

Law Nr.2004/32

FAMILY LAW OF KOSOVO

PART ONE.

GENERAL PROVISIONS

I. PRINCIPLES

Article 1.

Scope of Regulations

This Law regulates engagement, marriage, relations between parents and children, adoption, custody, protection of children without parental care, family property relations and special court procedures for disputes of family relations.

Article 2.

Family

- (1) Family is a vital community of parents and their children and other persons of the kin.
- (2) Family is the natural and fundamental nucleus of society and enjoys the right to protection.

Article 3.

Principles on Regulations on Family Relations

Regulation of family relations is based on the principles:

1. Equality between husband and wife, respect and mutual assistance between them and family members
2. Protection of children's rights and the responsibility of both parents for the growth and education of their children, where by children are meant persons under age of 18.
3. Parents and children owe to each other assistance and consideration for the entire span of their lives
4. Children of parents, who were not married at the time of birth, enjoy the same rights and have the same obligations as children born from parents who were married at the time of birth.

Article 4.

All persons enjoy equal treatment of rights and obligations set forth in this Law. There shall be no direct or indirect discrimination against any person or persons based on sex, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or convictions, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.

II. PROTECTION OF RIGHTS

Article 5.

Social Protection

(1) Children without parental care, and those with diagnosed mental or physical disorders as well as parents who are not capable to create necessary living conditions for themselves and their children are under special financial and social support.

(2) The social community undertakes custody for elderly persons in cases when they are not capable to ensure living conditions and have no other persons in their kin who are obliged by Law to provide assistance.

Article 6.

Institutional Protection of Rights

(1) Protection and family assistance shall be governed by the competent body of the municipal administration which is responsible for issues of social assistance.

(2) The Custodian Body is an administrative municipal body competent for social issues. It shall be comprised of a group of experts with professional work experience in the specific field of duty.

(3) The Custodian Body may also be a body (group of experts as mentioned above) of a specific social institution which is established by the Municipal Assembly to carry out such obligations.

(4) The Custodian Body, participating in the procedures, is authorized to present motions for the protection of children's rights and interests, to present facts that parties have left out, to suggest administration of necessary evidence, to exercise legal remedies, and undertake other contentious actions. The court is obliged to summon the Custodian Body participating in the procedures, to all court session, and serve it with all the decisions.

Article 7.

Form of Protection

(1) For implementation of family relation's rights, the mother and child are provided special protection by means of social welfare.

(2) Children without parental care are given special protection through custody, family shelter, residential shelter and adoption.

Article 8.

Support

(1) When applying this Law, legal and natural persons, providing professional assistance namely solving disputes between family members, shall mutually cooperate.

(2) In this Law, unless the context otherwise requires:

- (a). the singular includes the plural and the plural includes the singular,
- (b). “he” includes “she” and “him” includes “her”.

PART TWO.

ENGAGEMENT AND MARRIAGE

I. ENGAGEMENT

Article 9.

Engagement

Engagement is the mutual promise of two persons of different gender to get married in the future.

Article 10.

No legal Claim or Promise of Penalty

- (1) No one can file a claim for a wedding bond due to the fact that he was engaged.
- (2) The Promise of a penalty for the case that the wedding bond will not be performed is void.

Article 11.

Liability to pay Damages in Case of Rescission

(1) If a fiancé resigns from an engagement, he is obliged to pay for any damages to the other fiancé, the parents of the other fiancé or third persons who acted on their behalf. The fiancé is liable for any expenditures or obligations which were invested on expectation of marriage. He is also liable for expenditures or obligations the other fiancé made on expectation of marriage, namely those which affect his assets or employment.

(2) Liability for damages is limited to the extent expenditures or obligations were reasonable according to the circumstances.

(3) There is no liability if there was an important reason for rescission.

(4) Timely limitation for any claims under the rules of engagement is two years.

Article 12.

Responsibility of the other Fiancé for Revocation

If a fiancé is responsible for the revocation of the other on terms of an important reason he is liable for any damages provided in of this Law.

Article 13.

Return of Gifts

If no marriage follows the engagement, every fiancé may ask the other for the surrender of gifts he gave on the occasion of the engagement. In this case rules of unjust enrichment of the Law on Obligations shall apply. In case one of the fiancés dies, the right to ask for compensation of damages shall not be executed.

II. MARRIAGE

1. Principles

Article 14.

Marriage

- (1) Marriage is a legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family.
- (2) Men and women, without any limitation due to race, nationality or religion, have the right to marry and found a family as well as they are equal to marriage, during marriage and at its dissolution.

Article 15.

Capacity for Marriage

- (1) The capacity to enter into wedlock is obtained with full capacity to act.
- (2) Majority is obtained upon the completion of the eighteenth year of age.
- (3) Full capacity to act is obtained upon reaching majority or by entering into wedlock prior to this age.

2. Marriage Requirements

Article 16.

Conditions for Entering into Wedlock

- (1) A person who has not reached the age of eighteen shall not enter into wedlock.
- (2) Due to justifiable reasons, the competent court may allow wedlock for a minor person older than sixteen years upon his request, if it concludes that the person has reached the necessary physical and psychological maturity for exercising his marital rights and to fulfill his marital obligations.

(3) Prior to the decision, the court shall seek the opinion of the Custodian Body and shall hear the minor and his parents respectively the custodian. The court shall also hear the person with whom the minor intends to enter into wedlock and shall investigate other circumstances important for the decision.

Article 17.

Certificate for Marriage-Eligibility for Foreigners

(1) People of foreign nationality shall bring a marriage certificate provided by the authorities of their home country proving their eligibility for marriage under the rules of this Law, namely that no marriage prohibitions or bans exist.

(2) The certificate loses its validity, if marriage is not bonded six months after the certificate was issued. If the certificate states a shorter time limit, this will apply.

3. Marriage Prohibitions and Bans

Article 18.

Free Will

Marriage shall not be valid when the will has been obtained under coercion, threat or by mistake or any other lack of free will of the future spouses.

Article 19.

Previous Wedlock

No one shall enter into a new wedlock unless the previous wedlock has legally ceased to exist.

Article 20.

Capacity to Act

- (1) A person who has been deprived of his/her legal capacity by a court decision shall not enter into marriage.
- (2) Notwithstanding paragraph (1) of this article a court may exceptionally allow such a person to wed upon request. In such cases the court could seek the opinion of the parent, guardian or custodian of the person and the Custodian Body (Municipal Center for Social Work).

Article 21.

Consanguinity

- (1) Persons related by blood in a direct blood line (consanguinity) or indirect blood line (kin), such as a brother and a sister from the same father and mother, father's and mother's sister and brother, uncle (mother's brother) and niece, aunt (father's sister) and nephew, children of mother's and father's sisters and brothers from the same mother and father (nephews and nieces), as well as sisters' and brothers' children of the same mother and father, shall not enter into wedlock.
- (2) This also applies for brothers and sisters from one mother or father as well as if the relationship has ceased to exist because of an adoption.
- (3) Extra-marital consanguinity is the same marriage ban as the marital one.

Article 22.

Adoption

- (1) Adoption is a ban to wedlock.
- (2) Kin established by adoption is a ban to wedlock same as consanguinity.

Article 23.

Affinity

- (1) Persons in affinity; father-in-Law and daughter-in-Law, son-in-Law and mother-in-Law, stepmother and stepson, stepfather and stepdaughter shall not enter into wedlock, regardless of the fact whether the marriage that has created such relations has ceased to exist.
- (2) Due to justifiable reasons, the competent court may allow wedlock between persons in affinity after seeking opinion from the Custodian Body.

Article 24.

Custody

- (1) Marriage between the custodian and the person under custody is banned during the time of custody.
- (2) Due to justifiable reasons, the competent court may allow wedlock between persons as mentioned in Article 23 of this Law, if it obtained the opinion from the Custodian Body.
- (3) Custody ceases upon marriage between these persons whereas marriage remains valid.

4. Wedlock Application

Article 25.

Wedlock Application

- (1) Persons willing to marry shall file a request with the Municipal Assembly registrar.
- (2) A certificate of birth has to be attached to the request and when necessary, other documents if requested by the registrar.
- (3) The registrar decides on the marriage date in agreement with the persons willing to marry.

Article 26.

Reciprocal Information

Upon request the registrar shall recommend persons willing to marry to reciprocally be informed until the marriage date regarding their health, to visit a family consultancy to be provided with a professional opinion regarding the development of harmonious marital and family relations and to get acquainted with the opportunities and advantages of family planning and to agree on the future surname.

5. Wedlock Procedure

Article 27.

Location

- (1) Wedlock is solemnly entered into in specifically designated premises.
- (2) Wedlock may be entered into in other premises, if so requested by the spouses, provided they emphasize justifiable reasons.

Article 28.

Procedure with the Registrar

- (1) To enter into wedlock, it is necessary that two persons of opposite sex in the presence of one another freely declare their will and full consent for marriage in front of the registrar.
- (2) The statement shall be absolute and without dating.
- (3) Participating parties during the wedlock bond are the future spouses, two witnesses and the registrar.

(4) Any person with the capacity to act may serve as witness during the wedlock bond.

Article 29.

Registrars Concurrence

The registrar is obliged to allow the wedlock procedure if there is no ban or prohibition. The registrar is obliged to refuse cooperation in the wedlock procedure, if any prohibition or ban exists. The registrar is not entitled to refuse cooperation, if no prohibitions or bans exist.

Article 30.

Entering into wedlock

The wedlock bond commences with the report presented by the registrar, stating the presence of the future spouses and the non-existence of marital bans and prohibitions provided for in this Law. This is concluded, based on the documents and statements of future spouses and witnesses.

Article 31.

Wedlock Bond

(1) In case the registrar concludes the non-existence of prohibition and bans, he then shall inform the future spouses about the provisions of this Law regarding their rights and obligations, and shall read the same as well.

(2) The registrar shall ask each future spouse separately, whether they agree to marry with one another.

(3) After providing statements consenting for the marriage, the registrar shall announce the wedlock bonded.

6. Wedlock Refusal

Article 32.

Wedlock Refusal

If the registrar concludes the existence of any marriage ban or prohibition, he orally informs the applicants that they cannot marry and makes official record in the minutes therein.

Article 33.

Administrative Procedure

(1) When the persons applying for wedlock disagree with the oral communication as provided for in Article 32 of this Law, they may request the registrar to bring a ruling on the refusal of the marriage request

(2) The ruling provided for in paragraph 1 of this Article may be appealed within 8 days upon notification by competent bodies regarding the disallowance of marriage. Based on the request provided for in paragraph (2) of this Article, the competent body is obliged to issue a decision through administrative procedure within 15 days upon receipt of the request.

Article 34.

Attendance

In the event that on the decided date of marriage the bride, groom or both do not appear and their absence is not justified, the request for wedlock shall be deemed to have been withdrawn.

Article 35.

Marriage register

(1) The registrar records the bonded wedlock in the marriage register, which is then signed by the spouses, two witnesses and the registrar.

(2) Immediately upon wedlock, the spouses are provided with a certificate from the marriage register.

7. Regulations upon Religious Wedlock

Article 36.

Preliminary Issues

Persons marrying according to religious rules shall not perform the wedding, unless the spouses testify the legal marriage bond through a certificate, issued by the marriage registrar.

Article 37.

Documentation

(1) The official from the religious community, in front of whom wedlock was contracted in a religious way, shall provide the registrar with a document signed by the spouses, the witnesses and the representative of the religious community, proving the religious marriage bond.

(2) The document foreseen in Paragraph (1) of this Article shall be delivered to the registrar within five days from the date of the wedlock.

Article 38.

Registration

(1) The registrar is obliged to record the wedlock entered into in a religious way in the marriage register within three days upon receipt of the document provided for in this Law.

(2) Immediately upon recording religious wedlock in the marriage register, the registrar shall issue the religious marriage certificate.

8. Factual Relationship (Out-of-marriage Relationship)

Article 39.

Definition

(1) A factual relationship (out-of-marriage relationship) is the factual relationship between the husband and the wife who live in a couple, characterized by a joint life that represents a character of stability and continuation.

(2) A factual relationship (out-of-marriage relationship) is equal with the marital status on the aspect of rights and obligations for caretaking, reciprocal financial support, and property rights as specified in this law.

(3) A factual relationship does not produce the effect of paragraph 2 of this article if at the time of its creation these marital obstacles existed: existing marriage, blood gender at the level forbidden by this law, the adopting gender, mental illness, and disability to judge unless the obstacle no longer exists.

Article 40.

Requirements

People are considered to live in a factual relationship (out-of-marriage relationship), if they:

1. are eligible to marry, but did not obtain a legal marriage
2. have cohabitated openly as a couple.

Article 41.

Benefits

In a factual relationship (out-of-marriage relationship), spouses owe to each other the same respect, mutual understanding and support than under legal marriage.

III. RIGHTS AND OBLIGATIONS OF SPOUSES

Article 42.

Matrimonial Cohabitation

- (1) In marriage, namely in all personal and property relations, spouses are equal.
- (2) The wedlock is entered into for the entire lifespan.
- (3) Spouses are obliged to be faithful to one another and reciprocally assist, respect and financially support one another, especially in case that the other is lacking a sufficient material basis for living.
- (4) Spouses shall develop and live out the feeling of reciprocal solidarity, as well as solidarity towards their own or adopted children.

Article 43.

Matrimonial Surname

- (1) Spouses shall determine their common surname.
- (2) When entering into wedlock, the spouses through agreement may decide:
 1. that each of them retains his surname

2. that the common surname shall be the one of either spouse
 3. to add to one surname the surname of the spouse.
- (3) A surname combination shall not be possible, if the surnames of the spouses are already composed of a double surname. In this case only one of the surnames may be combined with the name of the other spouse to become the matrimonial surname.
- (4) In case spouses do not decide on a matrimonial surname, each of them retains his own surname.

Article 44.

Residence, Maintenance and Occupation

- (1) Spouses decide on the place of residence through agreement.
- (2) The spouses decide for the maintenance of the common family economy through agreement.
- (3) In case one of the spouses is exclusively in charge with the household, he manages the household on his own responsibility.
- (4) Both spouses contribute to the family maintenance in proportion to their individual capability.
- (5) Each spouse is independent in selecting a job and vocation.

IV. PROPERTY RELATIONS OF SPOUSES

Article 45.

Basic Principle

On the basis of the legal institute of a "Joint Ownership of Subsequently Acquired Property", the property of spouses may be separate property or joint property.

Article 46.

Separate Property of Spouses

- (1) Property belonging to the spouse at the time of entering into wedlock remains separate property of his.
- (2) Separate property is also property acquired during marriage through inheritance, donation, or other forms of legal acquisition.
- (3) Property belonging to the spouse based on the proportion of common property is also separate property.
- (4) The product of art, intellectual work or intellectual property is considered separate property of the spouse who has created it.
- (5) Each spouse independently administers and possesses his/her separate property during the course of the marriage.

1. Joint Property of Spouses

Article 47.

Joint Property

- (1) Joint property of spouses is the property acquired through work during the course of the marriage as well as income deriving from such property.
- (2) Joint property may be comprised also of intangible and obligatory rights.
- (3) Property of spouses acquired jointly through gambling games is considered joint property.
- (4) Spouses are joint owners in equal shares of the joint property unless otherwise agreed on.

Article 48.

Application

Applicable law governing real rights and obligations shall be applied in respect of joint property, unless otherwise foreseen in this Law.

Article 49.

Administration of Joint Property

The spouses shall carry out the administration and disposition of the joint matrimonial property together and in agreement.

Article 50.

Immovable Property

(1) Rights of spouses regarding immovable objects, which are their joint property as provided for in Article 47 of this Law, are recorded in the public register for immovable property on behalf of both spouses as joint property with undetermined shares.

(2) When only one of the spouses is registered as property right holder of the joint property in the immovable property rights register, it shall be considered as if registration was carried out on behalf of both spouses. The property cannot be alienated or administered without the consent of both spouses as defined by the applicable law.

(3) When both spouses register in the public register relating to immovable property as joint owners for determined shares, it shall be considered that they have portioned out the joint property.

Article 51.

Contractual Arrangements on Possession and Administration

(1) Spouses may contract that administration and possession of joint property in a whole or in parts shall be carried out by one of the spouses.

(2) The contract may be limited only to the administration or rights of possession. Unless otherwise contracted, administration includes possession within regular activity.

(3) The contract may also refer to all special acts of regular administration or special acts that have been determined.

2. Apportioning of Joint Property of Spouses

Article 52.

Principle

None of the spouses shall arbitrarily be deprived of his property.

Article 53.

Apportioning by agreement

(1) Spouses, at any time may apportion their joint property by agreement.

