governs the general effects of his parents' marriage. (2) If, before the birth of the child, the marriage of the parents ended or was dissolved, the law that governed its effects on the date of the termination or dissolution shall apply. (3) The mentioned law also applies to the denial of paternity of the child born out of wedlock, as well as to the acquisition of the name by the child. **Article 2589** (1) The general effects of marriage are subject to the law of the common habitual residence of the spouses, and in their absence, the law of the common citizenship of the spouses. In the absence of common citizenship, the law of the state on whose territory the marriage was celebrated applies. The law applicable to the filiation of the child out of wedlock: **Article 2605** (1) The filiation of the child out of wedlock is established according to the national law of the child from the date of birth. If the child has several citizenships, other than Romanian, the citizenship law that is most favourable to him is applied. (2) The law provided for in (1) applies especially to the recognition of filiation and its effects, as well as to contesting the recognition of filiation.	**Applicable law** **Article 16** Universal application Any law designated as applicable by this Regulation applies whether or not it is the law of a Member State. **Article 17** Applicable law 1. The law applicable to the establishment of parentage is the law of the state where the person who gives birth has his or her habitual residence at the time of birth or, if it cannot be established what is, at the time of birth, the habitual residence of the person who gives birth, the law of the state in when the child was born. 2. Without prejudice to paragraph (1), where the law applicable under paragraph (1) results in the establishment of parentage with respect to a single parent, the law of the State of nationality of that parent or of the second parent or the law the child's state of birth may apply to the establishment of parentage to the second parent. **Article 18** Scope of Applicable Law The law designated by this regulation as the law applicable to establishing parentage regulates, in particular: (a) the procedures for establishing or contesting parentage; (b) the binding legal effect and/or probative force of authentic documents; (c) the procedural quality of the persons in the procedures involving the establishment or contestation of parentage; (d) any deadlines for establishing or contesting parentage. **Article 19** Change in applicable law Where parentage has been established in a Member State pursuant to this Regulation, a subsequent change in the applicable law shall not affect parentage already established.

Romanian Private International Law	Proposal for a Council Regulation on Parentage
Acknowledgment Recognition of full right **Article 1095** Foreign judgments are legally recognized in Romania, if they refer to the personal status of the citizens of the state where they were pronounced or if, being pronounced in a third country, they were first recognized in the state of citizenship of each party or, failing that of recognition, were pronounced based on the law determined as applicable according to Romanian private international law, they are not contrary to the public order of Romanian private international law and the right to defence was respected. Conditions of recognition **Article 1096** (1) Decisions related to processes other than those provided for in art. 1,095 can be recognized in Romania, in order to benefit from the authority of res judicata, if the following conditions are cumulatively met: a) the decision is final according to the law of the state where it was pronounced; b) the court that pronounced it had, according to the law of the seat state, the competence to judge the case without being based exclusively on the presence of the respondent or some of his assets not directly related to the litigation in the seat state of the respective jurisdiction; c) there is reciprocity regarding the effects of foreign judgments between Romania and the state of the court that pronounced the judgment. (2) If the judgment was pronounced in the absence of the party that lost the case, it must also state that the party in question was served in due time both the summons for the term of the debates on the merits and the referral act of the court and that he was given the opportunity to defend himself and exercise the right of appeal against the decision. (3) The non-definitive nature of the foreign judgment, arising from the omission of the citation of the person who did not participate in the trial before the foreign court, can only be invoked by that person.	**Acknowledgment** **Article 24** Recognition of a court decision 1. Judgments in matters of filiation pronounced in one member state are recognized in all other member states without having to resort to any special procedure. 2. In particular, no special procedure is required for the updating of the civil status documents of a Member State on the basis of a judicial decision in the matter of filiation rendered in another Member State which can no longer be subject to any appeal under the law of that Member State member state. 3. If the recognition of a judgment is invoked incidentally before a court in a member state, it may issue a judgment to that effect.

Analysing the dichotomy of the provisions of the Code of Civil Procedure regarding the law applicable to the filiation of a child from or outside of marriage, respectively the proposal of the Council Regulation on filiation, we note the fact that by law, in Romania, either the law of the COMMON habitual residence of the spouses is considered, in the absence of the residence common, the law of the COMMON citizenship of the spouses, and in the absence of the common citizenship of the spouses, the law of the state on whose territory the marriage was celebrated. These assumptions are taken into account to establish the parentage of the child from the marriage, but with regard to the child out of wedlock, the national child law applies from the date of birth.

