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## THE FAMILY LAW

### Part One

#### INTRODUCTORY PROVISIONS [Preamble]

##### Article 1

This Law governs marriage, the relations of parents and children, adoption, guardianship, the effects of an extramarital union between a man and a woman, and the procedures of the competent bodies in connection with family relations and guardianship.

##### Article 1

The government of family relations is based on the following principles:

- 1) the equality of woman and man and mutual respect and assistance among all members of the family,
- 2) the protection of the welfare and rights of the child, and the responsibility of both parents for the raising and upbringing of the child,
- 3) appropriate guardianship protection for a child without parental care and for an adult that has mental difficulties.

##### Article 3

The provisions of this Law concerning the consequence of an extramarital union are applied to the life union of an unmarried woman and an unmarried man who do not live in some other extramarital union, which lasts for at least three years or even shorter if a joint child is born in it.

##### Article 4

- (1) In the implementation of this Law, legal entities and individuals who provide expert assistance or who settle disputes among the members of the family are bound to work together.
- (2) The competent bodies as defined in Paragraph 1 of this Article apply separate regulations unless otherwise determined in this Law.

### Part Two

## MARRIAGE

##### Article 5

Marriage is a legally governed life union between a woman and a man.

### I. CONTRACTING MARRIAGE

##### Article 6

Marriage is contracted with the statement of consent of a woman and a man in a civil or religious form.

#### Article 7

In the civil form, marriage is contracted before a registrar.

#### Article 8

In a religious form with the effects of a civil marriage a marriage is contracted before a minister of a religious community that has specially arranged legal relations concerning this with the Republic of Croatia.

#### Article 9

- (1) The bride and the groom personally declare their intention to contract marriage in a civil form to the registrar who has jurisdiction in the place in which they wish to contract marriage.
- (2) The bride and the groom will append to the declaration a birth certificate, and when it is necessary, at the request of the registrar, other documents as well.

#### Article 10

- (1) Pursuant to the declaration of the bride and groom and in other ways the registrar will check whether the preconditions for the contract of marriage have been met.
- (2) If a court decision is required for the contract of marriage, the registrar will instruct the bride and groom to obtain it.

#### Article 11

- (1) If the registrar determines that any of the preconditions for the contract of marriage have not been met, he [hereinafter: includes she – tr.] will orally inform the bride and groom that it is not allowed for them to contract marriage and will contain a memorandum to this effect in the declaration of the intention to contract marriage.
- (2) The bride and the groom can within eight days of the day of being informed that it is not permissible for them to contract marriage submit an application to the competent office of general administrative affairs for the determination of whether they meet the preconditions for the contract of marriage.
- (3) The competent office is bound in the administrative procedure concerning an application as defined in Paragraph 2 of this Article to make a decision within a period of fifteen days of the receipt of the application.

#### Article 12

- (1) When he determines that the conditions for the contract of marriage have been met, the registrar will take a declaration from the bride and the groom concerning the choice of surnames.

(2) The bride and the groom will confirm by their signature that they have been acquainted with the personal rights and duties in marriage, and the possibility of arranging property relations according to the provisions of this Law.

#### Article 13

(1) In agreement with the bride and the groom who wish to contract marriage in civil form the registrar will determine the day for the contract of the marriage in a period of between thirty and forty five days from the day of the declaration of the intention to contract marriage.

(2) In exceptional cases when there are good reasons the registrar may approve the contracting of marriage before the thirtieth and at the latest up to the ninetieth day of the day of the declaration of the intention to contract marriage.

(3) The registrar will recommend to the bride and the groom that by the day of the contracting of the marriage they should visit a marriage and family counsellor.

#### Article 14

If on the day set for the contracting of the marriage either the bride or the groom or both do not appear and do not provide reasons for their absence it will be deemed that the declaration of the intention to contract marriage has been withdrawn.

#### Article 15

(1) Marriage is contracted in a formal manner in official premises, and exceptionally in some other appropriate place, a decision concerning which will be made by the registrar.

(2) To contract marriage outside official premises, a special fee is paid.

(3) The minister competent for administrative measures will prescribe the criteria for the determination of the amount of the fee as defined in Paragraph 2 of this Article.

#### Article 16

Marriage is contracted in the presence of the bride and the groom, the registrar and two witnesses.

#### Article 17

Any adult and competent person may be a witness to the contracting of marriage.

#### Article 18

(1) On the day and at the time set for the contracting of the marriage the registrar will announce that the bride and the groom and the witnesses are present in person and that there is no impediment to the contracting of the marriage.

(2) In a speech appropriate to the occasion the registrar will acquaint the bride and the groom with the provisions of this Law and with their rights and duties and

stress the significance of marriage, and particularly that a harmonious marriage is of the greatest importance for family life.

(3) The registrar will ask the bride and the groom by name if they agree to contract marriage to each other.

#### Article 19

(1) The marriage is contracted when the bride and the groom state their consent.

(2) After the consent the registrar will announce that between the woman and the man, mentioned by their personal names, marriage has been contracted.

(3) The registrar will enter the marriage contracted into the register of married people. The woman and the man and the witness and the register will sign the entry into the register.

(4) Immediately after the entry of the contracted marriage into the register of married people the register will hand the spouses a wedding certificate.

#### Article 20

(1) A bride and a groom who wish to contract marriage in a religious form will obtain from the registrar competent for the place in which they wish to contract the marriage a certificate that they have met the conditions for the contracting of marriage as prescribed in this Law.

(2) In the procedure of issuing a certificate as defined in Paragraph 1 of this Article the registrar will apply in an appropriate manner the provisions of Articles 10 and 11 of this Law.

(3) In the certificate as defined in Paragraph 1 of this Article the registrar will state that he has acquainted the bride and the groom with the personal rights and duties in marriage, with the possibility of arranging their property relations according to the provisions of this Law, and their consensual declaration concerning the choice of surnames.

(4) The certificate as defined in Paragraph 1 of this Article is good for three months from the day of issue.

(5) The registrar will warn the bride and the groom that the wedding certificate from the government register is evidence that their wedding that has been contracted in religious form has the same effects as a civil marriage.

(6) The minister competent for administrative matters will prescribe the contents and form of the certificate as defined in Paragraph 1 of this Article.

#### Article 21

(1) The minister of the religious community in front of whom the marriage is contracted in the religious form will deliver the registrar as defined in Article 20 of this Law a document that has been signed by the wife, husband, the witnesses and the minister of the religious community, in which he confirms that the marriage has been contracted.

(2) The document as defined in Paragraph 1 of this Article is delivered to the registrar within five days of the day of the contracting of the marriage.

#### Article 22

(1) The registrar is bound to enter a marriage contracted in a religious form in the register of married persons in a period of three days of the day of receipt of the document as defined in Article 21 of this Law.

(2) Immediately after the entry of the marriage contracted into the register of married the registrar will hand the spouses a wedding certificate.

#### Article 23

A marriage contracted in religious form in line with the provisions of Articles 8 and 20 Paragraphs 1 and 4 of this Law has, from the day of the contracting of the marriage, all the effects of a civil marriage as prescribed by this law.

### II. CONDITIONS FOR THE CONTRACTING OF MARRIAGE

#### 1. Conditions for the existence of a marriage

##### Article 334

(1) For the existence of a marriage the following are necessary:

1. that the bride and the groom are of different sexes
2. that the bride and the groom have stated their consent to the contracting of marriage
3. that the marriage in a civil form has been contracted before a registrar or that a marriage in a religious form has been contracted according to the provisions of Article 8 and Article 20 Paragraphs 1 and 4 of this Law.

(2) If at the time the marriage is contracted any of the conditions as defined in Paragraph 1 of this Article has not been met, the legal effects of marriage are not created.

##### Article 25

Every person who has a legal interest and a welfare centre have the right to file a suit to determine whether a marriage exists or not.

#### 2. *Conditions for the validity of a marriage*

##### Article 26

(1) A marriage may not be contracted by a person who is not eighteen years old.

(2) Exceptionally to the provision of Paragraph 1 of this Article a court may in a non-litigation procedure allow the contracting of marriage to a person who is sixteen years old, if the court determines that the person is mentally and physically mature enough to marry, and that there is a good reason for the contracting of the marriage.

(3) A motion for the adoption of a decision about allowing the contracting of a marriage can be made only by a person as defined in Paragraph 2 of this Article.

(4) In a procedure in connection with a motion as defined in Paragraph 3 of this Article the court will hear the minor submitter of the motion, the minor's parents or guardians as well as the person with whom the minor intends to contract

marriage and will obtain the opinion of a welfare centre and investigate the circumstances that are importance for a decision.

#### Article 27

- (1) A person who has been deemed legally incompetent or a person incapable of judging may not contract marriage.
- (2) Exceptionally to the provision of Paragraph 1 of this Article a court may in a non-litigation procedure allow the contracting of marriage to a person deemed legally incompetent whom it nevertheless deems to be capable of understanding the significance of marriage and the obligations that derive from it and that the marriage is clearly in this person's interests.
- (3) A motion for the adoption of a decision to allow the contracting of a marriage can be submitted only by the person deemed to be legally incompetent.
- (4) In the procedure in connection with a motion as defined in Paragraph 3 of this Article the court will obtain the opinion of the guardian or the parent who cares for an adult child deemed to be legally incompetent and a welfare centre.

#### Article 28

- (1) Marriage may not be contracted between kin in the direct line, and in the lateral line between a sister and brother, a half-sister and half-brother, a child with a sister or half-sister or a brother or half brother of its parent, children of sisters and brothers and half sisters and half brothers.
- (2) Exceptionally, for well-founded reasons, a court may in a non-litigation procedure, allow the contracting of marriage between children of sisters and brothers and the children of half-sisters and half-brothers.
- (3) The provisions of Paragraphs 1 and 2 of this Article are applied also to relations that have been created by adoption.

#### Article 29

Marriage may not be contracted by one who is already married.

#### Article 30

A marriage contracted in contravention of Articles 26 to 29 of this Law is not valid and the provisions on the annulment of marriage shall be applied to it.

### III THE PERSONAL RIGHTS AND DUTIES OF SPOUSES

#### Article 31

- (1) During contracting of a marriage the bride and the groom may agree:
  1. that each will keep his or her surname
  2. that they will take as the common surname the surname of one of them
  3. that they will both take both surnames as common
  4. that each of them will take together with their own surname the surname of their spouse and each will decide which to use in the first and which in the second position.

(2) In the case on an agreement about surnames as defined in Paragraph 1 Item 3 of this Article the bride and the groom will decide which surname to use in the first position and which in the second position.

(3) An agreement about a surname must be in accordance with the provisions of a separate law.

#### Article 32

(1) In a marriage the spouses are equal.

(2) The spouses are duty bound to be loyal to each other, to help each other, to respect each other and to maintain harmonious marital and family relations.

(3) Spouses determine in agreement the place of their residence.

(4) Spouses determine in agreement about the birth and raising of children and about the performance of jobs in the family community.

#### Article 33

Each spouse makes an independent choice concerning the choice of his or her work and occupation.

### IV THE CESSATION OF MARRIAGE

#### Article 34

(1) Irrespective of the form in which it was contracted, a marriage ceases upon: the death of a spouse, the pronouncement that a missing spouse is deceased, annulment or divorce.

(2) A marriage ceases by annulment or divorce when the judgement of a court concerning the annulment or divorce becomes legally effective.

(3) If a missing spouse is pronounced dead, the marriage ceases on the day that is determined through the legally effective decision of a court to be the day of the death of the missing spouse.

(4) If a marriage contracted in a religious form ceases according to the provisions of Paragraph 2 of this Article, the cessation of the marriage does not affect the spousal obligations deriving from the regulations of the religious union before which the marriage was contracted.

#### Article 35

In the event of an annulment of a marriage or a divorce each one of the spouses may retain the surname that he or she had at the moment of the cessation of the marriage.

##### 1. Annulment of a marriage

#### Article 36

The spouses and the welfare centre have the right to sue for an annulment of a marriage pursuant to Article 30 of this Law.

### Article 37

- (1) The parents of a minor also have the right to sue for the annulment of a marriage contracted against the provisions of Article 26 of this Law.
- (2) A court can deny a suit for the annulment of a marriage contracted in contravention of the provisions of Article 26 Paragraph 2 of this Law if at the time of the contracting of the marriage there was or subsequently was created a good reason because of which the court was able to permit the contracting of the marriage.
- (3) A suit for the annulment of a marriage may not be filed after the minor has become eighteen years old, but a spouse who at the time the marriage was contracted was a minor can sue for the annulment of a marriage within one year of attaining majority.

### Article 38

- (1) A court can deny a suit for the annulment of a marriage that has been contracted, without the permission of a court, by a person pronounced legally incompetent if during the time the marriage was contracted the person was or subsequently became capable of understanding the significance of marriage and the obligations that derive from it.
- (2) A suit for the annulment of a marriage cannot be filed after a decision restoring legal competence has become legally effective.
- (3) A spouse who has been pronounced legally incompetent can sue for the annulment of the marriage within a year the decision declaring him or her legally competent again has become legally effective.

### Article 39

A court can deny a suit for annulment of marriage that has been contracted, without the permission of a court, by persons as defined in Article 28 Paragraph 2 if at the time of the contracting of the marriage there was or subsequently was created a good reason because of which the court would have been able to permit the marriage to be contracted.

### Article 40

- (1) Persons with a legal interest have the right to sue for the annulment of a marriage contracted in contravention of the provisions of Article 30 of this Law.
- (2) A court will deny a suit for the annulment of a marriage if a previous marriage has ceased by the ending of the main hearing.

### Article 41

- (1) In a litigation proceeding to annul a marriage while a previous marriage was in existence, the existence or non-existence of that marriage is proved by a wedding certificate or some other appropriate public document.
- (2) If the parties cannot prove the existence or non-existence of a previous marriage with the documents as defined in Paragraph 1 of this Article, the court will adjourn the proceedings and instruct them in a given period to file a suit for

the determination of whether a marriage does or does not exist, and then to inform the court of the filing of the suit. A plaintiff that claims a previous marriage did exist will be instructed to file suit, and also a defendant that denies the existence of a previous marriage in spite of its contracting being entered into the register of married persons.

(3) A procedure adjourned according to the provisions of Paragraph 2 of this Article will be resumed when the decision in the suit for the determination of whether a marriage did or did not exist becomes legally effective.

## *2. Divorce*

### Article 42

(1) A spouse may apply for a divorce in a suit, and both spouses in a consensual application.

(2) A spouse has no right to sue for divorce while his wife is pregnant or until their child is one year old.

### Article 43

A court will grant a divorce:

1. if it determines that the marital relations have been seriously and lastingly disturbed, or
2. if a year has passed since the marital union ceased to exist, or
3. if both spouses consensually apply for a divorce.

## *3. Mediation before divorce*

### Article 44

The mediation procedure is carried out when a divorce procedure is started with a suit or with a consensual application, and the spouses have minor joint or adopted children or children of whom they have parental care after their majority.

### Article 45

(1) The mediation procedure is not carried out if one or both spouses have been pronounced legally incompetent, unless the court determines that they are capable of understanding the significance of marriage and the obligations that derive from it.

(2) The mediation procedure is not carried out if the whereabouts of one or both of the spouses have been unknown for a period of at least six months.

(3) The mediation procedure is not carried out if one or both of the spouses lives abroad.

(4) Exceptionally to Paragraph 3 of this Article, the mediation procedure will be carried out if the spouses have minor joint or adopted children or children over whom they exercise parental care even after their majority if the court considers that there are no major difficulties in the way of the spouses taking part in the mediation procedure.

#### Article 46

- (1) When the court receives a suit or a consensual application as defined in Article 44 of this Law, at the first hearing it will ask the spouses at once to state to which welfare centre, marriage counselling office or person authorised to give expert assistance (a mediator) they wish to turn for the sake of obviating their marital dissensions or for the sake of an agreement about settling the legal effects of the divorce.
- (2) The court will ask the parties if there is any agreement about with which parent the children will live, about their meetings and association with the other parent, or about the accommodation of the child during the divorce proceedings.
- (3) If the spouses have not agreed on whom they will carry out the mediation proceedings with, the court will make an ex officio decision concerning the choice of mediator.
- (4) In cases as defined in Paragraphs 1 and 3 of this Article the court will without delay make a decision about before whom the mediation procedure will be carried out and deliver it to the mediator. No separate appeal is permitted against a decision as defined in Paragraph 3 of this Article.
- (5) Spouses are bound to initiate the mediation procedure within 15 days of the making of a decision as defined in Paragraph 4 of this Article.

#### Article 47

- (1) The institution or individual that carries out the mediation will call the spouses, according to the rules for personal delivery, to attend the procedure in person without an attorney.
- (2) If the plaintiff or if both the spouses who have submitted a consensual application do not heed the call to mediation and do not justify their failure to attend, the mediator will at once inform the court about this in writing.
- (3) If the spouses give up the mediation procedure, the mediator will at once inform the court about this in writing.
- (4) In a case as defined in Paragraphs 2 and 3 of this Article, the court will deem the suit or the consensual application to have been withdrawn.

