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Introduction

The present Impact National Report is part of the research undertaken under the EU co-funded project UniPAR – Towards Universal Parenthood in Europe¹, which addresses the legal issues stemming from the circulation of family status – in particular, parent-child relationships – across borders, also in light of the current evolutions in the field of Assisted Reproductive Technologies (hereinafter ARTs).

The Impact National Reports represent the results of an analytical research conducted by the UniPAR consortium on Belgium, Italy, Spain, Croatia, Poland and Bulgaria, concerning domestic law - including private international law - rules, case law and current practices on parenthood.

Each Impact National Report finds its basis in the European Impact Report developed by the Consortium and aimed at identifying parenthood issues arising in connection to existing EU secondary law, also analysing the possible impact of the Parenthood Regulation at the EU level². In order to obtain this result, the consortium has conducted an analytical research of the EU *acquis*, accompanied by an impact research in the light of the possible introduction of a Parenthood Regulation. At the same time, the research will be supported by consultations with professionals and stakeholders, in the form of six national seminars and a European stakeholder meeting in Brussels. At the end of the project, the Consortium will formulate Conclusions and Recommendations, which will be the natural development of the research outputs incorporating the inputs from the Stakeholder's meeting and national seminars.

In this context, the present Impact National Reports analyses how parenthood issues are dealt with in each of the six jurisdictions covered. Such information will be of value in order to deal with the increasingly frequent (cross-border) cases in which parenthood is an issue. A comparison between domestic legal systems will reveal convergences and divergences in the respective approaches. In addition, the research is supported by the analysis of a series of case-studies, identified by means of a preliminary analysis of case law and concerning specific disharmonies created by recent developments in ARTs as well as in the society and in the legal systems.

This factual approach is focused on results that would be reached in the specific situations at stake.

The Impact National Reports also deal with the possible introduction of an EU Parenthood Regulation, in the light of the fact that the introduction of the new PIL rules will determine substantial changes in the application of the already existing EU PIL

¹ JUST-JCOO-AG-2023-101137859. More information about the project, its activities and resources are available on the official website: <https://www.pravos.unios.hr/unipar/>.

² The European Impact Report is accessible on the UniPAR website at <https://www.pravos.unios.hr/unipar/resources-305/>.

instruments in family matters. The auspice is that the Impact National Reports would help stakeholders and professionals to be aware of problems and possible future developments, in order to accompany them through the transition.

Please note that in all the documents/deliverables of the UniPAR project, the term “parenthood” is used in order to make reference to the (legal) parent-child relationship, coherently with the title of the project itself (i.e. UniPAR – Towards Universal Parenthood in Europe).

However, the UniPAR’ consortium is aware of the fact that also “filiation” and (biological and legal) “parentage” are terms frequently use to make reference to relation existing between a child and his/her parent(s)³.

³ It appears that (i) the term “parenthood” refers to an ongoing status of the mother or father of a child, associated with the responsibility of raising a child, (ii) “parentage” traditionally refers to the genetic link between a child and another person (even if the expression “legal parentage” as opposed to “biological parentage” is frequently used as well and (iii) “filiation” focuses on the child’s perspective of the parent-child relation. On this topic, see BAINHAM A., *Parentage, Parenthood and Parental Responsibility: Subtle, Elusive Yet Important Distinctions*, in GILMORE S. (ed), *Parental Rights and Responsibilities*, London-NewYork, 2017, p. 159; LECKEY R., *Filiation*, in *McGill Law Journal*, 2020, p. 73.

A) Parenthood

1) Relevant private international law rules on parenthood

Please provide an English translation of the relevant private international law rules on parenthood (jurisdiction, applicable law and recognition and enforcement)

Please provide a brief explanation of their functioning.

As far as jurisdiction is concerned, please clarify whether a competent authority hearing a case on another matter:

- is able to determine parenthood or not;

- may recognise a judgment on parenthood for the purpose of taking its decision on the other matter

Please clarify which is the law applicable to:

- limitations

- legal standing

- evidence (including presumptions)

Please explain briefly how a foreign judgment on parenthood is recognised in your State.

The private international law rules on parenthood are laid down in the Belgian Code of Private International Law (*Wetboek van Internationaal Privaatrecht* or *Code de droit international privé*). For some instances below the civil code is also relevant. Belgium is in the process of renewing the civil code. However, the matters discussed below are still comprised in the Old Civil Code. This code is still in force for the parts that have not been replaced. Therefore, the references below to "Old Civil Code" should not be understood as old law, but as the law currently in force. The current government has agreed that it will revise Belgian law on filiation⁴, so that the current law, including the private international law, might change in the course of the next four years.

Jurisdiction

Article 61 of the Belgian Code of PIL determines the conditions under which **Belgian judges** have jurisdiction to hear claims relating to the establishment or contestation of filiation. This article states that:

"In addition to the cases provided for in the general provisions of the present statute, the Belgian courts have jurisdiction to hear any action regarding the establishment or contestation of a link of lineage, if:

1° the child has his habitual residence in Belgium when the action is introduced;

⁴ See the Government Agreement of 2025, https://www.belgium.be/sites/default/files/resources/publication/files/Accord_gouvernemental-Bart_De_Wever_fr.pdf, p. 130 and 166-167.

2° the person whose link of lineage is invoked or contested has his habitual residence in Belgium when the action is introduced; or
3° the child and the person whose link of lineage is invoked or contested have the Belgian nationality when the action is introduced”⁵.

In addition to the specific provision of Article 61 of the Code PIL, Belgian judges can also base their jurisdiction on the general rules of jurisdiction in the Belgian Code of PIL. These are set out in Articles 5-14. One possible relevant ground of jurisdiction is Article 11, which contains the *forum necessitatis*. According to Article 11, Belgian courts will exceptionally have jurisdiction when the matter presents close connections with Belgium and proceedings abroad seem impossible or when it would be unreasonable to demand that the action be brought abroad.

