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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.

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[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/. .

Please note that in all the documents/deliverables of the UniPAR project, the term "parenthood" is used in order to make reference to the (legal) parent-child relationship, coherently with the title of the project itself (i.e. UniPAR – Towards Universal Parenthood in Europe).
However, the UniPAR' consortium is aware of the fact that also "filiation" and (biological and legal) "parentage" are terms frequently use to make reference to relation existing between a child and his/her parent(s)[3].

[3] It appears that (i) the term "parenthood" refers to an ongoing status of the mother or father of a child, associated with the responsibility of raising a child, (ii) "parentage" traditionally refers to the genetic link between a child and another person (even 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

Jurisdiction in parenthood cases in Poland is governed by the **Code of Civil Procedure (CCP)**[4] and **bilateral agreements** on judicial cooperation (for example, 1961 Poland-Bulgaria bilateral agreement[5]). Polish courts have jurisdiction if the defendant is domiciled or habitually resident in Poland (Art. 1103 § 1 CCP). Additionally, Polish courts have jurisdiction if the child is a Polish citizen, domiciled or habitually resident in Poland (Art. 11032 § 1 CCP). Jurisdiction of Polish courts is exclusive if all parties are Polish citizens and have their domicile and habitual residence in Poland (Art. 11032 § 2 CCP). If a Polish court has jurisdiction over a case that involves the determination of a child's parentage, then the Polish court also has jurisdiction over other related claims connected to parentage (Art. 11033 § 3 CCP). This provision ensures that all related issues regarding parenthood are dealt with by the same court to avoid fragmentation of proceedings and potentially conflicting judgments.

Recognition of a foreign judgment on parenthood can be considered incidentally by a Polish court when deciding another case (e.g. child custody, inheritance), even if the court itself is not competent to determine parenthood directly in that matter. In

[4] Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego (Dz.U. 2024 poz. 102).
[5] Umowa między Polską Rzecząpospolitą Ludową a Ludową Republiką Bułgarii o pomocy prawnej i stosunkach prawnych w sprawach cywilnych, rodzinnych i karnych, podpisana w Warszawie dnia 4 grudnia 1961 r., Dz.U.1963, nr 17, poz. 88. See the list of all bilateral agreements on judicial cooperation in civil matters to which Poland is party to in: KAMARAD E., WYSOCKA-BAR A., *Private International Law in Poland*, Alphen aan den Rijn, 2020, 25, p. 191-194.

practice however it happens that the court does not recognize a foreign judgment but instead orders applicants to provide a birth certificate transcribed into Polish Civil Status Registry.

Applicable law

Conflict of law rules in parenthood cases in Poland is governed by **Private International Act (PILA)**[6] and **bilateral agreements** on judicial cooperation (for example, 1961 Poland-Bulgaria bilateral agreement. Article 55 (1) PILA covers all means of **determination of parenthood**, except acknowledgement of a child. Therefore, it applies to establishing or denying both fatherhood and motherhood. Article 55 (1) PILA contains a general rule, according to which the determination and challenge of the child's filiation is governed by the child's law of nationality as of the time of his or her birth. Article 55 (2) PILA adds on that if the child's law of nationality as of the time of his or her birth does not provide for the judicial determination of fatherhood, the judicial determination of fatherhood is subject to the child's law of nationality as of the time when filiation is determined. If this law also does not provide for a judicial determination of fatherhood, then the public order clause would have to be applied, causing the refusal of application of the foreign law and the application of the law that allows such determination[7].

The applicable law **governs** in particular the presumption of paternity of a child born in marriage, including its nature and conditions, as well as the admissibility of an action to determine the fatherhood of a child born in marriage and the main effect of the presumption of paternity, which is, inter alia, the kinship relationship between the child and the mother's husband. The applicable law also governs denial of parenthood. In this context, the law applicable determines substantive law premises, time limits, the circle of persons with legal standing, the participants in a proceeding and the effects of denial of parenthood[8].

