

## Adoption: Amendments to the Civil Code and the International Private Law Code

Draft Law No. 920 amending the provisions of the Civil Code on Adoption (11 articles), transmitted to the National Council on 16 April 2014, was voted unanimously by the National Council on 12 June 2019.

It is part of the wave of recent family law reforms (such as Law No. 1.278 of 29 December 2003 granting equal rights to men and women within the couple and with regard to children, or Law No. 1.450 of 4 July 2017 on the alternating residence for the child in the case of separation or divorce, the exercise of parental authority, and the family mediation).

It modifies the internal rules of adoption laid down in the Civil Code (Book I, Title VIII, Articles 240 to 297), the International Private Law Code (international adoption) and Law No. 1.155 of 18 December 1992 on nationality, as amended (Articles 1 and 2).

The legislator was inspired by French law and Swiss law, as well as international conventions (New York Convention of 20 November 1989 on the Rights of the Child, Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, European Convention on the Adoption of Children of 27 November 2008 of the Council of Europe).<sup>1</sup>

### *The main amendments to the Civil Code:*

- **Terminology adaptations** (removal of obsolete references : '**adoption**' replacing '*adoptive filiation*', '**full adoption**' replacing '*legitimising adoption*', '**prerogatives of parental authority**' replacing '*paternal power rights*', '**exercise of parental authority**' replacing '*custody rights*').
- General provisions:
  - **Fundamental principle of the interest of the adopted person** placed at the head of the provisions.
  - Increase in the **minimum age difference between the adopter and the adopted person** (except where the adopted child is the child of the adopter's spouse: 16 years instead of 15)).
  - Lowering the **age at which the adopted child must personally consent to the adoption** (13 years old instead of 15).

<sup>1</sup> Explanatory Memorandum to the Draft Law No. 920, A-1-12, 21/02/2014, especially p. 1; Committee on Women's Rights and Family, Report on the Draft Law No. 920, 07/05/2019, especially p. 1, 4.



- Full adoption:
  - Lowering the **minimum age of one spouse to make a joint application for full adoption** (26 years old instead of 30).
  - Increasing the **age at which a minor child admitted to the household of the adoptive parents for at least 1 year can benefit from a full adoption** (15 years old instead of 6).
  - Abolition of the clause subordinating adoption to the absence of descendants.
  - New provision concerning the **general conditions of full adoption of a child** (Monegasque, foreign, judicially declared abandoned, or able to be re-adopted)
  - New rules on **consent to full adoption** (may be given only 6 weeks after the birth of the child, obligation of the judge or notary to ensure that consent is free and informed, obligation to inform about the consequences).
  - New provision on **withdrawal of consent** (case of lapse of consent).
  - New provisions on the **declaration of abandonment** (conditions, declaration with respect to both parents, or only one).
  - New provision on the **procedure of full adoption** (supervision of the hearing of the adopted person, verification by the judge that the simple adoption *"is not likely to compromise the family life"*).
  - Consecration of **the right of the adopted person to have access to information concerning his origins** (information on biological filiation kept in the general registry for 100 years).
  - New provision relating to the **effects of full adoption** (distinction between the general effects of the adoption and its opposability to third parties).
  
- Simple adoption:
  - Lowering the **minimum age of the person or at least one of the spouses applying for the simple adoption** (26 years old instead of 30).
  - Abolition of the clause subordinating adoption to the absence of descendants.
  - Amendments concerning the **consent to simple adoption** (deletion of the authorization of the tutelary judge in the case of joint exercise of parental authority, new case of the child whose filiation is established only in respect of one of its authors).
  - Clarifications regarding the **declaration of consent before the tutelary judge or the notary** (ensure the reality and integrity of the consent, obligation to inform the author (s) of the consequences).
  - New provisions relating to the **simple adoption procedure** (investigation - adopted child and adopters-, regulation of the hearing of the adopted person, verification by the judge that the simple adoption *"is not likely to compromise the family life"*).



- Amendments relating to the **effects of simple adoption** (general effect, rights of the adopted person and the adopter in the inheritance, retroactive effect of the adoption pronounced after the death of the adopting).

***Amendments to the International Private Law Code:***

- Clarification of the **conditions of consent, regardless of the applicable law** (consent of the adopted person or his legal representative, free consent, consent obtained without consideration after birth, informed consent about the consequences).
- Clarification of the **procedure required for the forced execution of a foreign adoption decision** (general exequatur procedure).