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The Philippines: Child custody

Introduction

The following note gives an introduction to the regulation regarding child custody in the Philippines. The note describes the right of custody when a child is born in or out of wedlock and touches upon the deprivation of custody as well as transfer of parental authority.

This note is based on information obtained through an interview with the Office of the Solicitor General during a fact-finding mission to Manila in September 2023 as well as open source information.

Legitimate and illegitimate children

According to Philippine law, there are two categories of children – legitimate and illegitimate – depending on the marital status of the parents.¹ The Family Code of 1987, Art. 164, states that “*children conceived or born during the marriage of the parents are legitimate*”², whereas Art. 165 states that “*children born outside a valid marriage are illegitimate, unless otherwise provided in this Code*”.³

The right of custody – legitimate children

In case of legitimate children both father and mother exercise parental authority jointly.⁴ If one of the parents is absent or deceased, the remaining parent has custody rights over the child.⁵

A child which is born out of wedlock may be legitimised if its parents subsequently enter into a valid marriage.⁶ According to Art. 179 of the Family Code: “*legitimated children shall enjoy the same rights as legitimate children*”.⁷ Thus, the father of a child born out of wedlock must marry the mother of the child to legitimise the child and thereby achieve joint custody rights.⁸

¹ Landinfo, 17 July 2020, p. 1.

² Family Code, 6 July 1987, art. 164.

³ Family Code, 6 July 1987, art. 165.

⁴ Office of the Solicitor General, Manila, September 2023.

⁵ Office of the Solicitor General, Manila, September 2023.

⁶ Family Code, 6 July 1987, art. 177; Landinfo, 17 July 2020, p. 5.

⁷ Family Code, 6 July 1987, art. 179.

⁸ Landinfo, 17 July 2020, p. 5.

The right of custody – illegitimate children

According to a representative from the Office of the Solicitor General, the mother exercises the sole parental authority in case of illegitimate children, even though the father acknowledges paternity.⁹ On the back of the birth certificate, a separate Affidavit of Admission of Paternity can be filled out, but the acknowledgement of paternity can also appear as an annotation on the front.¹⁰ The father to the illegitimate child is obliged to support the child and is entitled to visitation right.¹¹

Legal separation and annulment

In the Philippines divorce is not allowed.¹² However, it is possible to annul a marriage in certain cases. Whether a child is defined as legitimate or illegitimate, when born within a marriage that is annulled after the child is born, depends on the reason for the annulment.¹³ If the marriage was void from the beginning, for instance if one of the parties was under the age of 18 years at the time of marriage or if the marriage between the parties is incestuous, the general rule is that the child will be considered illegitimate. However, the child will in general be defined as legitimate if born within a marriage that later on is annulled due to reasons listed in Art. 45 of the Family Code (e.g. fraud, force or sexually transmitted diseases).¹⁴

Furthermore, a married couple can file for legal separation on grounds such as repeated physical violence or habitual alcoholism.¹⁵ Legal separation does not terminate the marriage bond, but entitles the spouses to live separately.¹⁶ Children born before a legal separation are considered legitimate.¹⁷

For more information on marriage and annulment, see the NIDC note: *‘The Philippines: Marriage registration and marriage certificates’*.

Child custody in case of separation

When the parents of a (legitimate) minor child legally separate, the Court will determine who shall have custody rights. According to the Family Code, custody of minor children will be given to the innocent spouse, except if the guilty spouse is the mother and the child is below seven years of age.¹⁸

In general, the mother is the preferred custodian by the law, if the child is below seven years of age, unless the mother is deemed unfit to take care of the child.

⁹ Office of the Solicitor General, Manila, September 2023.

¹⁰ Landinfo, 17 July 2020, p. 2.

¹¹ Office of the Solicitor General, Manila, September 2023, Landinfo, 17 July 2020, p. 4.

¹² Office of the Solicitor General, Manila, September 2023.

¹³ Landinfo, 17 July 2020, p. 1; Family Code, 6 July 1987, art. 35, art. 37.

¹⁴ Family Code, 6 July 1987, art. 45.

¹⁵ Family Code, 6 July, 1987, art. 55.

¹⁶ Family Code, 6 July 1987, art. 61.

¹⁷ Family Code, 6 July 1987, art. 164; Landinfo, 17 July 2020, p. 2.

¹⁸ Office of the Solicitor General, Manila, September 2023; Family Code, 6 July 1987, art. 63, 213.

Reasons for not awarding custody of a child below seven years of age to the mother could be neglect or abandonment of the child.¹⁹

If the minor child is seven years or older, the parents have freedom to enter into an agreement regarding custody of their child, if possible.²⁰

However, custody given to a parent may be taken away by the Court if said parent is later on deemed unfit.²¹

Whenever matters of child custody are being considered in court, the welfare and best interest of the child is always the paramount principle.²²

Substitute parental authority

In case of death or absence of the parents (or mother with sole parental authority in case of an illegitimate child), there is a preferred order by the law as to who should exercise substitute parental authority over the child.²³ The order is as follows:

1. The surviving grandparent.
2. The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified.
3. The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.²⁴

Transfer of parental authority

According to the Family Code, parental authority is inalienable and "*may not be renounced or transferred except in the cases authorized by law*".²⁵ Said cases could be adoption, guardianship or foster care.²⁶ The transfer of custody will always be handled by the Family Court.²⁷

Suspension and termination of parental authority

The Family Court can decide to either suspend or terminate parental authority in case of physical and/or mental neglect of the child. Grounds for suspension are, for example, parents, who treat their child with excessive cruelty or compel it to beg.²⁸

Furthermore, parents can be deprived of their parental authority altogether. One of the reasons for termination of parental authority is abandonment.²⁹ A

¹⁹ Office of the Solicitor General, Manila, September 2023.

²⁰ Family Code, 6 July 1987, art. 63, art. 213.

²¹ Office of the Solicitor General, Manila, September 2023.

²² Office of the Solicitor General, Manila, September 2023.

²³ Office of the Solicitor General, Manila, September 2023.

²⁴ Family Code, 6 July 1987, art. 216.

²⁵ Family Code, 6 July 1987, art. 210.

²⁶ Office of the Solicitor General, Manila, September 2023.

²⁷ Office of the Solicitor General, Manila, September 2023.

²⁸ Office of the Solicitor General, Manila, September 2023.

²⁹ Office of the Solicitor General, Manila, September 2023.

representative from the Office of the Solicitor General explained that if a custodian goes to work abroad and leaves his/her child in care of its grandparents for a longer period of time, it would not be considered as abandonment by the law, as long as the custodian provides financial support to the child.³⁰

Parental authority may subsequently be revived by the Court after suspension or termination.³¹

³⁰ Office of the Solicitor General, Manila, September 2023.

³¹ Office of the Solicitor General, Manila, September 2023.

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