(2) The apportioning of the joint property may be carried out when spouses determine or request determination of their shares in their joint property, and by this become co-owners to the determined shares.

(3) The agreement provided for in Paragraph (1) and 2 of this Article shall be concluded in writing, in accordance with the formal requirements defined by the applicable property law for conclusion of such agreements.

Article 54.

Evaluation of Joint Property in Case of Non Agreement

(1) When the agreement is not reached while the share of each spouse belongs to the joint property, it shall be decided upon by the court. The decision shall be based on the spouses contribution, by evaluating all circumstances and considering not only personal income and other revenues of each spouse, but assistance of one spouse provided to the other spouse, i.e. children's care, conduct of housework, care and maintenance of property and any other

form of work and co-operation pertaining to the administration, maintenance and increase of joint property.

(2) The competent court shall also decide in case of disputes regarding the spouses' share provided for in this Article.

Article 55.

Determination of shares

(1) The share of property of the spouses shall be determined using the same criteria as established in article 54 (1).

(2) The largest share of the spouse in a determined object or determined right, may be determined by court only if that object or right, economically is independent compared to other objects and rights of the joint property and the spouse, for obtaining such object or right, has largely participated with income from his separate property.

(3) The spouse, who after the cease of the marital community increases the value of objects from the joint property by investment, has the right to claim remuneration from the other spouse, if investments were necessary and useful. Remuneration shall be in proportion with his share in the object.

(4) The other spouse may be released from such obligation, if he accepts to receive the largest share of that object in proportion with the investments made.

Article 56.

Time Limits and Subjects

(1) Apportioning of the spouses' joint property may be requested during marriage and upon its termination.

(2) Persons eligible to demand apportioning of joint property are: spouses, successors of a dead spouse or of a spouse announced to be dead and from the creditor of one of the spouses, if the request of the creditor cannot be realized from the separate property of that spouse.

Article 57.

Responsibilities and Obligations

(1) Spouses carry responsibility for their personal obligations resulting from separate property and their obligations resulting from the share in joint property.

(2) Both spouses are bound by joint and individual obligations through their joint and separate property and for obligations that one of the spouses has to fulfil towards third persons, as well as by obligations, which need to be fulfilled by both spouses.

(3) The spouse, who through separate property has fulfilled common obligations, has the right to request that the other spouse compensates for his spouses share.

3. Property Relations of Extra Marital Spouses

Article 58.

Principles

(1) Property gained through corporate work of husband and wife in an extra marital community (partnership without cohabitation) is considered their common property.

(2) Property acquired during the factual relationship (out-of-marriage relationship) and that is subject to distribution or division is considered joint property. Provisions of this law relating to apportioning of joint property of spouses of a legally registered marriage are applied analogically for property relations of persons in a factual relationship (out-of-marriage relationship).

PART THREE.

BREACH OF MARRIAGE

I. PRINCIPLES

Article 59.

General Principles

The court and any person concerned with a breach of marriage shall have regard to the below mentioned general principles

1. the institution of marriage shall be preserved.
2. spouses to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counseling, reconciliation procedures foreseen by this law or otherwise, to save the marriage.
3. a marriage which has irretrievably broken down should be brought to an end
 - a. with minimum distress to the parties and to the children affected;
 - b. dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as possible in the circumstances; and
 - c. without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and
4. that any risk of harm or violence to spouses and to children should be avoided.

Article 60.

Types of Breach of Marriage

- (1) Marriage ceases upon death of the spouse, announcement of the missing spouse dead, annulment or divorce.
- (2) Marriage is dissolved only upon claim and by court order through annulment (void marriage) or dissolution (divorce).
- (3) Annulment or dissolution become legally effective when the judgments of the court annulling or dissolving marriage becomes final.
- (4) When a missing spouse is announced dead, marriage is dissolved the day when the death of the missing spouse is concluded by final judgment.

Article 61.

No Official Legal Action Required

To bring a factual relationship or out-of-marriage relationship to an end, no official legal action is required.

II. ANNULMENT OF MARRIAGE

Article 62.

Collision of Marriages

- (1) Marriage entered into at the time of the existing of a previous marriage of one of the spouses is void.
- (2) Marriage newly bonded at the time of the existence of the previous marriage of one of the spouses shall not be annulled, if the previous marriage was dissolved in the meantime.
- (3) When both marriages are dissolved simultaneously due to the death of the spouse who entered into a new marriage, while still being legally married to another person, the new marriage shall be annulled, except when the new marriage has lasted for several years and the spouse from the previous marriage has not undertaken actions to re-establish marital community and cohabitation.

Article 63.

Fear, Violence, Threat

Marriage shall be annulled if the spouse has provided consent under fear, violence or serious threat.

Article 64.

Formal Deficiencies

Marriage may be annulled if the formal requirements for marriage foreseen in Articles 14-25 and 28 of this law are not met. Namely if

1. the spouse lacks the capacity to act because of a diagnosed mental illness or other reasons
2. marriage was entered into between persons in consanguinity or persons of the same kin based on adoption or affinity.

Article 65.

Error and Deceit

- (1) Marriage may be annulled if it was bonded by error regarding the identity of the spouse.
- (2) Marriage entered into because of willful deceit regarding facts, which, if known in time would have stopped the spouse from entering into such marriage, and which now make common life unbearable shall be annulled.

Article 66.

Lack of Intent

- (1) Marriage entered into without the aim of co-existence of the spouses is invalid.
- (2) Marriage is void when the spouses through marriage were in fact not interested to establish co-existence but want to hide some other legal action or primarily want to achieve another goal (i.e. legal succession, family pension, evasion from criminal liability or abuse of any other rights).
- (3) Such marriage shall not be annulled, if it is later decided to establish co-existence.

Article 67.

Right to file Claim

(1) Persons eligible in filing a claim for the annulment of marriage due to reasons provided for in this Law are the spouses, the public prosecutor and all other persons who have a direct legal interest in the annulment of marriage.

(2) When reasons provided for in this Law cease, the right to file a claim for the annulment of marriage belongs only to the spouse who has suffered mental illness or due to other reasons suffered incapacity to act. The claim may be filed within one year from the date, the aforementioned reasons ceased to exist.

III. DIVORCE

Article 68.

Divorce

(1) Marriage may be dissolved by divorce only upon decision of a court.

(2) One spouse or both by mutual agreement may request a divorce by filing a claim with the competent court.

(3) The right to file a claim can not be passed on to successors but the successors of the plaintiff may continue the commenced procedure, to verify the foundation of the complaint.

(4) When one of the spouses files a claim for divorce and the other spouse expressly declares not to reject the soundness of the requests in the complaint, the latest until the conclusion of the main court session, it shall be considered, that the spouses have submitted a proposal for divorce by mutual agreement.

Article 69.

Reasons for Divorce

(1) The spouse may request divorce when marital relations have seriously and continuously become disordered or when due to other reasons the marriage has irretrievably broken down.

(2) The reasons for divorce include inter alia: unbearable life of spouses, adultery, assassination against the life of the spouse, serious maltreatment, ill-intended and unjustifiable abandonment, incurable mental illness and continuous incapacity to act, unreasonable interruption of factual cohabitation for more than one year and divorce by mutual agreement.

IV. PROTECTION OF CHILDREN AND SPOUSES

Article 70.

Principles of Protection

(1) Spouses shall not file a claim for divorce during the pregnancy of the wife and until their joint child becomes one year old.

(2) Together with the proposal for divorce by mutual agreement, spouses are obliged to submit a written agreement of care-taking, educating and feeding their joint children, as well as a written proposal on how personal contacts between the child and both of the parents shall be guaranteed in future.

(3) A divorce permission may not be granted or may be postponed, even though the marriage has failed, only in exceptional circumstances, if and as long as the maintenance of the marriage is for specific reasons necessary to the interest of the child.

Article 71.

Basic Maintenance of the Spouse

(1) During marriage court disputes, the court based on claim, may determine by decision about temporary measures to provide financial maintenance and accommodation for the spouse.

(2) Appeal against the ruling provided for in Paragraph (1) of this Article does not stop the execution of the ruling.

V. MARITAL DISPUTE PROCEDURES

1. Preliminaries

Article 72.

Competence

Apart from the court with overall territorial jurisdiction, the court in the territory of which the spouses had their last joint residence, shall have jurisdiction over marital disputes.

Article 73.

Legal Panel

A panel comprised of one judge and three lay judges conducts procedures of marital disputes in the first instance court and brings decisions, whereas in the second instance the panel is comprised of a panel of three judges.

Article 74.

Right of the Custodian

The custodian, on behalf of the spouse suffering from diagnosed mental illness or the person suffering incapacity to act may file a claim for divorce only with previous consent of the Custodian Body.

Article 75.

Exclusion of the Public

The public is excluded from the procedures of marital disputes.

2. Efforts for Reconciliation

Article 76.

Principle

(1) The court order on divorce shall be preceded by a period of efforts of reconciliation guided by the court in special court sessions except when:

1. One of the spouses is suffering incapacity to act
2. When one or both spouses live abroad
3. When the place of residence of one of the spouses is not known

(2) The reconciliation period shall allow spouses a period for reflection and consideration of their decision and to consider all circumstances and consequences.

Article 77.

Procedures of Reconciliation

(1) In the divorce disputes the court is obliged to achieve formal reconciliation.

(2) The final decision on divorce is sent to the parties only after concluding the procedures and only if reconciliation was not achieved.

Article 78.

Reconciliation Sessions

When the court conducts the reconciliation procedure of the spouses, it shall assign special sessions in efforts to reach reconciliation, as far as it concludes that chances to achieve reconciliation still exist.

Article 79.

Attendance, Waive of Proposal

- (1) Both spouses are summoned to personally participate in the session in efforts to achieve reconciliation.
- (2) When one or both spouses duly summoned do not justify the absence at the session in efforts to reach reconciliation, the court shall evaluate whether to assign a new session or conclude that reconciliation has failed.
- (3) When one or both spouses who through a joint proposal have initiated the procedures for divorce by mutual agreement do not appear in the session in efforts to reach reconciliation and their absence is not justified, it shall be considered, that they have waived the proposal.

Article 80.

Factual Legal Competence of the Custodian Body in the Reconciliation Procedures

- (1) If the spouses have one or more joint minor children the reconciliation procedure is conducted by the Custodian Body by applying social work and other professional methods, by utilizing services of marriage and family councils as well as other professional institutions.
- (2) Procedures shall be supported by the principle of free will and co-operation.
- (3) In other cases, the court conducts the reconciliation procedure of spouses, when the president of the panel deems it unreasonable that the reconciliation procedure shall be transferred to the Custodian Body.

(4) In the written record transferring reconciliation to the Custodian Body, names and addresses of spouses shall be included, as well as the date of divorce procedures and the main reasons for requesting divorce. If the spouses have minor children, all data referring to them shall also be provided.

Article 81.

Territorial Legal Competence

(1) For the reconciliation procedure, jurisdiction lies not only with the Custodian Body in the territory of which is the transient or dwelling place of the defendant, but also with the Custodian Body in the territory of which the spouses had their last joint residence.

(2) When procedures commence with the claim for divorce by mutual agreement, the Custodian Body in the territory of which one of the spouses has his transient residence or dwelling place shall be competent for the reconciliation procedure of spouses, as well as the Custodian Body in the territory of which the spouses lastly resided jointly.

Article 82.

Protection of Children in the Reconciliation Procedures

During reconciliation procedures the Custodian Body concludes under what living and developing conditions the joint children of the spouses are found in and undertakes all necessary measures to ensure education, security and financial maintenance, by making efforts to achieve agreement between the spouses in order to protect the children's interests.

Article 83.

Time Limit on Reconciliation Procedures with the Custodian Body

(1) The reconciliation procedures in front of the Custodian Body may not last longer than three months but can be extended, if the spouses agree to continue such procedure after the expiry of the this deadline.

(2) The Custodian Body is obliged without delay to submit to the court a written report on the results of the reconciliation procedures.

3. Court Procedures

Article 84.

Investigations/Inquiries of the Court

(1) When proceedings have commenced by the proposal of the spouses for divorce by mutual agreement, facts supporting the proposal are not investigated, however, the court may decide to conduct evidentiary proceedings, same as for the procedures in divorce by complainant, if during the reconciliation proceedings it evaluates that justifiable reasons of joint minor children require the preservation of marriage.

(2) When the spouses have joint children, the court may investigate the facts and conduct evidentiary proceedings relating to that part of the proposal of spouses dealing with the safekeeping, education and provision on financial maintenance for the children, if it concludes that the proposal of the parents regarding these issues offers no necessary guarantee that the interests of their minor or disabled children shall be properly protected through such agreement.

Article 85.

Determination of Facts on which the request is based

(1) Facts based on which the party bases its request in marital disputes, may be considered contestable by the court, even when such facts are no longer contestable between parties.

(2) No judgment may be issued for marital disputes due to absence or judgment by concession.

Article 86.

Withdrawal from the Complaint

(1) In divorce disputes, the plaintiff may withdraw the claim until the conclusion of the main court session without the consent of the respondent, whereas only with the consent of the respondent until the procedure becomes final.

(2) The withdrawal of the joint proposal of spouses for divorce by mutual agreement may be undertaken until the judgment for divorce becomes final. The proposal shall be considered to have been withdrawn even when one of the spouses withdraws from the proposal.

Article 87.

Limitation of Appeal

The judgment dissolving marriage according to the joint proposal of the spouses for divorce by mutual agreement may be appealed only because of :

1. essential violations of the provisions of the contentious procedure,
2. or due to the fact that the proposal was submitted by mistake or under coercion or deceit.

Article 88.

Extraordinary Remedies are not Allowed

If marriage has been dissolved or annulled by final judgment, a decision for divorce, respectively for annulment of the marriage may not be attacked with extraordinary legal remedies.

4. Property Relations after Divorce

Article 89.

Apportioning of Joint Property

Apportioning of joint property of spouses may be requested during marriage or after marriage ends by divorce.

Article 90.

Apportioning Guidelines

(1) When dividing joint property, the debt of the joint property shall be calculated in the shares of each spouse.

(2) When dividing the property upon request of one of the spouses of a legally registered marriage, consideration should be given to ensure that his/her share includes those objects of the joint property which serve his/her craft or vocation.

(3) If the value of objects provided for in Paragraph (2) of this Article is disproportional high, compared to the value of general joint property, those objects shall also be apportioned, except in cases when the spouse to whom such shares should belong to does not ensure pecuniary compensation of the relevant or approximate value to the other spouse, respectively does not transfer another object or share with relevant or approximate value to the other spouse. For these compensation purposes consent of both spouses is required.

(4) When apportioning is initiated upon the request of one spouse, he shall be provided with those objects of the joint property which exclusively serve for personal use.

Article 91.

Pecuniary Compensation

When the share of one spouse from the joint property is disproportional smaller than the share of the other spouse, the court, upon request of one of the spouses, may determine pecuniary compensation for the spouse considering all the circumstances and the values of his share.

Article 92.

Movable Things

(1) Each of the spouses may request movable objects from the joint property to be divided to the other spouse on behalf of the share in the joint property of the spouse, who has kept those movable objects upon termination of their coexistence, and has silently possessed them for at least three years.

(2) On Application of Paragraph (1) of this Article, the other spouse may request to be provided with the relevant share from other movable objects and if the values of such objects are not sufficient, he is eligible to pecuniary compensation for the difference.

Article 93.

Protection of Children's Property

(1) The spouse to whom the joint children have been entrusted to for protection and education, besides his share, is provided with objects serving only the children or which are designated only for their direct use, except when the value of these objects is unproportionally high compared to the value of the general joint property.

(2) In such cases, same actions may be taken as in Article 91 of this Law.

Article 94.

Pre-Emption

When the share of the spouse from the joint property is finally determined, the other spouse has the right to pre-emption in that share.

Article 95.

Court Decision on Non Agreement

(1) If spouses in the divorce procedures do not agree upon who shall be entitled to live in the matrimonial domicile in future or about the distribution of commonly used furniture and other household belongings, on request of one or both of the spouses, the decision shall be taken by the court.

(2) The court shall decide with close regard to each individual case, especially when the decision touches the welfare of children and the social position of the spouses.

VI. MISCELLANEOUS

Article 96.

Surname

- (1) The spouse, who at the time of wedlock has changed the surname, after dissolution of marriage, may acquire the previous surname.
- (2) The statement for acquiring the previous surname shall be submitted within six months from the dissolution of marriage.
- (3) The statement shall be submitted to the registrar who maintains the register of marriages where marriage was bonded based on the place of residence of the person providing the statement.

Article 97.