Article 55 (3) concerns **acknowledgement of a child**. Pursuant to this provision the declaration of acknowledgement is governed by the child's law of nationality as of the time of acknowledgment. If that law does not provide for the declaration of acknowledgement, the child's law od nationality as of the time of birth applies, as long as that law provides for acknowledgement. Similar to determination of the parenthood,

[6] Ustawa z dnia 4 lutego 2011 r. – Prawo prywatne międzynarodowe (Dz.U. 2015 poz. 1792).
[7] PAZDAN M. (ed), *Prawo prywatne międzynarodowe, Komentarz*, Warszawa, 2018, p. 511.
[8] KAMARAD E., ANNA WYSOCKA-BAR, *Private International Law in Poland*, cit., p. 134. In Polish literature see: MOSTOWIK P. in POCZOBUT J. (ed), *Prawo prywatne międzynarodowe. Komentarz*, Warszawa, 2017, p. 855–858.

it is possible to apply public policy clause if the law indicated as applicable does not provide for the acknowledgement of a child[9].

According to the principle of *lex fori processualis*, that the law of the forum governs the procedures and rules of **evidence** in a legal proceeding, including how evidence is gathered and presented. This means that the rules regarding the admissibility, relevance, and weight of evidence (e.g. DNA testing, documentary evidence – especially birth certificates, medical records from childbirth (hospital documentation), witness testimony, expert opinions, etc.) are determined by the law of the court where the case is being heard.

If the child has a **multiple nationality** Article 2(1) and (2) PILA applies. The first one provides that Polish nationality prevails over any foreign nationality a Polish national may possess According to the second one, when it comes to foreigners with multiple nationalities, the law of this state with which a foreigner is most closely connected prevails as national law. If the child is a **stateless person or a refuge** the law of his or hers domicile or habitual residence will be applied, according to Article 3(1)[10].

It is also possible to apply ***renvoi*** (Article 5(1) PILA) - if the foreign law that is indicated as applicable law by this act, refers back to the Polish law, Polish law applies.

The declaration of acknowledgement of an **unborn but already conceived child** (*nasciturus*), according to Article 55(4) PILA is subject to the mother's law of nationality as of the time of acknowledgement. The phrase "the time of acknowledgement" used in Article 55 (1) and Article 55 (4) means the moment of submitting the declaration of acknowledgement by the person acknowledging the child[11].

Applicable law indicated by Article 55 (3) or (4) **governs** in particular the legal nature of the acknowledgement, the requirement of the mother's consent, the requirement of a consent of the statutory representative of the child or the child himself, the content of the declaration of acknowledgement and the grounds for annulment and revocation of the acknowledgement[12].

Recognition and enforcement

Recognition and enforcement of foreign judgments in parenthood matters is regulated by the **CCP** or **bilateral agreements** on judicial cooperation (for example, 1961 Poland-

[9] PAZDAN M. (ed), *Prawo prywatne międzynarodowe, Komentarz*, (C.H. Beck 2018), 512.
[10] PILICH M., *Zasada obywatelstwa w prawie prywatnym międzynarodowym* (Wolters Kluwer Polska) 2015, p. 341–369.
[11] PAZDAN M. (ed), *Prawo prywatne międzynarodowe, Komentarz*, cit., p. 512.
[12] MOSTOWIK P. in POCZOBUT J. (ed), *Prawo prywatne międzynarodowe. Komentarz*, cit., p. 858-860.

Bulgaria bilateral agreement). Under Article 1145 CCP, foreign civil judgments – including on parenthood – are recognized **automatically** unless there is a legal ground for refusal. No special court procedure is required unless there's a dispute. Grounds for **refusal** of recognition are listed in Article 1146 § 1 CCP, including, among others, violation of Polish public policy (*ordre public*).

Once recognized (automatically or by declaration), the foreign judgment can be used to modify civil status records (e.g. birth certificate).

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.***

Parenthood is assessed based on choice-of-law rules as provided in the Polish Private International Law Act (PILA) – Articles 52–54 govern the determination of parenthood.

However, Civil Registry authorities (USC) do not themselves actively determine parenthood; they rely on: foreign birth certificates or foreign judicial decisions (e.g., establishing or denying paternity) and they will only verify whether the foreign document can be recognized under Polish law (i.e., whether parentage can be put into Polish civil records).

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

According to Article 1138 CCP **a foreign official document** (like a birth certificate, marriage certificate, foreign court judgment) is treated as equivalent to a Polish official document for evidentiary purposes in court proceedings, unless the authenticity or accuracy of the document is successfully challenged.

