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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[1], 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[2]. 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,

[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/.

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 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

The new Croatian Private International Law Act (hereinafter: PIL Act) of 4th October 2017 entered into force on 29th January 2019[4]. It holds rules on jurisdiction, applicable law and recognition and enforcement relevant for parenthood.

Jurisdiction

Along with general jurisdiction based on the defendant's domicile, special jurisdiction criteria apply for parenthood matters.
There is a rule governing a special jurisdiction for personal status in Article 47:

> *(1) Unless otherwise provided by this Act, in proceedings concerning the personal status of natural persons, a court or other authority of the Republic of Croatia shall have jurisdiction — except as provided in Article 57 of this Act— if the person whose personal status is in question has a habitual residence in the Republic of Croatia or is a Croatian citizen.*
> *(2) Paragraph 1 of this Article applies, for example, to proceedings concerning:*
> 1. *granting permission to enter into marriage.*
> 2. *deprivation or restoration of legal capacity*
> 3. *establishment or termination of guardianship*
> 4. *establishment or contestation of maternity or paternity*
> 5. *establishment of adoption*
> 6. *declaration of a missing person as deceased.*

Article 51 governs the jurisdiction for maternity and paternity matters:

[4] Private International Law Act (PIL Act), OG 101/17, 67/2023.

(1) In matters concerning the establishment or contestation of maternity or paternity, the courts of the Republic of Croatia shall have jurisdiction if at least one party has habitual residence in the Republic of Croatia, or if both the child and the person whose maternity or paternity is being established or contested are Croatian nationals.

(2) A declaration acknowledging paternity or maternity may be made before a competent authority of the Republic of Croatia:

1. *if the child or the person making the declaration has habitual residence in the Republic of Croatia, or*
2. *if the child was born in the Republic of Croatia.*

Parenthood may be relevant for the determination of other subject matters as a main cause of action. In those situations, the court dealing with different subject matter as a main cause of action may determine parenthood as a preliminary issue, according to Article 12 of the Civil Procedure Act[5]:

(1) When a court's decision depends on the prior resolution of an issue regarding the existence of a certain right or legal relationship, and no decision has yet been made on that issue by a court or another competent authority (preliminary issue), the court may resolve that issue itself, unless otherwise prescribed by specific regulations.

(2) The court's decision on the preliminary issue has legal effect only in the proceedings in which the issue was resolved.

(3) In civil proceedings, the court is bound by the final judgment of the criminal court declaring the defendant guilty, with respect to the existence of a criminal offense and the criminal responsibility of the perpetrator.

Also, it is possible to recognize a foreign judgment for the purpose of other proceedings, by Article 72(3) of the PIL Act:

(3) If a final decision on the recognition of a foreign court judgment has not been made, any court may decide on the recognition of that judgment as a preliminary issue in the proceedings, but only with effect for that specific proceeding.

Applicable Law

According to Article 41 of the PIL Act, the applicable law is determined by a listed connecting factors, which have to be established when the procedure for establishing or contesting maternity or paternity is initiated. Hence, the law of the child's habitual residence, or if it is in the best interests of the child, the law of the State of the nationality of the child or the law of the State of which the persons whose maternity or paternity are established or contested nationals, is applied. Albeit the habitual residence of the child is set as the primary connecting factor, it can be superseded by the law of the nationality of either the child or the persons whose maternity or

[5] Civil Procedure Act, OG SFRJ 4/77., 36/77., 36/80., 6/80., 69/82., 43/82., 58/84., 74/87., 57/89., 20/90., 27/90., 35/91, OG 53/91., 91/92., 112/99., 129/00., 88/01., 117/03., 88/05., 2/07., 96/08., 84/08., 123/08., 57/11., 148/1, 25/13., 89/14., 70/19., 80/22., 114/22., 155/23.

paternity are being established, subject to the test of the best interests of the child (alternatively).