Limitation of Liability

The other spouse is not responsible for the obligations that one of the spouses had before entering into wedlock, as well as for personal obligations, that he accepts during the marriage.

Article 98.

Succession

If marriage is dissolved or annulled by court order, the spouse loses the right for statutory succession depending on the fact of previous marriage.

PART FOUR.

RELATIONS BETWEEN PARENTS AND CHILDREN

I. PATERNITY AND MATERNITY

1. Paternity

Article 99.

Principle

(1) As the father of the child shall be considered the husband of the child's mother if the child is born during the marriage or within 300 days after breach of marriage,.

(2) When the child was born during the later marriage of his mother, as a father of the child shall be considered the husband of the mother from the previous marriage if the child was born before the end of the deadline of 300 days after the breach of her previous marriage, except when the husband of the mother from the later marriage with her consent accepts the child as his own.

Article 100.

Children Born in Marriage

(1) A child shall be considered to have been born in marriage when his parents are married at the time of birth.

(2) If the parents of extra marital children intended to enter into wedlock but were impeded due to death of one spouse or due to a marriage ban, which arose after conception, upon request of one parent or the child the court shall announce in an extra contentious procedure that the child was born in marriage.

(3) When none of the parents is alive, or the parent alive has been divested from the capacity to act or from parental custody, the procedure to announce the minor child to have been born in wedlock, shall be initiated by the Custodian Body.

(4) Under the conditions of Paragraph (2) of this Article, the request to announce the marital child may also be submitted in the dispute for the verification of paternity, if paternity has not been previously verified by acceptance or by court decision.

Article 101.

Children Born out of Marriage

Father of the child who was not born in wedlock or during the deadline of 300 days after the dissolution of marriage, shall be considered the husband who accepts the child as his own or the person, the paternity of whom has been verified by court decision.

Article 102.

Eligibility for recognition of Paternity

Paternity may be recognized by a male who is capable to act and who has reached the age of 16, as well as by a person who has partially been divested from his capacity to act but is capable to understand the content of the statement for recognition of paternity.

Article 103.

Principles on Recognition of Paternity

(1) The person considering himself father of the child may accept paternity and shall allow the recording of this fact in the minutes in front of the registrar.

(2) Paternity may also be recognized before the Custodian Body, before the court or another authorized body for preparing public documents. These bodies are obliged, without delay to submit the verified minutes to the competent registrar who shall then register the child in the register of births.

(3) Paternity may also be recognized by will.

(4) The statement for recognition of paternity can not be provided by a proxy representative.

Article 104.

Court Procedures

(1) The mother of the extra marital child, when announcing the birth of her child may present the person she considers father of her child. She may provide oral statement to be recorded in the minutes before the registrar or before the body, authorized to prepare public documents, a verified document or a will.

(2) When the mother has not provided written record about the person she considers to be the father of her child, the registrar shall give advice regarding her rights to do so.

(3) When the registrar is served with the mother's statement regarding the identity of her child's father, he shall ask the recorded person to declare his paternity directly before the registrar or to provide a certified document within a time limit of 30 days. Correspondence with such individual must be submitted in person and based on the rules providing confidentiality.

(4) The registrar shall draft minutes regarding the actions undertaken and oral statements of the child's mother and the person whom the mother alleges to be the father of the child.

(5) If the addressed person declares not to be the father of the child or within 30 days does not express himself regarding the paternity of the child, the registrar shall inform the mother of the child thereupon.

(6) When the addressed person declares before the registrar, to consider himself to be the father of the child, and this is recorded in the minutes or in the verified document, the registrar shall officially register him as father of the child in the register of births and shall inform the mother regarding this registration.

Article 105.

Recognition of Paternity before Birth and after death of a Child

(1) The statement for recognition of paternity may also be provided before the child's birth. Such statement produces legal effect, provided that the child is born alive.

(2) After the death of the child, paternity may be verified only by court decision upon request of the authorized persons and if they have a legal interest for this.

Article 106.

Consent of the Mother

- (1) Recognition of paternity produces legal effect and is registered in the register of births only if the mother of the child agrees with such recognition.
- (2) The statement on consent for recognition of paternity may be given by the mother according to the rules provided for in for in Article 103 of this Law regarding the recognition of paternity.
- (3) If she has not presented the same person as father of the child, the registrar is obliged to summon the child's mother for her statement within 30 days from the recognition of paternity.

Article 107.

Consent of the Child

- (1) When the child is older than 16 years, consent of the child shall also be required for recognition of paternity. Such consent shall be provided foreseen in Article 109 of this Law.
- (2) When the child regardless of his age suffers from continuous incapacity to act or the mother is no longer alive or with unknown residence or has been announced dead or has been completely deprived from her capacity to act, the statement regarding consent for recognition of paternity shall be provided by the custodian of the child with the permission of the Custodian Body.

Article 108.

Court Procedure on Disagreement

- (1) If the mother of the child or the child older than 16 years of age, or the custodian of the child does not agree with the recognition of paternity, where such consent is required or they do not declare themselves concerning this issue within 30 days after being informed of the recognition, the person who has recognized the child as his own may submit a claim to the court, in order to verify that he is father of the child.
- (2) The claim may be submitted within a period of three years after being informed about the disagreement of the mother of the child. If in the meantime paternity of another person has

been verified, the claim rejecting paternity of such person shall not be submitted after the expired date.

Article 109.

Legal Effect of the Statement of Recognition

- (1) The statement for recognition of paternity, statements of the mother and child and consent for recognition of paternity shall not be revoked.
- (2) The person providing a statement for recognition of paternity may request annulment of such statement, if it was given under coercion, deceit or mistake.
- (3) The claim for the annulment of a statement may be submitted within a period of six months from the date, coercion ceased to exist or the moment, deceit becomes known or the mistake is noticed.

Article 110.

Extra Marital Children

- (1) Apart from the person considering himself father of the child, the child and the child's mother may also submit a claim for paternity verification of an extra marital child.
- (2) The extra marital child may submit a claim for paternity verification at anytime.
- (3) If the child is a minor or lacks the capacity to act, the mother on his behalf may submit the claim. If the mother is not alive or is divested from the capacity to act or from parental custody or her place of residence is unknown, the claim may be submitted by the custodian with the permission of the Custodian Body.
- (4) The mother may submit a claim for the verification of paternity as long as she has the right of custody for the child.

Article 111.

Ex Officio Action

(1) When the mother records a specific person to be father of her child and within a period of one year from the child's birth does not initiate the paternity verification procedure, the Custodian Body may ex officio initiate such procedure on behalf of the child. In this case the child is assigned a special custodian to conduct the procedures.

(2) The Custodian Body shall not initiate the procedure of ex officio verification of paternity, if the mother objects to this action on the basis of justifiable reasons, .

2. Maternity

Article 112.

Verification of Maternity

Provisions of this Law regarding the verification of paternity shall also apply for the verification of maternity.

3. Rejection of Paternity and Maternity

Article 113.

Rejection by Husband

(1) The husband may reject paternity of the child born by his wife during marriage or prior to the expiry of 300 days upon the dissolution of marriage, if he does not consider himself being the father of the child.

(2) The claim on the rejection of paternity may be submitted within six months from the time of knowledge of the fact that gave reason for the assumption of paternity. The claim shall not be submitted later than ten years after the child's birth.

(3) If the husband of the child's mother has been completely divested from her capacity to act, his custodian with the permission of the Custodian Body may submit the claim rejecting his paternity.

Article 114.

Rejection by the Mother

(1) The mother may reject the father of the child to be the person, who according to Article 99 Paragraph (1) of this Law is considered to be the father of the child.

(2) The claim rejecting paternity by the mother shall be submitted within six months from the child's birth.

Article 115.

Rejection of Paternity on Initiative of the Child

(1) The child may reject the paternity of a person, who by this Law is considered to be his father.

(2) The child may submit a claim rejecting paternity. When the child is a minor or has no capacity to act, the claim on his behalf may be submitted by the mother and, if the mother is no longer alive or her place of residence is unknown or she has been divested from the capacity to act or from parental custody, the claim may be submitted by the custodian with the permission of the Custodian Body.

(3) The child's right to claim is not time barred.

Article 116.

Rejection of Paternity of a third Person for an Extra Marital Child

(1) The person considering himself to be the father of an extra marital child may claim invalidity of the paternity of the other person who has registered the child as his own, provided that with the same claim he requests the verification of his own paternity.

(2) The claim may be submitted within a period of one year from the date of registration of the rejected paternity in the register of births.

Article 117.

Rejection of Paternity of a third Person for a Marital Child

(1) The person considering himself father of a marital child, may reject paternity of a third person who according to this Law is considered to be father of the child.

(2) This applies only in case that the person has lived in cohabitation with the mother of the child at the time of the conception and that with the same claim he requests verification of his own paternity.

(3) The claim rejecting paternity provided for in Paragraph (1) of this Article shall be submitted within a period of one year from the child's birth.

Article 118.

Rejection of Maternity

(1) The woman registered in the register of births as the mother of the child, may reject her maternity, if she considers not to be the mother of the child.

(2) The claim rejecting maternity may be submitted within a period of six months from the date of learning not to be the mother of the child and at the latest, seven years from the child's birth.

Article 119.

Third Person Rejection of Maternity

(1) The woman who considers herself being the mother of the child may reject maternity of the other woman, who has been registered as mother of that child in the register of births, provided that with the same claim she requests the verification of her own maternity.

(2) Such claim shall be submitted within a period of six months from the date of learning that she is the mother of the child and the latest, seven years from the child's birth.

Article 120.

Rejection of Maternity on Initiative of the Child

(1) The child may reject maternity of the woman registered in the register of births to be his mother.

(2) Until the age of majority of the child and in cases, when the child has been divested from his the capacity to act, the Custodian Body or the custodian, with the permission of the Custodian Body may submit such claim on the child's behalf.

(3) The right of the child to reject maternity is not time barred.

Article 121.

Succession of Rights

(1) The right to claim rejection of paternity and maternity is not transferred to the successors of authorized persons; however, the successors may continue the commenced procedure, if they have a legal interest in this issue.

(2) On exception to provisions of Paragraph (1) of this Article, the successors of the person, who according to this Law is considered being the father of the child, may submit a claim rejecting paternity, if such person was not informed, neither of the conception of the mother, nor of the birth of the child, nor has he lived together with the mother of the child at the time of conception.

Article 122.

Exception

Rejection of paternity or maternity is not permitted after the child's death.

4. Special Provisions for Maternity and Paternity of Children Conceived by Medical Assistance

Article 123.

Principle

It is not allowed to determine or reject maternity or paternity of a child which is conceived by medical assistance and the consent of the donor.

Article 124.

Exceptions

(1) Exceptionally the husband of the mother may reject paternity of the child born at the time of marriage or after 300 days from the breach of marriage, if the child was conceived artificially with the sperm of a third person and without written consent of the husband.

(2) The woman, who gave birth to a child conceived by an ovule cell of another woman, has the right to reject maternity, if the conception was carried out by medical assistance and with no written consent of hers.

(3) The woman with the ovule cell of whom the child has been conceived without written consent of hers, has the right to reject maternity of the woman who gave birth, if at the same time she claims verification of her own maternity.

(4) The claim rejecting maternity or paternity may be submitted within six months from the date of being informed about the conception as provided for in Paragraphs (1), (2) and (3) of this Article. It shall not be submitted after the child reached the age of seven.

(5) If persons mentioned in Paragraph (1), (2) and (3) of this Article learn about conception before the time of birth of the child, they shall submit a claim rejecting maternity or paternity within six months from the child's birth.

II. CHILD PROTECTION AND PARENTAL RESPONSIBILITY

1. Child Protection

Article 125.

Principles on Child Protection

- (1) Each child enjoys the undeniable right for life.
- (2) Children have the right to grow up in a family with parents. Children not living together with both parents, have the right to regularly meet the parent they are not living together with.
- (3) Children with diagnosed mental or physical impairments are eligible to special care, suitable conditions of life which guarantee their dignity and facilitate active participation in social life.
- (4) Children are eligible to free of charge primary schooling and access to information regarding different professions and schools.
- (5) Children enjoy the right for protection from economic utilization, child exploitation trafficking and sexual exploitation and from any activity which could be harmful or hazardous to their education or health.
- (6) Children shall be protected from maltreatment and sexual violations.
- (7) Children shall be protected from illegal usage of narcotic drugs and psychotropic substances and it shall not be permitted that children are used for illegal production and trafficking of such substances.

Article 126.

Cohabitation, Non-Cohabitation

- (1) Minor children have the right to live with their parents.
- (2) Minor children may live separately from their parents only if common interests of children and parents require so.

Article 127.

Return of the Child to the Cohabitation with his Parents

Parents shall request the return of their minor child, when the child is not living with them and is unjustly kept by other persons.

2. Parental Responsibility

Article 128.

Principles

- (1) Parental responsibility primarily results from the right for parental care and custody.
- (2) A child is under parental responsibility until the age of majority.
- (3) Parents are obliged to ensure at any times that the principles laid out in Article 125 of this Law are utilized for the protection of their minor children.
- (4) Parental responsibility includes rights and obligations, aiming to ensure emotional, social and material welfare of the child, by looking after the child, preserving personal relations, providing proper growth, education, vocational training, legal representation and administration of property.
- (5) By applying these principles parents shall consider skills, inclinations and desires of their children.

Article 129.

Personal Contribution and Usage of Public Services

To ensure parental care and to apply the principles of Article 128 of this Law, parents are obliged to personally contribute to the best of their ability and as well, if necessary, to make use of services of social institutions.

3. Child's Surname

Article 130.

Determination of Child's Surname

- (1) Parents in agreement determine the surname of the child.
- (2) The child obtains the surname of one parent or of both
- (3) Parents shall not determine different surnames to joint children.
- (4) When parents cannot reach an agreement regarding the surname of the child, after hearing both parents, the surname is determined by the Custodian Body in compliance with provisions of Paragraph (2) of this Article.

Article 131.

Exceptions

- (1) If one of the parents is not alive or is incapable of exercising parental custody and obligations or is unknown, the other parent determines the surname of the child.
- (2) If the parents of the child are not alive or incapable for exercising parental custody or are unknown, the Custodian Body determines the surname of the child.

Article 132.

Child's Surname after Change in Family Status

- (1) The minor child who has been given a surname after changes in his family status by recognition of paternity, by wedlock of the parents, by verification of paternity or maternity or

by the rejection of paternity or maternity, may be determined a new surname within a period of two months after the change of family status.

(2) When a new surname is determined for a child who is older than ten years, the child's consent is necessary.

(3) The statement for the determination of a new surname shall be submitted to the registrar who keeps the register of births for the child, or to the registrar, based on the residence of the person providing the statement.

4. Representation and Administration of the Child's Property

Article 133.

Representation

(1) Parents are obliged and have the right to legally represent their minor children.

(2) All consignments and statements that need to be send to the child, may be send to either one parent or the other and when the parents are not living together, to the parent with whom the child is living with.

Article 134.

Administration of Property

The parents to the benefit of the child administer the property of the child until the age of majority.

5. Use of Child's Income

Article 135.

Principle

(1) Parents may use income deriving from their child's property for nutrition, education and for necessary needs of the family community, if the family has no sufficient means.

(2) The parents may alienate or indebt the child's property only with the permission of the competent Custodian Body and only for the purpose of providing maintenance, care and education to the child.

Article 136.

Legal Transactions, Labor Relations

(1) The child who has reached the age of 14 may undertake legal transactions; however, consent of his parents or the permission of the Custodian Body for legal transactions is required for the validity of these actions, except for actions of minor importance, or unless otherwise allowed by Law.

(2) The child who has reached the age of 15 may, with consent of his legal representative, independently establish labor relations and possess and dispose of his personal income and property acquired through his work but shall contribute for his nutrition and education from such income to his family.

6. Exercise of Parental Custody

Article 137.

Definition of Parental Custody, Exercise by the Parents

- (1) Parental custody includes all parental rights and obligations, provided for in this Law.
- (2) The parents jointly exercise and fulfill parental rights and obligations by agreement.
- (3) If one of the parents has died or has been announced dead or has not been entrusted with parental custody or divested from it, parental custody belongs to the other parent. The same shall apply if due to other circumstances one parent is not capable of exercising parental custody.

Article 138.

Exercise of Care by the Custodian Body

The Custodian Body decides on behalf of the child's interests only on request of one or both of the parents, on appeal of a third person, in cases when custody of the child is under its control or upon a court decision.

Article 139.