From the economy of the whole regulation, we deduce that the Romanian legislator, regarding the child from marriage, gives priority effectiveness to the common elements of the spouses, either the

common residence, or the common citizenship, or the territory where the marriage was celebrated, and with regard to the child out of wedlock, the law receives the child's national identity on the date of birth.

22. *Per a contrario, de lege ferenda*, in the event of the application of the Council Regulation on filiation, priority will be the law of the state where the person who gives birth has his habitual residence at the time of birth, or the law of the state where the child was born, and in the situation where the application of this law would result in the establishment of filiation with respect to a single parent, may apply to the establishment of filiation with respect to the second parent and the law of the state of citizenship of the parent who gives birth or of the second parent or the law of the state of birth of the child.

In other words, as a general rule, the law applicable to establishing parentage should be the law of the state in which the person who gives birth to a child has his or her habitual residence and if, by applying that rule, parentage is established only in relation to one of parents, the alternative solutions ensure the possibility of establishing parentage in relation to both parents.

With regard to the recognition of foreign judgments in Romania, the judicial procedure of the executor is mandatory, so that the enforceable title that was pronounced abroad can be enforced on the territory of Romania, but by ferenda law, based on the Council Regulation on parentage of judgments in matters of filiation pronounced in one member state are recognized in all other member states without having to resort to any special procedure.

XII. Jurisprudential element. Case Study

23. Through the application for summons, the petitioner, a Romanian citizen with permanent residence in France, requested the court from her domicile in Romania that by the judgment that will be pronounced, she would grant:

1. to establish the fact that the 1st rank respondent, domiciled in Romania, is not the minor's father, pursuant to S. 429 of the Civil Code;
2. to establish the minor's paternity vis-à-vis the respondent of rank 2, residing in France and domiciled in Romania, pursuant to S. 408 (3) of the Civil Code;
3. to order the making of the necessary entries in the register of civil status of the City Hall at the parents' residence, in the sense of the removal from the parent column of the entries that refer to the respondent of rank 1 and the entry in the parent column of the entries that refer to the 2nd rank respondent;
4. to decide that the parental authority over the minor born in France should be exercised jointly, by both parents, respectively by the petitioner and the 2nd rank respondent according to S. 930 (2) of the new Code of Civil Procedure (exercise of parental authority)
5. to decide, regarding the name of the minor pursuant to S. 438 of the Civil Code, for the minor to bear the father's last name (establishment of the minor's name);
6. to establish that the minor's residence should be at the mother's residence in France (minor's residence), currently the minor's residence is at that address, where the 2nd rank respondent also lives;
7. to order the obligation of the 2nd rank respondent to make contributions for the upbringing and education of the minor, in kind (the contribution to the expenses for the upbringing and education of the minor);

De facto, from the cohabitation relationship of the petitioner with the 2nd-ranking respondent, the minor is born in France, this being recognized[21] by the 2nd rank respondent at the Romanian City

[21] Recognition hit by absolute nullity in relation to the fact that the parentage to the mother's husband was not removed. See S. 418 of the Civil Code, regarding the absolute Nullity of the recognition which disposes:
Recognition is struck by absolute nullity if:

Hall, but as a result of the fact that the minor is born during the divorce process between the petitioner and the 1st rank respondent, respectively during the mother's marriage with the 1st rank respondent, the provisions of S. 414 of the Civil Code which provide:

S. 414.

(1) The child born or conceived during the marriage is fathered by the mother's husband.
(2) Paternity can be denied, if it is impossible for the mother's husband to be the father of the child.

In such a situation, the City Hall of the residence of the biological parents registers the mother's husband, respectively the 1st rank respondent, in the "father" column of the child.

Through the action, it is also requested that the honourable court observe the fact that the 1st rank respondent recognizes in the divorce action the fact that at the time of filing the divorce action, the petitioner was 6 months pregnant with the child of another man, with whom she was in a relationship extramarital relationship, showing that that child is the result of the relationship with the man with whom she had the extramarital relationship. In the same sense, the complainant stated that she was pregnant with another man's child, meaning that it is impossible for the 1st rank respondent to be the minor's father.

