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Responsible Parenthood Act

NO. 8101

THE LEGISLATIVE ASSEMBLY

OF THE REPUBLIC OF COSTA RICA

DECREES:

RESPONSIBLE PARENTHOOD LAW

Articles 54 and 112 of the Organic Law of the Supreme Court of Elections and Civil Registry, No. 3504, of May 10, 1965, are hereby amended to read as follows:

"Article 54.- Registration **of children born out of wedlock**. In the registration of birth of sons and daughters born out of wedlock, paternity and maternity shall be recorded, if the declaration is made by the two persons who claim to be parents and both sign it.

The Registrar shall warn the mother of the legal and administrative provisions established with respect to the declaration and registration of paternity; also, of the civil liabilities she may incur for indicating as such who, after having undergone the respective technical tests, does not turn out to be the biological father; in addition, of the characteristics of the certainty of the DNA test and of the obligation to take the test. Once the mother has been informed and in the absence of the father's declaration, she may sign the record and indicate the name of the presumed father.

In that act, the child will be registered under the surnames of its mother. The presumed father will be summoned by means of notification, so that he manifests himself in this respect within ten working days from the notification, and he will be warned that the non manifestation of opposition to the paternity indication will give rise to the administrative recognition of the filiation. In case the mother, the child and the indicated father do not accept the paternity of the minor, only one free appointment will be given to the mother, the child and the indicated father, so that they go to a comparative study of genetic markers, before the laboratories of the Costa Rican Social Security Fund accredited by the National Entity of Accreditation of Laboratories (ENAL); by means of this study it will be defined if the indicated affiliation is true. The Costa Rican Social Security Fund will have the obligation to guarantee the chain of custody of the test, as well as to communicate the results of the test to the Civil Registry. If the presumed father does not appear or if he refuses to carry out the genetic test, the presumption of paternity will be applied and will result in the administrative declaration and registration with the surnames of both parents, as long as the mother and the child have presented themselves for the test. Said administrative declaration will grant the legal obligations of paternity.

Once the administrative declaration of paternity has been registered, the parent or his or her successors may bring a legal action to contest the paternity declared administratively. This procedure will not suspend the registration of the child.

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Against the administrative resolution that presumptively determines paternity, no administrative appeal shall be allowed.

Against such resolution there shall be no right, in judicial or administrative proceedings, to suspend the execution or any other precautionary measure aimed at preventing its effects".

"Article 112.-**Appeal of the resolutions of the Registry, term and procedure.** Any resolution of the Registry may be appealed before the Court, within a term of three days after the respective notification. The provisions set forth in the Electoral Code, the Law of Aliens and Naturalization and Article 54 of this Law, with respect to appeals, shall remain unaffected.

If the appeal is filed in time, the Registry will admit it immediately after it is filed and will send the file to the Court.

Once the file has been received, the Court shall rule within fifteen days, unless it orders evidence for better provision; in this case, the term shall be counted as of the day on which the evidence has been taken."

Article sheet

Article 2-Add Article 54 bis is hereby added to the Organic Law of the Supreme Court of Elections and Civil Registry, No. 3504, of May 10, 1965, which shall read as follows:

"Article 54 bis.-Notifications. For the cases of paternity acknowledgment proceedings, the Civil Registry shall conform to the provisions of the Law on notifications, summons and other communications, No. 7637, of October 21, 1996. For these purposes, all notifications shall be made in person and those made to the contrary shall lack all legal validity and efficiency."

Article sheet

Article 3º-Articles 96 and 156 of the Family Code, Law No. 5476, of December 21, 1973, are hereby amended to read as follows:

"Article 96.-**Declaration of paternity and reimbursement of expenses in favor of the mother.** When the Court accepts the declaration of paternity, it may condemn in the sentence the father to reimburse the mother, according to the principles of equity, the expenses of pregnancy and maternity of the daughter or son during the twelve months following the birth. These items will have a prescription period of ten years.

In any case, once paternity has been declared, the maintenance obligation of the father with respect to the daughter or son will go back to the date on which the claim was filed and will be settled in the corresponding maintenance process, through the execution of the sentence.

When the declaration of paternity is made through the administrative procedure before the Civil Registry, the reimbursement of the expenses referred to in the first paragraph shall be processed in the corresponding alimony process.

In order to ensure the payment of retroactive alimony, the competent court in matters of alimony, upon initiating the proceeding, shall order the attachment of assets against the defendant, for a prudential amount that covers the rights of the beneficiaries. Said attachment shall not require prior deposit or guarantee of any kind."

"Article 156.-Exclusion from **exercising parental authority**. The father or mother whose refusal to recognize their descendants has made necessary the administrative or judicial declaration of filiation shall not exercise parental authority, unless, subsequently, the Court decides otherwise, in accordance with the convenience of the daughters and sons."

Article sheet

Article 4º-Add Article 98 bis to the Family Code, Law No. 5476 of December 21, 1973, which shall read as follows:

"Article 98 bis.-**Special process for filiation actions**. In proceedings in which filiation is discussed, the following procedural rules shall be observed:

- a) Contents of the claim: The statement of claim must necessarily indicate:
 - 1.- The names, surnames, qualities of both parties and the numbers of the identity cards.
 - 2.- The facts on which it is based, stated one by one, enumerated and well specified. 3.-
The legal texts invoked in its support.
 - 4.- The claim that is being formulated.
 - 5.- The offer of evidence, with indication, if applicable, of the name and other general information required by law of the witnesses.
 - 6.- The indication of a house or office to receive notifications and the means.

In the same resolution in which the lawsuit is filed, the appointment of genetic markers will be requested.