#### Article 48

- (1) A mediator will question the parties about the causes that have led to the breakdown of their marital relations and endeavour to obviate the causes and to reconcile the spouses.
- (2) The mediator is bound to supply a professional and expert opinion to the spouses according to the rules concerning personal delivery in a period of fifteen days of the conclusion of the mediation procedure.

#### Article 50

- (1) An establishment or individual that has carried out the mediation procedure will also supply a professional opinion to the welfare centre if the spouses have a minor child or adopted child or child over whom they exercise parental care even after majority.

(2) A professional opinion is delivered to the welfare centre that has not carried out the procedure according to the registered residence of the parent with whom the children live.

(3) If the children live apart from both parents the professional opinion is delivered to the welfare centre in the area in which lies the seat of the body that determined on the placement of the child. If the child has been placed without any decision from a competent body the professional opinion will be delivered to the welfare centre of the child's temporary whereabouts.

(4) A welfare centre is bound to consider at once the professional opinion and to take the necessary measures for the protection of the child's well-being.

#### Article 51

If the spouses do not deliver the professional opinion to the court in a period of a year from the delivery [reception] of the decision of the court as defined in Article 46 of this Law, it will be deemed that the suit or the consensual application for divorce has been withdrawn.

#### Article 52

(1) The minister competent for justice affairs will prescribe the manner of keeping registers and documentation in connection with matters of the courts in the area of marriage and relations in marriage.

(2) The minister competent for matters of welfare will prescribe the manner of keeping registers and documentation in connection with matters of the welfare centres in the area of marriage and relations in marriage.

(3) The minister competent for welfare matters will prescribe the conditions that a legal entity or individual as defined by Paragraph 46 Paragraph 1 must fulfil to be authorised to provide professional assistance in the mediation procedure.

(4) The minister competent for welfare matters will provide a list of authorised mediators to the minister competent for justice matters for the sake of the conducting of registers of mediators.

(5) The minister competent for welfare matters will prescribe the basic elements that a professional opinion in the mediation procedure has to contain.

### Part Three

## PARENTS AND CHILDREN

### 1. MATERNITY AND PATERNITY

#### Article 53

A child's mother is deemed to be the woman that gave birth to it.

#### Article 54

A child's father is deemed to be the mother's husband if the child is born during the duration of a marriage or during three hundred days from the cessation of the marriage.

## Article 55

If maternity or paternity cannot be determined according to Articles 53 and 54 of this Law, it will be determined by the acknowledgement of the parents or by court decision.

### *1. Acknowledgement of maternity and paternity*

## Article 56

(1) Maternity and paternity can be acknowledged in a record before a registrar, a welfare centre or a court. These bodies are bound without delay to supply a copy of the record to the registrar competent to enter the children in the register of births.

(2) Maternity and paternity may also be acknowledged in a will [testament].

## Article 57

(1) Maternity and paternity can be acknowledged by a minor who is sixteen years old if the person is capable of understanding the significance of the declaration of acknowledgement.

(2) Maternity and [or] paternity can be acknowledged by a person partially declared to be legally incompetent if the person is deemed capable of understanding the significance unless in the decision pronouncing the person to be partially legally incompetent it has been determined that the person may not make a declaration concerning personal status.

## Article 58

(1) Acknowledgement of maternity and paternity is irrevocable.

(2) Maternity and paternity may not be acknowledged after the child's death, unless the child has progeny.

## Article 59

(1) Acknowledgement of maternity will be entered into the register of births if the welfare centre competent according to the place of the child's birth has given its prior consent.

(2) If the child is at least fourteen years old and capable of understanding the significance of acknowledgement, the child's consent is also necessary for the acknowledgement of maternity. A child will give its consent before the welfare centre competent according to his registered residence or temporary abode.

(3) When it draws up or receives a record or will acknowledging maternity as defined in Article 56 of this Law, the registrar competent for the entry of the child into the register of births will at once ask the welfare centre to give its consent or agreement as defined in Paragraphs 1 and 2 of this Article within a period of thirty days.

(4) After obtaining the consent or agreement prescribed by this Law, the registrar will enter the acknowledgement of maternity into the register of births.

#### Article 60

The acknowledgement of the paternity of a conceived but still unborn child will produce legal effect if the child is born live.

#### Article 61

- (1) For the entry of the acknowledgement of paternity, the consent of the child's mother is required.
- (3) The mother can declare her consent before the bodies as defined in Article 56 Paragraph 1 of this Law.

#### Article 62

- (1) If the child is fourteen or over and is capable of understanding the significance of the acknowledgement, the child's consent too is required for the acknowledgement of paternity. A child gives its consent before a welfare centre competent according to its registered residence or temporary abode.
- (2) If a child is younger than fourteen years, or is older than fourteen but is not capable of understanding the significance of an acknowledgement, and if the mother is no longer living, has been pronounced dead, is younger than fourteen, has been declared totally legally incompetent or in a decision of partial legal incompetence it has been declared that she may not undertake actions that refer to personal status or if her whereabouts have not been known for at least two months, consent for the acknowledgement of paternity is given by a welfare centre.

#### Article 63

- (1) When he receives a declaration or record concerning the acknowledgement of paternity, or a will to which the declaration of the mother giving consent to the acknowledgement of paternity is not affixed, the registrar competent for the entry of the child into the register of births will at once call upon the mother according to the regulations concerning mandatory personal delivery to make a declaration within a period of fifteen days.
- (2) If the consent of the child is necessary for the entry of the acknowledgement of paternity, or alternately the consent of the welfare centre, the registrar will ask the welfare centre of the registered residence or whereabouts of the child to supply the declaration of the child or the consent of the welfare centre within a period of fifteen days.

#### Article 64

A welfare centre on the elapse of the period as defined in Article 59 and 63 of this Law will inform a person that has acknowledged maternity or paternity whether the regulation consent or agreements have been obtained.

#### Article 65

- (1) If during the entry of a child into the register of births there are no data concerning the child's father, the registrar will acquaint the mother with the right of the child to know who his father is and with the procedures that must be undertaken for the fulfilment of this right.
- (2) The mother may declare to the registrar in a record whom she considers to be the child's father.
- (3) The mother's declaration as defined in Paragraph 2 of this Article is considered to be her consent to the acknowledgement of paternity.

#### Article 66

If the registrar has entered a child into the register of births without information about the child's father, he will at once inform the welfare centre competent for the registered residence or whereabouts of the mother about this and supply a copy of the record concerning the mother's declaration as defined in Article 65 Paragraph 2 of this Law.

#### Article 67

- (1) A welfare centre will in a period of fifteen days of receiving the information as defined in Article 67 of this Law call upon the mother to state whom she considers the child's father, unless she has already done this before the registrar.
- (2) It will caution the mother that for the well-being of the child she should name the person she considers the father.
- (3) The mother's declaration before a welfare centre concerning whom she considers the child's father has the significance of her consent to the acknowledgement of paternity.

#### Article 68

- (1) When it receives the mother's declaration as defined in Article 67 of this Law, a welfare centre will, in a period of fifteen days, according to the regulations concerning personal delivery, call the person named.
- (2) If the person called responds, the welfare centre will show him the declaration of the mother that she considers him the child's father and acquaint him with the legal provisions concerning the determination of paternity.

#### Article 69

If the person called acknowledges paternity, the welfare centre will at once supply to the registrar a copy of the record concerning the mother's declaration about whom she considers the child's father and a copy of the record concerning the acknowledgement of paternity for the purpose of the entry of the paternity into the register of births,

#### Article 70

If in the procedure prescribed by Articles 66 through 68 of this Law the paternity is not determined by acknowledgement, the welfare centre will inform the mother

of this and acquaint her with the legal provisions concerning the determination of paternity by a court decision.

## *2. Determining maternity and paternity with a court decision*

### Article 71

(1) A suit for the determination of maternity or paternity can be filed by a child up to the time of the child's twenty fifth birthday.

(2) If the child is a minor or has been declared totally legally incompetent or if by a decision concerning partial legal incompetent it has been determined that the child may not undertake actions concerning personal status, a person who legally represents him or her may file suit in the child's name.

### Article 72

(1) A woman who considers herself the mother can file a suit for the determination of maternity up to the time the child has its eighteenth birthday.

(2) A mother may file a suit for the determination of paternity up to the time the child has its eighteenth birthday.

(3) A man who considers himself the father of a child may file a suit for the determination of paternity within a period of one year of receiving the information that the agreement or consent as defined in Article 61 and 62 of this law has not been obtained, and at the latest by the time the child has its eighteenth birthday.

### Article 73

A welfare centre can file a suit to determine maternity or paternity up to the time the child has its eighteenth birthday.

### Article 74

(1) If a person said to be a mother or the father of a child is not alive the suit for the determination of maternity or paternity is filed against the person's heirs.

(2) A suit as defined in Paragraph 1 of this Article can be filed in a period of one year of the death of the person said to be the mother or the father of the person or in a period of six months from the probate ruling becoming legally effective.

## *3. Disputing [contending] maternity and paternity*

### Article 75

(1) A child may dispute the maternity or paternity of the person entered into the register of births as his parent.

(2) A child may file suit as defined in Paragraph 1 of this Article up to the time the child has his twenty fifth birthday.

(3) If the child is a minor or when the parents exercise parental care over him after he has attained majority, a guardian at litem established for this suit appointed by the welfare centre may file suit on his behalf.

(4) A suit as defined in Paragraph 1 of this article can be filed on behalf of a person who has been declared completely legally incompetent or a person who in

a decision concerning the declaration of partial legal incompetence has been determined to be unfit to undertake actions concerning personal status by his guardian in conjunction with the prior permission [approval] of the welfare centre.

#### Article 76

- (1) A woman who has been entered into the register of births as the child's mother may dispute this maternity.
- (2) A suit as defined in Paragraph 1 of this Article may be submitted in a period of six months from the discovery of the fact that rules out her maternity, and at the latest by the time the child has had its seventh birthday.

#### Article 77

- (1) A woman who considers herself a child's mother can dispute the maternity of the woman who is entered into the register of births as the mother, and at the same time may seek to have her own maternity established.
- (2) A suite as defined in Paragraph 1 of this Article may be submitted in a period of six months from the discovery that she is the mother of this child, and at the latest by the time the child has had its seventh birthday.
- (3) In a procedure as defined in Paragraph 1 of this Article the court will, before it starts to consider and decide on the suit disputing maternity, determine, at the cost of the plaintiff, the production of medical forensic evidence in accord with the capacities of contemporary medical science for the sake of determining the maternity of the plaintiff.
- (4) If from the medical forensic evidence it appears that the plaintiff is not the mother of the child concerned in the contention of maternity suit, the court will issue a ruling denying the suit in its entirety.
- (5) The court will continue to deliberate and decide on the motions for the contention and establishment of maternity if from the medical forensic evidence it appears that the plaintiff is the mother of the child.
- (6) The court will make a decision on both motions in a single judgement.

#### Article 78

A legally effective decision denying maternity is considered also to result in the denial of the paternity of the mother's husband that is of the man whose paternity was determined by acknowledgement.

#### Article 79

- (1) The mother's husband may dispute the paternity of a child born while the marriage lasts or during three hundred days from the cessation of the marriage if he considers he is not the father. If the husband has been declared totally legal incompetent or if through a decision concerning a declaration of partial legal incompetence he has been determined to be unfit to undertake actions concerning personal status, a suit for the contention of paternity can be filed by his guardian in conjunction with the prior approval of the welfare centre.
- (2) A suit as defined in Paragraph 1 of this Article may be filed in a period of six months from the discovery of a fact that casts doubt upon the truthfulness of the

paternity entered, but at the latest by the time the child has had its seventh birthday.

#### Article 80

Persons with legal interests can carry on the procedure of the contention of maternity or paternity in a period of six months from the death of the mother or the father that has filed the suit or in a period of one month from the day a probate ruling becomes legally effective.

#### Article 81

(1) A mother may dispute the paternity of a child born during the duration of a marriage or during three hundred days from the cessation of the marriage. If the mother has been declared totally legal incompetent or if through a decision concerning a declaration of partial legal incompetence she has been determined to be unfit to undertake actions concerning personal status, a file for the sake of the contention of paternity can be filed by her guardian in conjunction with the prior approval of the welfare centre.

(2) A suit as defined in Paragraph 1 of this Article can be filed within six months of the birth of the child.

#### Article 82

(1) A man that has acknowledged paternity and later discovers a fact that rules out the possibility of his paternity can dispute his paternity in a suit within six months of the discovery of this fact, but at the latest by the time the child has had its seventh birthday.

(2) A man who has been coerced into acknowledging the paternity of a child that he claims not to derive from him can dispute his paternity in a suit within six months of the acknowledgement, and at the latest by the time the child has had its seventh birthday.

#### Article 83

(1) A man who considers himself the father of a child can dispute in a suit the paternity of a person who has acknowledged the child his own, if at the same time he seeks to have his own paternity established.

(2) A suit can be filed within one year of the day of the entry of the acknowledgement of paternity into the register of births.

(3) In the procedure as defined in Paragraph 1 of this Article the court will, before it starts to deliberate and determine on the application concerning the contention of the paternity determine, at the cost of the plaintiff, the production of medical forensic evidence in line with the capacities of contemporary medical science for the sake of establishing the paternity of the plaintiff.

(4) If from the medical forensic evidence it derives that the plaintiff is not the father of the child whose paternity he is disputing, the court will issue a ruling denying the suit in its entirety.

- (5) The court will continue to deliberate and make a decision on applications for the contention and establishment of paternity if from the medical evidence it follows that the plaintiff is the father of the child whose paternity he has disputed.
- (6) The court will make a decision concerning both applications in a single judgement.

#### Article 84

- (1) If maternity or paternity has been determined by a court judgement, no contention is permitted.
- (2) Contention of maternity or paternity is not permitted after the death of the child.

#### *4. Special provisions concerning the maternity and paternity of a child conceived with medical assistance.*

#### Article 85

It is not permitted to establish or dispute in a judicial procedure the maternity or paternity of a child conceived in a procedure of fertilisation with medical assistance and the consent of a donor.

#### Article 86

- (1) Exceptionally, the mother's husband may dispute the paternity of the child born during the duration of the marriage or during three hundred days from the cessation of the marriage if the child is conceived with medical assistance with the semen of another person without the husband's written consent.
- (2) A woman who has given birth to a child who has been conceived with the egg cell of another woman has the right to dispute the maternity if the fertilisation with medical assistance occurred without her written consent.
- (3) A woman with whose egg cell a child was conceived without her written consent has the right to dispute the maternity of a woman who gave birth to the child if she seeks at the same time to have her maternity established.
- (4) A suit for the sake of disputing maternity or paternity can be submitted within a period of six months from the day of the discovery that the conception occurred in the manner defined in Paragraphs 1, 2 and 3 of this Article, and at the latest up to the time the child has had its seventh birthday.
- (5) If the persons as defined in Paragraph 1, 2 and 3 of this Article found out before the birth of the child that conception occurred [?wording defective: ?in one of the ways mentioned in this article] they can file suit in a period of six months from the day of the birth of the child.

## II. RIGHTS AND DUTIES IN THE RELATIONS OF PARENTS AND CHILDREN

### *1. A child's rights and duties*

#### Article 87

- (1) A child has the right to care for its health and life.
- (2) A child has the right to security and upbringing in the family appropriate to his physical, mental and emotional needs.
- (3) A child has the right to a life with its parents, in accordance with its well-being. If it lives apart from one or both parents, the child has the right to meetings and association with the parent(s).
- (4) A child has the right to choice of education and occupation and the right to be employed in accordance with its own capacities and its own well-being.

#### Article 88

Parents and other members of the family may not subject the child to degrading procedures, mental or physical violence, or abuse.

#### Article 89

- (1) A child has the right to seek the protection of its rights before the competent bodies who are bound to inform the welfare centre concerning this.
- (2) A child has the right to a guardian ad litem in cases determined by this Law.
- (3) A guardian ad litem is appointed by the welfare centre in cases when another body decides on violation of the child's right, and a court when the decision making concerning a child's right is in the competence of a welfare centre.
- (4) A guardian ad litem is bound to submit a report on his representation of the child at the application of and in the period determined by the body that appointed him.
- (5) In procedures in which a decision is made concerning the child's right or interest, the child has the right to find out in an appropriate way about important circumstances of the case, to obtain advice and to express his own opinion and to be informed about the possible consequences of his opinions being respected. The opinion is taken into consideration in accordance with his age and maturity.

#### Article 90

A child is duty bound to respect his parents and assist them and to be considerate to members of the family.

### *2. Parental care*

#### Article 91

- (1) Parental care consists of responsibility, the duties and rights of parents, with the aim of protecting the well-being of the child and his personal and property interests.
- (2) A parent may not renounce [the exercise of] parental care.
- (3) Parental care may be limited and taken away only by a decision of the competent bodies and for reasons and in a manner prescribed by this Law.

#### Article 92

(1) Parents are bound to care for the life and health of a child and to enable it to use measures for improving, preserving and restoring health, in accordance with the regulations from the domain of health care and the requirements of medical science.

