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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 Europe<sup>1</sup>, 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 level<sup>2</sup>. 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 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,

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<sup>1</sup> 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/>.

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

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)<sup>3</sup>.

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<sup>3</sup> 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 fi 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

## Jurisdiction

The jurisdiction in matters of parenthood is governed by the **Bulgarian Code on Private International Law (hereinafter "CPIL")**<sup>4</sup> and some of the legal aid treaties.

The parenthood is subject to the **general** as well as to the **special rules** of jurisdiction contained in the Bulgarian CPIL.

Pursuant to Article 4, para. 1 CPIL the Bulgarian courts and other authorities shall have international jurisdiction where:

1. the defendant has a habitual residence, statutory seat or principal place of business in the Republic of Bulgaria;
2. the claimant or applicant is a Bulgarian national or is a legal person registered in the Republic of Bulgaria.

This jurisdiction is the general one and is alternatively applicable to all other grounds of jurisdiction except the exclusive jurisdiction.

The **special jurisdiction** is established in Article 9 CPIL, titled "Jurisdiction in Matters Relating to Parenthood". Pursuant to Article 9, para. 1 CPIL the Bulgarian courts and other authorities shall have jurisdiction over proceedings for establishment and

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<sup>4</sup> Prom. In State Gazette No 42 from 17 May 2005, amend. SG. No 59 from 20 Jul 2007, amend. SG. No 47 from 23 Jun 2009, amend. SG. No 100 from 21 Dec 2010, amend. SG. No 106 from 22 Dec 2023, amended in State Gazette No39 from 1 May 2024.

contesting of parenthood except pursuant to Article 4 herein and where the child or the parent, who is a party, is a Bulgarian national or is habitually resident in the Republic of Bulgaria. As per Article 9, para. 2 the same grounds of jurisdiction apply to matters relating to relationships in personam and in rem between parents and children. This second paragraph is derogated by the rules of Regulation (EC) No 2019/1111<sup>5</sup>, by the 1996 Hague Convention<sup>6</sup> and by legal aid treaties with rules on jurisdiction in matters of parental responsibility<sup>7</sup>.

The CPIL provides a legal **definition on the term "habitual residence"**. Pursuant to Article 48, para. 7 CPIL "habitual residence of a natural person" shall denote the place where the said person has settled predominantly to live without this being related to a need of registration or permit to reside or settle. For determination of this place, special regard must be given to circumstances of personal or professional nature arising from sustained connections of the person with the said place or from the intention of the said person to establish such connections. This definition is inspired by the Belgium Code of Private International Law and the way it is applied by the Bulgarian courts is consistent with the autonomous notion of habitual residence under the EU PIL.

The acquisition of Bulgarian **nationality** is governed by the **Constitution of the Republic of Bulgaria**<sup>8</sup> and the **Bulgarian Citizenship Act**<sup>9</sup>. Pursuant to Article 25, para.1 of the Bulgarian Constitution a Bulgarian citizen shall be anyone born of at least one parent holding a Bulgarian citizenship or born on the territory of the Republic of

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<sup>5</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)

<sup>6</sup> Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

<sup>7</sup> For example: Article 24 (2) of the Agreement on legal assistance in civil, family and criminal matters between the People's Republic of Bulgaria and the Socialist Republic of Vietnam, published in the State Gazette, No. 69, September 4, 1987; Article 26 (2) of Agreement between the People's Republic of Bulgaria and the Republic of Cuba on legal assistance in civil, family and criminal matters (ratified by decree no. 1959 of the state council of 2 november 1979 - sg, no. 90 of 1979 in force from 25 july 1980); Article 25 of Agreement between the People's Republic of Bulgaria and the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters (ratified by Decree No. 784 of the State Council of April 15, 1975 - State Gazette, No. 33 of 1975. In force since January 18, 1976) etc.

<sup>8</sup> Promulgate in State Gazette No 56 from 13 Jul 1991, amended by State Gazette No 85 from 26 Sep 2003, amended by State Gazette No 18 from 25 Feb 2005, amended by State Gazette No 27 from 31 Mar 2006, amended by State Gazette No 78 from 26 Sep 2006, amended by State Gazette No 12 from 6 Feb 2007, amended and supplemented by State Gazette No 100 from 18 Dec 2015, amended and supplemented by State Gazette No 106 from 22 Dec 2023, amended by State Gazette No 66 from 6 Aug 2024.

<sup>9</sup> Prom. SG. 136/18 Nov 1998, amend. SG. 41/24 Apr 2001, suppl. SG. 54/31 May 2002, amend. SG. 52/29 Jun 2007, amend. SG. 109/20 Dec 2007, amend. SG. 74/15 Sep 2009, amend. SG. 82/16 Oct 2009, amend. SG. 33/30 Apr 2010, amend. SG. 11/7 Feb 2012, amend. SG. 21/13 Mar 2012, amend. SG. 16/19 Feb 2013, amend. SG. 66/26 Jul 2013, amend. SG. 68/2 Aug 2013, amend. SG. 108/17 Dec 2013, amend. SG. 98/28 Nov 2014, amend. SG. 14/20 Feb 2015, amend. SG. 22/24 Mar 2015, amend. and suppl. SG. 103/27 Dec 2016, suppl. SG. 77/18 Sep 2018, amend. and suppl. SG. 21/12 Mar 2021, amend. SG. 22/18 Mar 2022, amended by State Gazette No 26 from 1 Apr 2022.