Exercise of Custody in Case of Separation of Parents

- (1) If the parents live in separation, the parent with whom the child lives with exercises parental custody, if agreed on by the other parent.
- (2) In cases when parents live in separation and they cannot agree with whom the child shall live with, unless otherwise provided for by this Law, the competent court shall decide.
- (3) In cases when parents live separately, are divorced or their marriage has been annulled by a court decision or by decision of some other competent body and the child has been entrusted for care and education to one of the parents, parental custody is exercised by the parent to whom the child has been entrusted to.
- (4) During the time of execution of a court measure, the parental custody is exercised by the parent to whom by decision of the court, it was ordered to apply the measure.

Article 140.

Court Decision on Exercise of Parental Rights and Obligations

(1) When in a marital dispute the competent court brings a judgment for the dissolution or annulment of marriage, by this judgment the court shall also decide on issues of custody, care and education of minor children.

(2) When parents have not reached an agreement regarding the issue mentioned in Paragraph (1) or their agreement does not comply with the interests of the children, the court, after hearing the opinion and proposal of the Custodian Body and investigating all relevant circumstances of the case shall decide: to entrust all children for care and education to one parent, to entrust some to the mother and the others to the father or, to entrust some or all children to a third person.

(3) If the parent who exercises parental custody hinders personal contacts of the child to the other parent, the court by judgment shall regulate the manner of maintaining personal contacts of the children with the parent who does not exercise parental custody, if the evaluation of all circumstances of the case show that this is necessary for the protection of the child.

(4) The court shall change the decision regulating custody upon request of one parent or the Custodian Body, if changed circumstances require so.

(5) The opinion of the child who is capable of forming his/her views shall be taken into consideration by the court in all cases of parental custody. Such opinion shall be given due weight in accordance with the age and the ability of the child to understand.

Article 141.

Issues of Essential Importance for the Child's Development

(1) Both parents shall decide by agreement for issues of essential importance for the development of the child, even in cases when based on their agreement or the decision of the Custodian Body or the court decision only one of them exercises parental custody.

(2) When the parent who does not exercise parental custody does not agree with any measure or action of the other parent in exercising parental custody on matters of essential importance, he may inform the competent court, which is obliged to decide whether the measure or such action is in favor of the child's interests.

7. Entrustment of the Child

Article 142.

Temporary Entrustment to a Third Party by Parents

(1) When the interests of the child require so, the parent or parents may temporarily entrust the child to a third person for care and education, if that person meets the conditions of a custodian.

(2) If the parents or the parent who exercise parental custody temporarily move to a different transient residence within or outside Kosovo, they or he may entrust the child for care and education only to a person who meets the requirements of this law to become a custodian.

Article 143.

Entrustment of the Child to One Parent or a Third Person

(1) In case of death of the parent exercising parental custody and based on a court decision or a decision of the Custodian Body or based on a written agreement with the other parent, as well as in cases when such parent loses the capacity to act or abandons the child, the other parent has the right to request handover of the child for care and education from the person with whom the child is cohabitating.

(2) In case of dispute between parents and the third person, the competent court may decide to entrust the child for care and education to the person with whom the child is cohabitating or to another person or institution, if after hearing the opinion and proposal of the Custodian Body and investigating all the circumstances concludes, that the interests of the child require so.

Article 144.

Court Considerations

(1) The court or the Custodian Body which brings a decision for the entrustment of a child for care and education is obliged to properly investigate all circumstances which are important for proper physical and mental development and education of the child.

(2) In case the child is older than ten years, the court shall consider in particular the emotional situation of the child. If deemed necessary, the court shall take into consideration the opinion of experts.

Article 145.

Personal Contacts

(1) If the child lives with only one parent or with a third person or institution, the parents shall agree on a manner of preserving personal contacts with the child. In cases of dispute, the competent court takes a decision regarding this issue.

(2) If circumstances change, the competent court may again regulate the manner of preserving personal contacts of parents with their children.

III. SUPERVISION OF PARENTAL CUSTODY

Article 146.

Supervision by the Custodian Body

The Custodian Body exercises general and continuous supervision of the exercise of parental custody.

Article 147.

Urgent Measures of the Custodian Body

(1) If the Custodian Body learns about the existing danger to the child, because of an abuse of parental rights or any danger to the child by serious neglect of parental obligations, it is obliged to urgently undertake measures for the protection of the personality, the rights and the interests of the child.

(2) The registrar is obliged to inform the Custodian Body of the birth of a child whose parent or parents are unknown and about all necessary measures to be undertaken for the child's protection.

Article 148.

Taking away the Child from the Custody of Parents

(1) A child shall not be removed from the care of her/his parent/s or legal guardian without their permission or an order of the Court.

(2) Exceptionally, where the Custodian Body has reasonable grounds to believe that there is an immediate serious risk to the health, safety or welfare of a child, the Custodian Body may enter any premises and remove the child to a place of safety where he/she will be cared for, for a period not exceeding 72 hours

(3) Before the 72 hours expire, the Custodian Body should bring the case to the attention of the competent court, which shall decide on the custody of the child. If circumstances require, the court may make an assessment order for a period up to 21 days to allow further investigations and assessments to be made, by which time the matter has to be brought to the court for further attention.

(4) With this taking of the child into care the other rights of the parents do not terminate, nor their obligations toward the child.

IV. DEPRIVATION OF PARENTAL CUSTODY

Article 149.

Deprivation of Custody

(1) Parents who abuse the exercise of parental rights or seriously neglect the exercise of parental obligations are deprived from custody.

(2) Parents may be deprived from custody for all their children or, if special circumstances require so, only from custody of one child.

(3) The competent court takes the decision to deprive the parents from parental custody in an extra contentious procedure, after hearing the opinion of the Custodian Body and investigating all relevant circumstances of the individual case.

Article 150.

Procedure

(1) The decision on the deprivation of parental custody may be initiated by the other parent, the Custodian Body or the Court.

(2) The Custodian Body is obliged to initiate the procedure for the deprivation of parental custody, if it in any way learns about the existence of reasons provided for in this Law.

Article 151.

Re-entrustment of Parental Custody

(1) When reasons causing the deprivation of parental custody cease to exist, the parent or parents by court decision may be entrusted back parental custody.

(2) The request for entrusting parental custody may be submitted by the parent or the Custodian Body.

(3) In marital disputes and disputes regarding relations between parents and children, the court dealing with such issues may ex officio bring a decision to return parental custody, if it concludes that conditions are met for this.

V. TIMELY EXTENTION OF PARENTAL CUSTODY

Article 152.

Principle

Parental custody may also be extended after the age of majority if the child, due to a diagnosed mental illness, diagnosed mental or physical impairments or other medically acknowledged reasons is not capable to take care of his personality, rights and interests.

Article 153.

Procedure

(1) The decision for extending parental custody is taken by the competent court in an extra contentious procedure upon request of the parents or the Custodian Body.

(2) The proposal for extending parental custody shall be submitted before the child reaches the age of majority, however, the court may also extend parental custody when the request has not been submitted in due time, if reasons for extending parental custody existed at the time the child reached the age of majority.

(3) In the decision extending parental custody the court shall specify whether the person who has achieved extended parental custody, custody was categorized as of the rights towards a minor younger or older than 14 years.

Article 154.

Cease of Timely Extension

When reasons extending parental custody towards a mature person cease to exist, the court, upon request of such person, of the parents or of the Custodian Body, shall make a decision on terminating extended parental custody.

Article 155.

Record

Decisions extending or terminating timely extended parental custody shall be recorded in the register of births and when such person possesses immovable property, it shall be recorded in public records of immovable property.

PART FIVE
SPECIFIC FORMS OF PROTECTION OF CHILDREN
WITHOUT PARENTAL CARE

I. COMMON PROVISIONS

Article 156.

Children without Parental Care

- (1) A child without parental care is deemed to be a child whose parents are not alive, whose parents are unknown or have disappeared.
- (2) A child without parental care is deemed to be also the child whose parents for any reason permanently or temporarily do not fulfill obligations of parental custody.

Article 157.

Principles of Child Protection

- (1) A child without parental care enjoys special social protection.
- (2) The fundamental forms of legal and family protection of children without parental care under this Law are: custody, family shelter, residential shelter and adoption..

Article 158.

Enforcement of Protection

The decision on the enforcement of any of the forms for protection of children without parental care shall be taken only after a close examination of each individual case. The competent body shall conclude the form of family protection for the child which meets the child's needs to the greatest extent.

Article 159.

Compensation for the Loss of Parental Care

Protection of children without parental care, in conformity with the needs of these children is achieved through securing the conditions for such a development of the children, which shall compensate in the best way the loss of parents or parental care.

II. ADOPTION

1. Intermediation of Adoption

Article 160.

Intermediation of Adoption

(1) Intermediation of adoption shall achieve the placement of a child (adoptee) under the custody of a person who wishes to take a child under his care and responsibility (adopter).

(2) Intermediation of Adoption also means to achieve and administer data about a child which shall be placed as well as data about the prospective parents who wish to adopt a child even if the child is not born at the time data is filed.

Article 161.

Competent Authority for Adoption

- (1) The adoption procedure is a competence of the Court. The court may seek advice from the Custodian Body in making a determination on adoption.
- (2) The Custodian Body shall dedicate only specially trained personnel which shall be suitable for the task because of personal features and which shall have professional experience in working with children.

Article 162.

Confidentiality and Data Protection

- (1) The competent court and custodian body shall be responsible for the protection of data and the privacy of the information collected during the adoption process.
- (2) The decision on adoption shall only be delivered to the parties which participate in the adoption proceedings in accordance with this law.

2. Principles of Adoption

Article 163.

Permissibility of Adoption

- (1) The adoption of a child is permissible if it serves the child's well-being and it is to be expected that a parent and child relationship will be created between the prospective adoptive parent and the child.
- (2) A person who has been involved in unlawful acts or in actions contrary to good morals in obtaining or bringing a child for the purpose of adoption or who commissioned a third person to do so or rewarded such person for doing so, may only adopt a child, if this is imperative for the child's well-being.

Article 164.

[Principle on Matrimonial Requirements]

- (1) Spouses shall only adopt a child jointly.
- (2) An unmarried person may only adopt a child alone.

Article 165.

[Exception on Matrimonial Requirements]

- (1) Exceptionally only one of the spouses may adopt a child, but this requires the consent of the other spouse.
- (2) One spouse may also adopt a child alone if the other spouse cannot adopt the child because of incapacity to act or because he has not yet reached 21 years of age.
- (3) At the request of the adopting party and with the consent of the persons who have participated in the adoption procedure, the other spouse may be later included in the adoption if he later fulfils the conditions provided by Law.

Article 166.

Trial Period

- (1) Adoption shall not be pronounced until the adopter has been caring for the child for an appropriate period of time, specified by the court, but not exceeding three months.
- (2) The trial period shall be initiated and continuously supervised and evaluated by the Custodian Body, which provides a report to the court as necessary.
- (3) The court shall make a decision at the end of the trial period. However the court may extend the trial for an additional period of up to three (3) months if there is disagreement between the parties or due to other extenuating circumstances brought to its attention by the Custodian Body or child expert /s involved in the proceedings.

Article 167.

Rights and Obligations

Adoption establishes between the adopting party and the adoptee the same rights and obligations that exist between parents and children.

3. Consent for Adoption

Article 168.

Consent of the Child

(1) The consent of the child is required for an adoption. The consent of a child with incapacity to act or of less than fourteen years of age may only be given by his legal representative, respectively his custodian.

(2) Otherwise the child may give the consent himself.

(3) In the event that the citizenship of the adopting parent and the child differ, the Custodian Body must give its approval to the procedure.

Article 169.

Consent of the Parents

(1) The consent of the parents is required for the adoption of a child.

(2) The consent may not be given before the child is eight weeks old.

(3) No consent is required by the spouse who by court order has lost custody or has lost the capacity to act or whose residence is not known for more than one year.

(4) It is valid also when the person giving consent does not know the already determined adopting persons.

Article 170.

Inquiries

In case the adoptee has only one living parent the Court shall address close family members of the minor's dead parent to acquire data that could be of importance for the decision on adoption. Consent however is not required.

Article 171.

Substitution of Consent of one of the Parents

(1) The Custodian Body shall, upon request of the child, substitute the consent of one of the parents, if this parent continuously and gravely violates his obligations towards the child or has demonstrated by his conduct that he is indifferent towards the child and that in case the adoption is not taking place, this would result in a considerable disadvantage for the child.

(2) The consent may also be replaced by the decision of the Court, if the violation of obligations, whilst not continuous, is nevertheless especially grave and it is anticipated that the child can no longer be entrusted on a permanent basis to the custody of this parent.

(3) The consent shall be replaced when it becomes evident, that one parent has abandoned the child for more than six months and his residence is not known.

(4) The consent of one of the parents may further be substituted, if he is permanently incapable to provide the necessary care and control of the child's upbringing, because of a diagnosed, particularly severe mental illness or a diagnosed particularly severe mental or emotional disability and if the child without adoption could not grow up within a family and the child's development would as a result be seriously jeopardized.

Article 172.

Declaration of Consent

(1) Consent must be declared towards the Competent Court and becomes legally effective at the point in time it is delivered.

(2) Consent may not be made subject to a condition or to a stipulation as to time, nor may it be made by a representative. It is irrevocable, as long as consent was not given by mistake or under coercion or deceit.

(3) If the person giving consent has limited capacity to act, his consent does not require the assent of his legal representative.

(4) The consent shall become ineffective if the request is withdrawn or the adoption is refused.

(5) The consent of a parent shall also become ineffective, if the child is not adopted within three years from the date the consent became effective.

Article 173.

Invalidity of Adoption

An adoption is invalid if during the procedures of granting of such adoption it becomes obvious, that the conditions of Articles 160-162, 166, 169 and 172 are not met.

4. Adoptee

Article 174.

Only Minor Child

Only a minor child can be subject to adoption.

5. Adopter

Article 175.

Principle

The adopting party shall be a person with the capacity to act and the necessary personal qualities to successfully exercise and fulfill parental rights and obligations.

Article 176.

Minimum age

- (1) The prospective adoptive parent must have reached 21 years of age.
- (2) If spouses intend to adopt a child, one of the spouses must have reached 25 years of age and the other spouse must have reached 21 years of age.

Article 177.

Inter Personal Relationships

- (1) There shall be no adoption of a person along the lines of descendants, nor of a brother or a sister.
- (2) A legal custodian cannot adopt a person under his care until the competent body discharges the custodian from his legal status.

Article 178.

Legal Reliability of the Adopter

The following persons cannot adopt:

1. A person who by court order has lost parental custody

2. A person for whom there is founded suspicion that he will misuse the rights of an adopter resulting in harm to the adoptee or that he requests adoption for his own pecuniary benefit.
3. A person who suffers from a diagnosed psychiatric illness or is retarded from a mental perspective as well as a person who suffers from an illness which may endanger health and life of the adoptee.

Article 179

Permanent residence

- (1) Adopter can be only permanent resident.
- (2) Exceptionally, foreign national/resident can be adopting party if the child can not be adopted or fostered in Kosovo and/or there are reasonable grounds for such an action as the child has special needs and requires specialized treatment not available in Kosovo.
- (3) The preliminary consent of the administrative bodies who deal with social work policies shall be required for adoption by a foreign citizen.

6. Procedure of Adoption

Article 180.

Decision of the Court; Application

- (1) Adoption is established by the Court upon request of the adopting parents.
- (2) The request may not be made subject to a condition or to a stipulation as to time, nor shall it be made by a representative.

Article 181.

Territorial Legal Competence and Exclusion of the Public

- (1) For adoption legal competence lies with the Court of the territory of where the applicants had their last joint residence as well as with the Court at the place of residence of the adoptee.
- (2) The public is excluded from procedures on adoption.

Article 182.

Procedures to Initiate a Request on Adoption

- (1) The person who wishes to adopt, together with the parents of the minor who shall be adopted, may present a request for an adoption to the Court.
- (2) The request shall have attached the written consent of the child's natural parents, the child's certificate of birth and other relevant documents to present proof for the child's future well being, namely provide information about the adopting party and the adoptee as well as about the conditions of adoption.
- (3) The Court is eligible to collect further data and proof from the Custodian Body, Social Services and other experts in the field of child care on conditions of adoption.
- (4) A child determined to be without parental care by the competent authority may be adopted by persons who are seeking adoption and have registered with the appropriate authority, which shall also be authorized to initiate the procedure.

Article 183.

Legal Advice and Assistance

- (1) The competent Court responsible for the intermediation of adoption shall administer all requests for adoption and assist the parties in all stages of procedures.
- (2) The Court is under the obligation to adequately inform the adoptee and adopters about the legal, educational and moral purposes and consequences of the adoption.

(3) The Court shall inform the adoptee of the legal nature of future rights and obligations and shall give relevant consultation and help in this regard.

Article 184.