For the establishment or contestation of maternity or paternity, the applicable law at the time of initiation of the proceedings is:

1. *the law of the child's habitual residence, or*
2. *if it is in the best interest of the child, the law of the state of which the child is a national or the law of the state of which the persons whose maternity or paternity is being established or contested are nationals.*

Material and formal validity of the confession of maternity or paternity is subject to any of the alternatively set applicable laws: the law of nationality or habitual residence of the child at the time of acknowledgement or the law of the nationality or habitual residence at the time the person is acknowledging maternity or paternity, according to the Article 42 of the PIL Act.

For the validity of the acknowledgment of motherhood or fatherhood, the applicable law is:

1. *the law of the child's nationality or habitual residence at the time of acknowledgment, or*
2. *the law of the nationality or habitual residence of the person acknowledging motherhood or fatherhood at the time of acknowledgment.*

There are no specific rules on law applicable to limitations, legal standing and evidence (including presumptions); hence, *lex causae* also applies to these matters.

If Croatian law is applicable, the Family Act[6] provides rules on these issues. The rules for establishing and contesting parenthood differ depending on the child's age. The law provides strict time limits for establishing or contesting parenthood.

Establishing parenthood:

A child may file a lawsuit to establish maternity or paternity up to the age of twenty-five (Article 383 of the Family Act). A lawsuit to establish paternity may be filed by the mother of the child up to eighteen (Article 384 of the Family Act). The same age limit applies if the social welfare centre files the procedure (Article 387 of the Family Act). A lawsuit to establish paternity may be filed by a man who considers himself the child's father within one year of receiving notification that consent of the mother before the civil registry (Articles 63-64 of the Family Act) has not been obtained, and no later than the child's eighteenth birthday. (Article 385 of the Family Act). If the person who is claimed to be the mother or father of the child is not alive, a lawsuit to establish maternity or paternity against her or his heirs may be filed within one year from the death of the person claimed to be the mother or father of the child or within six months from the finality of the decision on inheritance. (Article 396 of the Family Act).

[6] Family Act, OG 103/2015, 98/2019, 47/2020, 49/2023, 156/2023.

Contesting motherhood:

The child can file a lawsuit in court up to the age of 25, and if the child is a minor, then the lawsuit is filed by a special guardian appointed by the social welfare authority. A woman who is registered as a mother of a child may file a lawsuit to contest her motherhood within 6 months of learning of the fact that it excludes her motherhood and no later than the 7th year of the child's life. A woman who considers herself the mother of a child may contest the motherhood of a woman registered as the mother if she simultaneously seeks to establish her motherhood. The lawsuit may be filed within 6 months of acknowledging that she is the mother of the child, and no later than the 7th year of the child's life. The paternity of the mother's husband, i.e. the man whose paternity has been established by acknowledgement, is also considered contested by a final judgment on contesting maternity. (Articles 393 – 398 of the Family Act).

Contesting paternity:

A child may file a lawsuit to contest paternity up to the age of 25, but if the child is a minor, the lawsuit is filed on his behalf by a special guardian appointed by the social welfare authority. A lawsuit to contest the paternity of a child born during the marriage or within 300 days following the dissolution of the marriage may be filed by the mother's husband if he considers that he is not the biological father, within 6 months from the day of acknowledgement of the fact that casts doubt on the truthfulness of the registered paternity, but no later than the 7th year of the child's life.

A man who is registered as the father of a child based on the acknowledgement of paternity and later finds out about the fact that excludes his paternity can contest his paternity with a lawsuit within 6 months from the day of acknowledgement of that fact, but no later than child's 7 years of age. A man who has been forced to acknowledge the paternity of a child he claims does not originate from him may contest his paternity in a lawsuit within 6 months of the acknowledgement and no later than the 7th year of the child's life.

A man who considers himself to be the father of a child may file a lawsuit contesting the paternity of a person who has acknowledged that child as his own if he simultaneously seeks to establish his paternity. The lawsuit can be filed within 1 year of registering the acknowledgement of paternity in the birth register.

The mother may file a lawsuit to contest the paternity of the child born during the marriage or within 300 days following the dissolution of the marriage, but only within 6 months of the birth of the child. (Articles 400 - 404 of the Family Act).