Article 65 of the Belgian Code of PIL determines when the **Belgian civil status officers** can have jurisdiction to draw up the attestation of acknowledgement of filiation. This article provides that:

“Declarations acknowledging natural children can be drawn up in Belgium, if:
1° the person who recognizes has the Belgian nationality or has its domicile or habitual residence in Belgium at the time the declaration is drawn up;
2° the child is born in Belgium; or
3° the child has its habitual residence in Belgium at the time the declaration is drawn up”⁶.

On the basis of Article 7, 2 of the Belgian Consular Code, Belgian consular officials may draw up an attestation of acknowledgement if the recognising parent has Belgian nationality and is domiciled in the consular jurisdiction⁷.

If a question of filiation arises as an incidental question in another case, for example in the settlement of an inheritance, jurisdiction over the question of filiation should be determined on the basis of the jurisdiction rules on filiation. Furthermore, if the recognition of a foreign judgment on filiation is relevant for the determination of

⁵ This English translation of the Code of PIL is made by Caroline Clijmans and Paul Torremans. The translation is based on the version of the Code of PIL on 1 August 2018 and can be accessed on the website:

https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf.

⁶ This English translation of the Code of PIL by Caroline Clijmans and Paul Torremans can be accessed on the website https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf.

⁷ Kruger T., Verhellen J., *Internationaal privaatrecht. De essentie* (3rd edition), Brugge, 2023, p. 285.

jurisdiction in a matter other than filiation, the Belgian authority will examine the recognition of the foreign filiation judgment on the basis of Belgian private international law as a separate matter.

Applicable law

The **applicable law to filiation** is determined by Article 62 of the Belgian Code of PIL. This article states:

"§1. The establishment or the contestation of the link of lineage with a person is governed by the law of the State of the person's nationality upon the birth of the child or, if the establishment results from a voluntary act, at the time such act is carried out. If the law applicable by virtue of this article does not require such consent, the requirements and conditions for the consent of the child as well as the manner in which such consent is expressed are governed by the law of the State on the territory of which the child has his habitual residence at the time of the consent.

§2. If the link of lineage is validly established according to the law applicable by virtue of the present statute vis-à-vis various persons, the law applicable to the filiation that results from the operation of the law on its own, will determine the consequence of a voluntary act of recognition. In case of a conflict between various filiations that result by operation of law from the law or that results from multiple acts of recognition, the law of the State with which the case has the closest connections amongst all designated legal regimes will apply"⁸.

It is possible that, on the basis of the applicable law under Article 62, filiation is validly established in respect of several persons. In particular, it may be the case that filiation exists with respect to more than one person of the same sex because the different national legal systems are not aligned. Article 62, §2 offers a solution to these conflicts. Initially the wording of this provision specifically referred to filiation of more than one person of the same sex. When Belgium allowed co-motherhood, the legislator changed the wording to allow for this scenario. The current wording is however confusing, since, taken literally, it would apply to all children with more than one parent, while that is of course not the legislator's intention. It is supposed to refer to more than one person besides the mother who gave birth to the child.

⁸ This English translation of the Code of PIL by Caroline Clijmans and Paul Torremans can be accessed on the website https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf.

Article 63 of the Belgian Code of PIL clarifies which aspects of filiation are determined by the applicable law pursuant to Article 62. Article 63 provides that:

"The law applicable by virtue of article 62 determines notably:

1° who is authorized to establish or contest the filiation;

2° the burden of proof and the elements to be proven regarding the filiation, as well as the evaluation of the evidence;

3° the conditions and consequences of the possession of status;

*4° the term for introducing the action"*⁹.

Article 64 relates to the **formal validity** of the attestation of acknowledgement and provides that "[t]he declaration of acknowledgment is drawn up in accordance with the formal requirements prescribed by the law that by virtue of article 62, §1, part 1 is applicable to the filiation or by the law of the State on the territory of which the deed is drawn up"¹⁰.

The Belgian Code of PIL also contains a so-called "escape clause" (Article 19). This provision allows for the application of another law that is closely related to the case if the appointed law has only a tenuous link with the case. This provision has been used in filiation cases where the mother and the child have Belgian nationality, and all of the involved people live in Belgium, while the father's foreign nationality is the only foreign element¹¹.

The Code of Private International Law further contains a public policy exception, for if the result of the application of foreign law would be manifestly contrary to public policy. The application of (a provision of) foreign law is to be refused if it would lead to a result which is manifestly incompatible with public policy. The public policy exception in Article 21 should be used with restraint. Moreover, it requires an

⁹ This English translation of the Code of PIL by Caroline Clijmans and Paul Torremans can be accessed on the website https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf.

¹⁰ This English translation of the Code of PIL by Caroline Clijmans and Paul Torremans can be accessed on the website https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf.

¹¹ Court of First Instance of Nivelles, 25 October 2005, *Revue trimestrielle de droit familiale* 2006, p. 875, with case note by M. Fallon; Court of First Instance of Liège, 5 May 2006, *Revue du droit des étrangers* 2006, p. 237; Court of First Instance of Leuven, 27 October 2008, *AR: Actuele Jurisprudentie* 08/1637/A; Family Tribunal of Namur, 4 december 2019, *Revue trimestrielle de droit familiale* 2020, p. 192; Court of Appeal of Ghent, 25 November 2021, *Tijdschrift@ipr.be* 2022/1, p. 45.

assessment of the specific circumstances of the case. In this context, two factors should be taken into account. Firstly, the degree to which the situation is connected with the Belgian legal order, and secondly, the significance of the consequences produced by the application of the foreign law. Article 21 also stipulates that if a provision of the foreign law is not applied because of its incompatibility with public policy, another relevant provision of that law or, if required, of Belgian law applies. Several filiation cases use Article 21, for instance when the foreign law makes it impossible to establish the legal filiation link between an unmarried father and the child¹². The same applies if foreign law does not allow the establishment of co-motherhood if the child was born in the framework of a common family project of the mothers¹³. The fact that the mother does not have to consent to the establishment of fatherhood is not inconsistent with public policy if the mother has the possibility to afterwards contest the fatherhood¹⁴. A foreign law that does not allow the child to contest fatherhood¹⁵, or that makes the time limit for such contestation too short¹⁶, is contrary to public policy. A court found that giving birth anonymously (in France) is not against public policy¹⁷, but this case law is probably no longer good law in light of the judgment of the Belgian Constitutional Court on anonymous gamete donation¹⁸. Sometimes Articles 19 and 21 are used in combination to avert the application of foreign law and to apply Belgian law instead¹⁹.