Bulgaria, should he not be entitled to any other citizenship by virtue of origin. Bulgarian citizenship shall further be acquirable through naturalization. The Citizenship Act provides further details for acquiring Bulgarian citizenship. It is important to highlight that the general principle – *jus sanguinis* – considers the parenthood between the child and his/her parents. Citizenship is acquired automatically, including when parenthood stems from recognition or is established in a court decision (Article 9 of the Citizenship Act). In practice, the citizenship stems from the nationality of one of the parents without applying the conflict of law rule as regards parenthood envisaged in Article 83 CPIL.

The general jurisdiction considers the procedural positions of the parties. Thus, all persons habitually resident in Bulgaria irrespectively of their nationality are subject to the jurisdiction of the Bulgarian court and other authorities as defendants. However, the access to the Bulgarian court and other authorities is open only for claimants who are Bulgarian nationals irrespectively of their place of living<sup>10</sup>. The special jurisdiction does not consider the procedural position of the parties. It allows access to the Bulgarian court and authorities always if the child or one of the parents is a Bulgarian national. They may be resident in Bulgaria or abroad. The case law refers to this provision also in situation of a person, claiming to be the biological father, who is a Bulgarian citizen<sup>11</sup>. A parent who is not a Bulgarian citizen can also benefit from this jurisdiction, again no matter where he or she is residing. Foreign nationals - a child and/or parents - have the right or may be summoned before a Bulgarian court or authorities on matters of parenthood if they have their habitual residence in Bulgaria. It is clear from the regulation that the Bulgarian court or other authorities do not have jurisdiction in cases where neither the child nor the parent has a personal (based on nationality) or territorial connection (based on habitual residence) with Bulgaria. The personal or territorial link with Bulgaria shall exist at the time when the procedure is commenced<sup>12</sup>.

The rules on jurisdiction described above apply to the court when parenthood is the subject matter of the claim. Parenthood may be raised as an independent claim, i.e. for establishing fatherhood. It can be joined with another claim - i.e. a claim for establishing fatherhood lodged with a claim for maintenance. In this case, international jurisdiction is determined independently for each claim. It is possible that the question of parenthood is a preliminary/incidental issue for a dispute with another subject matter - i.e. a claim for maintenance. In that case, the court that has jurisdiction over the main claim may also rule incidentally on the preliminary/incidental issue (Article 38, para. 1 of the CPIL). Alternatively, it can also

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<sup>10</sup> Ruling No. 341 of 2 October 2017 in Private Civil Case No. 3310/2017, Civil Chamber, Third Division, Supreme Court of Cassation;

<sup>11</sup> Ruling No. 341 of 2 October 2017 in Private Civil Case No. 3310/2017, Civil Chamber, Third Division, Supreme Court of Cassation;

<sup>12</sup> NATOV N., *Commentary of the Code of Private International Law*, p. 165.



recognise a judgment on parenthood for the purpose of taking its decision on another matter (Article 118, para. 1 CPIL).

The rules on jurisdiction of the CPIL are also relevant for the Bulgarian civil status officials<sup>13</sup>. As established in Article 4 CPIL the heads of jurisdiction bind not only courts but also "other authorities" such as civil status officials.

However, there is a new case law of the Bulgarian Supreme Administrative Court<sup>14</sup>, stating that the civil status official who draws up civil status acts is not an administrative authority and does not act as an authority with international jurisdiction in the meaning of Art. 1, para. 1, item 1 of the CPIL. It does not apply the provisions of the CPIL, in particular, those of Art. 45 of the Code of Private International Law (on public order) and Art. 117 of CIPL (on recognition of foreign court decisions and acts). The civil status official in the view the Supreme Administrative Court does not establish but registers the parenthood of the child established under Bulgarian law. The proceedings are of a public law nature and do not apply conflict of laws rules of private international law, in view of which the application of foreign law could not be expected. This view is not in compliance with the PIL rules on both jurisdiction and applicable law.

International jurisdiction under treaties on legal assistance is not regulated uniformly. In some of these treaties, jurisdiction is determined solely with reference to the child. According to Article 25(6) of the Treaty on Legal Assistance with Russia<sup>15</sup> and Articles 20(3) and Article 26 of the Treaty with Cuba<sup>16</sup>, the competent court is that of the contracting state of which the child is a national, or where the child has domicile or habitual residence.

In others, jurisdiction is determined with reference to both the child and the parent. For instance, under Article 27 of the Treaty with Poland<sup>17</sup>, the competent court is that of the contracting party whose nationality the child holds. However, if both parties to the proceedings are domiciled in the territory of one of the contracting states, the court of that state also has jurisdiction.

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<sup>13</sup> Ibid.