(2) A parent is bound to protect a child from the degrading procedures and corporal punishment of other persons.

#### Article 93

(1) Parents have the duty and right to bring up a child as a free, humane, patriotic, moral, industrious, sensitive and responsible person, respecting the principles of equality between men and women, so as to be prepared for a harmonious family and social life with a positive attitude towards nature.

(2) The upbringing of a child must be in accordance with his age and maturity, and with the right of the child to freedom of conscience, religious and other beliefs.

#### Article 94

(1) Parents are bound to look after and nurture the child and care for his needs.

(2) Parents must not leave a child of pre-school age without the supervision of an adult person,

#### Article 95

(1) For the sake of the well-being of a child, in line with his age and maturity, parents have the right and duty to supervise him in his association with other persons.

(2) Parents have the right and duty to forbid a child younger than sixteen to go out at night without the escort of themselves or the escort of another adult in whom they have confidence.

(3) Going out at night is deemed to be between the hours of 11 at night and 5 in the morning.

#### Article 96

(1) Parents are bound to take care of the regular obligatory education of a child.

(2) Parents are bound to take care according to their capabilities of the further education of the child.

(3) It is the duty of a parent to attend meetings in connection with the upbringing and education of the child.

(4) Parents have the duty to take care of the all-round education of their child and to encourage the child's artistic, technical, sporting and other interests.

#### Article 97

It is the right of a parent to live with his or her child, unless this is against the well being of the child.

#### Article 98

- (1) Parents have the duty and right to represent their child and to contract legal matters for him, unless otherwise ordered in this Law.
- (2) The maintenance of the child is the duty and right of the parents.
- (3) Parents have the duty and right in accordance with the provisions of this law to manage the property of their child until it attains its majority.

#### Article 99

- (1) Irrespective of whether they live together or apart parents care with equal rights, together and consensually for the child, unless otherwise ordered by this Law.
- (2) Only one parent cares for the child if the other has died, been pronounced dead, deprived of parental care, pronounced legally incompetent or partially legal incompetent with respect to the parental care or is otherwise incapable of caring for the child.

#### Article 100

- (1) If the parents do not live in a family community, the court will decide with which parent the child will live and determine the manner and time of meetings and association of the child with the other parent.
- (2) For the sake of the protection of the well-being of the child meetings and association of a child with a parent that does not live with the child may be curtailed or forbidden, and according to the circumstances of the case the court may settle on a person in the presence of which such meetings and association may take place.
- (3) At the request of the court a welfare centre will propose a person as defined in Paragraph 2 of this article, to whom, in an appropriate manner, the provisions of Article 110 paragraphs 5 through 7 of this Law will apply.
- (4) The court may decide that some of the duties should be carried out by the parent with whom the child does not live, for example, care for the child's health, education, out of school activities, some matters of representing the child and managing its property and other things.
- (5) In the procedure for making a decision as defined in Paragraph 1 and 2 of this Article the court will respect an agreement of the parents, if it is not against the well-being of the child.
- (6) A court will make a decision about the cessation of curtailment or bans on meetings and association on the motion of the welfare centre, a parent or the child.

#### Article 101

If the parents cannot agree about the realisation of the substance of parental care or about the realisation of the child's rights, the court will make a decision, in a non-litigation procedure, for the sake of the child's well-being and on the motion of a parent, the welfare centre or the child.

#### Article 102

On the motion of a parent, child or a welfare centre, the court will, if it so required by essential changes in circumstances, make a new decision concerning which parent the child will live with and about the meetings and association of the child with the other parent, and if necessary other matters of substance concerning parental care.

#### Article 103

(1) The welfare centre will at once, and at the latest in a period of eight days of discovering that both parents are absent, are prevented from or are from health or similar reasons incapable of caring for a child, and that they have not entrusted it to the care and upbringing of another person who meets the conditions prescribed for a guardian, confide the child even without the consent of the parents to the care and upbringing of another person, a children's home or some other legal entity that carries out the activity of welfare.

(2) A decision as defined in Paragraph 1 of this Article can last at most 60 days.

(3) An appeal against a decision as defined in Paragraph 1 of this Article will not delay the enforcement of it.

(4) If a welfare centre considers that the circumstances as defined in Paragraph 1 are still continuing after the elapse of the period as defined in Paragraph 2 of this Article it will at once make a decision to put the child into care.

(5) If parents ask for the surrender of the child and the making of a decision to stop care, and yet the welfare centre is of the opinion that this is not in the interest of the child, it will make a motion to the court to adopt a measure for the protection of the well-being of the child.

(6) If a welfare centre does not initiate a procedure before the court within 15 days of the parents' application, the parents can address their application for the surrender of the child to the court.

#### Article 104

Both parents or the parent that cares for the child on her or his own can occasionally confide the care and upbringing of the child to a person who meets the conditions laid down for a guardian, but to a welfare institution or other legal entity that carries out the welfare activity only subsequent to the decision of the welfare centre.

#### Article 105

If the parent with whom the child lives dies, in a non-litigation procedure the court will, at the motion of the other parent, or of the child or the welfare centre, without delay decide on the further care of the child.

#### Article 106

If the child is with some other person, without a legal basis, who refuses to surrender the child, the court will in a non-litigation procedure, at the motion of the parent, the child or the welfare centre, without delay determine to take the child away from such a person.

## Article 107

(1) In a non-litigation procedure, at the motion of the grandmother or grandfather, or the child, the court will make a decision about meetings and association of the grandchild with the grandfather or the grandmother taking into account the well-being of the child.

(2) In a non-litigation procedure at the motion of a sister or a brother or a half-sister or half-brother, the court will make a decision concerning meetings and association with a minor sister or brother or a minor half-sister or half-brother, taking into account the well-being of the child.

(3) If the person submitting the motion as defined in Paragraph 2 of this Article is a minor, the motion will be submitted on behalf of the minor by his or her legal representative or by the welfare centre.

### *3. Measures for the protection of the rights and well-being of the child*

## Article 108

(1) Everyone is bound to inform a welfare centre about the violation of a child's rights, and in particular about all forms of physical or mental violence, sexual abuse, neglect or negligence, abuse or exploitation of the child.

(2) The welfare centre is bound at once after receipt of the information as defined in Paragraph 1 of this Article to investigate the case and to take measures to protect the child's rights.

(3) If the welfare centre has received the information as defined in Paragraph 1 of this Article from another body or institution, it is bound to inform this body or institution about what has been undertaken.

(4) The court before which a misdemeanour or criminal proceeding is heard in connection with the violation of some right of a child is bound to inform the welfare centre and the court that is competent for imposing measures for the protection of the rights and well-being of the child about the institution of a procedure.

(5) A decision with legal effect made in the procedure as defined in Paragraph 4 of this Article will be delivered by the court to the centre and to the court that is competent for imposing measures for the protection of the rights and well-being of the child.

## Article 109

A welfare centre will caution parents about mistakes and shortcomings in their care for and upbringing of a child and help them to obviate these mistakes and shortcomings, and can refer them to an advisory centre or to parenting classes.

## Article 110

(1) A welfare centre will determine surveillance of the enforcement of parental care when mistakes or shortcomings in care for the child are many in kind and frequent or when the parents need particular care in the upbringing of the child.

(2) A surveillance decision will determine the surveillance programme for the child and the parents and appoint the person who will carry out this programme.

(3) A surveillance programme may include referring the child to a children's home for half-day or whole day placement, referring the parents and child to healthcare and other establishments for treatment and other kinds of professional care.

(4) Surveillance is ordered in the shortest period of six months. A person who is carrying out the surveillance programme submits a report at least once in two months to the welfare centre and even more often at the request of the welfare centre.

(5) A person who is carrying out surveillance of parental care must meet the conditions for a guardian, and cannot be kin in the direct line or the lateral line to the second degree.

(6) A person who is carrying out surveillance of parental care has the right to a monthly remuneration and also to reimbursement of justified costs at the expense of the welfare resources. An official of a welfare centre has the right to a monthly remuneration when he or she carries out surveillance of the realisation of parental care, with the special approval of the director, outside office hours.

(7) The minister competent for matters of welfare will prescribe the amount of the sums and the manner of paying out the remuneration for carrying out surveillance of parental care.

#### Article 111

(1) In a non-litigation procedure the court will take away from a parent who to a major extent neglects the raising and upbringing of a child or where there is a danger to the proper raising of the child, the right to live with and bring up the child, and will confide the child to the care and upbringing of another person, an institution or another legal entity that carries out the activity of welfare.

(2) It is deemed that a parent to a major extent neglects the raising, upbringing and education of a child if for example the parent shows insufficient care for the diet, hygiene, clothing, medical assistance, regular school attendance, does not prevent the child in some harmful associations, going out at night in a forbidden way, in vagrancy, begging or stealing.

(3) A parent who has not in good time informed the competent welfare centre or has not himself done anything to protect the child from the procedures as defined in Paragraph 1 of this Article that have been carried out by the second parent or by members of the family union will have the same measure imposed upon him or her as that defined in Paragraph 1 of this Article.

#### Article 112

In a non-litigation procedure the court will confide a child with behaviour disorders to a welfare institution for care and upbringing if the parents or foster parents are not capable of bringing up the child properly. Without delay, the court will supply the decision confiding the child to care to the welfare centre for the sake a decision being made about the child being cared for outside its own family.

#### Article 113

- (1) The court will decide on motions by which the procedures as defined in Article 101, 102, 107, 111 and 112 of this Law without delay and at the latest within 60 days of the day the motion is made.
- (2) In a decision as defined in Article 111 and 112 of this Law the court will determine the manner and time of the meetings and association of the child with the parent, in which it will in appropriate manner apply the provision of Article 100 of this Law.
- (3) Measures as defined in Article 111 and 112 of this Law are imposed for a period of one year.
- (4) A procedure to impose measures as defined in Articles 111 and 112 of this Law will be initiated by the court ex officio at the motion of the welfare centre or of the child.
- (5) When a measure as defined in Article 111 or 112 of this Law is imposed, the parent is not thereby relieved of responsibility and the other duties and rights of a parent to the child.
- (6) Before the elapse of the period as defined in Paragraph 1 of this Article the court will investigate the circumstances of the case and for the sake of the well-being of the child in a new decision reimpose the same or some other measure for the protection of the child.
- (7) An appeal against the decisions made pursuant to Articles 110 to 112 of this Law will not delay the enforcement of them.

#### Article 114

- (1) In a non-litigation procedure the court will deprive a parent who abuses or grossly violates parental responsibility, duties and rights of the right to parental care.
- (2) A parent is deemed to abuse or grossly violate parental responsibility, duties and rights if he or she:
  1. exerts physical or mental violence on the child, including exposing it to violence among the adult members of the family
  2. takes sexual advantage of the child,
  3. exploits the child by forcing it to work too hard or to do work that is not appropriate to its age,
  4. allows the child to consume alcohol, drugs or other narcotic substances,
  5. encourages the child to socially unacceptable behaviour
  6. has abandoned the child
  7. does not care for a child with which he or she does not live for more than three months,
  8. in a period of one year does not create the conditions for life together with the child with which he or she does not live without having any particularly good reason for this,
  9. does not care for the basic necessities of life of a child with which he or she lives or does not adhere to the measure that have been previously imposed by a competent body for the sake of the protection of the rights and well-being of the child
  10. in some other way grossly abuses the rights of the child.
- (3) The proceeding for deprivation of the right to exercise parental care must be instituted by a welfare centre as soon as it learns of the circumstances as defined

in Paragraph 2 of this Article, and it can also be initiated by the other parent, the child or the court ex officio.

(4) The right to exercise parental care will be restored in a decision of the court when the reasons because of which the right was taken away have ceased.

(5) The non-litigation proceeding as defined in Paragraph 4 of this Article can be initiated by a parent who has had the right taken away from him or her or the welfare centre.

(6) In the event that a proceeding for the deprivation of the right to exercise parental care is instituted with respect to both or the only parent the welfare centre will appoint the child a guardian ad litem.

(7) The provisions concerning guardianship for special cases will be applied in an appropriate way to the guardian ad litem as defined in Paragraph 6 of this Article.

(8) A decision with legal effect on depriving or restoring the right to the exercise of parental care will be supplied to the competent registrar for the sake of entry into the register of births and parents, to the ministry competent for justice affairs for the sake of keeping a register concerning persons deprived of the right to exercise parental care, and if the child has some right to real estate the decision will be delivered to the land register department of the municipal court for the sake of an annotation being made.

(9) After the majority of the child data about the deprivation of the right to exercise parental care are not shown in documents from the register of births.

#### Article 115

The court will impose on a parent that has not protected the child from the parent that abused parental responsibility, duties and rights, for the sake of the good of the child, measures as defined in Articles 111 and 114 of this Law, taking account of the circumstances of the case.

#### Article 116

(1) In a non-litigation proceeding the court can forbid a parent, grandparent, sister or brother or half-sister and half-brother that does not live with the child to approach the child in certain places or at a certain distance or to harass him [issue a restraining order below]

(2) The proceeding as defined in Paragraph 1 of this Article can be initiated by a welfare centre, a parent or the child.

(3) The court will inform the welfare centre about the initiation of a proceeding as defined in Paragraph 1 of this article and supply it with a decision about the restraining order.

(4) The court is bound to make a decision in a proceeding as defined in Paragraph 1 of this Article without delay and at the latest within 60 days of the day the motion is submitted.

#### Article 117

(1) A court that is conducting a proceeding in connection with Article 111 of this Law may postpone the making or the enforcement of the decision if the parent to whom the application of the measure refers undertakes to leave the family

community for a period of fifteen days and regularly to attend a counselling service, a parenting class or a healthcare institution to which he or she is referred.

(2) A court that conducts a proceeding in connection with Article 116 of this Law can postpone the making or the enforcement of the decision if the parent or grandparent to which the application of the measure refers undertakes to come regularly to a counselling service, a parenting school or a health care institution to which he or she is referred.

(3) A decision concerning the postponement will be rescinded and the proceeding will be continued if the person as defined in Paragraph 1 and 2 of this article does not adhere to the obligations undertaken.

#### Article 118

(1) A welfare centre can at any time require parents to render accounts concerning the management of a child's property and the revenue that a child or a family realises for the need of a child according to separate regulations.

(2) A welfare centre can, for the sake of the property interests of the child, make a decision that the parents, with respect to the management of the child's property, have the position of guardian, and determine that part of the child's income or income of the family obtained under special regulations is not paid into the hands of the parents, rather that the earnings are used to cover the necessities of life of the family or the child.

(3) A welfare centre can for the sake of the protection of the property interests of the child petition a court in a non-litigation proceeding to determine measures of security on the property of the parents.

#### *4. Cessation of parental care*

#### Article 119

(1) Parental care ceases when a child becomes legally competent or when it is adopted.

(2) If a child is adopted by a stepfather or stepmother, the parental care of the parent who is the spouse of the adoptive parent does not cease.

#### Article 120

(1) Legal competence is attained by the attainment of majority or by contracting marriage before majority.

(2) An adult person is one who has had his or her eighteenth birthday.

(3) A minor who is older than sixteen can also achieve legal competence if he or she has become a parent.

(4) In a non-litigation proceeding the court, at the motion of the minor as defined in Paragraph 3 of this Article, will decide on the acquisition of legal competence taking into consider the mental maturity of the petitioner.

(5) In the proceeding as defined in Paragraph 4 of this Article the court will hear the parents of the minor who has become a parent and will obtained the opinion of the welfare centre.

#### Article 121

For the sake of the rights and well-being of a child a welfare centre will appoint a guardian ad litem in cases as defined in Article 111, 112 and 114 of this Law.

#### Article 122

(1) The minister competent for justice matters will prescribe the manner of conducting registers and documentation in connection with matters of court in the area of the application of the provisions of this Law concerning parents and children.

(2) The minister competent for welfare matters will prescribe the manner of conducting registers and documentation connected with the matters of a welfare centre in the area of the application of the provisions of this Law concerning parents and children.

### Part Four

#### ADOPTION

#### Article 123

(1) Adoption is a special form of family law care for and protection of children without appropriate parental care that makes parenthood possible for the adoptive parents.

(2) Adoptive parents acquire the right to exercise parental care by the [act of] adoption.

#### Article 124

(1) In the adoption procedure a welfare centre will acquaint the adoptive parents with the rights of the child to learn from the adoptive parent that he has been adopted.

(2) The welfare centre will counsel the adoptive parents to tell the child at the latest by the time of his seventh birthday that he has been adopted and if the child is older, immediately after the adoption.

### I. CONDITIONS FOR ADOPTING

#### Article 125

(1) Adoption may take place if it is in the interests of the child.

(2) In the procedure of adoption the characteristics of the adoptive parent are estimated in comparison with the well-being of the child.

(3) A blood relative in the direct line cannot be adopted, nor can a brother or sister or the child of minor parents.

(4) Exceptionally the child of minor parents may be adopted a year after the birth of the child if there is no likelihood that it will be brought up in the family of the parents or of the grandparents or other close relatives.

(5) A guardian may not adopt a ward until he is relieved of his duties as guardian by the welfare centre.