Belgian law also contains a rule on so-called sham acknowledgment of children. This rule, in Articles 330/1, 330/2 and 330/3 of the Old Civil Code, applies if a person seeks to acknowledge fatherhood of a child with the sole purpose of gaining a right of residence for himself, for the child or for the mother of the child. The courts accept that a person has the sole purpose of gaining a right of residence if they have no intention to create a family bond with the child or to assume parental responsibilities; in other words, if

¹² Court of First Instance of Brussels, 12 January 2005, *Revue de Jurisprudence de Liège, Mons et Bruxelles* 2008, p. 834; Court of Appeal of Ghent, 25 January 2018, *Tijdschrift voor notarissen* 2018, p. 503.

¹³ Family Tribunal of Namur, 19 February 2020, *Actualités de droit familiale* 2020, p. 237; Family Tribunal of Brussels, 9 July 2021, *Actualités de droit familiale* 2022, p. 21.

¹⁴ Family Tribunal of Brussels, 20 July 2021, *Revue du droit des étrangers* 2021, p. 158.

¹⁵ Family Tribunal of East-Flanders (Ghent), 28 June 2018, *Tijdschrift@ipr.be* 2019/3, p. 185.

¹⁶ Family Tribunal of Namur, 3 April 2019, *Actualités de droit familiale* 2022, p. 3.

¹⁷ Court of Appeal of Brussels, 5 December 2019, *Revue de Jurisprudence de Liège, Mons et Bruxelles* 2021, p. 1394.

¹⁸ Constitutional Court, 26 September 2024, Nr. 102/2024, <https://www.const-court.be/public/n/2024/2024-102n.pdf>.

¹⁹ E.g. Court of Appeal of Ghent, 11 February 2021, *Rechtskundig Weekblad* 2021-2022, p. 554.

the acknowledgement does not correspond to the socio-affective reality²⁰. Several factors are identified in the case law of which a combination may constitute a serious indication that the recognition concerns a sham recognition (e.g., the person and the mother have never met, they do not know each other's name or nationality or where they work, they did not have an affective relationship, one of the parties is in a weak social position)²¹. The preparatory documents explain that this provision is of an overriding mandatory nature. It thus applies even if foreign law would have been applicable to the establishment of the filiation.

Recognition and enforcement

The Belgian Code of PIL does not contain any specific provisions on the recognition and enforcement of foreign judgments or authentic instruments concerning filiation (such as birth certificates and certificates of recognition). As a result, the general rules on recognition and enforcement apply.

The general rule on the **recognition and enforcement of foreign judgments** is laid down in Article 22 of the Belgian Code of PIL²². It provides for the automatic recognition

²⁰ Court of Appeal Liège (10th chamber), 20 December 2022, *Revue trimestrielle de droit familial* 2023/3-4, p. 834; Court of First Instance of Antwerp 18 februari 2021, *Rechtskundig Weekblad* 2022-23/10, p. 397.

²¹ Court of First Instance Namur (2nd chamber), 19 October 2022, *Revue trimestrielle de droit familial* 2023/2, p. 404-405; Court of First Instance of Antwerp 18 februari 2021, *Rechtskundig Weekblad* 2022-23/10, p. 397.

²² In English, article 22 reads as follows:

"§1. A foreign judgment, which is enforceable in the State in which it was rendered, will be declared enforceable in whole or in part in Belgium, in accordance with the procedure set out in article 23.

A foreign judgment will be recognized in Belgium, in whole or in part, without there being a need for the application of the procedure set out in article 23.

If the recognition issue is brought incidentally before a Belgian court, the latter has jurisdiction to hear it.

The judgment may only be recognized or declared enforceable if it does not violate the conditions of article 25.

§2. Any interested party, and in matters regarding the status of natural persons also the advocate-general, can in accordance with the procedure set out in article 23 request that the judgment be recognized or declared enforceable, in whole or in part, or that it be declared not recognizable or not enforceable, in whole or in part.

§3. For the purpose of the present statute:

1° the term judgment means any decision rendered by an authority exercising judicial power;

2° the recognition gives legal power to the foreign judgment".

This English translation of the Code of PIL by Caroline Clijmans and Paul Torremans can be accessed on the website

of a foreign judgment in Belgium, wholly or partially. If the recognition issue is brought incidentally before a Belgian court, the latter has jurisdiction to hear it.

A foreign judgment, which is enforceable in the State in which it was rendered, will be declared enforceable in whole or in part in Belgium, in accordance with the procedure set out in Article 23 of the Belgian Code of PIL. This is a unilateral procedure, i.e. it is not required to involve the defendant in any way.

According to Article 22, §1, any interested party may apply to the court of first instance for the foreign judgment to be recognised or declared enforceable, in whole or in part, or for it not to be recognised or declared enforceable, in whole or in part, in Belgium. As a foreign filiation judgment concerns the status of a person, the Public Prosecutor can also request a declaratory recognition or enforcement judgment.

Based on the general recognition rule of Article 22, a foreign filiation judgment is in principle recognised and enforced in Belgium. The grounds for refusal of recognition or enforcement are listed in Article 25, §1 of the Belgian Code of PIL, which includes the refusal ground that the consequence of recognition or enforcement is manifestly incompatible with public policy. When determining incompatibility with public policy, particular consideration should be given to the extent to which the situation is connected to the Belgian legal order and the seriousness of the consequences that recognition or enforcement might have. Pursuant to Article 25 §2 of the Belgian Code of PIL, the foreign filiation judgment cannot be reviewed on its merits.

The general rule on the **recognition and enforcement of foreign authentic instruments** is laid down in Article 27 of the Belgian Code of PIL²³. On the basis of Article 27, §1, a

https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf.

²³ In English, article 27 reads as follows:

"§1. A foreign authentic instrument is recognized by any authority in Belgium without the need for any procedure if the validity is established in accordance with the law applicable by virtue of the present statute and more specifically with due regard of articles 18 and 21.