<sup>14</sup> Decision No. 6044 of 16 May 2024 in Administrative Case No. 7594/2023, Third Division, Supreme Administrative Court.

<sup>15</sup> Agreement between the People's Republic of Bulgaria and the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters (Ratified by Decree No. 784 of the State Council of April 15, 1975 - State Gazette, No. 33 of 1975. In force since January 18, 1976);

<sup>16</sup> Agreement between the People's Republic of Bulgaria and the Republic of Cuba on legal assistance in civil, family and criminal matters (ratified by decree no. 1959 of the state council of 2 november 1979 - sg, no. 90 of 1979 in force from 25 July 1980).

<sup>17</sup> Agreement between the People's Republic of Bulgaria and the Polish People's Republic on legal assistance and legal relations in civil, family and criminal matters (ratified by decree no. 172/7.IV.1962, published in the Gazette of notifications, no. 31/17.IV.1962, entered into force on 20 April 1963).

There are also treaties under which jurisdiction in matters relating to the establishment of parentage and legal relationships between parents and children lies either with the court of the state whose law is applicable to the matter, or with the court of the parties' common domicile - if both parties reside in the same country (as is the case in the treaty with Hungary<sup>18</sup>).

The rules on international jurisdiction under treaties on legal assistance take precedence over the provisions of Articles 4 and 9 of the Bulgarian Private International Law Code (PILC), pursuant to Article 5 (4) of the Constitution of the Republic of Bulgaria. These treaty provisions were the principal rules governing parentage matters prior to the adoption of the PILC in 2005.

### **Applicable law**

The applicable law in matters of parenthood is governed by the Bulgarian **CPIL** and some of the **legal aid treaties**.

Pursuant to Article 83, para. 1 CPIL parenthood shall be governed by the law of the State whose nationality the child acquired at the time of birth. According to para. 2 of Article 83 CPIL notwithstanding the application of para.1, the following law may be applied should this be more favourable to the child:

1. the law of the State of which the child is a national or in which the child is habitually resident at the time of establishment of parenthood, or
2. the law applicable to the relationships in personam between the parents at the time of birth.

Under para. 3 of Article 83 CPIL the renvoi to the law of a third State shall be admissible where the said law admits establishment of the parenthood of the child. Paragraph 4 of Article 83 CPIL envisages that acknowledgment shall be effective if it conforms to the national law of the affiator or to the national law of the child at the time of acknowledgment, or by the law of the State in which the child has a habitual residence at the time of acknowledgment. Paragraph 5 further elaborates that the formal requirements for acknowledgment shall be governed by the law of the State where the acknowledgment has been effected, or by the law applicable according to para. 4 of Article 83 CPIL.

The concepts of Bulgarian "nationality" and "habitual residence" are described above. The foreign nationality is left to the foreign law as it stems from the international law providing for that each State is free to determine the acquisition and the loss of

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<sup>18</sup> Agreement between the People's Republic of Bulgaria and the Hungarian People's Republic on legal assistance in civil and criminal matters (ratified by the Presidential office of the National assembly by Decree no. 465 of 23 November 1953, published in "Notices of the presidential office of the national assembly", number 95 of 27 November 1953).

nationality<sup>19</sup>. The law applicable to the relationships in personam between the parents at the time of birth is governed by their common national law (Article 79, para.1 CPIL) or, if they hold different nationalities - by the law of the State in which they have a common habitual residence or, in the absence of such habitual residence, by the law of the State with which both spouses are most closely connected (Article 79, para.2 CPIL). According to the theory, the material criterion of "more favorable" law to the child is associated with the specific result, which will generally be present if, according to the relevant legal order, wider possibilities for establishing parenthood are allowed compared to those provided for in *lex patriae* of the child at the time of his or her birth. The initiative for applying the more favorable law may lie with either party or the court may consider it *ex officio* <sup>20</sup>. The Supreme Court of Cassation applies this rule *ex officio* and considers that it is more favorable for establishing the parenthood of the child to apply foreign law to the form of acknowledgment, as it provides for a lighter form (in the case of acknowledgment of fatherhood with an oral statement before an official according to Portuguese law)<sup>21</sup>.

The Bulgarian law permits *renvoi* as established in Article 40, para. 1 CPIL. Pursuant to it the notion "law of a State" shall denote the legal provisions of the said State, including the conflict of laws rules thereof, save as otherwise provided for in the CPIL or in another law. Parenthood is not among the matters excluded from *renvoi* as per Article 40, para. 2 CPIL. However, if the *renvoi* is admitted, Bulgarian substantive law or, respectively, the substantive law of the third State, shall apply as it stems from Article 40, para. 3 CPIL. Thus, the Bulgaria law allows in principle remission to the Bulgarian law and transmission to the substantive law of the third State. The solution is modified in matters of parenthood. Pursuant to Article 83, para. 3 CPIL the transmission to the law of the third State is possible only if it allows the establishment of parenthood. It is argued that this solution is an expression of the idea of implementing the law more favorable to the child<sup>22</sup>. The alternative system of rules for determining the law applicable to the acknowledgment of fatherhood, including its form, is an expression of the *favor validitatis* principle.