#### Article 126

(1) A person aged between twenty one to thirty five and who is at least eighteen years older than the adopted child may adopt a child.

(2) If there are some particularly justified reasons an adoptive parent may be a person older than thirty five, but the age difference between the adoptive parent and the adopted child may not be great than 45 years.

(3) If the adoptive parents adopt sisters and brothers, half sisters and half brothers, it is enough that one of the adoptive parents meets the age condition for only one of the children.

(4) If the adoptive parents have adopted a child and subsequently wish to adopt the child's sister, brother, half-sister or half-brother, they may adopt such a child without reference to their age.

#### Article 127

(1) An adoptive parent must be a Croatian citizen.

(2) Exceptionally an adoptive parent may be a foreigner if this is of particular benefit to the child.

(3) If the adoptive parent is a foreigner, the adoption can take place only with the prior approval of the minister competent for welfare matters.

#### Article 128

A person may not adopt a child if:

1. he or she has been deprived of the right to exercise parental care or
2. declared to be legally incompetent or
3. his or her previous behaviour and characteristics suggest that it is not desirable to entrust the person with the parental care for a child.

#### Article 129

(1) For an adoption it is necessary to have the consent of both parents or of one parent unless otherwise ordered by this Law.

(2) A parent may give consent for his child to be adopted by an adoptive parent known to him only if the child is adopted by a stepfather or stepmother. The consent is given in the manner prescribed by Article 137 of this Law.

#### Article 130

For adoption the consent of the parent is not necessary if:

1. the parent has been deprived of the right to exercise parental care
2. the parent has been declared totally legally incompetent
3. the parent is a minor and is not capable of understanding the significance of adoption.

#### Article 131

(1) For the adoption of a child in guardianship it is necessary to obtain the opinion of the child's guardian, unless consent is given by a minor parent.

(2) If the guardian is a person employed in a welfare centre, the consent to the adoption is given by a guardian ad litem appointed according to Article 172 of this Law.

#### Article 132

(1) Adoption can take place up to the child's eighteenth birthday.

(2) A decision to adopt the abandoned child of an unknown parent can be made after the elapse of three months from the child's birth or being abandoned.

#### Article 133

(1) A child may be adopted by both spouses together, by one spouse if the other spouse is the parent or adoptive parent of the child, and one spouse with the consent of the other spouse.

(2) A child may be adopted by a person who is unmarried if this is of particular benefit to the child.

#### Article 134

If the child has had its twelfth birthday and is capable of understanding the significance of adoption, the child's consent is required for adoption to take place.

## II. THE ADOPTION PROCEDURE

#### Article 135

(1) The adoption procedure is carried out ex officio by a welfare centre of the place of the registered residence of temporary abode of the child.

(2) Before initiating an adoption procedure a person who wishes to adopt the child must seek from the welfare centre of his own registered residence an opinion concerning his suitability to be an adoptive parent. The welfare centre will issue an opinion within two months of the receipt of the application.

(3) If from the composition of the opinion about the suitability for being an adoptive parent to the initiation of the procedure more than a year has passed the welfare centre that carries out the proceeding for adoption with at once investigate whether the circumstances have changed.

(4) The public is excluded from the adoption procedure.

(5) The minister competent for welfare matters shall prescribe the methods used to determine suitability to be an adoptive parent and the manner of drawing up an opinion about suitability.

#### Article 136

(1) The parent of a child, the spouse of the parent that intends to adopt the child, and the child give their consent to the adoption before the welfare centre that

carries out the procedure or the welfare centre of their residence of temporary abode.

(2) The child gives the consent as defined in Article 134 of this Law without its parent or the person who wants to adopt it being present.

(3) If the parents of the child, the spouse of the person who intends to adopt the child or the child who is being adopted have given their consent to the adoption before a welfare centre that is not conducting the proceeding, this centre will at once deliver a verified record concerning this to the welfare centre that is conducting the adoption procedure.

#### Article 137

(1) A parent may give consent to the adoption to a welfare centre as defined in Article 136 Paragraph 1 of this Law even before the start of the adoption procedure, but only when the child is six weeks old.

(2) Before the parent gives consent as defined in Paragraph 1 of this Article, the welfare centre will acquaint the parent with all the legal effects of the consent and the adoption.

(3) The consent is given in a record, and a verified copy of the record is handed to the parent.

(4) A parent may withdraw from his or her consent to the adoption in a period of 30 days from the signing of the record as defined in Paragraph 3 of this Article.

#### Article 138

(1) A parent that has consented to his child being adopted by an adoptive parent unknown to him or her is not a party in the adoption procedure after the elapse of the period as defined in Article 137 Paragraph 4.

(2) When a child is adopted by a stepmother or a stepfather the spouse is a party in the proceeding, but the other parent of the child, after the elapse of the time as defined in Article 137 Paragraph 3 is not a party in the adoption procedure.

(3) A parent whose consent to the adoption of a child is not necessary is not a part in the adoption procedure.

#### Article 139

A welfare centre will if necessary also hear the child's close kin on any circumstances that are important for the adoption.

#### Article 140

In the adoption procedure, the welfare centre will acquaint the child's parents, the adoptive parents and a child that is older than twelve years old with the legal effects of adoption.

#### Article 141

(1) The dictum of the decision of welfare system through which the adoption takes place contains:

- for the adopted child: personal name, date and place of birth, citizenship, ethnicity, year and number of entry into the register of births, personal name and address of parents,
  - for the adoptive parents: personal name, date and place of birth and address,
  - the statement of whether the adoptive parents are entered or not entered as parents.
- (2) If through the adoption there is a change in the personal data of the adopted child the dictum of the decision contains new data about the effects of the adoption.
- (3) A party may lodge an appeal against the decision concerning the adoption within eight days of the day of receiving the decision.
- (4) The adoption has taken place when the decision concerning the adoption becomes legally effective.
- (5) The welfare centre is bound at once to deliver a legally effective adoption decision to the competent registrar for the purpose of entry into the register of births.
- (6) The registrar will enter into the register of births the contents of Paragraphs 1 and 2 of this article and act in accordance with this.
- (7) The minister competent for administrative matters will prescribe the manner of the entry of adoption into the register of births.

#### Article 142

- (1) A welfare centre keeps files of subjects and a register of the subjects of adoption.
- (2) Information about adoption is an official secret.
- (3) An adult adopted child, an adoptive parent and a parent who has given consent for the adoption of a child in line with Article 129 paragraph 2 of this Law will be allowed to inspect the files of subjects of adoption and the register of births of an adopted child.
- (4) A minor adopted child will be allowed by a welfare centre to see the files of subjects concerning adoption, and a registrar into the register of births of adopted children, if the welfare centre determines that a sight of the adoption files and the register of births is in the child's interest.
- (5) Close blood relatives of the adopted child will be allowed to look into the files of adoption subjects if the welfare centre obtains the consent of an adult adopted child.
- (6) The minister competent for welfare matters will prescribe the manner of keeping register and files of adoption subjects.

### III THE RIGHTS AND DUTIES ARISING FROM ADOPTION

#### Article 143

Adoption leads to the creation between the adoptive parent and his relatives on the one hand and the adopted child and his progeny on the other an indivisible relationship of kinship and all the rights and duties that derive from this.

#### Article 144

- (1) With the adoption, the reciprocal rights and duties between the adopted child and his blood relatives cease.
- (2) If the child is adopted by a stepmother or stepfather, the rights and duties between the adopted child and the parent that is married to the adoptive parent do not cease, nor with the blood relatives of that parent.

#### Article 145

- (1) Adopted parents determine the personal name of the adopted child.
- (2) The adopted child acquires the common surname of the adoptive parents. If the adoptive parents do not have a surname in common, the surname of the adopted child will be determined in accordance with a separate law.
- (3) An adopted child may retain the name and surname that it had before the adoption, or may add to its surname the surname of the adoptive parent, if the welfare centre decides this is in the interest of the child.
- (4) An adoptive parent may determine the ethnicity of the adopted child.
- (5) If the adopted child is older than twelve, its consent is needed for a change in his personal name and ethnicity.

#### Article 146

- (1) Adoptive parents are entered into the register of births as parents.
- (2) Adoptive will not be entered into the register of births as parents if the welfare centre decides that this is in the interest of the child.
- (3) If the adopted child is older than twelve, its consent is required for the entry of adoptive parents as parents.

#### Article 147

After the adoption no contention or establishment of maternity or paternity is permitted.

#### Article 148

- (1) Through the adoption the adopted child and its progeny acquire the right to succeed the adoptive parent, his blood relatives and relatives by adoption.
- (2) Through the adoption the adoptive parents and his blood relatives and relatives by adoption acquire the right to succeed the adopted child and his progeny.
- (3) Through the adoption, the right of the adopted child to succeed his parents and other blood relatives ceases, except the parent that is married to the adoptive parent, and the blood relatives and relatives by adoption of that parent.

#### Part Five

### GUARDIANSHIP

#### Article 149

- (1) Guardianship is a form of the protection of minor persons without parental care, of adult persons who are not capable of caring for themselves and of persons

who for a number of other reasons are not able to protect their own rights and interests.

(2) Wards are persons under guardianship.

#### Article 150

(1) For minor wards, guardianship takes the place of parental care.

(2) For adult wards guardianship provides protection for the personality via care, medical care and training for life and work, and protection of property rights and interests.

(3) Guardianship ceases on the death of the ward or the cessation of the circumstances because of which a person is under guardianship.

#### Article 151

Guardianship is carried out by the welfare centre, a guardian and a guardian ad litem.

### I. GUARDIANSHIP FOR MINOR PERSONS

#### Article 152

A minor person will be placed under guardianship if his parents:

1. are dead, missing, unknown or for at least a month of unknown whereabouts,
2. have been pronounced legally incompetent or deprived of the right to exercise parental care
3. are minors and have not pursuant to Article 120 of this Law achieved legal competence,
4. are absent or otherwise detained or not able to take care of their child, and yet have not confided it to the care and upbringing of a person who meets the conditions to be a guardian.

#### Article 153

(1) A welfare centre will make a decision to place a minor under guardianship and will appoint him or her a guardian.

(2) A minor ward through a decision of a welfare centre is confided to the care and upbringing of a guardian, another person, a foster home, a children's home or a legal entity that carries out the activity of welfare.

#### Article 154

The guardian of a minor ward is duty bound like a parent conscientiously to have concern for the child's rights, and particularly concerning the child's health, upbringing and education.

#### Article 155

A guardian can only with the approval of the welfare centre:

1. decide on the choice or change of school and occupation, cessation of education or the education of the minor ward,
2. make major choices to do with the person of the minor ward, particularly in respect of health, documents concerning personal state and the other personal rights and interests of the minor ward.

Article 156

A minor ward who has income is bound to contribute to his maintenance.

Article 157

A minor ward has the right to find out in a suitable way of the important circumstances of the case, to obtain advice and to express his opinion and to be informed about the possible consequences of his opinions being heeded when decisions are being made concerning his right or interest. The opinion is taken into consideration in line with his age and maturity.

Article 158

- (1) Guardianship over a minor person ceases with the [minor's] acquisition of legal competence, adoption or the cessation of the reasons as defined by Article 174 of this Law.
- (2) A legally effective decision on the cessation of guardianship will be supplied to the competent registrar for the purpose of entry into the register of births and to the land register department of the municipal court for the sake of the expunging of notes.

## II GUARDIANSHIP AND PARENTAL CARE FOR AN ADULT PERSON

Article 159

- (1) In a non-litigation proceeding a court will pronounce an adult person who because of mental handicaps or other causes is not capable of looking after his personal needs, rights and interests or who is a threat to the rights and interests of other persons partially or completely legally incompetent.
- (2) Before making a decision as defined in Paragraph 1 of this Article, the court will obtain the professional opinion of a forensic physician on the state of health of the person concerning which the declaration of legal incompetence proceeding has been initiated and on the impact of this state on the persons ability to protect all or some of his or her personal needs, rights and interests and the threat to the rights and interests of other persons.
- (3) In a decision pronouncing the person partially legally incompetent, the court will determine the measures, actions and matters the person is not capable of undertaking independently, for example, disposing of assts, pay or other constant monetary receipts, manage property, decide about employment, give statements and declarations or undertake actions that relate to marriage, parental care and other personal status, unless otherwise determined in this Law.

(4) A person pronounced partially legally incompetent may independently undertake any matters that are not defined in the decision as defined in Paragraph 2 of this Article.

#### Article 160

(1) Everyone is bound to inform the welfare centre on the need to provide protection to persons as defined in Article 159 Paragraph 1 of this Law.

(2) Healthcare institutions are bound at the request of a welfare centre or ex officio to supply data to the welfare centre about mental disturbances and other causes because of which a person is incapable of taking care of his own rights and interests.

#### Article 161

(1) A welfare centre will motion a court to initiate proceedings when it considers that because of the reasons as defined in Article 159 Paragraph 1 of this Law a person should be declared partially or totally legal incompetent.

(2) A welfare centre appoints a guardian ad litem for a person concerning whom a proceeding for the declaration of total or partial legal incompetence has been started to whom the provisions of guardianship ad litem apply. The actions that the guardian is not authorised to undertake are taken by the person independently.

#### Article 162

A welfare centre will place a person who has been declared partially or totally legally incompetent under guardianship and appoint a guardian for the person in a period of thirty days of the court decision becoming legally effective.

#### Article 163

(1) If a person who has been pronounced legally incompetent has parents who agree and are able to care for an adult child, the welfare centre will make a decision concerning parental care after majority is attained.

(2) When a person who has been declared partially legally incompetent the welfare centre will decide on the exercise of parental care and determine in accordance with the court decision on the pronouncement of partial legal incompetence which components of parental care and with what authority the parents will exercise.

(3) The welfare centre will at once deliver to the registrar a legally effective decision concerning parental care after majority and the cessation of parental care after majority for the sake of entry into the register of births and to the land register department of the municipal court in the area of which the person has real estate for annotation in the land register.

(4) In the event of changed circumstances, the welfare centre will make a decision on the cessation of parental care after majority and will place the person as defined in Paragraph 1 of this Article under guardianship.

#### Article 164

In an appropriate way the provisions of this Law concerning the rights and duties of a child and the responsibilities, duties and rights of parents will be applied to parents who exercise parental care after a child's majority.

#### Article 165

For persons pronounced legally incompetent a physician of primary health protection is bound every three years at the request of the welfare centre to deliver it an opinion concerning the state of health of the ward considering the reason for the declaration of legal incompetence.

#### Article 166

(1) Guardianship, that is parental care for an adult person pronounced legally incompetent will cease when a court decision concerning the restoration of legal competence becomes legally effective.

(2) A court may decide that a person declared completely legally incompetent may be partially legally incompetent, if the legal conditions for this are met.

### III GUARDIANSHIP AD LITEM (A GUARDIAN AD LITEM)

#### Article 167

For the sake of the protection of individual personal and property rights and interests a welfare centre may appoint a guardian ad litem:

1. for a child in the proceeding of the contention of maternity and paternity as defined in Article 75 of this Law,
2. a child in the proceeding as defined in Article 111, 112 and 114 of this Law,
3. a child when there is a conflict of interests between it and its proceedings in property proceedings or disputes, or in the contracting of given legal matters,
4. children in the event of a dispute or the contracting of legal matters between them when the same person exercise parental care over them,
5. the child of a foreign citizen that without the escort of a legal representative is in the territory of the Republic of Croatia,
6. in other cases when the interests of child and parents are opposed.

#### Article 168

For the sake of the protection of personal and property rights and interests the welfare centre will appoint a guardian ad litem:

1. for a person when a motion to declare the person legally incompetent has been made,
2. for a person whose whereabouts have been unknown for at least three months or who is inaccessible and has no attorney,
3. a ward when there is a conflict of interest between him and his guardian or close relative or spouse-guardian in property proceedings or conflicts, or during the contracting of individual legal matters,

4. wards in the event of conflicts or the contracting of legal matters between them when they have the same guardian,
5. and in other cases when this is necessary for the sake of the protection of the rights and interests of the ward[s].

#### Article 169

(1) A decision made about the appointment of a guardian ad litem also defines his duties and authorities. Provisions about the rights, duties and responsibilities of a guardian apply in an appropriate manner to a guardian ad litem.

(2) An appeal against the decision of a welfare centre to appoint a guardian ad litem as defined in Article 167 and 168 of this Law does not postpone the implementation of the decision, except in cases when it is lodged against the decision to appoint a guardian ad litem as defined in Article 168 Paragraph 2.

(3) A guardian ad litem is bound to submit a report about his work at the application of the welfare centre during the performance of the work of guardianship in a period defined by the welfare centre, and after the conclusion of the case for which he was appointed within a period of eight days.

#### Article 170

(1) A welfare centre will determine the scope of the duties and authorities of a guardian with respect to a person if a motion has been made to pronounce the person legally incompetent, taking into account the person's state of health.

(2) The duties of a guardian as defined in Paragraph 1 of this Article cease when the decision to place the person under guardianship or parental care after majority becomes final or when the judicial decision that there are not reasons for the declaration of legal incompetence becomes legally effective.