Evidence, including legal presumptions, is also given by the Family Act. Presumptions refer to birth within marriage and birth within a certain period after remarriage. The child's mother is considered to be the woman who gave birth to him (Article 58 of the Family Act) (Presumption of motherhood).

The child's father is considered to be the mother's husband if the child was born during the marriage or within a period of up to 300 days from the termination of the marriage (Article 61(1) of the Family Act).
If the mother of the child has entered into a subsequent marriage within a period of up to 300 days from the termination of the marriage by death, the husband of the mother from the second marriage is considered the father of the child (Article 61(2) of the Family Act).

Recognition and Enforcement

According to the Article 66(1) of the PIL Act a foreign court decision is equated with a decision of a court of the Republic of Croatia and has legal effect in the Republic of Croatia only if it is recognized by the court of the Republic of Croatia.
The foreign court decision shall be recognized if the applicant for recognition has submitted proof that foreign decision is *res iudicata* under the law of the state in which it was rendered (Article 67(1) of the PIL Act):

> *(1) A foreign court decision shall be recognized if the applicant for recognition submits, along with the decision, proof that the decision is final under the law of the country in which it was rendered.*
> *(2) The applicant for the enforcement of a foreign court decision, in addition to the proof referred to in paragraph 1 of this Article, must also submit a certificate confirming the enforceability of the decision under the law of the country in which it was rendered.*

The court competent for the enforcement are municipal courts in whose territory the party against whom recognition is sought has domicile. If the party against whom recognition is sought does not have a domicile in the Republic of Croatia and no enforcement is to be carried out in the Republic of Croatia, the proposal may be submitted to one of the courts with real jurisdiction in the Republic of Croatia (Article 72(1) of the PIL Act).
The court will refuse to recognize a foreign court decision in the following cases:

- *The court of the Republic of Croatia shall refuse to recognize a foreign court decision if, upon the objection of the party against whom recognition is sought, it determines that the* ***party's right to participate in the proceedings*** *in which the decision was rendered was violated. (Article 68)*
- *Recognition of a foreign court decision shall be refused if, in that matter, the* ***court or another authority of the Republic of Croatia has exclusive jurisdiction****.*
  Recognition of a foreign court decision shall be refused if the court that rendered the decision based its jurisdiction solely on the presence of the defendant or the defendant's property in the country of that court, and such presence is not directly connected to the subject matter of the proceedings.
  Recognition of a foreign court decision shall be refused if the court based its jurisdiction contrary to the provisions of Sections 3, 4, and 5 of Chapter II of the Brussels Ibis Regulation. (Article 69)

- *Recognition of a foreign court decision shall be refused if, in the same matter and between the same parties,* ***there is a final judgment of a court of the Republic of Croatia*** *or a* ***decision of a foreign court that became final earlier and has been recognized or is eligible for recognition in the Republic of Croatia****.*
  The court shall stay the proceedings for the recognition of a foreign court decision if a previously initiated proceeding in the ***same legal matter and between the same parties*** *is pending before a court of the Republic of Croatia, until the final conclusion of that proceeding. (Article 70)*
- *Recognition of a foreign court decision shall be refused if such recognition would clearly be contrary to the* ***public policy*** *of the Republic of Croatia. (Article 71)*

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 authorities of the Civil Registry in Croatia act upon the domestic legislation: PIL Act, Act on Legalization of Documents in International Legal Transactions[7], the Civil Registers Act[8], the Same-sex Life Partnership Act[9], Personal Name Act[10], Citizenship Act[11], etc.
They also apply the following international conventions: 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents[12]; 1956 Paris Convention on the Issue of Multilingual Extracts from Civil Status Records to be used abroad[13], adopted within the framework of the International Commission for Civil

[7] Act on Legalization of Documents in International Legal Transactions, OG SFRY 06/73, OG 53/91.
[8] State Civil Registers Act, OG 96/93, 76/13, 98/19, 133/22.
[9] Same-sex Life Partnership Act, OG 92/14, 98/19.
[10] Personal Name Act, OG 118/12, 70/17, 98/19.
[11] Croatian Citizenship Act, OG 53/1991, 70/1991, 28/1992, 113/1993, 4/1994, 130/2011, 110/2015, 102/2019, 138/2021.
[12] HCCH, the Convention of 5 April 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. 12, OG IT 11/2011.
[13] ICCS, the Convention (no. 1) on the Issue of Multilingual Extracts from Civil Status Records to be used abroad was signed in Paris on 27 September 1956, OG SFRY 9/1967, OG IT 6/1994

Status (ICCS), as well as to the 1976 Vienna Convention on the Issue of Multilingual Extracts from Civil Status Records[14].