In determining the applicable law to matters of parentage, the public order (Article 45 of the Bulgarian Private International Law Code) and overriding mandatory provisions (Article 46 of the same Code) may come into effect.

The law applicable to parenthood does not depend on whether the child's parents are married or not.

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<sup>19</sup> CJEU judgment of 7 July 1992 in Case C-369/90, Micheletti and Others v Delegación del Gobierno en Cantabria ECLI:EU:C:1992:295, para. 10.

<sup>20</sup> STANCHEVA MINCHEVA V., *Commentary on the Code of Private international Law*, 2010, p. 249.

<sup>21</sup> Decision No. 271 of 10 January 2020 in Civil Case No. 913/2019, Civil Chamber, Fourth Division, Supreme Court of Cassation.

<sup>22</sup> STANCHEVA MINCHEVA V., *op.cit.*, p. 250.

Bulgarian law contains an independent system of rules regarding adoption (Article 84), which are special in relation to the conflict of law rules on parenthood.

The applicable law on parenthood governs all substantive law matters, including the time limits for bringing claims to establish or dispute parenthood. The distribution of the burden of proof, (including presumptions) is determined by the substantive law which governs the consequences of the fact requiring proof (Article 30, para.1 CPIL). The evidence is in principle a matter of *lex fori* but pursuant to Article 30, para.2 CPIL if the law applicable to the merits of the case admits testimony regarding the circumstances under Article 164 of the Code of Civil Procedure (for example for establishing legal act, which validity is subject to written act or contestation of the content of an official document) , this type of evidence shall be admissible if the fact materialized within the territory of the State whereof the law is applicable.

Korea<sup>23</sup>). For Applicable law under treaties on legal assistance is not regulated uniformly. In some of these treaties, the applicable law is determined with reference to the child. The simplest provision states that parentage is to be determined according to the child's nationality (Article 20(1) of the Treaty with example, Article 25 (2) of the Treaty on Legal aid with the Russia provides that cases concerning the contestation or establishment of paternity or maternity, as well as the establishment of the birth of a child within a marriage, shall be decided in accordance with the legislation of the contracting party of which the child was a **citizen** at the time of birth (including when the parents are not married (Article 25(4)). According to para. 5, if the child is a national of one of the contracting parties but resides in the territory of the other contracting party, and the legislation of the latter is **more favorable** to the child, then the legislation of that contracting party shall apply. In other treaties, the child's **habitual residence** is used as an alternative criterion to nationality for determining the applicable law (such as Article 28 of the Treaty on Legal aid with Poland). The most notable provision is one in which the applicable law governing parentage is determined based on factors related to the father. For example, pursuant to Article 24 of the Treaty on Legal aid with Hungary, in proceedings for the establishment of paternity, the applicable law is that of the state of which the person alleged to be the father was a national at the time of the child's birth. Furthermore, if the alleged father died before the birth of the child, the applicable law is that of the state of which he was a national at the time of his death. If the nationality of the alleged father at the time of death or at the time of the child's birth cannot be established, the law of the state of his last known nationality shall apply.

## **Recognition and enforcement of judgments**

Pursuant to Article 117 CPIL judgments and authentic acts of the foreign courts and other authorities shall be entitled to recognition and enforcement where:

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<sup>23</sup> Agreement between the People's Republic of Bulgaria and the Democratic People's Republic of Korea, Published in the State Gazette, No. 15 of 20 February 1990.

1. the foreign court or authority had jurisdiction according to the provisions of Bulgarian law, but not if the nationality of the plaintiff or the registration thereof in the State of the court seized was the only ground for the foreign jurisdiction over disputes in rem;
2. the defendant was served a copy of the statement of action, the parties were duly summonsed, and fundamental principles of Bulgarian law, related to the defence of the said parties, have not been prejudiced;
3. if no effective judgment has been given by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties;
4. if no proceedings based on the same facts, involving the same cause of action and between the same parties, are brought before a Bulgarian court earlier than a case instituted before the foreign court in the matter of which the judgment whereof the recognition is sought, and the enforcement is applied for has been rendered;
5. the recognition or enforcement is not contrary to Bulgarian public policy.

The foreign judgment shall be recognized by the authority where to the said judgment is presented (Article 118, para.1 CPIL). Should the conditions of recognition of the foreign judgment be raised as the issue in a dispute, an action for recognition may be brought before the Sofia City Court (Article 118, para.2 CPIL).

The interested party must present a true copy of the judgment, authenticated by the rendering court, and a certificate issued by the same court, to the effect that the said judgment has taken effect. These documents must be certified by the Ministry of Foreign Affairs of the Republic of Bulgaria (Article 119, para.2 CPIL).

The court shall of its own motion verify the conditions covered under Article 117 CPIL (Article 120, para.1 CPIL). The defendant in the proceedings for recognition and enforcement of foreign judgement may not invoke violations under point 2 of Article 117, which the defendant could have raised before the foreign court (Article 120, para.2 CPIL).