#### Article 171

(1) For a person who has been of unknown whereabouts or has been inaccessible at least three months and who has no attorney, in proceedings that are filed and conducted in front of a court or administrative bodies, a welfare centre will appoint a guardian ad litem only after being informed by the court or the administrative body in front of which the proceeding about the person's interests and rights is being conducted.

(2) The body in front of which the proceeding is being conducted may also, under conditions defined by a separate law, appoint a guardian for persons as defined in Paragraph 1 of this Article. This body is bound without delay to inform the welfare centre that has the same authority over a guardian so appointed as over a guardian that it has itself appointed.

#### Article 172

(1) In the event of a dispute between a ward whose guardian has been determined according to the provisions of Article 153 Paragraph 2 of this Law and the welfare centre, in a non-litigious proceeding a court will appoint, for the sake of the protection of the rights and interests of the ward, a guardian ad litem, and determine the scope of his authorities.

(2) A motion to the court for the appointment of a guardian as defined in Paragraph 1 of this Article can be made by an establishment or another legal entity or an individual who learns of such a case.

#### Article 173

The rights and duties of a guardian ad litem cease when the decision on the cessation of this guardianship becomes final.

### IV. A GUARDIAN

#### Article 174

(1) A person who has the character and abilities to carry out guardianship and who contents to be a guardian is appointed a guardian.

(2) If it is required by the circumstances of the case and the well-being of the ward, a welfare centre can decide to carry out the duties of guardian directly and for this purpose will appoint a person employed in the centre. A director or an official who carries out the legal matters of guardianship in the centre may not be appointed guardian.

(3) For the appointment of a guardian as defined in Paragraph 2 of this Article, the consent of the person is not necessary.

(4) The same person can be guardian for several wards, if this is not against their separate interests.

(5) The welfare centre will ask of wards who are capable of understanding what is at issue and from their close relatives their opinion about the person whom it intends to appoint guardian.

#### Article 175

A guardian cannot be a person

1. who has been deprived of the right to exercise parental care
2. who has been pronounced legally incompetent
3. whose interests are opposite to those of the ward
4. from whom considering his behaviour and characteristics and relationship with the guardian correct performance of the duties of a guardian cannot be expected
5. with whom the ward has concluded a contract about lifelong maintenance,
6. with whose spouse the ward has concluded a contract about lifelong maintenance.

#### Article 176

A welfare centre is bound to acquaint a person whom it intends to appoint a guardian with the significance of guardianship and the rights and duties of the guardian.

#### Article 177

(1) A welfare centre in the decision appointing a guardian also defines his duties and rights.

(2) A welfare centre can in a decision restrict the authorities of a guardian, if this is in the interest of the ward and decide that certain matters for the ward shall be performed by an official of the welfare centre or some other person qualified to carry out such kinds of matters.

#### Article 178

(1) A decision on placing someone under guardianship and on the cessation of the guardianship shall be delivered by a welfare centre in eight days of the decision becoming legally effective to the registrar for the sake of entry into the register of births and to the land register department of the municipal court in the area of which the person under guardianship has real estate for the sake of annotation or for the expunging of annotations in the land registers.

#### Article 179

(1) A guardian is bound conscientiously to have concern for the person, the rights, obligations and well-being of a guardian, to manage his property and undertake measures to qualify the person for an independent life and work.

(2) Before undertaking major matters of protection of the person of the ward or his property interests the guardian is bound to consider the opinion, wishes and feelings of the ward.

(3) A guardian will endeavour to involve an adult ward in everyday life and leisure activities in accordance with the person's state of health and capacities.

#### Article 180

(1) If a ward has property, the welfare centre will without delay schedule and describe this property and confide it to the management of the guardian.

(2) The members of a commission composed of a representative of the welfare centre, the office of the government administration, the guardian, the person with which the property is located and the ward if he or she is capable of understanding the issue will be present at the scheduling of the property.

(3) The welfare centre will appoint the members of the commission as defined in Paragraph 2 of this Article.

(4) If the commission is of the opinion that for the description of certain items of moveable property particular expert knowledge is required that the members of the commission do not possess, it will ask for this to be done by an expert person.

#### Article 181

(1) When it considers it is necessary a welfare centre will schedule and describe the property of the ward and undertake other measures for the security of the property even before making a decision concerning guardianship.

(2) A welfare centre can even before making a guardianship decision ask the land register department in the area of which the person has real estate to annotate in the land register that the proceeding to place the person under guardianship has been instituted.

#### Article 182

A guardian is bound with the assistance of the welfare centre to undertake measures necessary for the provision of resources for the necessities of life of the ward.

#### Article 183

- (1) Outgoings for the necessities of life of the ward are covered from:
1. the ward's income
  2. resources obtained from persons who according to the law are bound to maintain the ward,
  3. welfare resources, in line with the provisions of a separate law,
  4. the ward's property,
  5. other sources.
- (2) Exceptionally, if this is for the good of the ward, the outgoings for his necessities of life can be met, before welfare resources, from the ward's property that does not serve for meeting the basic needs of life of the ward and the members of his family.

#### Article 184

- (1) A guardian represents the ward.
- (2) A guardian independently carries out matters of regular management of the ward's property unless otherwise determined by a decision of the welfare centre.

#### Article 185

For the undertaking of major matters to do with the person, personal state or health of the ward the guardian needs the prior approval of the welfare centre.

#### Article 186

- (1) With prior approval from the welfare centre the guardian can undertake matters that exceed the regular management of the property and rights of the ward, in particular:
1. the alienation or burdening of the ward's real estate
  2. alienate movables belonging to the ward of major value
  3. dispose of the ward's property rights.
- (2) A welfare centre in a decision approving matters as defined in Paragraph 1 of this Article will determine the purpose of the resources so obtained and will supervise the use of them.
- (3) An employee of a welfare centre or his or her spouse may not make a contract with a ward concerning the alienation or burdening of the ward's property.

#### Article 187

- (1) A guardian is bound every six months and when this is sought by the welfare centre to submit a report about its work and on the state of the ward's property.

(2) A guardian who according to this Law is bound to maintain a ward is bound, every year, and also when the welfare centre requires this, to submit a report about its work and the state of the ward's property.

(3) A report as defined in Paragraph 1 and 2 of this Article is submitted in written form or orally for a record.

(4) In the report the guardian must state who has looked after the person of the ward and the protection of the person's rights and well-being, and data about the management and disposal of the ward's property, about the income and expenditure of the ward and other data important for the person of the ward in the previous period.

(5) In cases of direct guardianship the report is submitted by the person as defined in Article 153 Paragraph 2 of this Law to the expert council of the welfare centre.

(6) The welfare centre is bound to consider the report of the guardian and if necessary to undertake appropriate measures for the protection of the well-being of the ward.

#### Article 188

(1) A guardian has the right to monthly remuneration, depending on his work and the effort expended in the protection of the ward's rights and well-being.

(2) A guardian who according to this law is bound to maintain the ward has not right to remuneration.

(3) The remuneration of the guardian is paid out of the resources stated in the provisions of Article 183 Items 1, 2, 4 and 5 of this Law, if this does not endanger the covering of the basic necessities of life of the ward.

(4) A guardian has the right to compensation for justified costs that are approved by the welfare centre out of the resources stated in Article 183 Items 1, 2, 4 and 5 of this Law, if this does not endanger the covering of the basic necessities of life of the ward.

(5) A guardian employed in a welfare centre has the right to a monthly remuneration for the matters of guardianship that, with the special approval of the director, he or she undertakes outside office hours.

#### Article 189

(1) If the resources for the remuneration as defined in Article 188 of this Law cannot be met from the resources anticipated in Article 183 of this Law they will be met at the cost of the resources of welfare.

(2) The minister competent for welfare matters will prescribe the amount and manner of the payment of the remuneration for guardians as defined in Article 188 of this Law and Paragraph 1 of this Article.

#### Article 190

(1) A guardian is liable for the damage that he has caused in the performance of his duties.

(2) A welfare centre shall determine the amount of the damage and call upon the guardian to make it up in a certain period, and at the same time motion the court to secure the ward's claims on the property of the guardian.

(3) If the guardian does not make up the damage in a certain period, the welfare centre will directly or via a guardian ad litem file a suit for the compensation for the damage.

(4) For the sake of the protection of the ward's rights that have been breached by the improper work of the guardian, the welfare centre is bound to undertake other measures provided for in the law against the guardian.

#### Article 191

If the guardian dies or by his own will ceases to carry out his duty or if there are circumstances that prevent the guardian from carrying out his duties, the welfare centre will without delay appoint a new guardian.

#### Article 192

(1) The welfare centre will relieve the guardian of his duties if it determines that he is negligent in the performance of these duties, that he is endangering the interests of the ward, that he is abusing his authority and if it is of the opinion that for the ward it would be more useful for another guardian to be appointed.

(2) The welfare centre will seek the ward's opinion about the dismissal of his guardian, if he is capable of understanding the issue.

(3) The welfare centre will relieve the guardian of his interests when he seeks this, and at the latest within two months of the submission of the application.

(4) In a case as defined in Paragraph 1 and 2 of this Article the welfare centre will appoint a new guardian for the ward without delay.

#### Article 193

(1) In the event of a change of guardian the welfare centre will ask for a report from the previous guardian and determine the period in which the transfer of the duties should be carried out.

(2) A record is composed of the transfer in the presence of an employee of the welfare centre, of both guardians and the ward, if he is capable of understanding the issue.

(2) If the previous guardian has not submitted a report or if he is not able to be present at the transfer of the duties, the welfare centres will acquaint the new guardian with the personal state and property affairs of the ward.

#### Article 194

In the event of the cessation of guardianship the welfare centre will call upon the guardian in a given period to submit a report about his work and the state of the ward's property and to surrender the property to the management of the ward or to his parent or adoptive parent. The surrender is carried out in the presence of the guardian, the ward, the parent or adoptive parent and the official of the welfare centre, and a record will be drawn up concerning it.

### V. COMPETENCE AND PROCEEDING IN MATTERS OF GUARDIANSHIP

#### Article 195

The territorial jurisdiction of the welfare centre in guardianship matters is determined according to the registered residence or temporary abode of the person who needs to be placed under guardianship or needs to be appointed a guardian ad litem.

#### Article 196

The welfare centre of the last residence or abode of the ward has territorial jurisdiction in the case of placing under guardianship a person who is entrusted to care and upbringing or who is placed in a welfare, upbringing and educational, healthcare or other institution or in another family.

#### Article 197

If a ward changes his residence, the territorial jurisdiction of the welfare centre also changes.

#### Article 198

(1) The proceeding for placing a person under guardianship and appointing a guardian is initiated ex officio the welfare centre that has territorial jurisdiction.

(2) A welfare centre will initiate a proceeding to place a person under guardianship and also for the application of different forms of protection according to direct knowledge or as a result of information that must be provided it by:

- a registrar, a judicial or other governmental body and a body of local self-government
- a spouse, relatives, other members of a household
- healthcare institutions.

#### Article 199

When a welfare centre initiates a proceeding for placing a person under guardianship, it at once undertakes the measures necessary to protect the person's rights and interests.

#### Article 200

(1) If the ward has any real estate in the area of another welfare centre, the welfare centre of jurisdiction may authorise this welfare centre to appoint a guardian ad litem to take care of this property.

(2) Approval for the alienation or burdening of real estate as defined in Paragraph 1 of this Article is given by the welfare centre responsible for the whole care of the ward.

#### Article 201

(1) A welfare centre works together with bodies of the civil service, the local self-government, with legal entities and individuals especially when it is necessary:

1. to obtain data about persons who need to be placed under guardianship

2. to obtain suggestions about persons suitable to be guardians, or the opinions about persons proposed as guardians,
  3. obtain data about shortcomings or irregularities in the work of a guardian.
- (2) Welfare, upbringing and educational, healthcare and other establishments or a family in which a ward is placed are bound to inform a guardian and the welfare centre about all the important circumstances concerning the person of the ward.

#### Article 202

- (1) A welfare centre will monitor the circumstances in which a ward lives. An employee of the welfare centre is bound to visit the ward at least twice a year and also when asked by the guardian or the ward.
- (2) An employee of the welfare centre is bound to draw up a report about a visit to the ward within eight days of the visit.
- (3) The welfare centre monitors the work of a guardian and affords him the necessary assistance.

#### Article 203

- (1) A minor ward who has had his fifteenth birthday and a ward who has been declared partially legally incompetent have the right to lodge an appeal against a decision to appoint or to discharge a guardian and also against decisions in which their rights and well-being are decided on. An appeal as defined by Paragraph 1 of this Article postpones the application of the decision.
- (2) A welfare centre can change its decisions when the interests of the ward so demand.

#### Article 204

- (1) A ward, his spouse, relative in the direct line, judicial bodies, bodies of the civil service, the local self-government, welfare, healthcare and educational institutions can lodge a complaint concerning the work of a guardian to the welfare service.
- (2) The welfare centre investigates the justification of the complaint and takes the measures determined by the law.
- (3) Persons as defined in Paragraph 1 of this Article can submit a complain concerning the work of the welfare centre in connection with the performance of individual guardianship matters to the ministry competent for welfare matters.
- (4) If the complain is grounded, the ministry will give instructions to the welfare centre concerning how it should behave and determine the period in which it is duty bound to supply a report about the actions undertaken.

#### Article 205

The minister competent for welfare activities prescribes the manner of keeping registers and files of cases, persons under guardianship, the manner of scheduling and describing their property, and the submission of reports and the way a guardian renders accounts.

#### Part Six

## MAINTENANCE [SUPPORT]

### Article 206

Maintenance is the duty and right of a parent and children, spouses and extramarital partners and kin in the direct line, when this is provided for in this Law.

### Article 207

Persons as defined in Article 206 of this Law contribute to their mutual maintenance according to their own capacities and the needs of the person maintained.

### Article 208

Renunciation of the duties and rights to maintenance has no legal effect.

## 1. MAINTENANCE OF CHILDREN, PARENTS AND OTHER RELATIVES

### Article 209

Parents are bound to maintain their minor children.

### Article 210

- (1) Parents are bound to maintain children who are in full time education even after their majority.
- (2) Parents are bound to maintain an adult child who has finished its education and cannot find employment for a year after the completion of the education.
- (3) Parents are bound to maintain an adult child who because of sickness, mental or physical impairment is not capable of work.

### Article 211

A child who has income is bound to contribute to its maintenance.

### Article 212

A parent whose exercise of parental care over a child has been restricted or taken away or who does not in fact exercise parental care nevertheless is not freed of the duty to maintain a child.

### Article 213

- (1) An adult child is bound to maintain a parent that is not capable of work, and does not have enough resources for living, or cannot realise resources from his or her assets.

(2) A child can be freed from the duty to maintain a parent who for unjustified reasons did not maintain him during the time it was his legal obligation.

#### Article 214

(1) A stepmother or stepfather is bound to maintain a minor stepchild if he or she cannot obtain maintenance from his parents.

(2) A stepmother or stepfather is bound after the death of the child's parent to maintain the minor stepchild if at the moment of the death of the parent they lived with the stepchild.

(3) If the marriage between the parent and the stepmother or stepfather was dissolve or annulled then the stepmother or stepfather is not bound to support the stepchild.

#### Article 215

An adult stepchild is, under the conditions as defined in Article 214 Paragraphs 1 and 2 of this Law, duty bound to support a stepmother or stepfather if the stepmother or stepfather maintained or cared for him for a quite long period of time.

#### Article 216

If a parent does not maintain a child, a grandparent pertaining to this parent is bound to maintain the child according to the provisions of Article 210 and 211 of this Law.

## II. MAINTENANCE OF A SPOUSE

#### Article 217

A spouse who does not have the means necessary for living or cannot realise them from his or her assets and is not capable of working or cannot be employed as the right to maintenance from the spouse.

#### Article 218

(1) A spouse has the right to make a motion for maintenance up to the end of the main hearing in a divorce or annulment motion, which the court is bound to warn him of.

(2) Exceptionally, if in a divorce or annulment no motion for maintenance has been made, the former spouse may file suit seeking maintenance in a period of six months from the cessation of the marriage, if the conditions for maintenance provided for in Article 217 of this Law existed at the moment of the conclusion of the main hearing in the divorce or annulment suit and lasted without interruption until the conclusion of the main hearing in the maintenance suit.

#### Article 219

A court may deny a petition for the maintenance of a spouse if the maintenance represents a manifest injustice to the other spouse.

#### Article 220

- (1) A court may decide that the obligation to maintain a spouse lasts up to one year, particularly when the marriage lasted a short time or when the plaintiff is able in the foreseeable future to secure means for living in some other way.
- (2) In justified cases the court may extend the obligation of maintenance.
- (3) A suit for extension of maintenance can be submitted only up to the elapse of the time for which the maintenance was set.