Inquiries and Preparation

(1) In order to reach a decision about the adequacy of the adopting party and the adoptee, the Court shall take into account all reasonable opinions of sociologists, psychologists, doctors, therapists and other experts.

(2) During the procedure of collection of data and evidence on the conditions for adoption, the Custodian Body directly or through a professional social service assures the necessary preparation of the parents of the adoptee and of the adoptive parties, respectively of the legal custodians of the adoptee.

Article 185.

Refusal of the Request on Adoption

(1) If the Court on the basis of the received and attached evidence and the opinion received according to the preceding Article as well as on the basis of an evaluation of all other circumstances concludes in the procedures preceding the granting of an adoption, that the conditions defined by Law for adoption are not fulfilled or the adoption is not in the interest of the adoptee, the Court shall make a decision refusing the request for adoption.

(2) A complaint may be filed against the decision which refuses the request for adoption within a term of 15 days from the day of the decision.

Article 186.

Approval of the Request on Adoption

(1) If the Court concludes that the conditions for adoption set forth by this Law have been met, the adoption shall be approved.

(2) In order to approve adoption, the presence of the adopting party is required together with the presence of the spouse, parents, respectively the custodian of the adoptee and the

presence of the adoptee himself if he is over 10 years, except when up to this age he has been under the legal custodianship of the person who wishes to be the adopting party.

(3) The statement of consent of the participating parties shall be entered in the minutes of procedure.

(4) On conclusion of the procedures of adoption the minutes shall be signed by the parties and shall be read to the persons present.

Article 187.

Minutes

(1) Special minutes are kept on the process of adoption.

(2) The minutes on the approval of adoption shall contain data about all actions undertaken, about all information gathered by the Court and about statements and agreements of the adoptee and the parents as well as the final pronouncement of adoption.

(3) The minutes on the establishment of the adoption cite the surname of the adoptee as the surname of the adopting party. Any change of the first name of the adoptee, namely an additional first name shall be entered as well.

(4) The minutes on the establishment of adoption provide data about the parents of the adoptee as well as data about the adopting party.

(5) The minutes shall be signed by all persons who are involved in the process and of the representative of the Court who conducted the procedure.

(6) The Court is under the obligation to keep all evidence and maintain the documentation on the adopted persons and the adoption process.

Article 188.

Registration

The competent court sends the minutes of the meeting on the establishment of the adoption immediately to the institution competent for registration in the official birth book, to the party and to the Custodian Body. The adopting party is registered as the parent of the adoptee.

Article 189.

No Establishment of Adoption after the Death of a Child

The establishment of the adoption may not take place after the child's death.

7. Legal Effect of Adoption

Article 190.

Legal Effect

- (1) If a child is adopted by spouses or if a spouse adopts a child of the other spouse, that child then acquires the legal status of a joint child of the spouses.
- (2) In other cases the child acquires the legal status of a child of the adopting parent.
- (3) In all cases referred to under Paragraph (1) of this Article, the spouses are entitled to joint parental custody, in cases referred to under Paragraph (2) of this Article, only the adopting parent is entitled to parental custody.

Article 191.

Cessation of the Child's Relationships to Relatives and Claims

- (1) When adoption is terminated the legal relationship between the child and his descendants and relatives ceases together with the rights and obligations resulting there from.
- (2) Claims of the child which arose before the adoption, especially those relating to annuities, orphan's pension and other corresponding recurring payments, shall not be affected by the adoption; this shall not apply to maintenance claims.

Article 192.

Continuance of Relationship to Relatives

(1) If the adopting parents are second or third degree relatives of the child by blood or marriage, only the relationship between the child and his descendants on one hand and his parents on the other is legally terminated, together with the rights and obligations resulting there from.

(2) If a spouse adopts the child of the other spouse, the relationship does not legally cease in respect to the relatives of the initial parent, if this parent had parental custody and is deceased.

8. Surname of the Child

Article 193.

Surname of the Child

(1) The child acquires the surname of the adopting person as his surname.

(2) If a married couple adopts a child or if one of the spouses adopts a child of the other spouse and the spouses do not have a joint married name, they shall determine the child's surname by making a declaration to the Court before the adoption is pronounced.

(3) The Court may, when pronouncing the adoption:

1. change the child's first names or add one or more new first names if this is in the interest of the child's well-being
2. with the child's consent place the new surname before or after the previous surname, if this is in the interests of the child's well-being.

(4) When the adoptee is older than ten years, his consent is required for the change of surname and any change in first name.

9. Prohibition of Disclosure and Inquiry

Article 194.

Principle

(1) Information about the adoption and its circumstances shall not be disclosed or investigated without the consent of the adopter and the child, unless special reasons of public interest require this.

(2) At full age the adoptee has the right of access to all information concerning his adoption and shall on request be provided with personal information about his biological parents.

10. Termination of the Adoption

Article 195.

Principle

The adoptive relationship may only be terminated under the provisions of Articles 196 to 200.

Article 196.

Annulment of Adoption

(1) The Court may annul the adoptive relationship on application, if it was established without a request of the adopter or without the consent of the child or the consent of a parent.

(2) The request lacking the necessary consent is ineffective only when the declarer:

1. was at the time of making the declaration in a state of unconsciousness or temporary insanity, if the applicant was legally incompetent to enter into a transaction or if the

incompetent or less than fourteen year old child personally gave his consent and the decision was made thereupon

2. failed to understand the procedures of adoption or although he was aware thereof, he did not intend to request an adoption or to express his consent to the adoption procedures
 3. made a mistake concerning the identity of the child or the adoptive child made a mistake concerning the identity of the adopter
 4. was induced to make the declaration by fraud, concerning material circumstances
 5. was unlawfully induced by threats to make the declaration.
- (3) The annulment may not be made, if the declarer has ratified the request or the consent after the cessation of the deficiencies mentioned under Paragraph (2) of this Article.
- (4) Claim for annulment of adoption may be submitted within six months from the day when it was learnt about the reason for annulment and no later than within one year from the day of establishment of adoption.

Article 197.

No Termination for Lack of Consent

The adoptive relationship may not be terminated, if the welfare of the child would be substantially jeopardized thereby, unless the predominant interests of the adopter necessitate the termination.

Article 198.

Ex officio Termination

- (1) During the time of minority of a child the Competent Court may terminate the adoptive relationship on its own motions, if for any reasons this becomes necessary for the welfare of the child.
- (2) If the child was adopted by a married couple, also the adoptive relationship between the child and only one of the spouses may be terminated.
- (3) The adoptive relationship may only be terminated:

1. if in a case under Paragraph (2) the other spouse or a biological parent is willing to assume the care and upbringing of the child and if the exercise of the parental custody by him would not be contrary to the welfare of the child or
2. if the termination would facilitate a new adoption of the child.

Article 199.

Effects of Termination

- (1) The termination has effect only for the future. If the competent court terminates the adoptive relationship on the application of the adopter after his death or on the application of the child after the latter's death, it has the same consequence as an adoptive relationship terminated before death.
- (2) Upon termination of the adoption the relationship of the child and his descendants and to the relatives based on the adoption are terminated, together with the rights and obligations created thereby.
- (3) At the same time the relationship between the child and his descendants and the natural relatives together with the rights and obligations arising there from are revived, with the exception of the parental authority which is dependent only on the right for custody.
- (4) The competent court shall return custody to the natural parents, if and as far as it is not contrary to the welfare of the child; otherwise it shall appoint a custodian.
- (5) If the adoptive parents are a married couple and the termination affects only the rights of one spouse, the effects mentioned in Paragraph (2) ensue only between the child and his descendants on the one hand and the latter spouse and his relatives on the other; the effects under Paragraph (3) do not ensue.

Article 200.

Effects on the Surname

- (1) Upon the termination of the adoption, the child loses the right to bear the surname of the adopter as his surname.
- (2) The competent court may upon request of the child decide that the child retains the surname he acquired by means of adoption, if the child has a justifiable interest in bearing this surname.

11. Rights and Obligations of the Adopting Party and Adoptee

Article 201.

Creation and Termination of Family Relations

(1) Upon adoption family relations are created between the adopting party and persons in his family on the one hand, and the adoptee and his descendants on the other, with all the rights and obligations thereby.

(2) Adoption terminates the rights and obligations of the adoptee towards his parents and other persons in the family, as well as the rights and obligations of the parents and family towards him.

Article 202.

No Proof of Motherhood and fatherhood after Adoption

After adoption, it is not permissible to ask for prove of motherhood or fatherhood of an adopted child.

III. ORGANIZED PLACEMENT WITHIN A FAMILY

Article 203.

Principles

(1) The placement of a child in a foster family is an organized social form of children's care within another family.

(2) Children without parents or without parental care and children whose development has been impeded by circumstances in their family, are placed with another family to ensure necessary conditions of development, education and their preparation for an independent work and life.

(3) Educationally neglected children as well as children, whose development has been impeded, may be placed in another family.

(4) The financial situation of parents shall not be a reason for a placement in a foster family. The family shall be firstly supported by all means of social welfare.

(5) Rights and obligations of parents and custodians of the child, in respect of the provisions of this part of the Law, are limited for the duration of placement with a family.

Article 204.

Placement

(1) Children without parents or children without parental care are guaranteed a placement in a family until they are considered being able to lead an independent life and work.

(2) Placement is possible within a family of children with two parents or one parent.

(3) Placement is determined with the preliminary approval of the biological parents of the child and, as a rule, it lasts for the duration of the circumstances which gave rise to the placement.

(4) After the placement of the child with another family, the Custodian Body undertakes immediately all necessary means to address and in future to avoid all circumstances which made the placement with a foster family necessary.

Article 205.

Eligibility of Foster Parents

(1) Placement is made with a family which can successfully fulfill parental obligations, in particular with regard to care, education, teaching and enabling the child for an independent life.

(2) Placement of a child shall be made only with a family in which the parent or parents to whom the child is entrusted to, fulfill all the conditions provided for by this Law on behalf of children and parental responsibility.

Article 206.

Placement of a Child with Special Needs, neglected children and children with limited abilities

The family in which a child with special needs or a neglected child or a child with limited abilities is placed, is chosen upon the proposal of a group of professionals, assigned by the Custodian Body, which shall be comprised of social workers, teachers, psychologists doctors as well as other experts, chosen with regard to the reasons that made the placement necessary.

Article 207.

Legal Competence, Documentation

(1) The Custodian Body of the commune in which territory the child resides or is domiciled decides on placement of a child in a family.

(2) Before making a decision upon a placement, the Custodian Body mentioned in Paragraph (1) of this Article provides full documentation on all data which is important for making a decision on the child's placement, as well as on the family where the child will be placed.

Article 208.

Written Contract, Right of Visitation, Payment

(1) On the basis of the decision for the placement of a child the Custodian Body enters into a written contract with one of the parents of the family in which the child shall be placed.

(2) The family where the child is placed is under the obligation to facilitate visitation to or of the child's parents, unless the Custodian Body decides otherwise on behalf of the welfare of the child.

(3) The family where the child is placed has a right to payment.

Article 209.

Termination of Placement

(1) Placement within a family terminates:

1. by agreement of the contracting parties,
2. by withdrawal of the contract,
3. by the time the child reaches full age, respectively thereafter when the child is able to conduct an independent life or marries before that age,
4. with the adoption of the child,
5. upon death of the child or death of the family member who is a party to the contract for the placement in the family.

(2) In case of death of one of the parents of the foster family from Paragraph (1) of this Article, the contract for placement with a family remains in force if the other parent, within one month, informs the competent Custodian Body of the continuation of the child's placement and provided that it is guaranteed that the family in future fulfils the conditions determined by this Law.

Article 210.

Termination of Contract

(1) The family where the child has been placed may withdraw from the contract within the terms provided for in the contract.

(2) The Custodian Body may terminate the contract for placement with a family only if changed circumstances in the child's family indicate, that there is no further need to continue the placement.

Article 211.

Rescission from the Contract

(1) If the family where the child has been placed ceases to fulfill any of the conditions of Article 205 of this Law, respectively if the purpose of the placement has not been achieved, the Custodian Body may decide to revoke the contract for placement with a family.

(2) The decision of Paragraph (1) of this Article determines the day of rescission regarding placement of the child.

(3) The Custodian Body which has decided on the rescission of the contract for a placement shall ensure further protection, care and education of the child.

Article 212.

Supervision

(1) The Custodian Body supervises the child's development, ensures that protection, care and education of the child is conducted in conformity with the provisions of this Law and with the provisions of the contract for the placement of the child.

(2) The competent Custodian Body pays special attention to the development of the child regarding the purposes which led to the placement of the child.

(3) The Custodian Body is under the obligation to inform the foster family about the reasons (defects in the provision of care, protection and education of the child) that led to the placement. It shall make proposals on their future avoidance and all necessary regular and timely social measures.

Article 213.

Obligations of the Foster Family to Inform

The foster family is under the obligation to inform the competent supervisory body about issues of health, education and all other relevant conditions of the child's development.

Article 214.

Reciprocal Information of Responsible Bodies

(1) If placement with a family has been decided by one body, whereas supervision is exercised by another body, the supervisory body is under the obligation to inform the body of placement of the child's development.

(2) If the supervisory body from Paragraph (1) of this Article concludes that one of the conditions mentioned in Articles 209-211 for the dissolution of the contract have occurred, the body that is responsible for the placement shall be informed of this fact without delay.

PART SIX.

CUSTODY

I. PLACEMENT AND PURPOSE OF CUSTODY

Article 215.

Principles of Custody for Minors and Adults

- (1) Minor children are placed under custody and enjoy protection by public institutions
1. when it is impossible for their parents to exercise parental care and custody
 2. because both parents are deceased or not known, have been declared disappeared, or have lost parental custody or have lost the capacity to act.
 3. or for any other cause which by court decision gives reason for a placement on behalf of the wellbeing of the child.
- (2) The purpose of custody towards adults is to protect their personality and shall be manifested firstly through personal care, by enabling for an independent life, and medical care.
- (3) Custody aims to ensure also property rights and other interests and rights of the person under custody.

II. CUSTODY OF MINORS

Article 216.

Legal Competence and Aims of Custody for Minors

- (1) The Custodian Body places under custody a minor who is under no parental care.
- (2) The custodian of a minor has the obligation to take care in good faith for the minor's personality, in particular for the minor's health, education, upbringing and the development of the ability to lead an independent life.

Article 217.

Capacity to Act, Use of Income

- (1) The minor under custody who has not fulfilled yet 14 years can not exercise by itself the legal affairs, with the exception of minor actions. For the actions which can not be exercised by himself/herself it is necessary to have the permission of his custodian in order to make these actions valid, while for the actions that can not be carried by the custodian it is necessary to have the permission of the Custodian Body.
- (2) The minor under custody who enters into an employment relation, may dispose of his personal income and the revenue earned through his work. Besides he has the obligation to contribute to his own food, education and upbringing to a reasonable extent.

Article 218.

Right for Complaint

The minor who has reached 14 years of age has the right to submit a complaint against the decision of the Custodian, the Custodian Body or against other bodies which deny the approval required for the validity of any of his legal transactions.

Article 219.

Competence of the Custodian

The custodian can undertake the following actions only with prior approval of the Custodian Body:

1. to entrust the minor to an orphanage or another organization for children and minors for protection, education and upbringing, to entrust the minor to another person for education, upbringing and care or to place the minor under medical treatment for a long period at a health institution,
2. to initiate a change of school,
3. to decide on the selection of a profession or exercise of the minor's profession;
4. to undertake other important measures which could harm the minor's personality and interest.

Article 220.

Information of the Custodian Body

(1) The social Centre where the minor has been entrusted to or the institution where he has been sent as well as the person to whom he is entrusted for protection and education or the medical institution where he is placed for medical care, are under the obligation to inform the custodian and the Custodian Body of all important issues regarding life, health, education and upbringing of the person under custody, as well as of a possible discharge from the institution and his new place of residence.

(2) Persons and institutions mentioned in Paragraph (1) of this Article are under the obligation to timely inform the Custodian Body before discharging the minor under custody in order to ensure timely measures for maintenance and security of the minor.

Article 221.

Termination of Custody

Custody towards a minor terminates:

1. upon reaching full age
2. upon marriage before reaching full age

3. upon adoption
4. upon re-acquisition of parental custody from his own parents.

Article 222.

Property of the Custodian and Report

(1) In case of termination of custody, the Custodian Body requests the custodian to prepare a work report within a given term, to hand over the property of the person under custody and to deliver the person under custody to the administration respectively to the parents or the adopting party.

(2) Delivery of the property is performed in the presence of the custodian, the person under custody, respectively the parent or the adopting party and the representative of the Custodian Body.