The instrument must satisfy the conditions necessary to establish authenticity under the law of the State where it was drawn up.

To the extent that is required, article 24 is applicable.

In the event that the authority refuses to recognize the validity of the instrument, an appeal may be lodged before the court of first instance without prejudice to article 121, in accordance with the procedure set out in article 23. The appeal is lodged with the family court if the foreign authentic instrument is concerned with a matter referred to in article 572bis of the Code of Civil Procedure.

foreign authentic instrument on filiation is recognised in Belgium by all authorities without any procedure. However, a number of conditions apply.

Firstly, the validity of the filiation should be established in accordance with the law applicable by virtue of the Code of PIL. For this purpose, the rules on the applicable law in the case of filiation set out in the Section of Applicable law are relevant.

Secondly, there should be no evasion of the law. According to Article 18 of the Belgian Code of PIL, facts and acts committed with the sole purpose of evading the application of the law designated by the Code of PIL are not taken into account. This rarely comes up, except in the situation of surrogacy (see below).

The third condition concerns the public policy exception of Article 21 of the Belgian Code of PIL (see under the Section of Applicable law above).

Article 27, §1 also determines that a foreign authentic instrument must satisfy the conditions necessary to establish authenticity under the law of the State where it was drawn up.

If a Belgian authority refuses to recognise the foreign filiation instrument, the interested person may lodge an appeal before the family court. This procedure is the same as described above for court judgments, i.e. it is a unilateral procedure, and the civil servant is not sued. The court's decision on the (non-)recognition of the filiation is decisive and must be respected by all Belgian authorities.

§2. A foreign authentic instrument which has executory force in the State where the instrument was drawn up, will be declared enforceable in Belgium by the court of first instance, without prejudice to article 121 in accordance with the procedure set out in article 23 and after verification of the conditions provided for in §1. The request for a declaration of enforceability of a foreign authentic instrument is lodged with the family court if the instrument is concerned with a matter referred to in article 572bis of the Code of Civil Procedure.

§3. A judicial settlement, which has been approved by a foreign judge and is enforceable in the State where the settlement was approved, can be declared enforceable under the same conditions as authentic instruments".

This English translation of the Code of PIL by Caroline Clijmans and Paul Torremans can be accessed on [the website
https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf](https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf).

2) Foreign birth certificates and their registration in national registries

Please explain how the authorities of the Civil or Population Registry of your country proceed if the birth of a child occurred abroad and there is a foreign birth certificate.

Please clarify:

- **Whether they determine parenthood on the basis of choice-of-law rules.**

For the recognition of a foreign authentic act, such as a birth certificate, the Belgian Code of PIL requires an examination of the applicable law under the conflict-of-law rule (Article 27, §1 Belgian Code of PIL). For a discussion what this conflict-of-law rule entails, see question A.1.

- **Whether they transcribe the foreign birth certificate in the Civil or Population Registry or whether transcription is required only in some circumstances**

Every Belgian citizen shall submit any foreign authentic act concerning him to the Civil Registry, insofar as it results in a change in the status of the person (Article 68, §1 of the Old Civil Code). This thus includes foreign birth certificates of a child born to a Belgian citizen. A foreign birth certificate can only be transcribed in the civil register, serve as a basis for the modification of a civil status record, or serve as a basis for the inscription in the population, foreigners or waiting registers after examination of the conditions referred to in Article 27, §1 of the Code of PIL (Article 31 of the Code of PIL)²⁴. This examination is carried out by the Civil Registry²⁵ to whom the foreign birth certificate is submitted. The Civil Registry shall immediately register the foreign birth certificate in the Database for Civil Status Records and shall indicate the status of the examination. If the examination has a positive result, the Civil Registry shall prepare a Belgian birth certificate based on the foreign birth certificate (Articles 68, §1 and 69, §1 *juncto* Article 44 of the Old Civil Code). A copy or extract of the foreign birth certificate and, where appropriate, its certified translation shall be included as an annex in the Database for Civil Status Records (Article 69, §2 of the Old Civil Code).

For foreign citizens, the obligation arising from Article 68, §1 of the Old Civil Code does not apply. However, the Civil Registry is also obliged to prepare a Belgian civil status record if a foreign birth certificate is submitted for the preparation of another civil status record; e.g. for the preparation of nationality, recognition records or at the time

²⁴ For a discussion of Article 27 of the Code of PIL, see question A.1.

²⁵ The law also refers to the holder of the population, foreigner or waiting register but, in practice, the Civil Registry is also in charge of these registers so that these functions coincide.

of the declaration of birth (Article 68, §2 of the Old Civil Code)²⁶. This obligation applies only if the requirements of Article 31 *juncto* Article 27, §1 of the Code of PIL are fulfilled. The rest of the procedure is also the same: if the examination has a positive result, the Civil Registry shall prepare a Belgian birth certificate based on the foreign birth certificate (Article 68, §2 of the Old Civil Code). A copy or extract of the foreign birth certificate and, where appropriate, its certified translation shall be included as an annex in the Database for Civil Status Records (Article 69, §2 of the Old Civil Code).

If the examination does not have a positive result and the Civil Registry refuses to prepare or modify a Belgian birth certificate based on the foreign birth certificate or refuses to register the birth certificate in the population, foreigners or waiting registers, this will also be mentioned in the Database for Civil Status Records. This the Database is a depositary or collection of foreign acts and decisions whose recognition in Belgium is under investigation or has been investigated and recognised or refused. Shopping at different municipalities is prevented, because they can consult the Database for Civil Status Records to check whether the act or decision has already been submitted in another municipality²⁷. The Database however contains many difficulties for the registration of foreign documents²⁸.

- ***Whether the authorities in charge of the Civil or Population Registry are allowed to modify their records on the basis of a foreign judgment and, in the affirmative, whether a special procedure is required***

The relevant articles (most notably Article 68 of the Old Civil Code and Article 31 of the Code of PIL) do not distinguish between the transcription of the foreign act and the modification of the civil status records based on the foreign act. Authorities are thus allowed to modify their records on the basis of a foreign judgment following the same procedure as for preparing a new record.