#### Article 221

- (1) The right to maintenance ceases when a divorced spouse or the spouse from an annulled marriage who makes use of this right marries again.
- (2) The right to maintenance ceases on a judicial decision if the court determines that the divorced spouse or the spouse from an annulled marriage who uses this right lives in an extramarital union or if he or she has become unworthy of this right or if there are no longer any of the conditions as defined in Article 217 of this Law.
- (3) The court will determine that the legal effect of a decision on the cessation of maintenance as defined in Paragraph 2 of this article occurs before it becomes legally effective, from the day when the conditions for the cessation of the maintenance occurred.

### III. MAINTENANCE OF AN EXTRAMARITAL PARTNER AND THE MOTHER OF AN EXTRAMARITAL CHILD

#### Article 222

- (1) If the extramarital union of a woman and a man that lasted for quite a long time has ceased, the extramarital partner who meets the conditions as defined in Article 3 and 217 of this Law has the right to maintenance from the other extramarital partner.
- (2) A suit for maintenance can be submitted in a period of six months from the cessation of the extramarital union.

#### Article 223

The court may deny an application for maintenance of an extramarital partner if the maintenance represents a manifest injustice for the other extramarital partner.

#### Article 224

- (1) The court can decide that the obligation to maintain an extramarital partner lasts up to one year, especially when the plaintiff is able in the foreseeable future to provide means for living in some other way.
- (2) In justifiable cases the court may extend the obligation of maintenance.

(3) A suit for the extension of maintenance can be submitted only up to the elapse of the time for which the maintenance was determined.

#### Article 225

- (1) Right to maintenance will cease if the extramarital partner marries.
- (2) The right to maintenance ceases on a decision of the court if the court determines that the maintained extramarital partner lives in a new extramarital union or if he or she has become unworthy of this right or if there are no longer any of the conditions as defined in Article 217 of this Law.
- (3) The court will determine that the legal effect of a decision concerning the cessation of maintenance as defined in Article 2 of this Law occurs before its legal effectiveness from the day when the conditions for the cessation of the maintenance occurred.

#### Article 226

The father of an extramarital child is bound to maintain the child's mother for a year from the birth of the child if she cares for the child and does not have adequate means for living.

### IV DETERMINATION OF MAINTENANCE

#### Article 227

- (1) The right to maintenance from a spouse or an extramarital partner is obtained before maintenance from a relative.
- (2) If a stepmother or stepmother have children, the duty of maintenance is common to both children and stepchildren.
- (3) The right to maintenance from grandparents as defined in Article 216 of this Law is obtained before maintenance from a stepmother or stepfather.

#### Article 228

If several persons according to this Law have an identical maintenance obligation, this obligation is shared according to their several capacities.

#### Article 229

If a person who according to this Law is bound before other persons to give maintenance is not capable of totally satisfying the need for maintenance, the person who seeks maintenance can obtain the difference from other persons obliged to give maintenance as provided for in this Law.

#### Article 230

- (1) A welfare centre will endeavour to have parents or a child in fulltime education even after attaining majority and parents [sic] agree out of court on the amount or the increase in the contribution for the maintenance of a child whenever this is possible, paying attention to the well-being of the child.

(2) An agreement made in a welfare centre is an enforceable document.

#### Article 231

(1) In a maintenance suit a court will determine the total amount of resources necessary for the maintenance.

(2) In assessing the needs of the maintained person the court will take into consideration the person's income, assets, capacity for work, opportunities for employment, state of health and other circumstances on which the maintenance decision depends.

(3) In an assessment of the capacities of the person who is bound to give the maintenance all the person's receipts and real opportunities to acquire extra earnings, the person's own needs and the legal obligations to give maintenance will be taken into account.

#### Article 232

(1) When maintenance is sought for a child, the age of the child will be taken into consideration and the needs for its education.

(2) Irrespective of the circumstances as defined in Article 231 Paragraphs 2 and 3 of this Law, a parent capable of work cannot be exempted from the duty to maintain a minor child.

(3) The needs of the child for maintenance can be determined in an increased amount if this is in line with the increased capacities of an individual parent.

(4) The minister competent for justice matters will once a year publish, at the latest by April 1, data about the monthly needs of a child, considering the costs of living, which the court will take into account together with Paragraphs 1 through 3 of this Article.

#### Article 233

In a suit concerning child maintenance the court will with respect to the parent with whom the child lives take especially into account the care that the parent puts into the raising of the child and in accord with this will diminish the monetary contribution of this parent to the maintenance of the child.

#### Article 234

(1) A welfare centre may on behalf of the child file and conduct a maintenance suit or a suit for increased maintenance if another person or an establishment cares for the child or if the parent with whom the child lives does not obtain this right for unjustified reasons.

(2) A welfare centre may seek enforcement of the decision concerning child maintenance.

#### Article 235

(1) A welfare centre is bound to keep a register of decisions on child maintenance that it will deliver to the court according to Article 302 Paragraph 2 and of agreements entered into in the welfare centre according to Article 230 of this Law.

(1) The minister competent for welfare matters will prescribe the manner of keeping registers of court decisions on maintenance and of agreements entered into in a welfare centre.

#### Article 236

A court will instruct a person obliged to give maintenance that payments of monthly monetary instalments of the maintenance from his pay, compensation in lieu of pay or pension can be carried out according to his agreement (administrative ban) without an enforcement [garnishing] proceeding being carried out.

#### Article 237

If a person that is bound to contribute to the maintenance of a child does not agree to an administrative prohibition [a voluntary garnishing order], the welfare centre will after the elapse of six months from the day of the receipt of the decision of the court or the making of the agreement as defined in Article 230 of this Law check whether the person meets his obligation regularly and fully, and will take the measures necessary for the protection of the interests of the child.

#### Article 238

- (1) Maintenance is set in a monetary amount, unless there are good reasons for the maintenance to be provided in some other way.
- (2) Maintenance for a child is always set in a monetary amount.

#### Article 239

- (1) A court will order a person liable to pay maintenance who is employed to pay instalments due up to the end of the main hearing in certain monetary amounts, and the payment of the future monetary amounts will be determined in a percentage of wages and compensation in lieu of wages.
- (2) A person liable to pay maintenance is bound to pay the amounts of maintenance defined as a percentage of his wages to the person authorised to receive the maintenance on every occasion wages or compensation in lieu of wages are paid out.

#### Article 240

The provisions of Articles 238 and 239 of this Law are also applied in an appropriate way when the person liable to pay the maintenance is a pensioner.

#### Article 241

At the motion of a person who motions for maintenance, the court will, when it assesses that there are good reasons for this, determine the maintenance in a certain fixed sum of money, and not in a percentage of wages, compensation in lieu of wages or pension.

## Article 242

The court will set the payment of monetary instalments of maintenance by a person liable to provide maintenance who obtains an income from the independent performance of work with his personal work or on some other basis and not from employment, as in the case as defined in Article 232 Paragraph 2 of this Law in a defined amount of money.

## Article 243

A person who receives and a person who gives maintenance can petition the court to raise or to reduce the amount of the maintenance, decide on the cessation of the maintenance or change the manner of the maintenance determined in a prior decision with legal effect or by an agreement before a welfare centre if the circumstances pursuant to which the previous decision was made have changed.

## Article 244

An individual or a legal entity that has borne the costs of the maintenance of some person can file suit to require compensation of these costs from the person who according to this Law was bound to give the maintenance, if the costs made were justified.

## Article 245

A person liable to give maintenance who has entered into new employment is bound to give to the employer with whom he has become employed the data about the existence of a maintenance enforcement document and the name and address of the person whom the claim should be paid to.

## Article 246

An employer with whom the person liable to give maintenance has entered into new employment is bound at once to inform the person who has the maintenance claim about the new employment or else give the person who has the claim the necessary information about the person liable to give the maintenance who has obtained new employment with it.

## Part Seven

### PROPERTY RELATIONS

#### 1. THE PROPERTY RELATIONS OF SPOUSES

## Article 247

Spouses can have matrimonial acquisitions and personal property.

### *1. Matrimonial acquisition and personal property*

#### Article 248

A matrimonial acquisition is property that the spouses have acquired during the lasting of the marital union or that derive from that property.

#### Article 249

- (1) Spouses are equal co-proprietors of the matrimonial acquisition [the property acquired during the marriage] unless they have agreed otherwise.
- (2) A bride and a groom, that is, the spouses, can through a nuptial agreement determine their relations to do with matrimonial acquisitions differently.

#### Article 250

The provisions of real and obligatory law are applied to matrimonial acquisitions unless otherwise ordered in this Law.

#### Article 251

In connection with matters of regular management it is deemed that the spouse has given consent unless this spouse can prove the opposite. The absence of consent does not affect the rights and obligations of a bona fide third party.

#### Article 252

A gambling win is a matrimonial acquisition.

#### Article 253

- (1) Property that the spouse had at the moment of the contracting of the marriage remains his or her own personal property.
- (2) Own personal property is also property that the spouse has acquired during the marriage union on a legal foundation different from that stated in Article 248 of this Law (inheritance, giving and so on).

#### Article 254

- (1) An author's work is the personal property of the spouse that has created it.
- (2) Financial benefit from the authorial right and rights similar to authorial rights acquired during a marriage union is an acquisition.

#### *2. A nuptial agreement [marriage settlement]*

#### Article 255

- (1) A nuptial agreement can govern property law relations with respect to existent or future property.
- (2) Settlements about the management or disposal of acquisition have legal effect with respect to third parties if they are entered into land registers or into public

records in which the entry is necessary for the acquisition of rights or without which entry the thing cannot be used.

(3) A nuptial agreement is entered into in written form, and the signatures of the spouses have to be verified.

#### Article 256

In lieu of a spouse pronounced legally incompetent a nuptial agreement can be made by a guardian with the prior consent of the welfare centre.

#### Article 257

It is not allowed in a nuptial agreement to stipulate the application of foreign law to the property law relations.

### II. THE PROPERTY RELATIONS OF EXTRAMARITAL PARTNERS

#### Article 258

An extramarital union of a woman and a man that meets the conditions as defined in Article 3 of this Law creates property law effects to which the provisions of this Law concerning the property relations of spouses are applied in an appropriate way.

### III. PROPERTY RELATIONS OF PARENTS AND CHILDREN

#### Article 259

(1) A minor child may acquire property through work, inheritance, gift or some other legal foundation.

(2) A minor's property is managed by his parents, except for the property that the minor has obtained after his fifteenth birthday.

#### Article 260

The parents can use income from the child's property for the sake of his maintenance, treatment, upbringing, education or for covering certain other important needs of the child.

#### Article 261

(1) Parents can with the approval of the competent welfare centre alienate or burden the property of a minor child for the sake of his maintenance, treatment, upbringing, education, training or for the sake of covering some other important needs of the child.

(2) The approval of the welfare centre is also important for the undertaking of appropriate procedural actions before a court or government bodies relating to the child's property.

#### IV. THE COSTS OF THE DELIVERY OF AN EXTRAMARITAL CHILD

##### Article 262

- (1) The costs arising from a pregnancy and the delivery of an extramarital child are met by mother and father in accord with their economic capacities.
- (2) In the event of a suit a court will at the request of one of the parents determine the share of each of them in the covering of these costs.

##### Part Eight

#### PROCEEDING BEFORE A COURT

##### 1. COMMON PROVISIONS

##### Article 263

- (1) The provisions of this part of the Law determine the rules according to which courts proceed when in special civil proceedings, non-litigation proceedings and special proceedings of enforcement and security they make decisions concerning marital, family and other matters that are governed by this Law.
- (2) The proceedings as defined in Paragraph 1 of this Article are urgent.

##### Article 264

In proceedings defined by Article 263 of this Law the provisions of the Civil Proceedings Law and the Enforcement [Execution] Law will be applied unless otherwise ordered in this Law.

##### Article 265

- (1) Actions in special civil, non-litigation proceedings and action in the proceedings of enforcement and security in marital, family and other matters that are governed by this Law are undertaken urgently.
- (2) In proceedings defined by Paragraph 1 of this Article the first hearing must be held within fifteen days of the day when the suit or motion is received in the court.

##### Article 266

A second instance court is bound to make a decision on an appeal against a decision made in a first instance proceeding in cases as defined in Article 263 Paragraph 1 of this Law within thirty days of the day of the receipt of the appeal.

##### Article 267

A court is bound during a proceeding to pay particular care to protect the rights and interests of a child, a person with mental handicaps or a person who for some other reasons is not capable of taking care for himself or his rights and interests.

##### Article 268

(1) If a court during a proceeding suspects that a party is not capable of caring for his rights and interests himself and for that reason it should pronounce him legally incompetent and appoint a guardian for him, it will inform the welfare centre and the court of jurisdiction for the sake of the initiation of the appropriate proceeding.

(2) A court will adjourn a proceeding until the proceeding for pronouncing the person legally incompetent and appointing a guardian has been carried out, or until the welfare centre or the court of jurisdiction inform it of the suspension of the proceeding. During the adjournment of the proceeding only those actions that can be endangered by an adjournment can be taken, particularly those actions that are supposed to protect or secure the rights of the party that is not capable of looking after his rights and interests.

(3) In a case as defined in Paragraph 1 of this Article the court may appoint a temporary representative for each party in the proceeding.

#### Article 269

(1) In matters of status the court can allow even a party that is legally incompetent to undertake certain actions in the proceeding for the sake of obtaining his rights and interests if he is capable of understanding the significance and legal effects of these actions.

(2) A court will enable a child, in accordance with his age, maturity and well-being, for the sake of obtaining his rights and interests in status matters, to express his opinion before the welfare centre or before the court.

#### Article 270

(1) In status matters and in matters of maintenance of a minor child or a child over whom parents exercise parental care, the parties in a proceeding before the court may not withdraw their application, may not accept the application of the opposing party or make a settlement.

(2) In a proceeding as defined in Paragraph 1 of this Article the court is authorised to establish facts that the parties have not adduced, and can decide to have facts that the parties have stipulated in the proceeding proved.

(3) In a proceeding as defined in Paragraph 1 of this Article a court cannot make a judgement according to an acknowledgement, a judgement according to a renunciation or a judgement because of an absence.

#### Article 271

A proceeding deciding on status matters is held in camera.

#### Article 272

The court will decide freely on the costs of a proceeding concerning status matters, taking into account the circumstances of the case and the outcome of the proceeding.

#### Article 273

The court will supply decisions made in marital disputes, on the deprivation of the right to exercise parental care, and the declaration of legal incompetence to the registrar for the sake of entry into the national register.

## II PARTICIPATION OF A WELFARE CENTRE

### Article 274

- (1) When a welfare centre institutes a proceeding before a court, it has the position of a party in the proceeding.
- (2) A welfare centre can as a party join a proceeding that has been initiated by another party, if it is authorised to institute such a proceeding.
- (3) When it thinks it is necessary a court will call upon a welfare centre to take part in the proceeding and set it a period within which it can register its participation. The court will adjourn the proceeding until this period is elapsed but the welfare centre can also exercise its right to take part in the proceeding after the elapse of the period.

### Article 275

- (1) When in a proceeding before a court the rights and duties in the relations of parents and children are being decided on, the court will call upon a welfare centre to take part in the proceeding for the sake of the protection of the interests of the child.
- (2) A welfare centre is bound to respond to the call of the court as defined in Paragraph 1 of this Article and to take part in the proceeding.
- (3) A welfare centre takes part in the enforcement and security proceeding that is carried out for the sake of enforcing the decision made in the proceeding as defined in Paragraph 1 of this Article.

### Article 276

When it takes part in a proceeding according to the provisions of Article 274 Paragraph 2 and Article 275 of this Law, the welfare centre is authorised to make its motion and to undertake other actions in the proceeding for the sake of the protection of the rights and interests of a child, and particularly to put forward facts that the parties have not adduced, propose the production of evidence and enter legal remedies.

### Article 277

- (1) A court before which a proceeding as defined in Article 274 Paragraph 2 of this Law is being heard will call a welfare centre to the hearing and deliver it the petitions of the parties and the decisions irrespective of whether it takes part in the proceeding or not.
- (2) The court will require the welfare centre, taking into account the age, maturity and well-being of a child to inform the child of the opportunity to take part in the court proceeding in connection with proceedings as defined in Article 275 Paragraph 1 of this Law.

(3) The provisions of Paragraphs 1 and 2 of this Article will be applied in an appropriate manner in non-litigation proceedings in which according to the provisions of this Law a welfare centre can be a party if it does not take part.

#### Article 278

(1) A welfare centre is bound at the request of the court to collect data about the personal and family conditions of a child and the parties in the proceeding when the court deems this necessary for the making of a decision.

(2) A welfare centre is bound at the request of the court in maintenance disputes carefully to investigate the economic circumstances of the parties in the proceeding and in particular whether their statements concerning their income correspond with the real state of affairs.

#### Article 279

To do with the rights of a welfare centre for reimbursement of the costs of the proceeding and its duties to cover the costs in a proceeding before a court the provisions of the Civil Proceedings Law that refer to the state's attorney will be applied.

### III SPECIAL LITIGATION PROCEEDINGS

#### *1. A proceeding in matrimonial disputes*

#### Article 280

(1) A litigation proceeding for the sake of determining whether a marriage does or does not exist, for the annulment or dissolution of a marriage (matrimonial disputes) is instituted with a suit.