III. CUSTODY OF PERSONS WHO HAVE LOST THE CAPACITY TO ACT OR DO NOT HAVE THEIR FULL CAPACITY TO ACT

Article 223.

Full and Partial Deprivation of Capacity to Act

(1) A person of full age who is not capable of normal judgment (diagnosed mental illness, mental retardation or another similar cause) and due to this reason is unable to take care of his rights and interests shall be deprived of his capacity to act.

(2) A person of full age who by his actions gravely endangers his rights and interests or the rights or interests of other persons because of a diagnosed mental illness, mental retardation or severe abuse of alcohol or narcotics or due to a diagnosed infirmity of old age, shall be partially deprived of his capacity to act.

(3) The decision to deprive someone from his capacity to act or to limit his capacity to act is made by the competent court in a non-contest dispute.

Article 224.

Procedures

- (1) Persons who by court order are partially or fully deprived of their capacity to act are placed under custody, exercised by the Custodian Body.
- (2) The court has to forward the decision within a ten-day period to the competent Custodian Body which, within 30 days from the day of the decision, has to provide custody.

Article 225.

Obligations of the Custodian

- (1) The custodian of the person who was deprived of his capacity to act has the obligation to take care of the person's personality and in particular the conditions of his placement.
- (2) The custodian shall in particular take care of the special situation of the person in his custody with close examination of the causes that brought about the deprivation or limitation of rights. The custodian shall enable the person under his custody to live as far as possible an independent life in dignity.
- (3) If the custodian concludes that circumstances indicate the need to regain his capacity to act, respectively in case of the need of a revocation of the previous decision, he has the obligation to inform the Custodian Body without delay.

Article 226.

Analogy to Regulations for Custody for Minors

- (1) The custodian of the person who has fully lost his capacity to act has the rights and obligations of the custodian of a minor person that has not reached 14 years of age.
- (2) The custodian of the person who has partially lost his capacity to act has the obligations of a custodian of a minor person who has reached the age of 14. Under certain circumstances the Custodian Body shall allow all legal actions, which can be undertaken of a person with full capacity to act.

Article 227.

Temporary Measures

(1) The court where the procedure for the deprivation of the capacity to act has begun is under the obligation to immediately inform the Custodian Body which, if required, shall assign a temporary custodian to that person.

(2) The provisions on custody of minors who have reached 14 years of age apply to the rights and obligations of the temporary custodian from Paragraph (1) of this Article, but the Custodian Body, when it is deemed necessary, may apply to this person the provisions of custody over minors who have not yet reached 14 years of age.

(3) The obligations of a temporary custodian are terminated when either a permanent custodian is appointed or upon a court order denying the deprivation of the capacity to act.

Article 228.

Supervision

(1) The Custodian Body has the obligation to conduct permanent supervision of living conditions of the person deprived of his capacity to act, of his medical condition and in particular, of the conditions that caused the loss or limitation of his capacity to act. The Custodian Body shall receive regular reports from the custodian or from the institution where the person has been placed, respectively the health institution where the person under custody is treated or placed for treatment.

(2) According to its official obligation, the Custodian Body initiates all necessary court proceedings for the restitution of the capacity act to the person under custody, if it concludes that a change in conditions require so.

IV. CUSTODIANS IN SPECIAL CASES

Article 229.

Custody for Unclear Ownership

(1) The Custodian Body is entitled to appoint a custodian for special cases (from now on special custodian) on behalf of a person's assumed ownership in situations where the owner of the property is unknown and where such a person has no legal representative and custody is inevitable to protect the legal interests of the owner.

(2) A custodian may be appointed to the persons mentioned in Paragraph (1) of this Article by the court under the conditions provided by Law. Court and custodian have the obligation to inform the competent Custodian Body on this issue without delay.

(3) The Custodian Body may exercise the rights mentioned in Paragraph (1) and (2) of this Article.

(4) This Right ceases at the moment the person on whose behalf special custody was established claims and proves his own rights and identity with the Custodian Body.

Article 230.

Special Custody for Dispute Assessment

(1) The special custodian shall be appointed for a child where even though the parents exercise parental custody, a considerable dispute exists between him and his parents, namely where significant legal transactions involving the child's property are concerned.

(2) The person under custody may be temporarily appointed a special custodian for a severe and legally grave dispute between him and the custodian.

(3) Parents, adopting parties, custodians, relatives and neighbors have the obligation to notify the Custodian Body when they become aware of events or instances mentioned in Paragraphs (1) and (2) of this Article.

Article 231.

General Provisions

(1) On the occasion of appointing a custodian for special cases, the Custodian Body shall define scope, obligations and rights of the special custodian, taking into consideration the circumstances of each individual case.

(2) The provisions on rights, obligations and responsibilities of the custodian mentioned in Article 215 (2) and (3) apply by analogy to the special custodian.

(3) The special custodian has the obligation to submit regular reports of his work to the Custodian Body.

V. LEGAL COMPETENCE IN MATTERS OF CUSTODY

Article 232.

Legal Competence

Custody matters provided for by this Law are conducted and fulfilled by the Custodian Body defined in Article 6 of this Law.

Article 233.

Best Practices

(1) To protect rights and interests of the person under custody, the Custodian Body undertakes all necessary measures to achieve the purpose of custody in the best way.

(2) The Custodian Body during preparation, realization and enforcement of its decisions and measures, shall make use of all relevant forms of social protection, methods of social work and other professional work, namely of services of social organizations as well as of health and educational institutions.

Article 234.

Responsibility of the Custodian Body

(1) The Custodian Body ensures, that all rights and interests of the person under custody are guaranteed according to the provisions of this Law.

(2) The Custodian Body ensures also other forms of protection provided by Law to help minors and adult persons.

(3) The Custodian Body applies educational measures and other measures defined by the court. It conducts and supervises all activities under its power.

Article 235.

Custodian

The custodian, as a specially appointed person, is entrusted with all necessary rights and obligations to achieve this aim.

VI. CUSTODIAN

1. Designation of the Custodian

Article 236.

Custodian

(1) The custodian is appointed to the person under custody by the Custodian Body.

(2) As a custodian can be appointed any person who has the personal capacity and necessary ability to fulfill the obligations of a custodian and who accepts in advance to become a custodian.

(3) The custodian shall be in the first place appointed from among persons in the family of the person under custody. The Custodian Body shall decide whether this is in the interest of the person under custody.

Article 237.

Exclusions from the Right of Custody

One of the following persons cannot be a custodian:

1. The person who has previously lost rights of legal or parental custody due to a court decision
2. Who fully or partially has lost the capacity to act
3. Whose interests are in obvious conflict with the interests of the person to be placed under custody
4. A person whose personal features or pecuniary interests may be in conflict with the interests of a custodian and where it is suspected that the relationship with the person under custody or natural parents may cause conflicts.

Article 238.

Obligation to Accept Custody and Exceptions

(1) Persons related by blood to the person to be placed under custody in direct linear ascendancy and direct linear decadency and brothers and sisters of the father or mother of the person under custody, are under the legal obligation to accept the task of a custodian if they comply with the requirements for a custodian under the provisions of this Law.

(2) Persons in blood relationship do not have the obligation to accept the task of a custodian if:

1. they are under sixteen years of age;
2. due to illness, body defects or type of profession or service they are not adequately capable to fulfill this task;
3. they already took on the task of a custodian or if they already take care of two or more children;
4. a mother who is considered for the task has a child under the age of seven and rejects the task for this reason
5. the person already takes care of three or more minor children of his own.

Article 239.

Obligation to Accept Custody and Exceptions

On the occasion of appointing a custodian, the Custodian Body shall take into account the request of the person under custody if he is able to express his interest. Wishes of the relatives shall be also considered if this is in the interest of the person to be placed under custody.

Article 240.

Custody directly Exercised by the Custodian Body

(1) If this in the interest of the person to be placed under custody, the Custodian Body may decide not to appoint a custodian, but to fulfill the obligations of the custodian directly. Upon a decision to directly exercise the matters of custody a representative of the Custodian Body is appointed to conduct the tasks of a custodian on its behalf.

(2) The custodian's tasks, which require the permission of the Custodian Body or the participation of the body in any other way, in order to validate a decision, can be conducted by a representative of the Custodian Body only, if this person is holder of the administrative authorization of the Custodian Body. He shall abide by any directions of the Custodian Body and act in accordance with the provisions of this law.

Article 241.

Custody of More than One Person

The same person upon agreement may be appointed as a custodian for more than one person, if this is not in contradiction to the interests of the persons under custody.

2. Custody

Article 242.

Delegation of Obligations

If the Custodian Body generally takes the role of of a custodian or carries out special tasks of the custodian directly, it is authorized to entrust certain tasks to other professionals who can act on its behalf and under its supervision.

Article 243.

Entrustment

(1) The Custodian Body who decides on appointing the custodian defines the custodians obligations and scope of authority.

(2) Before making a decision from Paragraph (1) of this Article, the Custodian Body informs the custodian of the importance of custody, about rights and obligations and provides all other important information required for carrying out the task of a custodian.

Article 244.

Obligations of the Custodian

(1) The custodian is especially obliged to take care in good faith of the personality and the rights and interests of the person under custody and to administer his property with care, as well as to inform the Custodian Body of the course of custody.

(2) The custodian is especially obliged, with the assistance of the Custodian Body, to make use of all necessary means of social welfare in order to ensure the material requirements needed for the enforcement of custody measures.

Article 245.

Inventory of Property

(1) If the person under custody owns substantial property, the Custodian Body is obliged to attach an inventory- and evaluation-report of this property to his work report. This applies the same to the person who performs the obligations of a custodian in the name of the Custodian Body.

(2) The following data shall be provided with the inventory:

1. data of the person under custody
2. data about the custodian respectively a person who acts as a custodian in the name of the Custodian Body to administer the property of the person under custody
3. data on the person who holds things or property subject to the inventory on behalf of the person under custody

(3) If the Custodian Body, where it is legally strictly permissible, has initiated the procedure of custody, it can conduct the inventory and evaluation of property of the person under custody and undertake all necessary measures to protect this property, even before making the final decision for placement under custody.

3. Representation

Article 246.

Representation

- (1) The custodian legally represents the person under custody (legal representative).
- (2) If the obligations of the custodian are fulfilled directly by the Custodian Body or the custodian has only limited authority, the Custodian Body represents the person under custody through one of its representatives or other authorized professional personnel.
- (3) The person who represents the person under custody on behalf of the Custodian Body can perform the custodian's actions and measures as mentioned in Article 248 of this Law only upon prior permission of the Custodian Body.

Article 247.

Prohibition of Representation

The Custodian cannot represent the person under custody in the following legal transactions:

1. In legal transactions between the person and his spouse, his partner (in extra-marital cohabitation or in a factual relationship) or one of his relatives in direct line, unless the legal transaction is limited to the fulfillment of an obligation.
2. In legal transactions which involve transfer or burden by lien, mortgage or surety bond, if this means a secured claim of the ward against the custodian.
3. In legal transactions which involve an abolition or reduction of the aforementioned secured claims or which cause the obligation of the person under custody to such a disposition.
4. In a lawsuit between the persons designated in Paragraph (1) as well as in a lawsuit of an affair of the kind designated in Paragraphs (2) and (3) of this Article.

Article 248.

Requirement of Permission for Legal Transactions

- (1) The custodian requires prior permission of the Custodian Body:
 1. to enter into a legal transaction by which the person under custody is obliged to a disposal of assets in the whole or over an inheritance or over his future legal inheritance or his future part of an inheritance
 2. to a renunciation of the persons full or partial legacy
 3. to a contract which inclines the sale of a company-business as a whole or a contract that inclines the foundation of a company-business together with other persons
 4. to a lease of real-estate or commercial enterprises
 5. to renting or leasing or other contracts by which the person would be committed to regular obligations, if this contract exceeds the time of one year after the person reached majority.
 6. to an apprenticeship contract, if this contract binds the person for more than one year
 7. to contractual labor relations if they oblige the person for more than one year
 8. to the admission of money on the credit of the person under custody
 9. to the acquisition of a debenture or debenture bond or to entering a commitment of change or another paper, which can be transferred by endorsement
 10. to the assumption of a financial commitment or an endorsement
 11. for the granting of the power of procuration

12. to enter an amicable arrangement or an arbitration agreement, unless the subject of the controversy is assessable and does not exceed 200 Euro or unless the agreement corresponds exactly to a court proposal.

(2) If the custodian entered into legal transactions without prior permission of the Custodian Body, the validity of the transaction depends on its later approval by the Custodian Body.

Article 249.

Requirements for Permission

The permission shall only be granted to the custodian in person.

Article 250.

Request for Actions to be taken

(1) The custodian, public prosecutor, commune in whose territory the person under custody is residing or domiciled, a relative to the person under custody, humanitarian organizations or non-involved third persons can make a request or proposal in any matter of custody to the Custodian Body, to undertake actions and measures of custody, required for the protection of interests of the person under custody.

(2) The applicants mentioned in Paragraph (1) of this Article may file a complaint to the second instance against a decision of the Custodian Body refusing custody measures and actions within a term of 15 days from the day of the decision.

Article 251.

Transactions between the Custodian and the Person under Custody

The custodian can enter into a legal transaction with the person under custody only if the Custodian Body approves that this is in the interest of the person under custody.

4. Work Report and Evaluation

Article 252.

Regular Work Report

- (1) At the beginning of each year the custodian shall present a report to the Custodian Body and give account of his work for the past year. Monthly reports shall be given on request of the Custodian Body and a final report when he ceases to be a custodian.
- (2) The report of the custodian shall demonstrate his work and care for the personality of the person under custody, especially the conditions of placement and as far as applicable his health, education, upbringing and all other matters of importance for the personality of the person under custody.
- (3) The report shall contain also information on all property matters.

Article 253.

Review of the Work Report

The Custodian Body has the obligation to conscientiously review all reports on the work of the custodian and, if required, to undertake all necessary means to protect the interests of the person under custody.

Article 254.

Remarks on the Work of the Custodian

- (1) The person under custody may make remarks on the work of the custodian, but remarks may also be made by his relatives and third persons.
- (2) The remarks on the custodian's work shall be delivered to the Custodian Body, to decide on matters of custody.
- (3) In case the Custodian Body fulfils the obligations directly, the remarks on the Custodian Body are delivered to the second instance court, to decide on matters of custody.

Article 255.

Examination of Remarks

(1) The Custodian Body examines the remarks and in case founded remarks require intervention, it undertakes all necessary steps.

(2) In case the Custodian Body fulfils the obligations directly and the responsible second instance court concludes that the remarks are founded, it gives instructions to the Custodian Body to undertake all necessary steps. The Custodian Body, pursuant to the instructions shall decide, which measures to undertake and shall inform the second instance body about this.

5. Compensation for Expenses and Damages

Article 256.

Compensation

(1) The custodian fulfils his obligations without compensation, but the Custodian Body may award compensation to the custodian who devotes himself to a great extend to the given task.

(2) The custodian has a right to reimbursement of reasonable expenses incurred during the conduct of a custodian's tasks.

Article 257.

Liability for Damages

The custodian is liable for any damages to the person under custody which have been caused by unfounded refusal to fulfill the obligations of a custodian, by unreasonable omission to timely fulfill the obligations of a custodian, by negligent behavior, by the violation of rules of this law or upon arbitrary abandonment of his responsibilities.

Article 258.

Obligation to Sustain, Claim of Refund

(1) In case of irregular conduct of the custodian the Custodian Body is under the obligation to undertake all necessary means to maintain the representation of rights of the person under custody.

(2) As far as compensation of damages is concerned, the Custodian Body shall provide immediate compensation for all damages towards the person under custody and shall give the custodian a time limit to refund the amount.

(3) In case the refund is not provided within the given time limit the Custodian Body, directly or through a custodian appointed on this occasion, submits a claim to the competent court, to sue liability of the custodian.

6. Discharge and Release

Article 259.

Discharge of the Custodian

(1) The Custodian Body without delay shall discharge the custodian, if it concludes that the custodian has misused his authority or threatened the interests of the person under custody.

(2) The same applies in case that the custodian for any reason has lost the right to be a custodian.

(3) The Custodian Body shall discharge the custodian within a 30 days time limit if it finds that the custodian has been negligent in the fulfillment of his obligations or it considers, that it would be necessary for the person under custody to be assigned to another custodian.

(4) When the Custodian Body acts under the authority of Paragraphs (1) and (2) of this Article, it is obliged to undertake all necessary means to maintain the representation of rights until the appointment of the new custodian is accomplished.

Article 260.

Release of the Custodian from Obligations

(1) The Custodian Body shall release the custodian from his obligation on his request no later than three months from the day of request.