The Bulgarian law follows the commonly accepted types of recognition – *ipso jure* (Article 118, para.1 CPIL), by court decision (118, para.2 CPIL) and incidentally (as developed by the case law of the Supreme Court of Cassation considering Article 118, para.1 CPIL)<sup>24</sup>. According to the case law of the Supreme Court of Cassation, recognition carried out by the authority before which the foreign judgment is presented concerns only the jurisdiction and sphere of action of the relevant authority. In view of the

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<sup>24</sup> Decision No. 248 of 26 October 2012 in Civil Case No. 241/2012, Civil Chamber, Second Division, Supreme Court of Cassation and Decision No. 278 of 6 November 2013 in Civil Case No. 1108/2012, Civil Chamber, Fourth Division, Supreme Court of Cassation.

Supreme Court of Cassation it does not have constitutive effect and does not bind the Bulgarian court<sup>25</sup>.

## 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.**
- **Whether they transcribe the foreign birth certificate in the Civil or Population Registry or whether transcription is required only in some circumstances**
- **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 **birth certificate** under Bulgarian law is an official written document (Article 2, para.2 of the Law on Civil Registration). Birth certificates drawn up in accordance with the Bulgarian law prove the data reflected therein until their falsity is proven (Article 34, para.2 of the Law on Civil Registration). The birth certificate is drawn up by the civil status official in the municipality or mayoralty on whose territory the events occurred. The mayor of the municipality is the civil status official on the territory of the municipality (Article 35). Civil status certificates are drawn up on forms according to an established template (Article 37, para.1 of the Law on Civil Registration). The birth certificate is drawn up as a general rule on the basis of a written notification within 7 days, the day of birth not being counted (Article 42, para.1 of the Law on Civil Registration). When this term has expired and a birth certificate has not been drawn up, but the notification has been made or the official has learned of the birth during the same calendar year, he shall draw up the birth certificate. When the calendar year and the term for drawing up the birth certificate have expired, a birth certificate shall be drawn up only on the basis of a court decision, issued at the request of the parents, the person or the prosecutor (Article 44 of the Law on Civil Registration).

If the birth of a child occurred **abroad** and there is a foreign birth certificate the Bulgarian law requires a **transcription** in the Bulgarian Civil Registry. The legal rules are established in Ordinance Nr. RD-02-20-9 of May 21, 2012 on the functioning of the unified civil registration system<sup>26</sup>. A birth occurring abroad for persons who are

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<sup>25</sup>Decision No. 242 of 25 May 2011 in Civil Case No. 811/2010, Civil Chamber, Fourth Division, Supreme Court of Cassation concerning the recognition of a foreign divorce judgment.

<sup>26</sup> Published in the State Gazette (ДВ), issue No. 43, dated June 8, 2012, amended and supplemented in State Gazette, issue No. 4, dated January 14, 2014, amended in State Gazette, issue No. 2, dated January 9, 2015, amended and supplemented in State Gazette, issue No. 64, dated August 21, 2015, amended and supplemented in State Gazette, issue No. 22, dated March 22, 2016, amended and supplemented in State

Bulgarian citizens at the time of the event has to be registered on the basis of a transcript or extract from the civil status act drawn up by a foreign local authority or by a Bulgarian diplomatic or consular representative (Article 4, para. 1 of the Ordinance). For the registration of civil status events occurring abroad, civil status acts shall be drawn up in the administrative center of the municipality (Article 4, para. 2 of the Ordinance). According to Article 12, para 1 of the Ordinance, when registering a birth that occurred abroad, the data on the name of the holder, the date and place of birth, the gender and the established origin shall be entered in the birth certificate as they are entered in the submitted transcript or in the Bulgarian translation of the foreign document.

If the transcript does not contain the holder's patronymic, the same may be added to the birth certificate with a written application. According to para 3 of the same article, the patronymic and surname of the holder may be entered with the suffixes “-ов” or “-ев” and an ending according to gender, if this is stated in writing by the parents within three years of the person's birth. Article 12, para 3 of the ordinance further elaborates that when the origin from a parent (mother or father) is not established, when drawing up a birth certificate in the Republic of Bulgaria, the relevant field intended for the data on this parent shall not be filled in and shall be crossed out. If the transcript or extract does not contain all the necessary data regarding the parents, data from their identity documents or from the population register shall be used (Article 12, para 4 of the Ordinance). Article 12, para 5 of the Ordinance establishes that if a parent is entered in the transcript or extract with a name that is significantly different from the name under which he is entered in the population register, a document shall be presented for the drawing up of the birth certificate, from which it is evident that the names belong to the same person. When drawing up the birth certificate, the name of this parent shall be entered as it is entered in the population register.

According to Article 12, para 6 of the Ordinance, w birth certificate shall not be drawn up on the basis of a transcript or extract that does not contain data on the name, date of birth, place of birth **or gender of the holder**, and no other official documents certifying these data may be presented. Interested persons shall establish their rights in court.

When it cannot be established in an indisputable manner based on the data from the population register or from the submitted transcript or extract that at the time of birth the person had a parent who was a Bulgarian citizen, the birth certificate shall be drawn up after this has been established in accordance with Ordinance No. 1/1999. on the implementation of Chapter Five of the Bulgarian Citizenship Act (Article 12, para 7 of the Ordinance).