(2) If both spouses require a divorce, the litigation proceeding is instituted by a stipulated demand [a joint petition] for a divorce.

(3) If one of the spouses files a suit for a divorce, and the other at the latest by the conclusion of the main hearing, expressly states that he does not deny the justification of the suit, it will be considered that the marriage partners have submitted a joint petition for a divorce.

(4) If one of the spouses withdraws from the joint petition for a divorce, and the other adheres to the request to have the marriage dissolved, this application will be considered a suit for a dissolution of the marriage, and the court will instruct the spouses to start the mediation proceeding.

#### Article 281

(1) A spouse against whom the suit is filed in a matrimonial dispute may at the same court file a counter suit against the other spouse for the sake of determining that the marriage does not exist or for an annulment of the marriage.

(2) A decision on the suit and the counter suit will as a rule be made in a single judgement.

(3) A counter suit can be filed because the suit should not have been filed because the period in which the suit could be filed had elapsed.

## Article 282

- (1) There is no statute of limitations to the right to sue for divorce unless otherwise ordered in this Law.
- (2) The right to sue for an annulment or dissolution of a marriage does not pass to heirs, but persons who claim the right to inherit from a deceased spouse who has filed a suit can continue the proceeding for the sake of determining that the suit was grounded.
- (3) An application as defined in Paragraph 2 of this Article can be stated in a suit that was started by a deceased spouse, if not more than six months have elapsed since the spouse's death, and after the elapse of this period the application may be stated only in a special suit.
- (4) The provisions of Paragraphs 2 and 3 of this Article will be applied in an appropriate way when a deceased spouse has filed a joint petition for divorce.

## Article 283

- (1) If an attorney for a party files a suit in a matrimonial dispute, in the power of attorney which suit an attorney is able to file must be expressly stated.
- (2) If a suit for an annulment of a marriage is filed, in the power of attorney for which reason the suit can be filed must be expressly stated.

## Article 284

- (1) In divorce suits a plaintiff may without the consent of the defendant withdraw the suit right up to the conclusion of the main hearing and with the consent of the defendant until the time the proceeding is concluded with legal effect.
- (2) A joint petition for divorce can be withdrawn by the spouses at any time until the proceeding is concluded with legal effect.

## Article 285

- (1) A review is not allowed of a second instance judgement made in matrimonial disputes.
- (2) No extraordinary legal remedy or other legal measure can be permitted against a legally effective judgement stating that the marriage does not exist or is annulled or dissolved.

## *2. A proceeding for the sake of determining or contesting maternity or paternity*

## Article 286

- (1) Parties in a suit for the sake of determining maternity are the child and the woman whose maternity is being established, and the welfare centre or the woman who considers herself the mother as defined in Article 77 of this Law if they have launched this proceeding.
- (2) Parties in a suit for the determination of paternity are the child, the child's mother and the man whose paternity is being determined, and the welfare centre if it has instituted this proceeding.

(3) In suits as defined in Paragraph 1 and 2 of this Article a welfare centre may have the position of a party irrespective of who instituted the proceeding before the court.

(4) In proceedings for the sake of establishing maternity and paternity a down payment for the costs of the forensic expert will be paid from the resources of the court.

#### Article 287

(1) Parties in a suit to dispute maternity are a child, the woman who disputes the maternity, the woman whose maternity is being disputed or the child's father.

(2) The parties in a suit to dispute paternity are a child, the child's mother and the man whose paternity is being disputed.

(3) If in the suit as defined in Paragraph 2 of this Article paternity established by acknowledgement is being disputed, the man who is disputing the paternity is also a party.

#### Article 288

In a suit for the establishment of maternity, as well as in a suit in which another woman disputes maternity seeking at the same time the establishment of her own maternity, the party is also the man who, in the case that this maternity is established, would be deemed the father of the child.

#### Article 289

(1) If a suit for the sake of establishing or disputing paternity does not include all the persons as plaintiff and defendant who should be parties in the proceeding, the court will instruct the plaintiff to sue the person who is not included in the suit, or to call this person to join the suit as a new plaintiff.

(2) If the plaintiff does not expand the suit to all the persons who should be parties in the proceeding in the period set by the court, or if these persons do not join the suit, the court will appropriately apply the provisions of litigation proceeding.

#### Article 290

When there are several plaintiffs or defendants in a suit they are considered single adversaries.

#### Article 291

When one of the plaintiffs files a suit in the period allowed by the law, the suit can be joined by a plaintiff for whom the legal period for a suit has elapsed.

#### Article 292

(1) In a proceeding for the sake of establishing or disputing maternity or paternity the court can establish decisive facts by the production of evidence by medical forensics in accordance with the achievements of modern science.

(2) If it has decided to produce evidence by medical forensic testimony the court will in a ruling concerning the production of this evidence determine the period within which the production of the evidence can be waited for.

(3) The court will determine the period as defined in Paragraph 2 of this Article taking into consideration the urgency of the proceeding and other circumstances of the case, with the proviso that the period may not be longer than three months counting from the day of the delivery of the ruling to the parties.

(4) The summons to the production of medical forensic testimony will be delivered personally to the parties with the ruling that has determined the production of this evidence. In the summons the establishment that will undertake the forensic evidence must be stated, the time of the forensic evidence and a warning as the consequences of failure to attend.

(2) When the period as defined in Paragraph 2 of this Article elapses the hearing will be carried out irrespective of the evidence not having been produced.

(6) If the evidence is not produced because one of the parties did not respond to the summons to the production of the medical forensic proceeding or refused to take part in the forensic proceeding, the court will consider the significance of the fact that the party did not attend the forensic evidence proceeding or refused to take part in the forensic proceeding.

#### Article 293

A review is permitted against a second instance judgement on the establishment or disputation of maternity or paternity.

*3. A proceeding for settling issues of which parent a child will live [custody issues], parental care and measures for the protection of the rights and well-being of a child.*

#### Article 294

(1) A court will decide on which parent a minor birth or adopted child will live with, or with whom a child over whom parental care is exercised after majority will live, or of placing the child with another person, a welfare institution or some other legal entity that carries out welfare activities and concerning parental care:

1. in a decision determining that a marriage does not exist or annulling or dissolving a marriage,
2. in a decision establishing maternity or paternity.

(2) A court can decide, when it makes a decision as defined in Paragraph 1 of this Article, to impose measures for the protection of the rights and well-being of the child when this is necessary according to the circumstances of the case.

#### Article 295

(1) Before making a decision concerning which parent the child will live with and about parental care the court will obtain the opinion and recommendation of the welfare centre.

(2) The welfare centre is bound within a period of thirty days to supply the court with the opinion and recommendation as defined in Paragraph 1 of this Article.

(3) When custody is being decided on in a divorce proceeding a welfare centre can take into consider the opinion of the mediator.

#### Article 296

(1) In a decision concerning which parent the child will live with and on parental care the child will, if it is necessary, order a person with whom the child is living to surrender it to a parent.

(2) In a case as defined in Paragraph 1 of this Article the court will set a deadline for the surrender of the child or order that it be surrendered at once.

(3) A court decision concerning the surrender of the child to the parent with whom the child will live obliges the parties, the welfare centre and the person with whom the child is living.

#### Article 297

In the proceeding concerning with which parent the child will live and concerning parental care the court is not bound by the applications of the parties.

#### Article 298

(1) A court can decide on which parent the child will live with, the manner of holding the meetings and association of the child with the parents and other matters of parental care according to the agreement of the parents, if it considers that this agreement is in accordance with the well-being of the child.

(2) While determining the substance of the parental care as defined in Paragraph 1 of this Article, the provisions of Article 297 of this Law will be applied in an appropriate way.

#### Article 299

A review is not allowed of a second instance decision concerning which parent the child will live with or concerning parental care.

### *4. Proceeding in maintenance disputes*

#### Article 300

(1) A court will make a decision concerning the maintenance of a joint minor child or an adult child that has been pronounced legally incompetent when in a matrimonial dispute it makes a decision determining that a marriage does not exist or is annulled or dissolved and in other cases in which the parents live separately.

(2) The court will deliver a decision on the maintenance of a joint minor child or a child over whom the parents exercise parental care even after its majority to the welfare centre for the child's registered residence.

#### Article 301

(1) The court will make a decision concerning the maintenance of a minor child or a child over whom parents exercise parental care even after its majority when it

determines in a suit for the establishment of paternity that the defendant is the child's father.

(2) The court can also make a decision on the maintenance of a child as defined in Paragraph 1 of this Article in other suits for establishing or disputing maternity or paternity or when the making of this decision, considering the outcome of the suit and the circumstance of the case is possible and necessary.

#### Article 302

In a matrimonial suit a court will make a decision on the maintenance of one of the spouses if the spouse petitions for this.

#### Article 303

In maintenance suits an individual judge adjudicates in the first instance.

#### Article 304

In maintenance suits the provisions of the Litigation Proceeding Law that relate to the proceedings in small claims suits will not be applied.

#### Article 305

(1) In suits concerning the maintenance of a minor child or a child over whom the parents exercise parental care even after majority the court is not bound by the applications of the parties, and it will heed an agreement of the parties if it is in accordance with the well-being of the child.

(2) Review of a second instance decision concerning the maintenance of a minor child or a child over whom the parents exercise parental care after its majority is not allowed.

### IV. NON-LITIGATION PROCEEDINGS

#### *1. General provisions*

#### Article 306

(1) Up to the time a decision is made on the main issue a court will make a decision discontinuing a non-litigation proceeding if it determines that the proceeding should be carried out according to the rules of litigation proceeding. The proceeding will be continued after the decision becomes legally effective according to the rules of litigation proceeding before the court of jurisdiction.

(2) Actions that have been carried out by the non-litigation court (investigation, forensic evidence, taking evidence from witnesses and so on) are not without importance from the mere fact of having been undertaken in a non-litigation proceeding. These actions will be repeated only if the non-litigation court has made some essential violation of litigation proceeding.

(3) When a court decision is made in a non-litigation proceeding and the proceeding should have been carried out according to the rules of litigation

proceeding, this decision can be refuted by legal remedy, if the non-litigation court has made some essential violation of the provisions of litigation proceeding.

#### Article 307

In a non-litigation proceeding in the first instance an individual judge will adjudicate.

#### Article 308

- (1) Hearings are held before a court in the presence of a recording clerk.
- (2) The statements of parties and other participants in the proceeding that are given outside the hearings may be entered into a record by an expert adviser.

#### Article 309

- (1) A court can make a decision without holding an oral trial if it considers that this trial is not necessary.
- (2) A decision of the court can be founded on evidence that has not been produced before the court that makes the decision.
- (3) Statements of the parties and other participants in the proceeding can be given in written form.
- (4) Statements of parties and other participants in the proceeding can be given when the other parties and participants are not present. The court does not have to give in every case a party a change to respond to these statements.
- (5) The provisions of Paragraphs 1 through 4 of this Article will not be applied when there is a dispute between the parties about facts on which the decision in the main matter depends.

#### Article 310

Parties in a non-litigation proceeding can be, as well as the persons and bodies who are authorised by the provisions of this Law to institute a proceeding, also other persons whose rights and legal interests are being decided on in the proceeding.

#### Article 311

- (1) A record is as a rule composed of the actions carried out in the proceeding.
- (2) Less important statements of the parties and information that the court collects can be placed instead of in a record in a note in the record of the court.
- (3) The record is signed by the parties who were present at the actions in the proceeding, the judge and the recording clerk or the expert adviser who drew up the record.
- (4) A note in the record is signed by the person who drew it up.

#### Article 312

There is no suspension of the proceeding in non-litigation proceedings.

### Article 313

- (1) A decision is made in the form of a ruling.
- (2) A decision against which a special appeal is permitted and a decision of the second instance court must be accompanied by a reasoned opinion.

### Article 314

- (1) When enforcement of some action is ordered in a decision, the court will determine the period in which the enforcement has to be carried out.
- (2) A court may determine that the enforcement action be carried out at once, if this is necessary for the protection of persons regarding whom the court has a special care.

### Article 315

- (1) When through a decision a court changes the status of a party or the party's rights and duties, the legal effects of the decision come into being when the decision becomes legally effective.
- (2) The court can determine that the legal effects of a decision come into being before legal effectiveness if this is necessary for the sake of the protection of persons concerning whom the court has a special care.

### Article 316

- (1) An appeal is permitted against first instance decisions unless otherwise determined in this Law.
- (2) An appeal has to be lodged in a period of fifteen days from the delivery of the decision.
- (3) An appeal lodged in due time defers the enforcement of a decision or its legal effects, unless otherwise determined in this Law or in the actual decision of the court.
- (4) The court may decide that an appeal will not defer the enforcement when measures are imposed that protect the rights and well-being of children.

### Article 317

- (1) A first-instance court can in response to an appeal lodged in due time rescind or modify its decision, if the rights of other persons are not thus violated.
- (2) If a first instance court does not rescind or does not modify its decision, the appeal and all the records will be sent to the second instance court.

### Article 318

- (1) No review may be made of a legally effective decision made in a second instance court.
- (2) The state attorney may, within thirty days of the day the decision becomes legally effective, submit a motion for protection of legality against a decision in which a proceeding is closed with legal effect.

## Article 319

- (1) A motion to reopen the proceeding may not be made against a decision through which a proceeding is closed with legal effect.
- (2) A party who has achieved the ability to produce new facts or present new evidence that might lead to a different decision of the court can request the court in the non-litigation proceeding to rescind or modify the decision with which the previous proceeding was ended with legal effect.
- (3) When a court finds about new facts or evidence, it can even without the motion of the party rescind or modify the decision with which the former proceeding was ended with legal effect, if it was authorised ex officio to institute this proceeding.

## Article 320

In a non-litigation proceeding, the provisions of the Litigation Proceeding Law will be applied in an appropriate manner unless otherwise ordered by this Law.

### *2. Territorial jurisdiction of courts*

## Article 321

In non-litigation proceedings that are carried out according to the provisions of this Law, territorial jurisdiction belongs:

1. in matters that concern the relations of children and parents – to the court that has general territorial competence for the child,
2. in matters in which permission is sought for the contracting of marriage – to the court that has general territorial jurisdiction for the person that seeks the permission,
3. in matters of declaring a person legally incompetent and of restoring legal competence, to the court that has general territorial jurisdiction for the person about whom the proceeding is being carried out,
4. in other matters – to the court that has general territorial jurisdiction for any of the parties in the proceeding, and if the proceeding is instituted by a motion for the protection of that party, the court that has the general territorial jurisdiction for that party.

## Article 322

(1) If during a proceeding the circumstances on which the territorial jurisdiction rests should change, the court before which the proceeding was instituted can defer the case to a court that has become the court of territorial jurisdiction, if it is manifest that the proceeding will be carried out more easily or if this is necessary for the sake of the protection of persons concerning whom the court has a special care.

(2) Before deferring a case the court will seek the opinion of the welfare centre if it has taken part in the proceeding.

## Article 3223

The parties may not by an agreement change the jurisdiction of the court.

### *3. The proceeding for declaration of legal incompetence and restoration of legal competence*

#### Article 324

(1) The proceeding for the declaration of legal incompetence can be instituted ex officio by a court at the motion of the welfare centre, the spouse of the person about whom the proceeding is carried out, the person's blood relatives in the direct line and in the lateral line to the second degree of kinship.

(2) A proceeding for restoration of legal competence will be instituted by the court ex officio or the persons as defined in Paragraph 1 of this Article or the guardian with the approval of the welfare centre or the person concerning whom the proceeding for the restitution of legal competence is carried out.

#### Article 325

(1) In a motion for the institution of proceedings the facts should be stated on which the motion is founded and evidence should be presented in support of these facts.

(2) The court may call upon the person making the motion to submit written findings and the opinion of a physician or some other document that indicates that the person as defined in Article 159 Paragraph 1 of this article is not capable of taking care of his own needs, rights and interests or that the person is a danger to the rights and interests of other persons.

#### Article 326

(1) The court will call the person who has made the motion to institute the proceedings to a hearing, the person concerning whom the proceedings are carried out, the guardian of the person and the welfare centre.

(2) Persons as defined in Paragraph 1 of this Article and the welfare centre can during the proceedings take place during the production of the evidence and in the deliberations concerning the results of the entire proceeding.

(3) The court will endeavour to hear the person concerning whom the proceeding is carried out. If this person is in a psychiatric institution or is placed in a welfare institution, the person will be heard in principle in this institution.

(4) The court can desist from calling and hearing the person concerning whom the proceeding is being carried out, if this could be harmful for the person or if the hearing is impossible considering the person's mental impairment and state of health.

#### Article 327

(1) The person concerning whom the proceeding for the declaration of legal incompetence is being conducted should, by order of the court, be examined by a physician who will give a written finding and opinion of the results of the examination.

(2) The court may waive the medical examination if the person who is to be examined has already by court order been placed in a psychiatric institution and if from reports from this institution it appears that it is necessary to declare the person legally incompetent.

(3) A court may determine that a person who should be examined be placed temporarily, for a period of at most three months, in a psychiatric institution, if in the opinion of the physician this is necessary for an evaluation of the person's state of mind and if it is not dangerous for the person's health.