The authorities in the Civil Registry do not determine parenthood based on choice-of-law rules (note: all authorities, not just courts, should be bound by the PIL Act as ius cogens!). They will transcribe the foreign birth certificate as long as it complies with Article 40 of the Civil Register Act:

> *(1)The registration of facts of birth, marriage, or death of Croatian citizens occurring abroad is carried out on the basis of an extract from the civil register issued by a foreign authority. This extract must be submitted by the applicant, unless an international agreement provides that the foreign authority is obliged to forward such extracts to the competent authority in the Republic of Croatia.*
>
> *(2) Exceptionally, a birth that occurred abroad may be registered in the birth register on the basis of a decision of the competent administrative authority, if the extract from the birth register maintained by the foreign authority could not be obtained in the manner prescribed in paragraph 1 of this Article. The competent administrative authority shall issue a decision at the request of the applicant, based on the evidence submitted by the applicant.*

Any subsequent entries and annotations are regulated by the Articles 38 and 39 of the Civil Registry Act.

Article 38:

> *(1) Subsequent entries and annotations are additions and amendments to the original entry and relate to facts that occurred or became known after the original entry was made.*
>
> *(2) Subsequent entries and annotations also include the registration of other facts that, under the law, must be recorded in the civil registers.*

Article 39:

> *(1) Corrections of errors in original or subsequent entries in the civil registers are also entered as subsequent entries.*
>
> *(2) A correction of an original or subsequent entry may only be made based on a decision of the competent administrative authority.*
>
> *(3) If the authority competent to determine the incorrectly entered fact in the civil register is a state administration body, the correction shall be entered based on the decision of the competent administrative authority in the area where the civil register is kept.*

[14] ICCS, the Convention (no. 16) on the Issue of Multilingual Extracts from Civil Status Records was signed in Vienna on 8 September 1976,OG SFRY -8-26/1991, OG IT 6/1994.

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

In order for mutual rights and obligations to arise between a parent and a child, the parentage of the child must be established. Article 60 of the Family Act stipulates that paternity may be established by a presumption of marital paternity, by acknowledgement, or by a court decision.

Although the legal effects of marriage and out of wedlock unions are almost entirely equal, the rules governing the determination of a child's parentage from the father when the child is born during the parents' marriage (and within a certain period after the marriage ends) still differ from the rules for determining paternity in the opposite situation. Marital paternity is established by presumption, while non-marital paternity is established by acknowledgement or by a court decision in legal proceedings.

When it comes to the presumption of marital paternity, it is a rebuttable presumption that a child born during the marriage or within 300 days after the marriage ends is considered to be the child of the mother's husband, as his father (Article 61 of the Family Act).

The Family Act provides the possibility for a third man, who is considered to be the father of a child born during the marriage or within 300 days after the marriage ends due to divorce or annulment, to acknowledge his paternity, but only with the consent of the mother and the mother's husband.

