

Determination of motherhood

Abstract

The topic of this thesis is the determination of motherhood. Its aim is to identify the situations that make the determination of motherhood difficult or impossible and to evaluate their legal regulation or to propose its supplementation. The thesis is divided into eight chapters, with the first chapter being devoted to the definition of the term motherhood and its history, current legislation and origins.

The second chapter focuses on assisted reproduction. It describes its basic principles, historical development, current legislation and possible risks. Chapter three, focusing on surrogacy, is also related to assisted reproduction. This chapter draws attention to the lack of legal regulation in this area and, after an assessment of the possible consequences of its absence, a *de lege ferenda* draft of the basis for legal regulation is drawn up. The highly controversial option of whole-body donation is also mentioned here.

The fourth chapter briefly describes the legal regulation of adoption, as one of the possibilities of how a child can legally have a woman different from the one who gave birth to him or her on the birth certificate. The thesis here also alludes to the possibility of adopting a child by a person in a registered partnership and enabling it by repealing part of the Act on Registered Partnerships by the Constitutional Court.

Chapter five summarizes situations that may cause the child's mother to be unknown. These are birth with the mother's identity concealed, anonymous birth, which is not possible in the Czech Republic's hospitals, and the existence and functioning of baby boxes.

The sixth chapter contains an introduction to the issue of home births, an explanation of the impossibility of their legal management by midwives and an assessment of the possible negative consequences associated with the determination of motherhood. The seventh chapter is then devoted to the possibility of child switching, focusing on the case of child switching in the Třebíč hospital in 2006.

To combine the theoretical findings with practice, the last chapter of this thesis contains an analysis of the answers of all relevant courts to the question whether they have encountered proceedings for the establishing or denying of motherhood in their practice. This part also summarises some of the judgments sent by the courts to outline specific factual situations, which makes this thesis provide a unique insight into the issue and allows the reader to gain a deeper understanding of the context. Finally, attention is paid to the drafting of legislation on proceedings for the establishing and denying of motherhood, for which the provisions on of fatherhood now apply adequately.

Keywords

legal proceeding of establishing and disputing motherhood, surrogacy, determination of motherhood