²⁶ On how foreign acts and decisions are processed by the Civil Registry, see HEYLEN S., *De modernisering en informatisering van de burgerlijke stand*, in *Rechtskundig Weekblad*, 2018, p. 1452-1453.

²⁷ See in this regard: HEYLEN S., *De modernisering en informatisering van de burgerlijke stand*, cit., p. 1453.

²⁸ EVRARD T., WAUTELET P., *La réforme de la gestion des actes de l'état civil dans le contexte internationale : le droit subordonné à la technique*, in WAUTELET P., PFEIFF S. (eds), *Droit familiale internationale*, Liège, 2022, p. 149-206.

CASES

Establishment of parenthood of a child born in the forum

A bi-national married couple, the mother (Maria) being a national of your State and the father (Jürgen) being a national of Germany, is habitually resident in Germany. One month before the child's (Leo) birth in your State, the couple divorces in Germany. Parenthood between the child Leo and Maria is established at birth by operation of law and Leo acquires the nationality of your State due to the legal relationship established with Maria or the birth in your State (as the case may be under nationality law). Leo's birth is registered in your State.

Please clarify

- **Whether the father, Jürgen, will be registered as the child's father (despite the divorce)**

Whether it is possible under your legal system for Maria to appear at the birth registry with the man she says is the father (Jan) and register him as Leo's legal father and, in the negative, whether there is a way in your legal system to establish parenthood between Jan and Leo

On the basis of Article 62 of the Belgian Code of PIL, the law of the State of which Jürgen is a national will determine whether Jürgen is considered to be Leo's legal father in Belgium. This means that German law will determine whether Jürgen is the legal father of Leo. As a result, German law will determine whether the divorce affects the establishment of Jürgen's fatherhood. The application of German law can only be refused if the result is contrary to the public policy pursuant to Article 21 of the Code of PIL. However, this exception should be applied with restraint. This means that if Jürgen is the father of Leo according to German law, he will in principle be registered as such in Belgium.

Maria may request the Belgian Civil Registry to register Jan as Leo's legal father. According to Article 62 of the Belgian Code of PIL, the civil registrar will determine Jan's legal fatherhood according to the law of the State of his nationality. The law of the State of which Jan is a national will therefore, in principle, determine whether he can be recognised as Leo's legal father. If there is also a legal presumption of fatherhood for Jürgen under German Law (which applies to him as explained in the previous paragraph), there is a conflict. Article 62, §2 of the Belgian Code of PIL offers a solution when there is conflict between a legal presumption of fatherhood and a voluntary act of acknowledgement. In this case, the law applicable to the legal presumption, i.e. German law, will determine the effect of Jan's acknowledgement.

Establishment of parenthood of a child born abroad

A bi-national couple, the mother (Maria) being a national of your State and the father (Jürgen) being a national of Germany, are habitually resident in Germany. One month before the child's (Leo) birth in Germany, the couple divorces in Germany. The child's birth is registered in Germany and German authorities issue a birth certificate recording that Maria is the child's mother. Jürgen is not mentioned.

Please clarify

- **Whether Leo's birth may be registered in your State**
The value (if any) of the German birth certificate in your State
- **Whether Jürgen may be registered as the child's father in your State**
- **Whether it is possible in your legal system for Maria to appear at the birth registry with the man she says is the father (Jan) and register him as Leo's legal father and, in the negative, whether there is a way in your legal system to establish parenthood between Jan and Leo**

** For this question we assume that Maria is not married to anyone else at the moment of registration of Leon's birth and at the moment of acknowledgment by Jan.*

If Maria wants to register the birth of Leo in Belgium, the civil registrar will examine whether she is the legal mother under the Belgian Code of PIL. On the basis of Article 62 of the Belgian Code of PIL, the law of the State of which Maria is a national, i.e. Belgian law, will determine whether Maria is to be regarded as Leo's legal mother. Under Belgian law, the principle of *mater semper certa est* applies and Maria is therefore considered to be Leo's legal mother²⁹.

If Maria has already registered the birth of Leo in Germany, the recognition of the German birth certificate in Belgium is determined by Article 27 of the Belgian Code of PIL. On the basis of Article 27, §1, the German birth certificate is recognised in Belgium by all authorities without any procedure. However, a number of conditions apply. Firstly, there is a conflict-of-laws test. This means that it has to be examined whether Maria is the legal mother on the basis of the applicable law according to Article 62 of the Belgian Code of PIL. As indicated in the previous paragraph, this leads to the application of Belgian law, according to which Maria is considered to be the legal mother.

²⁹ Article 312, §1 juncto Article 44 of the Old Civil Code. See also VERSCHULDEN G., *Handboek Belgisch Personen-, familie- en relatievermogensrecht. Volume I. Verticale familiale relaties* (2nd edition), Brugge, 2023, p. 44-45.

In addition to the conflict-of-law test, there should be no evasion of the law as described in Article 18 of the Belgian Code of PIL. The third condition under Article 27 of the Belgian Code of PIL concerns the public policy exception set out in Article 21. The application of (a provision of) foreign law should be refused if it would lead to a result which is manifestly incompatible with public policy. The application of Article 27 of the Belgian Code of PIL in this case will most likely lead to the recognition of the German birth certificate in Belgium.

Whether Jürgen can be registered as Leo's father in Belgium will depend on Article 65 of the Belgian Code of PIL, which determines when the Belgian civil registrar has jurisdiction to issue an attestation of acknowledgement. If Leo is habitually resident in Belgium at the time the attestation is drawn up, the Belgian civil registrar will have jurisdiction. The registrar will use Article 62 to determine which law determines whether Jürgen can be the legal father. As explained in the context of the previous case on page 16, the application of Article 62 in Jürgen's case results in the application of German law. Thus, German law will determine whether Jürgen is Leo's legal father.