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***

Leo's birth may be registered in Croatia. According to the Civil Registry Act, this matter concerns a subsequent entry into the Croatian registry of births based on a German birth certificate that does not include the father's information. Such an entry would be made under Article 40 of the Civil Registry Act.
According to Article 5(3) of the Croatian Citizenship Act, children born abroad to Croatian citizens who are registered in the registry office in the Republic of Croatia shall acquire Croatian citizenship by descent.
In order to have value in Croatia, the German birth certificate needs to be issued in accordance with the Public Documents Regulation or the Vienna Convention on the Issue of Multilingual Extracts from Civil Status Records. The Croatian Civil Registry authorities accept both equally.
The case constitutes a situation of subsequent entry into the Croatian birth registry where the father was not recorded in the initial registration. The marital status of the child's mother should be established in order to apply the provision on the presumption of marital paternity.
The mother would have to change her marital status in Croatia if she got divorced abroad. The question remains whether the mother has a legal interest in having the marital father recorded. Alternatively, if he provides the necessary documents or if she registers this in advance, then it is considered proven.
Leo cannot be registered if she has not regularized her status because, according to Article 9, everything must be aligned for all essential elements of the registration to be established. Otherwise, Jurgen must provide the German divorce judgment along with the relevant form in accordance with the Public Documents Regulation.
The Law on Civil Registers stipulates that this can be done until the registration is concluded. However, the question is when the registration is concluded: Is it when the fact occurred in our country, when the registration is required in Croatia, or when the registration took place in Germany? The answer will depend on which law is

applicable, which will be determined based on Article 42 of the PIL Act: At the moment the procedure is initiated, the applicable law may be the law of the habitual residence of the child (German law - if the child still resides there), or if it is in the best interest of the child, the law of the child's nationality – the child has German nationality but has become Croatian upon registration in the register of citizens; or the law of the nationality of the person whose paternity is being determined. Jurgen is not registered; we have Jana and the wife, and they are both Croatian nationals, so the third alternative can be considered, and the Croatian Family Act can be applied.
The presumption of paternity applies even if the child was born in Germany, just like in Croatia. The situation is different if the presumed father is not recorded in the German birth certificate. Despite the presumption, if the mother comes before the registrar with the biological father, the registrar cannot register the father based on the presumption.
In the case where the mother has previously regulated her marital status and has been divorced, and no one was recorded as the father in the first registration from the German register, they can all come before the registrar and make declarations according to the Family Act.

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 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

Tom's birth certificate could not be entered in the Croatian Birth Registry as such, namely having listed two legal mothers.

According to Article 12 of the Family Act, marriage is a legally regulated life union of a woman and a man, so Croatian law does not recognize same-sex marriage or same-sex spouses. Furthermore, in accordance with Article 185 of the Family Act, a child may be adopted by spouses and cohabitants jointly, one spouse or cohabitant if the other spouse or cohabitant is the child's parent or adopter, one spouse or cohabitant with the consent of another spouse or cohabitant and a person who is not married or cohabiting.

Adoption is the only option for a different-sex spouse to become the child's second parent because adopters acquire the right to parental care through adoption. A child may be adopted by spouses and cohabitants jointly, one spouse or cohabitant if the other spouse or cohabitant is the child's parent or adopter, one spouse or cohabitant with the consent of another spouse or cohabitant and a person who is not married or cohabiting (Article 180(2) and Article 185 of the Family Act).

The same-sex partner cannot become the child's second parent, but alternatively, the life partner of the child's parent has the right to exercise parental responsibility for the child, i.e. the contents of parental care together with the parents or instead of the parent based on a court decision or alternatively the life partner may provide partner care which is a form of care for a minor child that can be provided by the live partner after the death of the life partner who was child's parent, and exceptionally during the life of the partner who is child's parent, if the other parent is unknown or is deprived of parental care due to child abuse. Partner care would be a mixture of parental responsibility and adoption because the partner becomes a partner-guardian of the child based on a court decision and between the partner-care provider of the child on the one hand and the child and his or her descendants on the other hand, permanent rights and duties are established that exist by law between the parents and the children and their descendants. However, partner care is not a permanent relationship like adoption because it can be terminated by a court decision. (Articles 40 – 49 of the Same-sex Life Partnership Act).