According to Article 13 of the Ordinance, when registering a birth that occurred abroad, the Bulgarian citizenship of the holder and the parent(s) shall be entered in the birth certificate.

Article 14, para 1 of the Ordinance establishes that after the birth certificate is drawn up, an original birth certificate shall be issued in accordance with an approved form. It shall be handed over to a parent or to a person expressly authorized by the parent. According to para 3 of the said Article 14 of the Ordinance, when a birth certificate is drawn up in a Bulgarian diplomatic or consular mission, a full copy thereof shall be issued. What is more, according to Article 14, para 4 of the Ordinance when the birth occurred abroad, an original birth certificate shall be issued after drawing up a birth certificate in the Republic of Bulgaria.

On the occasion of issuance of birth certificate in Bulgaria a procedure before the mayor of Pancharevo Municipality was initiated, which led to the decision of the CJEU on the case C-490/20. The case refers to a Bulgarian female citizen, who married another female citizen of the United Kingdom. Later the couple settled in Spain. They had a baby there, and the baby received a birth certificate in Spain, which stated that the baby's parents are both mothers. The Bulgarian mother files an application before the mayor of Pancharevo for a birth certificate to be issued to the child and presents the Spanish birth certificate. The mayor refuses to issue a birth certificate containing information that both women are parents as the mayor states that it would be against the Bulgarian public order. The rejection of the application is appealed before the Administrative court of Sofia City. The judge referred the case for a preliminary ruling to the CJEU. The Bulgarian court asked if the Bulgarian's mayor refusal to issue a birth certificate violated free movement of citizens in the EU, or, on the contrary, Bulgaria can refuse to issue the birth certificate on bases of public order and protection of national identity. In the preliminary question the judge stated as a fact that the child is a Bulgarian citizen.

The Court of Justice of the European Union (CJEU), sitting in Grand Chamber and following the Opinion of the Advocate General (Case C-490/20), delivered a judgment holding that Bulgaria is under an obligation to issue identity documents (but not a birth certificate) to a child who is a Union citizen. Furthermore, the Court ruled that Bulgaria must recognize the birth certificate issued by another Member State indicating the child's parents, for the purposes of exercising the right to free movement and residence within the EU.

The Court's reasoning is primarily based on the principles of freedom of movement and the prohibition of discrimination, but above all, on the right to respect for private and family life and the best interests of the child, as enshrined in the Charter of Fundamental Rights of the European Union (CFR).

In balancing the relevant values, the CJEU categorically rejected the possibility for Bulgaria to invoke public policy or constitutional identity as grounds for refusal in this



context. Following the judgment of the Court of Justice of the European Union, the Bulgarian administrative court of first instance held - relying extensively on arguments derived from EU law, the Convention on the Rights of the Child, and the European Convention on Human Rights - that compliance with the CJEU ruling necessitates the issuance of a birth certificate by the mayor.

According to the presiding judge, the inability to issue such a document constitutes a national measure that hinders the exercise of the right to free movement, and, pursuant to EU law, such an obstacle must be removed.

The essence of the CJEU's judgment is unequivocal: a child with two mothers - one of whom is a Bulgarian national - must have their parentage legally recognized for the purposes for free movement and to have identity documents.

The Mayor of Pancharevo Municipality appealed the decision of the administrative court of first instance. This led to a ruling by the Supreme Administrative Court, delivered in Decision No. 2185 of 1 March 2023 in Administrative Case No. 6746/2022, Third Division.

To determine initially whether the child holds Bulgarian nationality under Article 25 of the Constitution in view of the Supreme Court of Cassation, parenthood must be established in accordance with Bulgarian law. Under Article 60, paragraphs 1 and 2 of the Family Code, motherhood is defined by birth, meaning the mother is the woman who gave birth, including cases involving assisted reproduction. In this case, identifying the woman who gave birth was essential, but the couple refused to provide this information. Consequently, parenthood with the Bulgarian mother could not be confirmed. The Supreme Court concluded that since it was established that the child is not a Bulgarian citizen under applicable law, Bulgaria is not obligated to issue a birth certificate. According to the Supreme Administrative Court of Bulgaria the child has the right to have Spanish citizenship, because he/she was born in Spain, and the countries of his/her mothers refuse to provide the child with citizenship.

In addressing the complex question of whether nationality or parentage is to be determined first - and which legal instruments govern this process - the Supreme Administrative Court reaffirmed the established position that nationality takes precedence, with the Bulgarian Constitution serving as the primary legal source. Had the opposite approach been adopted—determining parentage first by applying the rules of the Bulgarian Private International Law Code (PILC) - the outcome would have been different. Pursuant to Article 83(1) of the PILC, parentage is determined according to the law of the state whose nationality the child acquired at the time of birth. If, as the Supreme Administrative Court asserts, the child had no nationality at birth, the next paragraph would apply. Under that provision, if more favorable to the child, either the law of the state in which the child had habitual residence at the time parentage was established, or the law applicable to the personal relationships between the parents at the time of birth, may be applied. In the present case, both of these rules

point to Spanish law, under which the child is legally recognized as having two parents, one of whom is a Bulgarian national. Accordingly, Bulgarian private international law—which takes precedence over the Family Code as *lex specialis* - designates Spanish law as the applicable law, thereby precluding any inquiry into which woman physically gave birth to the child, as would otherwise be required under Article 60(1) of the Bulgarian Family Code.