Maria may request the Belgian Civil Registry to register Jan as Leo's legal father. According to Article 62 of the Belgian Code of PIL, the civil registrar will determine Jan's legal fatherhood according to the law of the State of his nationality. The law of the State of which Jan is a national will therefore, in principle, determine whether he can be recognised as Leo's legal father. If there is also a legal presumption of fatherhood for Jürgen under German Law that applies to him based on his nationality, there is a conflict. Article 62, §2 of the Belgian Code of PIL offers a solution when there is conflict between a legal presumption of fatherhood and a voluntary act of recognition. In this case, the law applicable to the legal presumption, i.e. German law, will determine the effect of Jan's acknowledgement.

Co-motherhood

Valentina, a national of your State, and Jette, who is Dutch, are the legal mothers of a child (Tom) born in the Netherlands.

Please clarify

- **Whether Tom's birth can be registered in your State**

The value of the Dutch birth certificate be in your State

Whether the two women (Valentina and Jette) may be considered to be the legal mothers of the child in your State and, in the affirmative, whether this happens to all effects

If Valentina and Jette want to register the birth of Tom in Belgium, the civil registrar will examine whether they are the legal mothers on the basis of the Belgian Code of PIL. In accordance with Article 62 of the Belgian Code of PIL, the law of the State of which Valentina and Jette are a national, i.e. Belgium law for Valentina and Dutch law for Jette, will determine whether they are to be regarded as Tom's legal mothers. Under Belgian law, the principle of *mater semper certa est* applies to establishing legal motherhood. If Valentina gave birth to Tom, she will be considered his legal mother³⁰. If Jette gave birth to Tom, Valentina can be considered the legal co-mother under Belgian law. Co-motherhood in law can be based on a legal presumption if the couple is married (Article 325/2 of the Old Civil Code), on recognition (Article 325/4 of the Old Civil Code) or on a court decision (Article 325/8 of the Old Civil Code).

If Valentina and Jette want to have a birth certificate that was issued in the Netherlands recognised in Belgium, Article 27 of the Belgian Code of PIL will apply. On the basis of Article 27, §1, the Dutch birth certificate is recognised in Belgium by all authorities without any procedure. However, a number of conditions apply. Firstly, there is a conflict-of-laws test. According to Article 62, the establishment or the contestation of filiation in respect to a person is determined by the law of the State of the person's nationality upon the birth of the child or, if the establishment results from a voluntary act, at the time such act is carried out. As a result, Belgian law will apply to determine whether Valentina can be regarded as the legal mother and Dutch law will apply to determine whether Jette can be regarded as the legal mother. As explained in the previous paragraph, Valentina can be considered the legal (co-)mother under Belgian law.

³⁰ Article 312, §1 juncto Article 44 of the Old Civil Code.

In addition to the conflict-of-law test, there should be no evasion of the law as described in Article 18 of the Code of PIL. The third condition under Article 27 of the Code of PIL concerns the public policy exception set out in Article 21. The application of (a provision of) foreign law should be refused if it would lead to a result which is manifestly incompatible with public policy. The fact that the applicable law allows the existence of two legal mothers does not automatically lead to a violation of public policy in Belgium. The application of Article 27 of the Code of PIL in this case will most likely lead to the recognition of the Dutch birth certificate in Belgium.

B) Parenthood following an International surrogacy agreement (hereinafter ISA)

1) Attitude *vis-à-vis* surrogacy and relevant rules on (international) surrogacy in the national legal order

Please provide a brief description of the attitude of your legal order vis-à-vis surrogacy.

In case your legal order regulates surrogacy, please provide an English translation of the relevant national rules on surrogacy and a brief description of their functioning.

In case your legal order does not expressly regulate surrogacy, please explain which rules may apply to children born abroad following a surrogacy agreement.

In case your legal order does expressly prohibit surrogacy, please provide a brief explanation in English of the legislation, the functioning thereof and a reference to the original text of the legislation.

Belgian legislation neither prohibits nor regulates surrogacy. There is no legal framework for the surrogate mother, the intended parent(s) and the child. As a result, intended parent(s) often go abroad to have a child through surrogacy³¹. The current government has taken up in the government agreement the intention to regulate surrogacy³². However, it is not clear whether this attempt will succeed.

If a child is born abroad as a result of a surrogacy agreement, it is important to check whether parenthood has been established in the country of birth by means of a birth certificate, an acknowledgment or a judgment. If there is a **judgment**, recognition is determined by the general rule in Article 22 of the Code of PIL. Based on Article 22, a foreign filiation judgment is in principle recognised in Belgium. The grounds for refusal of recognition are listed in Article 25, §1 of the Belgian Code of PIL, which includes the refusal ground that the consequence of recognition is manifestly incompatible with public policy.

If there is an **authentic instrument**, recognition is determined by the general rule in Article 27 of the Code of PIL. This leads to a conflict-of-laws test and the application of Article 62 of the Belgian Code PIL, which determines the applicable law to filiation. In addition, it should be examined whether there is no evasion of the law as described in Article 18 of the Code of PIL and whether there is no violation of public policy as

³¹ DEN HAESSE S., *Crossing Borders: Proving Your Personal Status. Interactions Between Private International Law and Human Rights Law*, the Hague, 2023, p. 336.

³² Government Agreement of 2025, https://www.belgium.be/sites/default/files/resources/publication/files/Accord_gouvernemental-Bart_De_Wever_fr.pdf, p. 130.

provided in Article 21 of the Code of PIL. Belgian case law shows that the application of Article 27 of the Belgian Code of PIL leads to different results³³.

Various courts have found that establishing filiation through surrogacy does not amount to evasion of the law under Article 18 of the Code of PIL: even though parties reach a result that they could not have attained under Belgian law, this was not their sole purpose, but their purpose was to give effect to their wish to have a child³⁴. Some courts have stated that surrogacy does amount to evasion of the law, but that the best interests of the child should prevail and therefore recognised the birth certificate nonetheless³⁵. The correct analysis under private international law is that the applicable law should first be tested: if the intending parents have Belgian nationality, Belgian law applies. Then surrogacy is not possible under the applicable law and it is not necessary to consider whether there was evasion of the law³⁶.

2) Relevant problems considered by the case-law in your legal order

Please enlist and explain briefly the relevant problems considered by the case-law in your country concerning recognition of parenthood of children born following a surrogacy agreement.