#### Article 328

(1) If it determines that some person should be pronounced partially legally incompetent as a result of the abuse of dependency substances, a court may adjourn the proceeding and defer the making of a decision if this person is undergoing treatment in a healthcare institution.

(2) During the proceeding the court may warn a person who should be pronounced partially legally incompetent of the possibility of deferring the making of a decision if he undergoes treatment in a healthcare institution.

(3) The time for which the making of a decision may be deferred may not be shorter than six months or longer than one year, but the court may rescind its own decision if the person who should be pronounced partially legally incompetent leaves the treatment centre or if he is discharged from it because of disorderly conduct or if the person in some other way avoids treatment.

(4) In making a decision about a motion to pronounce a person partially legally incompetent the court will take into consideration the results of the treatment in the healthcare institution.

#### Article 319

(1) A decision of a court concerning the pronouncement of partial legal incompetence is delivered to the party that made the motion for the institution of the proceeding, to the person is pronounced partially incompetent, the person's guardian and the welfare centre.

(2) The court need not deliver the decision to the person declared incompetent if the person can not understand the significance and legal effects of the decision or if this is harmful to the person's health.

(3) Ex officio the court will inform the welfare centre about the legal effectiveness of the decision to pronounce legal incompetence, that is about the occurrence of the legal effects of this decision and also when these effects come into being even before the decision is legally effective.

#### Article 330

(1) If the reasons as defined in Article 159 of this Law cease, the court will decide to restore legal competence to the person pronounced legally incompetent in a previous decision.

(2) The court may decide that the person who was pronounced legally incompetent in a previous decision may be only partially incompetent (the partial restitution of legal competence) if the legal reasons for this are attained.

## Article 331

(1) If it denies a motion for the total or partial restitution of legal competence, a court can decide that before the elapse of a given time, but not long than one year, there may be no renewed application for the restitution of legal competence, if from the outcome of the proceeding it appears with great probability that for a certain time there is no reason to expect a full return to health or any important improvement in the state of mind or other circumstances because of which the person was pronounced legally incompetent.

(2) The court will deny any motion for the restitution of legal competence submitted before the elapse of the period as defined in Paragraph 1 of this Article.

(3) In a proceeding for the partial or full restitution of legal competence the provisions of the Law concerning the proceeding for the pronouncement of legal incompetence will be applied in an appropriate manner.

## Article 332

In proceedings that are instituted and conducted before a court or bodies of the government administration, a welfare centre will institute a proceeding for the appointment of a guardian ad litem only on information from the court or the body of the government administration that the whereabouts of the person in the suit are unknown.

### *4. Provisions concerning other non-litigation proceedings*

## Article 333

(1) An appeal against a decision of the court denying the motion to permit the contracting of a marriage in the case of a minor can be lodged only by the minor that intends to contract marriage and the person with whom the minor intends to contract marriage.

(2) An appeal may be lodged against the decision of a court that permits the contracting of a marriage in the case of a minor only by the person's parents, the person's guardian and the welfare centre.

(3) An appeal may be lodged against a decision of the court denying a motion to allow the contracting of a marriage in the case of a person pronounced totally legally incompetent by the person pronounced incompetent and by the person with whom he or she intends to contract marriage.

(3) An appeal may be lodged against a decision of the court allowing the contracting of marriage by a person pronounced legally incompetent by the person's guardian and by the welfare centre.

## Article 334

(1) An appeal against the decision of a court allowing legal competence to be attained by a minor older than sixteen years who has become a parent may be lodged by the minor's parents and a welfare centre.

(2) An appeal against a decision of the court that denies the motion for legal competence to be attained by a minor older than sixteen years who has become a parent may be lodged by the minor and by the welfare centre.

## Article 335

When the court imposes measures for the protection of the rights and well-being of a child the provisions concerning the participation of the welfare centre in the proceeding as defined in Article 295 of this Law will be applied in an appropriate way.

## V. SPECIAL PROCEEDINGS OF ENFORCEMENT AND SECURITY

### 1. *General proceedings*

#### Article 336

The enforcement [execution, garnishing] proceeding and the security proceeding are conducted according to the provisions of the Enforcement Law unless otherwise ordered in this Law.

#### Article 337

If a court is authorised *ex officio* to institute a proceeding in which an enforcement document is adopted, it can also *ex officio* make a decision on enforcement and it can conduct enforcement.

#### Article 338

An appeal against an enforcement ruling does not defer the implementation of the enforcement or the undertaking of enforcement actions through which the claims because of which the enforcement was ordered are ensured.

#### Article 339

A court may defer enforcement only if thereby the personal and other important interests of children and other persons concerning whom the court has a special care are not endangered.

### 2. *Enforcement for the sake of surrender of a child to a parent*

#### Article 340

(1) For deciding on a motion for enforcement for the sake of the surrender of a child to a parent with which it will live apart from the court that has general territorial jurisdiction for the party against whom the enforcement is undertaken the court that has general territorial jurisdiction with respect to the party that moves the enforcement is also a court of jurisdiction, as well as the court in the area of which the child happens to be.

(2) Conduct of enforcement of the removal of a child will be taken *ex officio* or at the application of a party by the court in the area of which the child happens to be.

(3) The court as defined in Paragraph 1 of this Article can decide that the conduct of certain enforcement actions for the sake of the surrender of a child to the parent

with whom it will live will be deferred to a court that is not the court of jurisdiction for the conduct of the enforcement.

#### Article 334

- (1) Pursuant to a court custody decision the conduct of enforcement may be ordered for the sake of the surrender of a child, irrespective of whether in the decision the surrender of the child has been ordered.
- (2) If in the decision of the court the party against whom the enforcement proceeding is conducted has not been ordered to surrender the child, the court will make this order in the enforcement decision. In this case the court will set the time for the surrender or it will order the child to be surrendered at once.

#### Article 342

- (1) In an enforcement decision the order of the surrender of the child may be given to the person to whom the enforcement decision refers, to a person on whose will the surrender of the child depends and every other person with whom the child may be at the moment of the making of the decision.
- (2) In a decision as defined in Paragraph 1 of this Article it will state that the child must be surrendered by any other person with whom the child might happen to be at the moment of the conduct of the enforcement.

#### Article 343

- (1) A motion for enforcement may be made by the parent who has been awarded custody [= with whom the child will live].
- (2) A welfare centre will make a motion for the enforcement if the parent who has been awarded custody does not oppose the institution of the enforcement proceeding.

#### Article 344

In the course of the enforcement proceeding the court will endeavour in the greatest possible measure to protect the child.

#### Article 345

- (1) After assessing all the circumstances of the case the court will determine enforcement by removing the child or by the imposition and implementation of fines or imprisonment against the person who in contravention of the court order refuses to surrender the child or undertakes actions with the aim of hiding the child or frustrating the implementation of the decision.
- (2) The means [mechanisms] of enforcement as defined in Paragraph 1 of this Article may also be ordered and implemented against a person with whom the child is located and against a person on whose will the surrender of the child depends.
- (3) If the purpose of the enforcement cannot be achieved with one of the means as defined in Paragraph 1 of this Article, the court may order another means for the enforcement of this Paragraph.

#### Article 346

In a motion for enforcement for the sake of the surrender of a child who has been awarded custody the means of the enforcement need not be indicated, and if it is indicated, the court is not bound by the motion of the party.

#### Article 347

(1) When in a court decision it is ordered that a child be surrendered at once, the enforcement decision must be delivered to the party from whom the child has to be removed during the undertaking of the first enforcement action. If the party is not present during the removal of the child, the decision will be delivered to the party subsequently.

(2) The absence of a person from whom a child is to be removed will not prevent the conducting of the enforcement actions.

(3) If the enforcement is carried out against a person to whom the enforcement decision does not refer, this person will be handed an enforcement decision and a minute concerning the removal of the child.

(4) If the enforcement is carried out against a person as defined in Paragraph 3 of this Article or against a person not present during the enforcement actions, these actions will be taken in the presence of two adult persons.

(5) According to the rules of personal delivery the court will inform the parent to whom the child must be surrendered on the time and place for the undertaking of the enforcement actions for the removal of the child, and it can also call the welfare centre to be present at the conduct of the enforcement.

#### Article 348

In the proceedings of enforcement of a measure taken for the protection of the rights and well-being of the child, the provisions of Articles 336 through 342 and Articles 344 and 347 will be applied in an appropriate way.

### *3. Maintenance enforcement*

#### Article 349

For the ordering of enforcement and for the implementation of enforcement for ensuring maintenance from wages and other regular monetary receipts of the garnishee, apart from the court that has general territorial jurisdiction for the garnishee, the court that has general territorial competence for the employer that pays the wages of the garnishee or the payer of other regular monetary receipts also has territorial jurisdiction, as well as the court that has adjudicate din the first instance in the proceeding in which the enforcement document was adopted.

#### Article 350

(1) A person whose income is attached for the sake of maintenance [a garnishee, a debtor] may before a court, a notary public, a welfare centre or an employer or some other payer give his consent that the sums set aside for the maintenance be

paid out of the wages or other regular monetary receipts directly to the person who in the decision of the court is defined as the recipient of the maintenance, without the conduct of an enforcement proceeding.

(2) If the garnishee gives consent as defined in Paragraph 1 of this Paragraph before a court, a notary public or a welfare centre, they will at once supply the employer or other payer of regular monetary receipts with the declaration of the garnishee and the maintenance decision.

(3) If a garnishee has given consent as defined in Paragraph 1 of this Article before an employer or other payer of regular monetary receipts, he is also duty bound to submit to them the maintenance decision.

(4) Pursuant to the garnishee's consent, the employer or other payer of regular monetary receipts is bound during every payment to act according to the maintenance decision [order].

(5) In the proceeding for the maintenance of a minor child or a child over whom a parent exercises parental care after majority the court will make a decision on enforcement and carry out the enforcement when the garnishee has wages or other regular monetary receipts unless the garnishee agrees to an administrative prohibition.

#### Article 351

During an enforcement proceeding for maintenance that is determined in a percentage, the court may at the proposal of the creditor, when there is good reason for this, order that the enforcement is carried out by the payment of a monthly monetary amount of the last instalment of the maintenance due.

#### Article 352

If the parent who pursuant to a legally effective court decision or agreement made before a welfare centre is bound to contribute to the maintenance of a child does not meet his obligations for a period longer than three months the welfare centre is bound at the motion of the other parent or ex officio, if it assesses that for this reason the maintenance of the child might be endangered, undertake measures to ensure the resources for temporary maintenance until the parent who is the debtor in the maintenance matter begins to meet his liability.

*4. Enforcement for the sake of ensuring meetings and association of a parent with a child [visitation rights]*

#### Article 353

In an enforcement proceeding for the sake of implementing a court decision about the holding of meetings and association of a parent and a child the provisions of Article 341 and Articles 343 through 347 of this Law will be applied in an appropriate way.

*5. Security measures for the sake of maintenance*

#### Article 354

Security measures according to the provisions of this Law are provisional measures for the sake of maintenance and preliminary measures for the sake of maintenance.

#### Article 355

- (1) The court that has the territorial jurisdiction for the decision about the enforcement motion also has the jurisdiction for making a decision on an enforcement motion.
- (2) For the ordering and implementation of a preliminary measure for the sake of maintenance, apart from the court as defined in Paragraph 1 of this Law [sic – Article], the court that in the first stage of the proceeding in which the maintenance order was made, which is not yet enforceable, also has jurisdiction.
- (3) In a maintenance suit the court can order a provisional measure, and when it makes a decision that orders the debtor to give the maintenance, it can determine a preliminary measure for the sake of maintenance if the decision is not yet enforceable.
- (4) A court can determine a provisional measure of security as defined by this article for the sake of the maintenance of a minor child or a child over whom parents exercise parental care after majority in any proceeding in which according to the provisions of this Law it makes decisions concerning the rights and interests of children.

#### Article 356

- (1) A provisional maintenance measure can be ordered if the persons who proposes the security measure makes it seem likely that there is a maintenance obligation, and that without the adoption of such a measure there is a danger for the personal and other important interests of that person, or a danger that without that measure the adversary of the security will frustrate the implementation of the maintenance or make it much more difficult.
- (2) A preliminary maintenance measure can be ordered if the person making a motion for the security makes it seem likely that by the time the decision ordering the giving of the maintenance becomes enforceable the person's personal or some other important interests would be jeopardised or that without this security measure the realisation of the maintenance would be prevented or made much more difficult.
- (3) It is deemed that there is a danger for the personal or other important interests of the person making a motion for the security if the security measures are determined for the benefit of a minor child or a child over whom parents exercise parental care after majority unless the claim relates to the part of the maintenance in an increased amount in line with the increased capacities of the individual parent.
- (4) When a provisional maintenance measure is ordered in a suit for the establishment of maternity or paternity, the creditor has to make it probable that that the person against whom the measure is ordered is the parent of the child.

#### Article 357

- (1) If the need exists a court will order and conduct ex officio provisional security measures for the maintenance of a minor child or a child over whom parents exercise parental care after majority.
- (2) In other cases the court will order security measures for maintenance only at the motion of the person proposing the security of the maintenance.
- (3) A welfare centre can submit a motion for ordering security measure when according to the provisions of this Law it is authorised to make a motion for enforcement.

#### Article 358

- (1) A provisional measure for the sake of maintenance can order the adversary of the security to give maintenance in the amount that is essential to meet the essential needs of life for the person in whose benefit the provisional measure is ordered, and also every other measure as defined in Article 297 of the Enforcement Law can be set.
- (2) By a preliminary maintenance measure the debtor can be ordered to give maintenance in an amount determined by the maintenance order or in a smaller amount.

#### Article 359

- (1) In a decision ordering a security measure the court will determine the time of the duration of this measure.
- (2) When a decision concerning a temporary maintenance measure is adopted before the filing of a maintenance suit a court will deliver this to the person who is authorised to file a suit and determine the period in which the maintenance suit is to be filed.

#### Article 360

In proceedings for ordering and conducting security measures the provisions of the Enforcement Law will be applied in an appropriate manner.

#### Part Nine

#### TRANSITIONAL AND CONCLUDING PROVISIONS

#### Article 361

- (1) The provisions of this Law are also applied to family relations that came into being before the day of the beginning of the application of this Law unless otherwise determined by this Law.
- (2) On the day this Law starts to be applied, the rights and duties acquired according to previous regulations will not be modified.

#### Article 362

(1) If before the day this Law starts to be applied a first instance decision of a court, a welfare centre or other body is adopted during the further proceedings the Family Law according to Official Gazette no. 162/98 will be applied.

(2) If after the day this Law starts to be applied a first instance decision as defined in Paragraph 1 of this article is rescinded or abolished, during further proceeding the provisions of this Law will be applied.

#### Article 363

Proceedings for the sake of establishing or contesting maternity or paternity before the beginning of the implementation of this Law will be concluded according to the provisions of this Law.

#### Article 364

Proceedings concerning the property relations of spouses and extra-marital partners instituted before the day of the beginning of the implementation of this Law will be concluded according to the provisions of the Law according to which they were instituted.

#### Article 365

(1) The minister competent for justice and administration matters will adopt the regulations as defined in Articles 15, 20, 52, 114, 122 and 141 of this Law in a period of six months of this Law coming into force.

(2) The minister competent for welfare matters will adopt the regulations as defined in Articles 52, 110, 122, 142, 189, 205 and 235 of this Law in a period of six months of the day of this Law coming into force.

#### Article 366

Up to the time of the adoption of the regulations as defined in Article 365 of this Law, the following will be applied:

- The Regulations concerning the manner of keeping registers and documentation in connection with matters of a welfare centre in the area of marriage and relations in marriage (Official Gazette 66/99)
- The Regulations on the amount and the manner of payment of remuneration for supervision of the exercise of parental care (Official Gazette 66/99)
- The Regulations on the manner of keeping registers and records of cases of adoption (Official Gazette 66/99)
- The Regulations concerning the amount and manner of payment of the remuneration for guardians (Official Gazette 66/99)
- The Regulations concerning the manner of keeping registers and records of cases of persons under guardianship, the manner of scheduling and describing their property, and the submission of accounts and the rendering accounts of guardians (Official Gazette 66/99)
- The Regulations concerning the manner of keeping registers of court decisions concerning maintenance and agreements entered into in a welfare centre (Official Gazette 66/99).

Article 367

(1) On the day this Law comes into force the Family Law of Official Gazette no. 162/98 will cease to be in force, save for the provisions of Articles 44 through 50, Articles 99,100, 101, 102, 104, 104, 105, 106, 112, 113, 116 and 117, which will remain in force for six more months from the day this Law comes into force.

(2) The provisions of Articles 44 through 51, of Articles 100, 101, 102, 105, 106, 107, 111, 112, 113, 116 and 117 of this Law will be applied after the elapse of the period as defined in Paragraph 1 of this Article.

Article 368

This Law will come into force the day it is published in Official Gazette [Narodne novine].

Class: 555-01/02-01/03

Zagreb, July 14 2003

Croatian Parliament

President of the Croatian Parliament

Zlatko TOMCIC, signed.