In accordance with the provisions of Section 408 of the Civil Code - Ways of establishing filiation -:

(1) Filiation to the mother results from the fact of birth; it can also be established by recognition or by court decision.
(2) Filiation to the father from the marriage is established through the effect of the presumption of paternity.
(3) Filiation to the father outside of marriage is established by recognition or by court decision, as the case may be.

Moreover, S. 425 of the Civil Code (Action to establish paternity) establishes:

(1) The action to establish paternity outside marriage belongs to the child and is initiated on his behalf by the mother, even if she is a minor, or by his legal representative.
(2) It can be started or, as the case may be, continued by the child's heirs, in accordance with the law.
(3) The action to establish paternity can also be initiated against the heirs of the alleged father.

Section 426 of the Civil Code (Presumption of filiation towards the alleged father) provides:

(1) Paternity is presumed if it is proven that the alleged father lived with the child's mother during the legal time of conception.
(2) The presumption is removed if the alleged father proves that it is impossible for him to have conceived the child.

An objection was submitted to the case file by the 2nd rank respondent, through which it is stated that he agrees with the action filed by the petitioner and states that he is the minor's father.

In the same sense, the 1st rank respondent also submitted an objection to the case file, through which he states that he agrees with the action filed by the petitioner, his ex-wife, and shows that he is not the minor's father.

a) a child was recognized whose parentage, established according to the law, was not removed. However, if the previous filiation was removed by a court decision, the recognition is valid;

b) it was made after the child's death, and he left no natural descendants;

c) was made in other forms than those provided by law

In the case, the court admitted and administered the documentary evidence, admitted the testimonial evidence with 2 witnesses domiciled in France, meaning that they were heard by rogatory commission, admitted the evidence with the psychosocial investigation, which was carried out in France at the address biological parents by the City Hall in France. The trial of a social investigation at the applicant's home was ordered by writ of mandate given that the parties live in France, where the minor's home is located. From the contents of the social investigation, it is noted that she has the conditions for the upbringing and education of the minor, currently the minor has two more brothers from the relationship of the petitioner with the 2nd rank respondent, the minor is educated, this was highlighted by her behaviour and diligence, which described her parents using positive words.

The French authorities listened to the witnesses, by rogatory commission, they highlighted the cohabitation relationship of the parties, respectively the petitioner and the 2nd rank respondent, the circumstance in which the minor was born, it being known to them that the minor's biological father is the 2nd rank respondent , which he had and was known to behave in this sense, behaving with love towards the minor.

The court notes that the 1st rank respondent is registered in the minor's birth certificate, respectively that the marriage of the spouses, respectively the marriage between the petitioner and the 1st rank respondent, was dissolved by civil sentence.

In relation to the moment of dissolution of the marriage, the minor was born in the marriage of the spouses, in the sense in which Section 429 of the Civil Code, marginally entitled Action in denial of paternity, is incident:

(1) The action to deny paternity can be initiated by the mother's husband, the mother, the biological father, as well as the child. It can be started or, as the case may be, continued by their heirs, in accordance with the law.
(2) The action is brought by the mother's husband against the child; when he is deceased, the action is started against his mother and, if applicable, his other heirs.
(3) If the husband benefits from special guardianship, the action can be initiated by the guardian, and in his absence, by a curator appointed by the court.
(4) The mother or the child can bring the action against the husband. If he is deceased, the action is started against his heirs.
(5) The biological father can bring the action against the mother's husband and the child. If they are deceased, the action is started against the heirs.

According to Section 431 of the Civil Code, marginally entitled Denial of paternity by the mother:

(1) The action to deny paternity can be initiated by the mother within 3 years from the date of the child's birth.

The court invoked the provisions of Section 432 of the Civil Code, marginally entitled Denial of paternity by the alleged biological father.[22]

(1) The action in the denial of paternity introduced by the one claiming to be the biological father can only be admitted if he proves his paternity towards the child.
(2) The right to action does not expire during the life of the biological father. If he has died, the action can be filed by his heirs within a maximum of one year from the date of death.