- b) Defective claim: If the claim does not meet the legal requirements, the jurisdictional instance will order the plaintiff to correct it and, to this end, will point out the requirements omitted or not duly filled. The same order will be given in the event that the defendant, within the first five days of the summons, points out any legal defect that its authority deems appropriate. Said

The resolution, in both cases, shall be without appeal. In the resolution the correction will be prevented within five days and, if it is not done, the inadmissibility of the claim will be declared and it will be ordered to be filed.

c) Summons: Once the claim has been filed in legal form or the defects have been corrected, the court will serve the defendant and will grant him a peremptory term of ten days to answer, raise defenses and objections on the merits, provide documentary evidence and offer all other evidence, indicating, if applicable, the names and general information of the witnesses.

d) Incompetence: If the court considers that it does not have jurisdiction, it shall declare this ex officio and order the file to be sent to the court that is to hear the case.

e) Competent court: The court with jurisdiction over family matters of the domicile of the respondent or of the plaintiff shall have jurisdiction, at the option of the latter and without the possibility of extension.

(The Constitutional Chamber by resolution No. 11098 of July 10, 2009, interpreted paragraph e) of Article 98 bis of Law No. 5476 of December 21, 1973, as added by this regulation, in the sense that "the possibility of the plaintiff to set the jurisdiction is valid as long as he represents the interests of the minor in accordance with what is set forth in the last recital of the sentence").

f) Intervention of the Judicial Investigation Organism: In the same resolution in which the lawsuit is filed, the Judicial Investigation Organism of the Supreme Court of Justice, or any of the laboratories duly accredited and recognized by the National Entity of Laboratory Accreditation, shall be summoned to perform the scientific test on the paternity or maternity under discussion.

g) Oral Hearing: Once the claim or counterclaim has been answered, a time and date will be set, within the following thirty days, for the single hearing in which, under penalty of nullity, the following will take place:

- 1.- The definition of the content of the process or the object of the specific hearing itself.
- 2.- The conciliation.
- 3.- Sanitation.
- 4.- Receipt of evidence.
- 5.- The resolution of the preliminary objections and objections on the merits.
- 6.- The conclusions of the attorneys or the parties.
- 7.- The delivery of the operative part of the sentence.

h) Incidents: The appointment may not be suspended due to the filing of incidents, appeals or proceedings of a similar nature, which shall be reserved for the beginning of the hearing and resolved at that time.

i) Concentration of evidence: The totality of the confessional and testimonial evidence must be evacuated in a single hearing and, only when it is very abundant, successive hearings may be set.

j) Final discussion: Once the evidence has been received, the judge will give the floor to the parties and their legal representatives to formulate conclusions.

k) Pending evidence: If at the time of concluding the oral hearing there is scientific evidence pending to be evacuated, its result will be awaited and, upon arrival of the result, it will be made known to the parties for a period of three days, so that they may formulate the pertinent observations.

l) Judgment: Once the evidence has been heard and the debate closed, a time will be set that day for the reading of the operative part of the judgment, except in cases of great complexity, in which the court is authorized to issue it on the following day. The notification of the full sentence will be made within a maximum period of five days.

m) Appeals: The judgment may be appealed within the third day and, if applicable, the second instance judgment will admit the appeal in cassation provided for family matters. The final decision in the proceedings in which filiation is disputed, produces the effects of *res judicata*."

*(The Constitutional Chamber by resolution No. 11158-2007 of 14:52 hrs. of 01/08/2007, interpreted paragraph m) of Article 98 bis of Law No. 5476 of 12-21-1973, added by this norm, in the sense that it is not unconstitutional as long as it is interpreted that the sentence issued in a filiation process with the efficacy and authority of *res judicata* admits the extraordinary appeal for review in the terms indicated in the considerations).*

Article sheet

Article 5°-Two new paragraphs are added to Article 172 of the Childhood and Adolescence Code, Law No. 7739 of January 6, 1998, which shall read as follows:

"Article 172.-Integration. The Board shall be composed as

follows: [...]

g) A representative of the National Women's Institute.

h) A representative of the National Council of Rectors."

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Article sheet

Article 6°-**Public** policies. In compliance with the legal provisions contained in the Code for Children and Adolescents, Law No. 7739, the National Council for Children and Adolescents shall formulate and execute public policies and campaigns related to sensitive and responsible parenthood, which promote the co-responsibility of women and men in the upbringing and education of their children, and shall therefore include these actions in budgets, plans and programs, in accordance with the policy of comprehensive protection of the rights of minors.

Article sheet

Article 7°-Authorization. The Executive Branch is hereby authorized to transfer to the Costa Rican Social Security Fund an annual amount of up to one billion colones, so that the latter may equip the laboratories, acquire reagents, consumable materials, equipment and hire the human resources required to meet the estimated demand for genetic marker comparison tests referred to in this Law.

Article sheet

Article 8°-Derogate paragraphs 2) and 3) of Article 420 of the Code of Civil Procedure, Law No. 7130, of August 16, 1989.

Article sheet

Transitory I.- Within a term of three months, the National Entity for Laboratory Accreditation (ENAL) shall regulate the procedure for the accreditation of laboratories that may perform DNA genetic marker tests.

Article sheet

Transitory II.- Within a maximum term of six months, the National Council for Childhood and Adolescence shall formulate and initiate the implementation of public policies and sensitive and responsible campaigns related to parenthood, as provided for in Article 6 of this Law.

Effective as of its publication.

Given at the Presidency of the Republic. San José, on the sixteenth day of April of the year two thousand and one.

Article sheet

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