Please explain briefly:

- the solutions adopted in your legal order with regard to the implementation of the indications provided by the ECtHR in its first Opinion rendered on Request No. P16-2018-001

- how (foreign) birth certificates of children born following a surrogacy agreements are considered by the Civil Registrars in your legal order

- how foreign adoption decisions (concerning adoption by the intentional parent) are considered by the Civil Registrars in your legal order

Since adoption by the second parent was already possible under Belgian law, the Belgian legislation did not need to be adapted after the first Opinion rendered on Request No. P16-2018-001.

³³ TRAEST M., *Overzicht van rechtspraak (2010-2021) - Internationaal privaatrecht inzake personen-, familie- en familiaal vermogensrecht. Afstamming*, in *Tijdschrift voor Notarissen*, 2022, p. 1127-1140.

³⁴ Such as Court of Appeal of Mons, 2 November 2020, *Revue trimestrielle de droit familial* 2021, p. 153; Court of Appeal of Ghent, 4 February 2021, *Tijdschrift@ipr.be* 2021/1, p. 40; Family Tribunal of Liège, 20 November 2020, *Revue trimestrielle de droit familial* 2021, p. 185.

³⁵ E.g. Court of Appeal of Brussels, 10 August 2018, *Actualités du droit de la famille* 2019, p. 159.

³⁶ Family Tribunal of Namur, 28 February 2018, *Journal des Tribunaux* 2018, p. 731.

In the absence of a specific legal framework in Belgium, civil registrars recognise foreign birth certificates resulting from surrogacy agreements differently. This leads to different outcomes and judicial proceedings. Civil registrars also often believe that legal certainty is best served by a court decision on the recognition. It seems that the courts have more flexibility when it comes to finding solutions³⁷. Due to the lack of a legal framework regarding surrogacy, courts also recognise foreign birth certificates following surrogacy agreements differently, or not at all. There is no uniform approach³⁸.

There is no uniform approach in the case law as to whether surrogacy is contrary to public policy under Article 21 of the Code of PIL. Some courts have stated that the absence of a legal framework on surrogacy in Belgium should not be grounds for refusing to recognise parenthood³⁹.

³⁷ HEYLEN S., *Wetgeving draagmoederschap dringend nodig*, in *Tijdschrift voor Familierecht*, 2021, p. 170-172.

³⁸ DEN HAESE S., *Crossing Borders: Proving Your Personal Status. Interactions Between Private International Law and Human Rights Law*, cit., p. 347.

³⁹ E.g. Court of First Instance of Brussels, 15 February 2011, *Tijdschrift@ipr.be* 2011/1, p. 129; Court of First Instance of Brussels, 15 February 2016, *Tijdschrift@ipr.be* 2016/2, p. 65; Court of Appeal of Ghent 20 April 2017, *Tijdschrift@ipr.be* 2017/3, p. 82.

CASES

Recognition and transcription of a foreign birth certificate establishing parenthood following a surrogacy agreement

Marco (commissioning father) and Michela (commissioning mother) made a surrogacy agreement in a third State with Agnese.

Agnese gave birth to Maria and the foreign birth certificate from the third State recognizes Marco and Michela's legal parenthood of Maria.

Whilst Marco has a genetic link with Maria, Michela has not.

Please explain the effects (if any) your legal system would give to this foreign birth certificate and, in particular, please clarify

- **Whether Marco's parenthood can be recognised**
- **Whether Michela's parenthood can be recognised?**

What procedure shall be followed (if any)

- **Whether grounds for refusal exist and, in the affirmative, which one**
- **Whether differences would exist if two men were indicated as parents in the foreign birth certificate**
- **Whether difference would exist if only a father is indicated in the foreign birth certificate, while the mother is not**

The procedure for transcribing a foreign birth certificate in the Belgian Database for Civil Status Records was explained under question A.2 on page 13.

The recognition of Maria's birth certificate in Belgium is determined by the general rule in Article 27 of the Belgian Code of PIL. This leads to a conflict-of-laws test and the application of Article 62 of the Belgian Code PIL. According to Article 62, the establishment of filiation in respect to a person is determined by the law of the State of the person's nationality upon the birth of the child or, if the establishment results from a voluntary act, at the time such act is carried out. As a result, the law of the State of Marco's nationality will determine whether he can be Maria's legal father. In addition to the conflict-of-laws test, it is necessary to examine whether there is no evasion of the law as described in Article 18 of the Code of PIL, and whether there is no violation of public policy, as described in Article 21 of the Code of PIL.

Belgian case law does not take an unequivocal position on how public policy applies in the case of surrogacy⁴⁰. One reason that could be used to argue that there is no violation of public policy is that Marco is the biological father.

The recognition regime explained above also applies to Michela. Whether she is Maria's legal mother depends in principle on the law of her nationality. A relevant aspect in Belgian case law seems to be whether this law allows the surrogate mother to be omitted from the birth certificate. If the applicable law allows it, there is not necessarily a conflict with public policy under Article 21 of the Belgian Code of PIL⁴¹.

If Maria's birth certificate had mentioned two men as the legal parents, recognition in Belgium would have been more difficult. The general recognition regime under Article 27 of the Belgian Code PIL would still apply to the recognition of the foreign birth certificate. In this situation, however, it would be more likely that a violation of public policy would be found, since it is not possible under Belgian substantive law to have two legal fathers⁴².

As this section has shown, the recognition of filiation between a child and their father or mother is determined separately for the (intended) father and mother. The effect of the fact that only the father is mentioned on the foreign birth certificate and not the (intended) mother is determined by the law applicable to the establishment of filiation respectively for the (intended) father and for the mother.

⁴⁰ TRAEST M., *Overzicht van rechtspraak (2010-2021) - Internationaal privaatrecht inzake personen-, familie- en familiaal vermogensrecht. Afstamming*, cit., p. 1127-1140.

⁴¹ Family Tribunal of Namur, 28 February 2018, *Journal des Tribunaux* 2018, p. 731; Court of Appeal of Liège, 30 July 2020, *Revue de Jurisprudence de Liège, Mons et Bruxelles* 2021, p. 437; and Traest M., *Overzicht van rechtspraak (2010-2021) - Internationaal privaatrecht inzake personen-, familie- en familiaal vermogensrecht. Afstamming*, cit., p. 1127-1140.