Next, Section 434 of the Civil Code, Disputing filiation against the father by marriage, is invoked, according to which:

Any interested person can, at any time, ask the court to find that the conditions are not met for the presumption of paternity to apply to a child registered in civil status documents as being born out of wedlock.

[22] Although the pending action represented an action in the denial of paternity by the mother.

The petitioner claims that the minor was born in the cohabitation relationship with the 2nd rank respondent, and according to S. 412 (1) Civil Code Legal time of conception

(1) The time interval between the three hundredth and the one hundred and eightieth day before the birth of the child is the legal time of conception. It is calculated daily.
(2) Through scientific means of proof, it is possible to prove the conception of the child in a certain period of the time interval provided for in section (1) or even outside this range.

It is also noted that it is impossible for the 1st rank respondent to be the minor's father, based on all the evidence administered in the case, due to the fact that the spouses, during the legal time of conception as defined by S. 412 of the civil code, they did not live together, a fact that leads to the admission of the action filed by the petitioner.

Through the Civil Judgment delivered in the pending case, the court partially admitted the civil action filed by the petitioner, action filed in her own name and as a representative of the minor. The court finds that the 1st rank respondent is not the father of the minor, respectively finds that the 2nd rank respondent is the father of the minor.

As regards the petitioner's petitions regarding the establishment of the minor's home, namely the obligation of the second-ranking respondent to a maintenance pension in kind, the court will reject these petitions, as devoid of interest, given that the evidence of the case does not show that between the parties, as parents of the minor, there is a misunderstanding regarding the minor's domicile, or the contribution to her support, to her growth and education.[23]

Regarding the name of the minor, according to S. 450 of the Civil Code Name of the child out of wedlock:

(1) The child out of wedlock takes the last name of the parent with whom filiation was first established.
(2) In case the filiation was subsequently established with respect to the other parent, the child, with the consent of the parents, may take the surname of the parent with whom he subsequently established his filiation or their combined names. The new surname of the child is declared by the parents, together, at the local community public service for the registration of the persons whose birth was registered. In the absence of parental consent, the provisions of S. 449 para. (3), which provide: (3) In the absence of the consent of the parents, the guardianship court decides and immediately communicates the final decision to the local community public service for records of persons where the birth was registered, meaning that the court approved that the minor bear the name of the biological father, respectively the name of the 2nd rank respondent.

It is ordered that the Civil Status Office of the parties' place of residence, which issued the birth certificate, make the appropriate mentions regarding the dispositions given by the court.

[23] The petitions were initiated according to the provisions of art. 438 Civil Code found in chapter V. Common provisions regarding parentage actions, the child's situation according to which

(1) Through the decision to admit the action, the court also pronounces on the establishment of the child's name, the exercise of parental authority and the parents' obligation to maintain the child.

(2) If it admits an action in contesting parentage, the court can establish, if necessary, the way in which the child maintains personal ties with the one who raised him.

By virtue of these provisions, based on the principle of availability, the applicant requested the court to rule on the establishment of the minor's name, the exercise of joint parental authority and the parents' obligation to maintain the minor in kind, regardless of the fact that there is no misunderstanding between the parties regarding these requests. Mutatis muntandis, the court established the name of the minor, although there is no misunderstanding between the parties.

The petitioner did not start an appeal against the civil judgment, as a result of the procrastination of the settlement of the trial, within a term of approximately 2 years.

24. The pending case was resolved within a term that is not considered to be a reasonable term, since the summons was registered on 23.03.2021, the judgment pronounced on 17.11.2022, respectively drafted on 27.02.2023.

25. Comparatively, in the assumption of the application of the Council Regulation on jurisdiction, applicable law, recognition of court decisions and acceptance of authentic documents in matters of filiation and regarding the creation of a European certificate of filiation, pursuant to art. 3 Scope, which stipulates that this regulation applies to civil matters regarding filiation in cross-border situations, it is necessary to note that the courts of the Member State where the child has its habitual residence at the time of the referral to the court, in accordance with art. 6 lit. a) from the Regulation.

26. Or, in the pending case, the competent court would have been the guardianship court in France, considering that the minor had her habitual residence in France at the time of the referral to the court, and it is no longer necessary to administer the evidence through the rogatory commission, respectively the evidence with the hearing of witnesses and the evidence with carrying out the psychosocial investigation, a fact that would determine the resolution of the process in a truly reasonable term, based on the principle of the best interest of the minor.