The result from the decision of the Supreme Administrative Court is that the child is not considered a Bulgarian citizen, cannot become one, and therefore, cannot have a birth certificate. The question on recognition of parenthood by a same-sex couple remains unanswered.

Most likely soon there will be ruling on similar cases, where the mother of the child is a Bulgarian citizen. The problem is that when information is presented before the mayor who the biological mother is, if she is the Bulgarian, a birth certificate is issued, but only one of the parents is included in the certificate – the Bulgarian one. It is necessary for this ruling to then be appealed based on the Pancharevo case to base the need for issuance of identifying documents for the purpose of free movement. Indirectly, the question of the issuance of birth certificate will once again be raised, as it is a necessary document in order for a passport to be issued.

The forementioned development of case-law in Bulgaria shows that for issuing a birth certificate and recognition of origin of parenthood a special instrument of the European law must be developed.

## 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 Jürgen and Leo**

Theoretically, as per the applicable law the child will be treated as Bulgarian national (Art. 48(2) CPIL), and the applicable law will be the Bulgarian pursuant to Art. 83(1) CPIL.

As long as the child's birth occurs within 300 days after the divorce, Jürgen is considered as the father of the child (Art. 61(1) of the Family Code where a presumption of parenthood is established in favour of the husband if a child is born while married or up to 300 days after the divorce). However, if Maria marries Jan prior to the birth of the child even if the birth occurs within the said 300 days after the divorce with Jürgen, according to Article 61, para 2 of the Family code, Jan would be considered father of the child.

Otherwise, in practice, the solution of this case will very much depend on the previous registration of the marriage of Maria and Jürgen in the population registry in Bulgaria. If there is no information regarding the marriage in the Bulgarian registries, the mother may be tempted not to provide the marriage certificate and the divorce decision and to opt for the child's recognition by Leo instead, i.e. concealing the fact that she was married, and the child is born prior to the expiration of the period of 300 days after the divorce. If so, the Bulgarian official would not be able to apply the presumption of Article 61 (1) of the Family code and Jan would be able, under Article 64 (1) of the Family code to recognize Leo as its own child.

The Bulgarian law does not provide for the possibility for the mother and the real father of the child to appear at the birth registry and register him as the father of the child. Therefore, if Jürgen is presumed to be father of Jan due to the child being born within

300 days after the termination of the marriage between Jürgen and Maria and Maria and Jan had not entered into marriage before that, the only possible way for Jan to establish parenthood would be to challenge the parenthood of Jürgen in court proceedings and creating the possibility for the subsequent acknowledgement of the parenthood (Art. 62 and Art. 64 of the Family Code).

## 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**

Yes in course of the issuance of a Bulgarian certificate based on the German one (Article 4 (1) of the ordinance). Maria will be registered as the mother and the only parent of the child (Art. 118 (1) CPIL). However, if the marriage appears in the Bulgarian population registry the authority may get confused and consider otherwise.

- **The value (if any) of the German birth certificate in your State**

It is considered as a foreign official document – non-contentious (or protective) act (Art. 124 CPIL). As established in the case law (for instance Ruling No. 126 of 02.04.2021 in civil case No. 3822/2020, Civil Division, First Panel, Supreme Court of Cassation): "Judicial acts issued in non-contentious proceedings in Bulgaria do not have the force of res judicata. As official documents issued by a competent authority within the scope of its powers, they have binding evidentiary value for the court; however, this evidentiary force may be challenged and rebutted."

- **Whether Jürgen may be registered as the child's father in your State**

Yes, he may go for direct recognition before the major using the marriage certificate and the divorce decision or/and lodge a claim requesting establishment of his parenthood.

- **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**

If the German birth certificate does not establish the father of Leo and if the marriage and the divorce are not registered in Bulgaria Leo may be acknowledged by Jan via declaration (Article 64 of the Family code). If the marriage is registered the authority will have to consider its effect over the parenthood and may decide against the acknowledgment. The way out will require again legal proceedings establishing the parenthood of Jürgen, rebutting it (article 71 of the Family code) and freeing the path for acknowledgment by Jan (Article 69 of the Family code).

## 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**  
Yes, but only if the biological mother is Valentina. Valentina will be the only parent that will appear in the birth certificate.
- **The value of the Dutch birth certificate in your State**  
The birth certificate will be treated as foreign non-contentious (or protective) act but it will be recognized only partially. The co-motherhood of the non-biological mother will be not recognised as being against the Bulgaria public policy.
- **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.**  
No.

## **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 Bulgaria there is a ban on surrogacy. This is established in paragraph point 5.7.9, Section IV of Ordinance No. N-2 of 12 July 2023 on Assisted Reproductive Activities, issued by the Minister of Health, published in the State Gazette, Issue No. 63 of 25 July 2023. Surrogacy is also prohibited under Articles 182a and 182b of the Penal Code.