⁴² Traest M., *Overzicht van rechtspraak (2010-2021) - Internationaal privaatrecht inzake personen-, familie- en familiaal vermogensrecht. Afstamming*, cit., p. 1127-1140.

Adoption by the non-biological intentional parent

Giovanni is the biological father of Maria, who is born in Canada following a surrogacy agreement with Agnese.

Michele is the intending father of Maria and wants to adopt her. Agnese agrees to the adoption, whilst Giovanni does not anymore.

Giovanni admits that he and Michele had a common parental project of having babies through a surrogacy agreement with Agnese, but he refuses to give his consent to adoption since, after Maria's birth, Michele has never had any affective relationship with her and abandoned both, his partner and the child.

Please clarify whether, in your legal order, Michele has a right to be recognized as a parent and, in the affirmative, what procedure can be followed in order to enforce that right (for example, establishment of parenthood, adoption)

Please clarify whether in your legal order differences may exist in the situation where the intending parent asking for the recognition of parenthood is a man (as in the example) or is a woman.

Please describe the requirements for the establishment of parenthood in favour of the non-biological (intentional) parent of a surrogacy agreement

Please clarify whether the biological parent's consent and/or the surrogate mother's one are a necessary element for the establishment of parenthood with regard to the intentional (non-biological) parent

As explained in Section B.1, Belgian legislation does not regulate surrogacy. There is no legal framework for enforcing a surrogacy agreement. Consequently, Michele cannot invoke a specific procedure to establish his parental rights based on the surrogacy agreement. In theory, however, legal fatherhood could be established through domestic adoption. The rules for domestic adoption are set out in the Old Civil Code (Belgian law is applicable in the hypothesis that Michele is a Belgian citizen and Maria did not have habitual residence in Canada: Articles 67-68 Belgian Code of PIL). According to Article 348-3 of the Old Civil Code, both parents must consent to the adoption of a child if their parentage has been established. As Giovanni refuses to consent to the adoption, Michele will not be able to adopt Maria under Belgian law.

There are no specific legal requirements for establishing parenthood in favour of the non-biological (intentional) parent in a surrogacy agreement. As mentioned in the previous paragraph, it is possible to follow the adoption legal framework. In the Belgian legal system, there is no difference between the situation where an intending parent asks for the recognition of parenthood based on adoption and that intending parent is a man or a woman. In case parenthood is based on acknowledgment, there is a difference. A man cannot establish legal fatherhood through acknowledgement if the

child already has a legal father. According to Article 319 of the Old Civil Code, legal fatherhood cannot be established through an act of acknowledgement by a second man if legal fatherhood already exists. However, if the non-biological intentional parent is female and legal fatherhood has not been established, acknowledgement may be possible under Article 325/1 of the Old Civil Code.

If adoption or acknowledgement is possible, the consent of the legal parents will be required. As previously mentioned, Article 348-3 of the Old Civil Code stipulates that, when the parentage of a child has been established with regard to both parents, they must both consent to the adoption. If the parentage of a child has been established with regard to only one parent, only that parent should consent to the adoption.

Recognition of a foreign decision establishing parenthood

Clara (intending mother) and Peter (intending father), resident in Belgium entered into a commercial gestational surrogacy agreement (i.e. the intending parents provide their gametes and both have genetic links with the child) with Natasha who lives in the State X (which is not a EU country), allowing such agreements.

Under the law of the State X, parenthood is established by virtue of a court order and the birth certificate is amended accordingly.

Clara and Peter come back to Belgium and require the recognition of the foreign judgment.

Please clarify the procedure to be followed for the (judicial) recognition of the foreign judgment of the State X

Please clarify also whether a different procedure is envisaged in your legal order in case of recognition of a (foreign) adoption decision

The recognition of the foreign judgment of the State X will be governed by the general rule on the recognition and enforcement of foreign judgments of Article 22 of the Belgian Code of PIL. According to Article 22, §1, any interested party may apply to the court of first instance for the foreign judgment to be recognised in Belgium. As a foreign filiation judgment concerns the status of a person, the Public Prosecutor can also request a declaratory recognition judgment.

Based on the general recognition rule of Article 22, the judgment of State X is in principle recognised and enforced in Belgium. The grounds for refusal of recognition or enforcement are listed in Article 25, §1 of the Belgian Code of PIL, which includes the refusal ground that the consequence of recognition or enforcement is manifestly incompatible with public policy. When determining incompatibility with public policy, particular consideration should be given to the extent to which the situation is connected to the Belgian legal order and the seriousness of the consequences that recognition or enforcement might have. Pursuant to Article 25 §2 of the Belgian Code of PIL, the foreign filiation judgment cannot be reviewed on its merits.

The Belgian Federal Central Authority is competent to examine the recognition of a foreign adoption decision. If State X is a party to the 1993 Hague Adoption Convention, recognition of the adoption in Belgium will be governed by this Convention. Under Article 364-1 of the Old Civil Code, such an adoption is recognised in Belgium by operation of law if the adoption is established in conformity with the Convention. Recognition may be refused only if the adoption is manifestly contrary to public policy, taking into account the best interest of the child and their fundamental rights under international law.

If State X is not a party to the 1993 Hague Adoption Convention, the recognition of the adoption decision is governed by Article 365-1 to 365-6 of the Old Civil Code. Article 365-1 of the Old Civil Code sets out the conditions for recognition, which include:

1. The adoption has to be established by the authority deemed competent under the law of that State, in accordance with the formal requirements and procedures in force in that State;
2. The adoption judgment has *res judicata* effect in that State;
3. If the adopter(s) has (have) their habitual residence in Belgium, the Belgian adoption procedure should have been followed⁴³.

The grounds for refusal of recognition are set out in Article 365-2 of the Old Civil Code. One ground for refusal is that the adoption is manifestly contrary to public policy, having regard to the best interests of the child and their fundamental rights under international law.

⁴³ KRUGER T., Verhellen J., *Internationaal privaatrecht. De essentie*, cit., p. 294-295.