Moreover, following the thorough analysis of the entire Article 6 of the Regulation, which regulates the General Competence, in the pending case several letters would be involved, respectively a), c), d) and f), since:

The courts of the member state are competent to decide on issues related to filiation:

(a) in which the child has his habitual residence at the time of the referral to the court, in relation to the fact that the minor had his habitual residence in France at the time of the referral to the court,
(b) whose citizenship the child holds at the time of referral to the court or
(c) in which the respondent has his habitual residence at the time of the referral to the court, in relation to the fact that the biological father had his habitual residence in France at the time of the referral to the court,
(d) in which either of the parents has their habitual residence at the time of the referral to the court, in relation to the fact that the mother had her habitual residence in France at the time of the referral to the court,
(e) whose citizenship is held by either parent at the time of referral to the court or
(f) where the child was born, based on the fact that the minor was born in France.

13. Conclusions

In corollary, for the speedy resolution of a summons request that would have as its object the denial of paternity, as well as the establishment of paternity, the proposal of the Council Regulation on jurisdiction, the applicable law, the recognition of court decisions and the acceptance of authentic documents in matters of filiation and regarding the creation a European parentage certificate, is considered to be beneficial.

From another perspective, non-governmental organizations in Romania are of the opinion that the Regulation disregards the fundamental principles of subsidiarity and proportionality, i.e. the fact that free movement cannot be used as a tool to circumvent the national competences of each member state in the field of marriage and family.[24]

[24] https://asociatiaprovita.ro/wp-content/uploads/2021/05/consultare-CE-recunoasterea-transfrontaliera-familii-2021.pdf The study mentions the fact that the imposition of the recognition of parenthood established abroad - in the hypothesis where the child is born following a surrogacy contract, through adoption or through medically assisted reproduction - in contradiction with the national laws of the host state would create a serious conflict between the rules, eo ipso there would be at least two definitions of

27. Regardless of the arguments for and against the Proposed Regulation regarding filiation, in relation to the fact that in order to promote the Union's object of creating, maintaining and developing an area of freedom and justice in which to ensure the free movement of people, access to justice and full respect for fundamental rights, Commission President Mrs. von der Leyen stated in her 2020 State of the Union address that "who is a parent in one country is a parent in all countries",[25] we believe that the appropriate perspective would have been "who is a CHILD in one country, is a child in all countries" taking into account the supremacy of the child's best

family and of the notion of parent, both in force in the same Member State, which would lead to normative chaos and a continuous erosion of national competence in related matters.

In support of the view that mother and child would become a commodity, see:

S. Hawley, "*Damaged babies and broken hearts: Ukraine's commercial surrogacy industry leaves a trail of disasters*", ABC News, https://www.abc.net.au/news/2019-08-20/ukraines-commercial-surrogacyindustry- leaves-disaster/11417388

L. De Freitas, "Couple left 'devastated' after surrogate baby is born with 'Asian' features", News24, https://www.news24.com/you/parenting/couple-left-devastated-aftersurrogate-baby-is- born-with-asian-features-20190822

J. Lahl/ m. Epinette, *Breeders: A Subclass of Women? Center for Bioethics and Culture*, 2014); KISHWAR DESAI, "*India's surrogate mothers are risking their lives*", The Guardian (5 June 2012), https://www.theguardian.com/commentis-free/2012/jun/05/india-surrogates-impoverished-die

[25] For details on maternity leave, paternity and raising and child care, see

R. L. Dornean Păunescu, *Maternity/Paternity Leave, Parental Leave for Child Care – Legislation, Child Psychology, Harmonious Development*, Biennial International Conference "Family Institution. Tradition, Reform, Standardization and Perspective", first edition, Iasi, November 8, 2019, Jurnalul de Studii Juridice Year XIV, No. 1-2, June, 2019, p.56-71. https://lumenpublishing.com/journals/index.php/jls/article/view/2263/1858

For details regarding the child's right to the state allowance, see R.L. Dornean Păunescu, *State allowance for children - social security right/Children's allowance - social security right*, in Jurnalul de Studii Juridice vol. 16 no. 1-2, November 2021, pp. 24-38, https://lumenpublishing.com/journals/index.php/jls/article/view/4509/3241