A case with similar facts was decided by the Administrative Court in Rijeka[15]. Two same-sex partners appealed the decision, rejecting their registration in the civil registers. The two of them entered into a civil partnership in the United Kingdom, where their daughter was born in 2021. In the British birth certificate of the child, one mother is listed under the "mother" section, and the other under the "parent" section. They argue that the child cannot independently enter or reside in the territory of the Republic of Croatia with the mother, who is not registered on the birth certificate. They refer to the judgment of the Court of the European Union C-490/20 V.M.A. The Court accepted the appeal and called upon Article 40 of the Civil Registry Act, Art 40. of the Same-Sex Partnership Act, Article 91(1) of the Family Act, Articles 2, 7,8 of ECHR and 7, 24 of the Charter of Fundamental Rights. Also, it called upon Article 21 of the TFEU. The case was returned to the new procedure without clear instructions on how the birth certificate would be entered into the Croatian Registry since the domestic form provides only for "mother" and "father". Following the decision, the biological mother could be registered on the birth certificate, while parental rights would be recognized for the other partner. The difficulty arises in the not infrequent situations where the parties do not wish to declare which of them is the biological mother.

[15] Administrative Court of Rijeka, 5 Us I-477/2023-2, 30.8. 2023.

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.

Croatian legal order prohibits surrogacy. By the Croatian legislation the **procedures establishing the relationship between parents and children occurs by the birth of a child**, when both parents, by registering the birth in the birth registry, acquire the right to joint parental custody (Family Act, Articles 91–160).
Additionally, the establishment of a relationship between parents and children can be done through the procedures of the establishment of maternity/paternity and dispute of maternity/paternity (Family Act, Articles 55-90). The procedures under the Act on Medically Assisted Reproduction[16] are related to the above. Those procedures are available to married and extra-marital partners (who must be in one of the aforementioned types of unions at the time of embryo transfer into the woman's body), as well as to legally competent women who are not in a marriage, extra-marital, or same-sex union. The extra-marital partner is required to submit a statement acknowledging paternity before the procedure, and the woman must submit a certified statement acknowledging the father's declaration.
Surrogacy is expressly forbidden by the Act of Medically Assisted Reproduction and also derives from Article 58 of the Family Act, which states that the child's mother is considered to be the woman who gave birth to the child. Therefore, the provision as such excludes the legal possibility of surrogacy.
Article 31 of the Act of Medically Assisted Reproduction prohibits seeking or offering the service of bearing a child for another person (surrogacy) through public advertisement or in any other way. The Act prohibits the possibility of arranging or performing medically assisted reproduction for the purpose of bearing a child for another person and handing over a child born through medically assisted reproduction (surrogacy). Also, contracts, agreements, or other legal transactions regarding the bearing of a child for another person (surrogacy) and the handover of a child born through medically assisted reproduction, whether for financial compensation or without compensation, shall be null and void.

[16] Act on Medically Assisted Reproduction, OG 86/12.

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

Adoption is the only option for a different-sex spouse to become the child's second parent because adopters acquire the right to parental care through adoption. A child may be adopted by spouses and cohabitants jointly, one spouse or cohabitant if the other spouse or cohabitant is the child's parent or adopter, one spouse or cohabitant with the consent of another spouse or cohabitant and a person who is not married or cohabiting, according to the Article 180(2) and Article 185 of the Family Act).

Foreign birth certificates containing data on both different-sex parents would be entered into the Croatian Civil Registry if the conditions from Article 40 of the Civil Status Act were met. The practice pointed toward difficulties in situations where only the biological father is listed on the birth certificate, without information on the mother. In those situations, Adminsitrative Court rendered that, in accordance with the child's best interest, such a birth certificate should be entered without listing the information on child's mother (below). The practice also pointed toward difficulties of the birth certificates of the child of the same-sex partner, where the Administrative Court also took a stand on entry in such a circumstance. Still, the practical instructions are missing (below).

Foreign adoption decisions are subject to a procedure of recognition and enforcement governed by the PIL Act and on Extra-contentious Procedure Act[17]. When a foreign adoption judgement is recognized it is a acknowledged by Civil Registrars and registry is updated.

[17] Extra-contentious Procedure Act, OG 59/23.