(2) A relative of the person under custody who is related by blood in a direct blood line (Consanguinity) or who is a brother or sister of the father or mother who is serving as a custodian, shall be only released on his request, if there are no grounds under which the request should be denied.

(3) When the Custodian Body acts compliant to Articles 259 or 260, it is obliged to undertake all necessary measures to protect, ensure and maintain all rights and interests of the person under custody. It shall select and appoint a new custodian as soon as possible.

Article 261.

Property Issues after Discharge or Release

(1) If the person under custody owns property, the Custodian Body undertakes all necessary measures to verify the current state of property by means of an inventory and an evaluation of the property.

(2) All property under custody shall be entrusted as soon as possible to the new custodian or to the person, who on behalf of the Custodian Body exercises the task of a custodian.

(3) The inventory, evaluation and delivery of the property of the person under custody shall be accomplished by a commission, appointed by the Custodian Body. Proceedings are to be held under the presence and participation of the discharged or released custodian, the new custodian respectively the person who directly exercises the task of a custodian in representation of the Custodian Body as well as the person under custody, in case that the latter is mentally capable to understand the matter.

VII. POWERS AND PROCEDURE

Article 262.

Territorial Competence

(1) Territorial competence of the body which according to the provisions of this Law carries out and performs the tasks and work of custody, is decided according to the domicile (registered place of living) and if this does not exist, according to the residence (unregistered place of living) of the person under custody.

(2) Territorial competence from Paragraph (1) of this Article is determined at the time, the conditions for placement under custody arose.

Article 263.

Change of Residence

(1) If residence changes, respectively the domicile of the person under custody changes, the territorial competence of the Custodian Body changes accordingly.

(2) The new competent Custodian Body shall decide whether a new custodian shall be assigned and whether any measures determined by the previous competent body shall be changed or maintained.

Article 264.

Official Obligation and Rule of Urgent Procedure

(1) The procedure for placement under custody is initiated and is conducted as an official obligation.

(2) The procedure under Paragraph (1) of this Article is deemed urgent.

Article 265.

Bodies to be informed

The Custodian Body shall be informed as a matter of obligation by the below mentioned bodies of the need of a person to be placed under custody or of another form of necessary protection, respectively about the termination of custody:

1. the registrar,
2. judicial bodies and administrative bodies that during the course of their obligations are involved in the matter,
3. relatives, family members and if deemed necessary, third non-involved persons.

Article 266.

Procedure

(1) When the Custodian Body becomes aware that a person shall be placed under custody, it immediately undertakes all necessary measures to protect personal rights, the property and other interests of such a person and starts the procedure for placement, namely appoints the custodian, determines his obligations and the scope of his authority, respectively makes the decision to fulfill the obligation of a custodian directly.

(2) After the appointment the Custodian Body shall immediately entrust its obligations to the custodian.

(3) In the procedure of entrustment the following persons shall participate:

1. the custodian
2. the person under custody, in case he is mentally capable to understand the subject matter
3. family members, which whom the person under custody cohabitates.

(4) The representative of the Custodian Body orally informs all persons present about the obligations and the competencies of the custodian and the person under custody, as well as about aims and purposes of custody.

(5) Upon delivery of documentation about the property which has to be administered by the custodian in accordance with the provisions of this Law, the obligations of the custodian in this respect become legally effective.

(6) The Custodian Body may assign a temporary custodian while the decision is pending.

Article 267.

Considerations

On making the decision about the adequate form of custody, the Custodian Body shall consider all interests of the person under custody and determine all contemporary professional methods of social work and social protection, as well as consider all pecuniary and materialistic possibilities available.

Article 268.

Registration

(1) The action for placing a person under custody and the action for the termination of custody shall be sent to the competent registrar within a time limit of 15 days after it has become legally effective. Legal effect is achieved, when decisions are issued.

(2) If the person owns immovable property, action under Paragraph (1) of this Article is issued also to the competent body within the same term, for registration of this fact in public land registers.

Article 269.

Written Evidence

The Custodian Body is obliged to collect and keep written evidence about the procedures, in particular for custody cases involving minors, custody of adults and special forms of custody.

Article 270.

Costs

(1) The costs for the application of certain measures, taken in the interest of the person who is being granted protection according to the provisions of this Law, is paid in accordance of priority by:

1. The income of a person who is being protected
2. Pecuniary means acquired from parents or other persons who are under the obligation to provide financial maintenance for the person who is being protected
3. Pecuniary means acquired because of social protection and other forms of assistance and welfare

(2) Means achieved because of social protection, shall be used under the direction of the custodian to undertake all necessary measures in the interest of the person who shall be granted the given form of protection according to the provisions of this Law.

(3) This shall also apply when this person has his own sufficient means, but the request made to those who have the obligation to provide protection causes difficulties, resulting in a gap of protection in a way as to endanger his life, health or regular education.

(4) The Custodian Body has the right to claim expenses made under Paragraph (2) and (3) of this the person whose needs are met, respectively to pursue his claims towards those, who have the obligation to provide protection.

PART SEVEN.

PROPERTY RELATIONS OF MEMBERS OF THE FAMILY COMMUNITY

Article 271.

Family Community

A family community consists of the spouses and their immediate family which for the purpose of this Law include the children and the parents of the spouses. Other family related persons as well as persons who are substantially dependent economically and who live in a common household with the spouses may be considered members of the family community for the purposes of this Law.

Article 272.

Acquisition of Property

All property acquired during the duration of this union is considered to be joint property of all members of the family community who have participated in its creation.

Article 273.

Administration of Property

(1) Joint property is being administered jointly by the members of the family community and is disposed of by mutual agreement.

(2) Minors who are members of a family community and who have reached the age of 15 take part in the administration and have equal rights in regard to the disposal of joint property.

(3) Administration of joint property on mutual agreement of all members of the community can be entrusted to one or more members of the family community

(4) Each member of the family community may request the decision on entrustment of administration of the joint property to be revoked. If the other members of the family community do not agree, the decision is taken by the court in an ex-officio procedure.

Article 274.

Immovable Property

(1) Rights of members of a family community concerning immovable property are registered in public registers for proof of ownership (Land Register). Entry is made on behalf of all the members of a family community who with their work have participated in the acquisition of undetermined parts.

(2) If the registers show a registered member of the family community in the capacity of an owner (single owner), as long as upon a joint proposal of all other members of the family unit, the facts concerning the rights of ownership are not changed to the legal status of joint property.

(3) The contract by which a member of the family community, who has been registered as single owner in public registers transfers or burdens the immovable property, the other members of the family community may legally attack such action. This shall only be possible, if at the time of entering into a contract the register showed facts on rights of joint ownership or if at the time of entering into a contract with a third party, the single owner has made public without doubt that the property is under family community.

(4) Non-authorized transfer of immovables can otherwise only be legally attacked, if the recipient was in bad faith.

(5) If a member of the family community transfers the property without authority, the other members of the family community have the right to rise a claim at the competent court for an evaluation of their part and a decision for pecuniary compensation.

Article 275.

Analogy

If the Law does not provide otherwise, property relations among members of the family community in this Law shall apply in analogy on governing of property relations between spouses.

Article 276.

Contractual Agreements and its Certification

(1) The members of a family community by contract may regulate their reciprocal property relations.

(2) The contract from Paragraph (1) of this to be provided in writing, has to list all members of the family community with their form of participation and has to be certified by a judge.

(3) Upon certification, the judge shall read the contract and shall inform the contracting parties about the consequences of the contract.

(4) If minors participate in the contract, the court shall request the opinion of the Custodian Body prior to certification.

Article 277.

General Rules on Property Rights

General rules of property relations apply also for property relations among members of the family community if not otherwise foreseen in this part of the Law.

PART EIGHT.

FINANCIAL MAINTENANCE

I. PRINCIPLES

Article 278.

Principle

(1) Financial maintenance in the context of this Law shall mean financial support and material support.

(2) Relatives related by blood in a direct blood line (Consanguinity) are under the obligation to provide reciprocal financial maintenance.

Article 279.

Neediness

Only persons who can not financially maintain themselves are eligible to financial maintenance.

Article 280.

Service Capability

(1) Persons who under consideration of all personal obligations are not able to provide financial maintenance without endangering their own reasonable maintenance, are not obliged to provide maintenance.

(2) Parents who fall under Paragraph (1) are obliged to provide financial maintenance to their minor and unmarried children by all reasonable means. This also applies to children between the age of 18 and 26 as long as they live in the household of their parents or one parent and are still in general education.

(3) The obligation mentioned in Paragraph (2) is not applicable if there is another relative who is obliged to provide financial maintenance. It shall also not apply if the child's support may be taken from the child's assets.

Article 281.

Obligation of Reciprocal Information on Financial Situation

(1) Relatives in a direct line are obliged to disclose to each other their income and financial situation based on request.

(2) Based on request the person who is obliged to provide maintenance shall present written evidence and documents to give proof about his income and his financial situation.

Article 282.

The Order obliged Persons

- (1) Primarily the spouse is obliged to provide financial maintenance to the other spouse.
- (2) In case the obligation of financial maintenance lies with several relatives, the obligation lies firstly with the descendants and secondly with the relatives in the ascending line.
- (3) The obligation for providing financial maintenance for people in consanguinity is determined according to order by which applies in inheritance.
- (4) Among several relatives who are of the same nature of relation, all of these are obliged in proportion to their financial capabilities. The person who directly takes care for a child in his household fulfils his share by providing care and education.

Article 283.

Change in Order of Obligation

- (1) As far as a relative is not obliged to provide financial maintenance, the obligation passes over to the relative based of the further order of obligation.
- (2) The responsibility of a spouse to provide financial maintenance to the other spouse passes over to the relatives of the person in need only in case of financial incapability as mentioned in Article 280 (1).

Article 284.

Regulation of Share of Obligation of More Persons in Providing Financial Maintenance

In case more than one person is in need and the person under the obligation to provide financial maintenance to all of them is not capable to provide full maintenance under the reasons mentioned in Article 280, the obligation is shared among all relatives obliged, until financial maintenance is fully guaranteed.

Article 285.

Extent of Maintenance

(1) The extent of maintenance shall be adequate to the conditions under which the eligible person used to live. In case the situation was desolate, the maintenance should provide at least the minimum which is needed to maintain daily life in dignity.

(2) Maintenance consists of all necessary requirements of living, including all costs of necessary training or education to acquire a profession.

Article 286.

Form of Maintenance

(1) Maintenance shall be primarily pecuniary.

(2) The person under the obligation to provide pecuniary maintenance may ask for the permission of the Custodian Body to be allowed to provide maintenance in another form if a special situation requires this.

(3) Maintenance has to be paid monthly in advance.

Article 287.

No Renunciation of Maintenance

The person eligible to maintenance can not renounce his right to future maintenance.

Article 288.

Expiration of the Right to Financial Maintenance

- (1) The right to maintenance between two persons expires, if either one of them dies.
- (2) This does not apply to the obligation of a parent towards his child. In this case his obligation is passed to his legal successor.

II. FINANCIAL MAINTENANCE AND ALIMONY

1. Financial Maintenance of Children

Article 289.

Application of Principles

General principles of the responsibility of parents provided for in this Law shall apply whereas not otherwise foreseen in the following Articles.

Article 290.

Financial Maintenance

- (1) Parents are under the obligation to provide financial maintenance for their minor children.
- (2) If the child has not completed schooling until majority, parents are under the obligation to provide all necessary support to ensure schooling, respectively education at a faculty, the latest until the child is 26 years of age.

Article 291.

Maintenance of Adult Children in Special Cases

If a child of full age is unable to work due to illness, physical or mental defects, and does not have sufficient means for his financial outcome, parents are under the obligation to provide financial assistance until such a situation ceases.

Article 292.

Obligation of the Child

From the age of 15 years on a child who earns income by his own work, is under the obligation to financially contribute for his own maintenance and if required, also for a reasonable contribution to the maintenance of the family he lives with.

Article 293.

No Loss of Obligation by Loss of Parental Custody

The parent who loses parental custody is not released from the obligation of maintenance towards his child.

Article 294.

Obligation of Children towards their Parents

(1) Children have an obligation to provide financial maintenance to their parents if their parents are not able to work or do not have sufficient minimum means to live.

(2) By way of exception, the court may refuse a claim for financial maintenance, if the parent has lost parental custody or has not provided financial maintenance for the child, despite his financial capability.

(3) The exception mentioned in paragraph (2) of this Article also applies if the court, after examining all the circumstances of the case concludes that the obligation of the child would present an open injustice to the child.

Article 295.

Obligation of Stepparents towards their Stepchildren

(1) Step father and step mother are under the obligation to provide financial maintenance for their step children if these have no other relatives who, according to this Law, are under the obligation to provide financial maintenance or have only relatives who are financially incapable.

(2) The obligation of stepmother or stepfather continues even after the death of their partner who has been a natural parent to the child, if the step child and the step mother or step father cohabitated prior to the death of the partner.

(3) This shall not apply, if marriage between the parent and stepfather or stepmother of the child has been annulled.

Article 296.

Obligation of Stepchildren towards their Stepparents

Stepchildren are under the obligation to provide financial maintenance for the step father and step mother according to Article 294 if their step parents have provided financial maintenance and care for them for a reasonable time. If step father and step mother have their own children, then this obligation is shared with the other children.

2. Matrimonial Maintenance (Alimony)

Article 297.

Definition of Alimony

Alimony is financial maintenance of spouses or former spouses.

Article 298.

Eligibility of Spouses for Alimony

(1) The spouse who does not have sufficient means for financial maintenance, who is unable to work or cannot be employed for other reasons, has the right to financial maintenance from the other spouse in proportion to his financial abilities.

(2) The court, considering all the circumstances of the case, may refuse the request for alimony, if alimony is demanded by a spouse in bad faith or if he has abandoned the spouse without any reasonable grounds.

Article 299.

Alimony for the Care of a Child

A divorced spouse may claim alimony from the other spouse as long as and to the extent he cares for and maintains a common child and for this reason it is impossible to work.

Article 300.

Alimony for Old Age

A divorced spouse may claim alimony from the other spouse if and as far as from the moment

1. of divorce
2. the conclusion of care and maintenance of a common child
3. the conclusion of the conditions foreseen in Articles 301 and 302 of this Law

he can not be expected to engage into employment because of his old age.

Article 301.

Alimony for Illness or Disability

A divorced spouse may claim alimony from the other spouse if and as far as from the moment of divorce, the conclusion of care and maintenance of a common child or the conclusion of the conditions foreseen in Article 302 of this Law he can not be expected to engage into employment because of an illness, a disability or a weakness in his physical or mental strength.

Article 302.

Alimony because of Unemployment, Claim for Difference

(1) As far as Alimony can not be granted under the provisions of the preceding Articles 299–301 a divorced spouse may claim alimony if and as far as he is not able to find employment after the moment of divorce.

(2) In case earnings from employment do not suffice and he is not eligible for alimony under Articles 298-301, he is eligible to claim the difference as alimony in order to achieve reasonable financial maintenance.

Article 303.

Adequate Employment

(1) The divorced spouse can only be requested to engage in adequate employment.

(2) Employment is adequate, if it is in relation to education, capabilities and health of the divorced spouse and it is adequate to the state of living. The latter is dependent on the time, the marriage lasted and the time, the divorced spouse engaged in care and upbringing of a common child.

(3) The divorced spouse shall engage in further education or retraining, if it is possible and necessary to find employment.

Article 304.

Neediness

The divorced spouse may not ask for alimony, as far and as long he is able to maintain himself from his own earnings and property.

Article 305.

Extent of Alimony

The extent of alimony is dependent on the matrimonial standard of living. Maintenance of the standard of living requires also the costs for adequate health insurance and costs for education or further education or retraining according to Paragraph (3) of Article 306.

Article 306.

Limitation or End of Obligation

(1) A claim for alimony shall be rejected or limited. This shall be dependent on extent the claim is unreasonable.

(2) The claim shall be unreasonable if

1. the period of time the marriage lasted or the period of time maintenance was provided for a common child was very short and for the fact of marriage or maintenance alimony is claimed for
2. the claimant is guilty of a crime or a deliberate aggravated assault against the other spouse
3. the claimant intentionally caused his neediness.

Article 307.

Capability for Alimony

(1) Persons who considering all other obligations are not able to provide alimony without endangering their own reasonable maintenance, are not obliged to provide maintenance.

(2) As far as they are able to provide alimony the obligation remains.

Article 308.

Obligation of Reciprocal Information on Financial Situation

(1) Divorced spouses are obliged to disclose to each other their income and financial situation on request.

(2) Written evidence and further documents shall be presented on request, in order to give proof about income and financial situation.

Article 309.

