

FILIATION IN THE REPUBLIC OF VIETNAM

Information has been requested on filiation and adoption laws in South Vietnam. In the inquiry it is stated that an American citizen married a Vietnamese woman in 1969 and later acknowledged his wife's natural child as his own on a birth certificate. He obtained this certificate in either 1969 or 1970 from a "Vietnamese agency" which, it is presumed, had the authority to issue such a document. The question is whether recognizing the child as his own on the birth certificate constitutes a legal adoption under Vietnamese law.

The law governing filiation in South Vietnam from July, 1964, until December, 1972, was Decree-law No. 15/64, regulating marriage, filiation and community property. The adoption provisions of this law require that a number of conditions and procedures be satisfied in the legal adoption of a child. For instance, the reason for adoption must be stated; the adopting parents and the adoptive child must be of certain ages, etc. (Art. 135-144). Under the provisions of this law on adoption the recognition of a child on a birth certificate does not constitute an action in the legal adoption of the child; however, the fact that the husband secured the document himself and recorded his name as that of the child's father constitutes an acknowledgement of an illegitimate child under the law. Article 115 on illegitimate children states that:

An illegitimate child can be acknowledged by an official act if he or she has not been acknowledged in the birth certificate.

The civil status officer shall record the recognition in the current civil status register. The notary as well as the civil officer should convey such recognition to the civil officer of the child's residence for the latter to record the acknowledgement on the margin of the child's birth certificate.

Such acknowledgement is the first step in the legitimation of the child. Article 131 of Decree-law No. 15/64 on legitimation of a child states that:

An illegitimate child who has been acknowledged by the parents will automatically be legitimized when the parents celebrate their marriage.

An illegitimate child who has not been acknowledged can also be legitimized if the parents acknowledge him or her right at the moment of the marriage celebration; in such case, the registrar who celebrated the marriage should establish a separate act to confirm the acknowledgement of the child and the legitimation.

The same article adds that:

An illegitimate child who is acknowledged after the marriage of the parents can only be legitimized by a judgment after an open trial. The judgment should confirm that since the date of the registration of their marriage the child has de facto status as a child born to both parties and based on that fact recognize legitimation.

Therefore, the act of acknowledging a child as stated in the inquiry is not a legal adoption of a child but, in fact, one part of the legitimation procedure under Vietnamese law.

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