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***

When such a foreign birth certificate is submitted to the competent registry office, the responsible official will verify whether the conditions under Article 40 of the Civil Status Act are met. If the foreign birth certificate meets these conditions, it will be entered into the Croatian civil registers as such. Officials at registry offices do not have a legal basis to examine circumstances that are, among other things, related to surrogacy.
- There will be differences in the situation where, on a foreign birth certificate, the two men are indicated as parents. Such birth certificates would not be possible to recognise in Croatia, given that Croatian law knows no institute of same-sex marriage or same-sex spouse, but merely a life partnership and an informal life partnership. According to national law, a life partnership is a community of family life of two persons of the same sex concluded before a competent authority, while the informal life partnership is a union of family life of two persons of the same sex who have not entered into a life partnership before the competent authority. (Article 2 and Article 3 of the Same-sex Partnership Act). Adoption is also not possible.
There will be a difference if only a father is indicated in the foreign birth certificate, while the mother is not. This kind of legal situation was recently argued before the Croatian Courts, and it will be best described in this case example[18]. The child was conceived by the surrogacy agreement in the USA, concluded by the Croatian intended parents and surrogate mother from the USA. The intended father was also the biological father of the child. The intended parents returned to Croatia with the birth certificate, indicating only the father. The civil registry refused to recognise such a

[18] Administrative Court of Zagreb, 32 UsI-2260/2023-8, 30.8.2023.

birth certificate. This action was explained by the following facts: The Birth Registry of the Republic of Croatia requires the entry of data on both parents, and the Family Act prescribes who is considered a child's parent, including the legal framework for determining a child's origin and the presumption of motherhood — that is, the woman who gave birth to the child is considered the child's mother. Although the mother (the woman who gave birth to the child) is known at the time of the child's birth, it is considered that, therefore, there is no valid legal basis for the registration. Since surrogacy is prohibited in the Republic of Croatia, the status obtained by the claimant cannot be automatically recognised in Croatia, as this would amount to enforcing the consequences of a legal institute banned under Croatian law. Such recognition would violate domestic legislation and place Croatian citizens in an unequal position. Furthermore, the child possesses identification documents issued by the United States, so their rights are not endangered. The Administrative court called upon Articles 2, 7 and 8 of the CRC and to the ECHR practice in *Mennesson* and *Labassee*. The court determined that, in this particular case, all the conditions for registration based on the extract from the civil register of a foreign authority were met and that the birth certificate from the United States, certified with an apostille and translated, constitutes a valid legal basis for the registration in question. The document is indisputably authentic and truthful and contains all the information necessary for the registration. Namely, the Civil Registry Act and the accompanying Instruction clearly stipulate that a child is to be entered into the birth register even when information about one parent is unknown (Article 22.1 of the Instruction), without requiring an analysis of the reasons why the information about the parent is missing. Accordingly, the court carried out the registration in accordance with the provisions of the Civil Registry Act and the Instruction by recording the child's birth and the father's information while leaving the fields for the mother's information blank, adding a note that the mother's details are unknown because they were not included in the foreign birth certificate on which the registration was based. The decision was confirmed by the higher court[19].

[19] High Administrative Court of Republic of Croatia, Usž-3881/2023-3, 23.5.2024.

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)
Please clarify whether in your legal order differences may exist in the situation where the intentional 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 already mentioned Croatian law knows no institute of same-sex marriage or same-sex spouse, but merely a life partnership and an informal life partnership. Parenthood of the same-sex partner could not be establish within the meaning of the Family Act, as well he would be not able to adopt according to the Family Act.

The same-sex partner cannot become the child's second parent, but alternatively the life partner of the child's parent has the right to exercise parental responsibility for the child in accordance with the Articles 40 – 49 of the Same-sex Partnership Act.

There is a general discrepancy between the man and woman, regarding the establishment of the parenthood. The intended mother would not be able to recognize the maternity due to the presumption that the child mother is a woman who gave him a birth.

In practice there is a different handling of the cases where only father is evidenced in the Birth certificate, when the matter of motherhood is questioned (see case law above), but when the mother is the only parent listed in birth certificate there will be no issue, since the AR is allowed to single woman's.

Theoretically, such a woman could conceive and give birth to a child through artificial insemination, and her partner could obtain custody, while in the case of same-sex male partners, this would not be possible.