**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.**  
N/A

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

If the foreign documents – birth certificate or court decision, do not contain information demonstrating a surrogacy situation, the standard track for recognition of birth certificates or decisions applies.

If there is a foreign decision with an operative part pointing at parenthood between a child and one/two parents, it is up to the eagerness of the requested authority (the major or the court) to dig into the details of the reasonings. It may happen that it stays focused on the operative part and thus decides to recognise the parenthood.

The most complicated solution is for the surrogate mother to renounce parental responsibility and thus to free the way for the intended mother to adopt the child.

**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.**

This is established in point 5.7.9, Section IV of Ordinance No. N-2 of 12 July 2023 on Assisted Reproductive Activities, issued by the Minister of Health, published in the State Gazette, Issue No. 63 of 25 July 2023, namely:

*5.7. When using donor gametes, the following is not permitted:  
5.7.9. achieving surrogate pregnancies;*

Surrogacy is also prohibited under Articles 182a and 182b of the Criminal Code:

Art. 182a. (New - SG, No. 26/2004) (1) (Amended - SG, No. 26/2010) Whoever, for the purpose of material gain, persuades a parent by means of a donation, promise, threat or abuse of official position to abandon his or her child or to give consent to his or her adoption, shall be punished by imprisonment for a term of up to three years and a fine of up to two thousand leva.

(2) The punishment under para. 1 shall also be imposed on whoever persuades a minor to give consent to his or her adoption, when the law requires it.

(3) Whoever, for the purpose of unlawful property gain, mediates between a person or family wishing to adopt a child and a parent wishing to abandon their child, or a woman agreeing to carry a child in her womb with the aim of handing it over for adoption, shall be punished by imprisonment for up to two years and a fine of up to three thousand leva.

(4) If the act under para. 3 is committed repeatedly, the punishment shall be imprisonment for up to three years and a fine of up to four thousand leva.

Art. 182b. (New - SG, No. 75/2006, effective 13.10.2006) (1) A female person who consents to the sale of her child in Bulgaria or abroad shall be punished by imprisonment for a term of one to six years and a fine of five thousand to fifteen thousand leva.

(2) The punishment under para. 1 shall also be imposed on a pregnant woman who consents to the sale of her child before its birth.

## **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**

N/A

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

If there is no sign of a relationship pointing at the surrogate mother, the birth certificate will be reissued and the link between the child and the parents will be included in the Bulgarian civil status register. A new Bulgarian birth certificate will be issued and it will prove the parenthood in Bulgaria.

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



An adoption decision issued by a foreign court is a court decision within the meaning of the CPIL. Insofar as the legal relationship under it is outside the regulations for international adoption of a child, this decision of the foreign court falls within the scope of Art. 118, para. 1 of the CPIL and is to be recognized directly by the authority to which it was submitted. The Civil Registrar should establish the existence of the five conditions for recognition under Art. 117 of the CPIL. One of the conditions is the public policy exception. If the Civil Registrar refuses to recognise the adoption decision its act is subject to court review.

## 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**

Yes, it will be recognised if the birth certificate does not reveal any information regarding the surrogacy relationship.

**- whether Michela's parenthood can be recognised?**

**1. What procedure shall be followed (if any)**

If Michela is included in the birth certificate she will be registered as a mother of the child if the birth certificate does not reveal any information regarding the surrogacy relationship.

**- whether grounds for refusal exist and, in the affirmative, which one**

If there is a sign of surrogacy implication the Civil Registrar may resort to the public policy exception.

**- Whether differences would exist if two men were indicated as parents in the foreign birth certificate**

If the parenthood is related to two men, the Civil Registrar will apply the public policy exception.

**- Whether difference would exist if only a father is indicated in the foreign birth certificate, while the mother is not**

The Civil Registrar will transcribe a Bulgarian birth certificate including only the father. The mother must use other procedural tools to establish her parenthood, most likely adoption procedure.

## **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 intentional 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 recognize as a parent and, in the affirmative, what procedure can be followed in order to enforce that right (for example, establishment of parenthood, adoption)**

The Bulgarian legal order does not provide any rights to Michaela stemming from the surrogacy agreement; even if such rights were agreed upon, they will be considered null and void as being contrary to the law and/or to the good morals (Art. 26, para. 1 Law on Obligations and Contracts).

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

In both cases the surrogacy agreement will be treated as null and void.

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

The biological parent has to renounce his/her parenthood and free the way for the intentional parent to acknowledge/adopt the child.

**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**

The biological parent must renounce the parenthood first. The consent is not sufficient. The surrogate mother also must renounce the parenthood if another intentional parent has to step in as a father of the child.

## Recognition of a foreign decision establishing parenthood

Clara (intending mother) and Peter (intending father), resident in - *your country* - entered into a commercial gestational surrogacy agreement (i.e. the international 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 Bulgaria 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**

As already presented a de facto recognition may happen in case the birth certificate is a standard one not revealing the surrogacy background.

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

Please see the explanation above.