Regulation of Order on Obligation of Alimony

(1) The obligation for alimony lies firstly with the divorced spouse.

(2) If or as far as the divorced spouse does not provide sufficient alimony, the obligation is passed on, as the right to financial maintenance, to the relatives according to the succession line of the defendant.

Article 310.

Form of Alimony

(1) Alimony shall be primarily pecuniary.

(2) The person under the obligation to provide alimony may ask for the permission of the Custodian Body or court to be allowed to provide maintenance in another form if a special situation requires this.

(3) Money has to be paid monthly and in advance.

(4) Instead of a monthly payment the claimant may ask for a lump sum satisfaction. This shall only apply if there are reasonable grounds and the lump sum would not result in an unfair burden to the person under the obligation to provide alimony.

Article 311.

Settlement

Divorced spouses may enter in an agreement about alimony within the court where the procedure for alimony is conducted.

Article 312.

Expiration of Rights

The right of the divorced spouse for alimony ceases, when the conditions of Articles 298-302 of this Law no longer apply, when the time has expired for which the court has determined alimony, when the divorced spouse that enjoys this right re-marries or enters into a non-marital cohabitation (factual relationship) or dies.

Article 313.

Continuation of Rights

(1) The obligation to provide Alimony does not cease with the death of the obliged person but is passed on to his legal successor. In this case all possible limitations on the amount of alimony cease and the amount is re-determined, dependent on the financial capabilities of the successor.

(2) This also applies for the claim for alimony for the month the claimant entered into a new wedlock or died.

Article 314.

Resurgence of the Right to Receive Alimony

In case where a person who is eligible to alimony entered into a new wedlock and this is later dissolved by divorce, the claim for alimony against his earlier spouse is resurged, if he cares for a common child from his first marriage.

Article 315.

Court Procedures

(1) The spouse has the right to request that by the same lawsuit which dissolves the marriage the court extends the suit in regard to alimony.

(2) The spouse who has not requested alimony from the other spouse in the divorce disputes, due to any reasonable ground, may submit such a claim in a separate law suit within two years but only if the below mentioned conditions are met:

1. conditions on granting alimony have existed before divorce and have continued until the closure of the court session in alimony dispute or
2. if within this deadline the incapability to work is caused as a consequence of personal injury or health injury from the time before the divorce.

Article 316.

Alimony in Cases of Unexpected Annulment of Marriage

In case marriage is annulled, the spouse who at the time of entering into the marriage did not know the cause of the invalidity of the marriage, can demand the other spouse to provide alimony under the conditions in which a divorced spouse shall satisfy a claim for alimony.

3. Special Provisions for the Protection of Children of Unmarried Parents

Article 317.

Obligation of the Unmarried Father

- (1) The father of a child is obliged to grant financial maintenance for the time span of 6 weeks prior of birth and eight weeks after the birth of a child.
- (2) This relates also to all costs of pregnancy and delivery of the child.
- (3) As far as the mother can not engage into employment because of an illness inflicted by pregnancy or delivery, the obligation to provide financial maintenance for the child and alimony to the woman may be timely extended.
- (4) The same shall apply if the mother can not engage into employment because of care and upbringing of the child.
- (5) This shall also apply in cases when the child was born dead or has died after birth or during the disability of the child, if caused by birth.

Article 318.

Limitations

- (1) The obligation to provide maintenance begins earliest 4 weeks before delivery and ends latest three years after birth.
- (2) The three year limitation may be extended, if it is deemed strictly necessary to maintain living conditions of woman and child.

Article 319.

General Rules on Obligations of Maintenance among Relatives

- (1) All provisions on obligations of maintenance between relatives shall apply as well for children of unmarried parents.
- (2) The obligation for alimony firstly lies with the father and then with other relatives.

Article 320.

Obligation of the Unmarried Mother

If the father is in charge with care and upbringing of the child, he may claim financial maintenance mentioned under Paragraph (4) of Article 317.

Article 321.

Refusal of Claim

The court may refuse the claim for alimony only if the claimant is guilty of a deliberate aggravated assault or similar crime against his partner.

Article 322.

Invalidity of Renouncement

Rights for alimony between unmarried partners can not be renounced.

III. PROCEDURES

1. Principles and procedures on maintenance and alimony

Article 323.

Territorial Competence

In disputes on alimony the child respectively his legal representative may file a lawsuit either at the court with general territorial jurisdiction or at the court in whose territory the plaintiff resides or is domiciled.

Article 324.

Legal Panel

The procedure for the alimony dispute at the First Instance Court is conducted and decided by a panel consisting of one judge and two lay judges, whereas at the Second Instance Court by a panel of three judges.

Article 325.

Ex Officio Decision

(1) Wherever possible, decisions on protection and maintenance of children in marital disputes shall be ex officio

(2) The court shall accept an agreement of parents on financial maintenance in accordance with this Law only if the settlement is in conformity with the provisions of this Law on issues of financial maintenance.

(3) The court decides, ex officio, on the financial maintenance of the child only if it is confirmed, that the defendant is the father of the child, respectively it is confirmed that the defendant is the mother of the child.

Article 326.

Involvement of the Custodian Body

- (1) The Custodian Body on behalf of the minor child may initiate and conduct the lawsuit.
- (2) It may also initiate the lawsuit for the increase of alimony, if the parent who has custody of the child, does not exercise such right due to unreasonable grounds.
- (3) If the parent does not claim enforcement of the decision, by which alimony has been decided on by the court, the Custodian Body on behalf of the minor child may request a final decision in the execution procedure in accordance with provisions of the Law on Enforcement Procedures.

Article 327.

Ex Officio Temporary Measures for Maintenance of Children

- (1) In disputes of financial maintenance of children, in disputes about custody and in disputes where financial maintenance for the child is decided ex officio, the court determines ex officio temporary measures for financial maintenance if both parents do not effectively contribute to the child's financial maintenance.
- (2) If the parent who on the basis of the court decision is obliged to provide the determined amount for financial maintenance does not carry out his obligation regularly, the Custodian Body, at the request of the other parent or as part of its official obligation undertakes all necessary measures to provide the child with temporary financial maintenance according to the provisions on social protection of children.
- (3) The measure shall last as long as the parent does not fulfill his obligation.
- (4) Enforcement measures against this parent shall be initiated if necessary.

Article 328.

Temporary Measures for Maintenance of Adults

- (1) In disputes about alimony or financial maintenance of adults the court may determine temporary measures for their alimony or financial maintenance only upon the request of the claimant.
- (2) Enforcement measures may be initiated on request of the claimant.

Article 329.

Encouragement of Out of Court Settlements

The Custodian Body is obliged to encourage children and parents to enter into out of court settlements.

Article 330.

Principles of Determination of Maintenance and Alimony

- (1) The obligation to provide financial maintenance or alimony is determined in proportion to all means of the defendant and within the limits of the needs of the claimant.
- (2) The court shall consider the defendants financial situation, ability to work, factual possibility of employment, health condition, personal needs, legal obligations and all other relevant circumstances.
- (3) When alimony is demanded for the child, the court considers the age of the child and all needs for his education.

Article 331.

Adjustment of Maintenance Decisions

- (1) The court, upon the request of the claimants or the obliged persons may increase, decrease, end or change financial maintenance or alimony which has been determined by a previous court decision, if circumstances on which the decision was based have changed.
- (2) Conditions which may change are namely personal needs and a rise in costs of living on the claimant's side and financial status of the defendant on the other side.

Article 332.

Extension of the Lawsuit

(1) When the court concludes that parents alone or together cannot fulfill the alimony needs of the minor child to the amount deemed necessary by the court, the Custodian Body shall be informed in this regard.

(2) In such cases, the Custodian Body may extend the lawsuit for financial maintenance and include other persons who according to the Law are obliged to provide financial maintenance.

(3) The decision on inclusion of these persons is incontestable.

(4) The legal representative of the minor child is entitled to request an extension of the lawsuit under the conditions set out in Paragraph (2) of this Article.

(5) If in the subsequent procedure the court concludes that other relatives also have no means to satisfy the needs of the child, the Custodian Body will take necessary measures to secure the alimony needs of the child according to provisions on social protection namely those mentioned under Articles 316 – 327.

Article 333.

Enforcement of Court Decisions

(1) The decision to increase financial maintenance or alimony at the request of the eligible person or the proposal of the Custodian Body is taken by the competent court. Based on an executive decision the court may initiate enforcement proceedings according to the rules on issuance of enforcement decisions. The Custodian Body respectively the competent body shall be informed about this procedure for statistical matters.

(2) If the obligor of alimony challenges the decision pursuant to Paragraph (1) of this Article, indicating in his challenge that his income has not been increased in proportion to the increase of the costs of living or other circumstances have occurred which do not support the increase of financial maintenance or alimony, the court will instruct such a person to initiate litigation within the prescribed time limit to proclaim enforcement as unacceptable.

(3) Until enforcement litigation becomes final, the enforcement decision for the payment of the amount evaluated for financial maintenance or alimony will be postponed, but the court may decide not to postpone enforcement, if it deems that the debtor will not be harmed by such action.

Article 334.

Cooperation in Enforcement

The employer of a person against whom a court decision for alimony or financial maintenance is being enforced, is obliged to cooperate with the authorities to provide a compulsory deduction of the alimony contribution from the persons salary or wage.

Article 335.

Exclusion of the Public

In order to guarantee protection of personal rights of parents and children, the public is excluded from all litigation for financial maintenance and alimony.

Article 336.

Revision

Revision is allowed in all disputes on financial maintenance and alimony.

2. Principles and procedures of disputes on relations between parents and children

Article 337.

Territorial Competence

In disputes for verification or challenge of a paternity or maternity the child, respectively his legal representative may file a lawsuit, either at the court with general territorial competence or at the court in whose territory the person resides or is domiciled.

Article 338.

Legal Panel

The procedure of a lawsuit among parents and between parents and children at the first instance level will be conducted and decided by a panel, consisting of one judge and two lay judges, whereas at the court of second instance the panel consists of three judges.

Article 339.

Participating Parties

(1) In disputes for the verification of paternity, parties of the lawsuit are the person whose paternity should be verified, the child and the mother of the child.

(2) In disputes challenging the paternity of the person, who according to the Law is deemed to be the father of the child participating parties are: the person challenging paternity, the child and the mother of the child.

(3) In disputes where the person, who deems himself to be the father of the child, challenges the paternity of the person who has recognized the child as his own, the parties in the dispute are: the person who refuses to recognize the accepted paternity, the person whose paternity is being objected, the child and the mother of the child.

Article 340.

General Court Procedures on Verification of Paternity or Maternity

(1) In disputes of family relations between parents and minor children and lawsuits for verification or refusal of paternity or maternity as well as in the case of adult children, the court may also consider facts which are not contested by the parties.

(2) In such disputes, no judgment can be pronounced because of absence or non-admission.

(3) In a dispute about the verification or refusal of paternity or maternity, a judicial agreement shall not be allowed.

(4) If in the lawsuit for verification of paternity or maternity the defendant recognizes his paternity respectively maternity, the procedure shall be suspended and the court will immediately send a certified copy of the minutes, together with the declaration for recognition of paternity respectively maternity to the competent official for registration of the child in the birth register.

Article 341.

Ensuring Necessary Participation, Rejection of Claim

(1) If in the verification dispute, respectively in the dispute for rejection of paternity, as claimant and defendant have not been included all persons mentioned in article 339 of this Law, the court shall invite the claimant to extend the lawsuit to more persons. These persons can not reject the extension of the lawsuit..

(2) If in the dispute for rejection of paternity, the plaintiff, within the term determined by the court, does not extend the suit to other persons, who are not initially included in the suit or if these persons within the same term do not join to the claim as new claimants, the claim shall be rejected.

(3) If in the dispute for verification of paternity, the plaintiff, within the term determined by the court, does not extend the suit to other persons, who are not initially included in the suit, or if these persons within the same term, have not joined in the suit as new plaintiffs, the court shall inform the Custodian Body on this matter and shall determine a new term within which the parties shall join the suit.

(4) If no further parties participate in the lawsuit in the given time limit, the claim shall be rejected.

Article 342.

Involvement of the Custodian Body

(1) In case of family relations disputes between parents and minor children, the court shall inform the Custodian Body, if it concludes that the statutory representative does not exercise the appropriate care in his responsibility due to a lack of knowledge or negligence.

(2) The Custodian Body at any time has the right to participate in such a dispute if it concludes that this is in the interest of the child or if the child is a party in the dispute.

(3) As a participant in the procedure, the Custodian Body is entitled to make proposals for the protection of rights and interests of children, to submit the facts which were not pointed out by the parties and to propose the collection of evidence, to provide necessary means of support.

(4) The court is obliged to invite the Custodian Body participating in the procedure to all court sessions and to send all of its decisions to this body.

Article 343.

Protection of Children by Special Custodians

(1) If a child and the parent, who is the legal representative of the child, jointly file a lawsuit for the verification or refusal of paternity, respectively, if they are defendants in the same suit, that parent shall also represent the child in the lawsuit but the Custodian Body may appoint to the child a special custodian if there are conflicting interests between the parent and child in the same suit.

(2) If the child and parent, who is the legal representative of the child, have opposing interests in the suit as plaintiff and defendant, the Custodian Body shall assign a special custodian to the child.

Article 344.

Ex Officio Temporary Measures for the Protection of the Child

(1) In custody procedures, the court ex officio may determine temporary measures for protection, education and placement of children.

(2) Temporary measures may be applied, irrespectively of the decision made in the underlying dispute or the nature of the underlying lawsuit if this is deemed necessary.

(3) Appeal against the decision on temporary measures does not stop the execution of the decision.

Article 345.

Exclusion of the Public

In the litigation for the verification or refusal of paternity and in disputes for custody of the minor child, the public is excluded from the lawsuit to guarantee protection of children.

Article 346.

Joint Dispute Procedures

Parties which jointly file a dispute for refusal or verification of paternity or maternity, respectively which are defendants in the same lawsuit, are deemed to be one contesting party, so that if the litigants make any omissions in any of the contesting actions, the effect of the contesting action undertaken by the other litigant extends over the litigant who did not undertake such action.

Article 347.

Costs

The court decides on its discretion on the costs of the procedure.

Article 348.

Second Instance Ex Officio Measures

(1) In the appeals proceedings of disputes for verification of paternity or maternity and in disputes for protection, education or financial maintenance of a minor child, the court of second instance shall take ex officio decisions in the interest of the minor child wherever possible.

(2) In case of disputes under Paragraph (1), the court of second instance will examine even the parts of the decision which were not challenged by the appeal.

IV. PROVISIONS OF CIVIL PROCEDURES

Article 349.

Application of the Law on Judicial Contests

Provisions of the Law on Judicial Contests in marital litigations or court disputes among family members apply, unless this Law provides otherwise.

Article 350.

Application of the Law on Extra-Judicial Proceedings

In legal issues which by this Law are regulated in extra-judicial procedure, shall apply provisions of the Law on extra-judicial Procedure.

V. ENFORCEMENT PROCEDURES

Article 351.

Territorial Competence

(1) With regard to the decision for the enforcement of the court order to deliver the child to the parent or to any other person to whom the child was entrusted for protection and education, the competence lies with the court which has general territorial jurisdiction for the party which demands such enforcement, as well as with the court in whose territory the child is found.

(2) The court in whose territory the child is found has the territorial jurisdiction to carry out enforcement procedures.

Article 352.

Enforcement Procedures

(1) On the occasion of compulsory enforcement, the court will consider the emergency nature of the procedure and the need to protect the personality of the child to the maximum extent.

(2) The court, after evaluating all the circumstances of the case, will decide whether to apply the enforcement by determining fines against the person, where the child is found or whether to remove the child from the person or not.

(3) If the purpose of enforcement cannot be achieved by a decision of fines, enforcement shall be applied by taking the child from the person where the child is found and handing over the child to the parent or another person to whom the child has been entrusted to for protection and education.

(4) In the enforcement procedures the court shall seek for opinion of the Custodian Body.

VI. TRANSITIONAL AND FINAL PROCEDURES

Article 353.

Family Law Procedures

The rules of procedures for courts, the Custodian Body, other bodies and authorized persons as mentioned in this Law are regulated in the applicable Law until a new law regulating this matter is adopted.

Article 354.

Transitional Provisions

(1) Cases that are under procedure will end according to the laws that have been in force.

(2) The deadlines set forth in this law on filing a suit will be implemented in all those cases on which the deadlines set forth in the provisions of this law have not passed.

Article 355.

Entry into Force

The present law shall enter into force after adoption by the Assembly of Kosova on the date of its promulgation by the Special Representative of the Secretary-General.

Law No.2004/32

20 January 2006