Adoption is the only option that different-sex spouse become the child's second parent because adopters acquire the right to parental care through adoption, and there is a special condition for the foreign adopters in the Article 186 of the Family Act.

> *2) Exceptionally, an adoptive parent may also be a foreign national if this is in the best interest of the child.*
> *(3) If the adoptive parent or the child is a foreign national, the adoption may be established only with the prior approval of the ministry responsible for social welfare.*

Recognition of a foreign decision establishing parenthood

Clara (intending mother) and Peter (intending father), resident in Croatia 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 Croatia 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

The court decision coming from the third state would need to go through the recognition procedure prescribed under the Croatian PIL act.
Such a decision would not be recognised as being contrary to Croatian public policy. A foreign judgement may have the same legal effect as a decision of a Croatian court, only if it has previously been recognized by a Croatian court in non-contentious proceedings Request for a recognition of foreign judgement must be accompanied with a copy of foreign court decision, for which recognition is sought, along with a proof that the foreign decision is final (*res iudicata*) under the law of the state of the decision. Recognition of the foreign judgement may be refused if the principle of the fair trial has been breached, if the court of origin grounded its jurisdiction of exorbitant grounds, it decision is manifestly contrary to the public policy, if already a Croatian decision has been rendered, or foreign decision has been recognized, in the same subject matter among the same parties. (Articles 67-71 of the PIL Act). However, the control of substantive law applied by the court of origin is confined to manifest breach of public policy (Art 71 of the PIL Act). Obligatory control of applied applicable law in personal status matters of Croatian citizens has been abolished with new PIL Act.

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

Yes. It would, the Croatian PIL Act in Article 71a prescribes a special requirements that need to be fulfilled when it comes to the recognition of a foreign adoption.

> *(1) A foreign court decision on the adoption of a child from a country that is not a party to an international treaty regulating the issue of international adoption shall be recognized after the court verifies the authenticity of the decision through diplomatic channels, and if the applicant, along with the evidence referred to in Article 67, paragraph 1 of this Act, also submits proof of the legalization of the decision in accordance with the law governing the legalization of documents in international legal transactions.*

(2) In the procedure referred to in paragraph 1 of this Article, the court of the Republic of Croatia shall request information from the ministry responsible for social welfare as to whether the adoptive parent was registered in the Register of Prospective Adoptive Parents in the Republic of Croatia, if the adoptive parent was, at the time the adoption was established, required to be registered in said Register.

(3) The court of the Republic of Croatia is obliged to forward the final court decision on the recognition of the foreign court decision referred to in paragraph 1 of this Article to the ministry responsible for social welfare and to the Croatian Institute for Social Work for the purpose of entry into the Adoption Register and monitoring of the child's adjustment in the adoptive family, in accordance with the law governing family relations.

This legal arrangement is of a new date, introduced in 2023 as an answer to the complex legal situation occurred. The case, which raised great public attention and provoked discussion at the end of 2022, at the same time, questions the existing legal framework which regulates intercountry adoptions with states that are non-parties of the Hague Adoption Convention. The case concerned eight Croatian citizens (four couples) who had adopted children in the DR Congo. The adoption procedure was conducted in the DR Congo, and each decision was recognised in Croatian before the courts under the Act on Private International Law.

During their travel back to Croatia, together with the children, the eight Croatian citizens were arrested by the Zambian authorities on suspicion of child trafficking. They were brought into custody, and the children were placed in the Zambian child protection institution. The couples were held in custody for months. The procedure before the Zambian authorities ended at the beginning of July 2023, when they were able to return to Croatia together with their adopted children. The case raised the question of the adequacy and sufficiency of the existing provision of the general recognition provisions in the Act on Private International Law that were applied in the case. The major concern was the authenticity of adoption decisions, such as those in the case concerned. This concern resulted in lightning changes to the Act on Private International Law. The Act was amended with a new provision (above) providing additional presumptions for recognising a foreign adoption decision coming from a non-party state of the Hague Child Adoption Convention. The first paragraph of this new provision is not necessarily needed because the existing legal framework, the Act on Legalisation of Documents in International Legal Transactions, already provides for it.