Transcription (*transkrypcja*), understood as entering a foreign civil status act into the Polish civil status registry (Rejestr Stanu Cywilnego) (Article 104(2) of Law on civil status records[13] – LCSR) is not required in every case. According to Article 104(5) it, however, may be mandatory:

1) when a Polish citizen concerned by a foreign civil-status document has a civil-status record confirming previous events drawn up on the territory of the Republic of Poland and requests that civil-status registration be carried out;

[13] Ustawa z dnia 28 listopada 2014 r. – Prawo o aktach stanu cywilnego, Dz.U. 2023 poz. 1378.

2) when the person needs a Polish civil status act for legal use in Poland (e.g., for a passport, ID, or PESEL – Polish personal ID number).

- ***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***

Civil Registry authorities **can modify** Polish civil records based on a foreign court judgment, but a special recognition procedure is required unless the judgment is automatically recognized (by operation of law) under Art. 1145 § 1 of the CCP.

Upon such recognized judgement civil registry authorities can amend civil records accordingly (e.g., update a birth record to reflect the father's named in a foreign court judgment).

In some complex or contested cases (e.g. when automatic recognition is refused or when there is a case of serious factual dispute – i.e. when someone contests the foreign judgment or disagrees with its effect in Poland), a separate court decision in Poland may be required to modify the registry based on foreign documentation.

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).***

Jürgen will initially be registered as Leo's legal father in the Polish birth certificate, even though they are divorced – because the presumption of paternity applies.

According to Article 55(1) determination of parenthood is governed by the by the child's law of nationality as of the time of his or her birth, therefore Polish law, since Leo acquired the Polish nationality by birth.

Under Polish law, the presumption of paternity depends on the marital status of the mother at the time of birth or conception. According to Article 62 § 1 of the Family and Guardianship Code - FGC[14]: "If a child is born during a marriage or within 300 days after the marriage is dissolved or annulled, the husband is presumed to be the father." However §2 adds: "If the mother remarries within those 300 days, the presumption applies to the new husband." In this case the couple (Maria & Jürgen) is divorced one month before child's birth – Leo was born within 300 days of the divorce, therefore Jürgen will be presumed to be the father under Polish law.

- ***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***

Maria cannot directly appear with Jan and register him as Leo's father if the legal presumption of paternity applies to Jürgen. The presumption must first be rebutted through a judicial procedure in Poland.

In order to establish Jan as the legal father in Poland she has to take two steps:

[14] Kodeks rodzinny i opiekuńczy z dnia 25 lutego 1964 r., Dz.U.2023, poz. 2809.

1) rebut the presumption of paternity (*zaprzeczenie ojcostwa*) – it has to be done via a court procedure in Poland, typically initiated by: the mother (Maria), or ex-husband (Jürgen), or the child (Leo, via guardian), within 6 months from when the person becomes aware of the facts;

2) voluntary acknowledgment (*uznanie ojcostwa*) – once the presumption is successfully rebutted, Jan may acknowledge paternity before: a civil registry officer, or a family court. If there is a disagreement or uncertainty, parenthood can be established by a court judgment (*sądowe ustalenie ojcostwa*).

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***

Leo's birth may be registered in Poland via transcription of the German birth certificate into the Polish Civil Status Registry (*Rejestr Stanu Cywilnego*). This would be possible because Leo is a Polish citizen (due to Maria's Polish nationality, under *jus sanguinis* rule). The application for transcription can be submitted by Maria or Leo's legal representative to a Polish Civil Status Registry.

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

As a rule, a foreign birth certificate has the same evidentiary value as a birth certificate issued by Polish authorities (Article 1138 CCP).

The German birth certificate is recognized as a civil status record, but to be used in some official situations in Poland (e.g., for ID documents), it generally must be: transcribed into the Polish system (*transkrypcja aktu urodzenia*), or used directly if an international (multilingual) form is issued under the Vienna Convention of 1976[15] (to which both Germany and Poland are parties to).

However, even without transcription, the German certificate has evidentiary value as proof of facts (e.g., birth, maternity) for legal or administrative proceedings.

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

The answer depends on whether the registrar has knowledge of the marriage between Maria and Jürgen. If Maria applied for transcription of the marriage certificate to Polish registrar (e.g. in order to obtain new Polish passport or ID following a change of name after marriage), than Jürgen will be listed in Polish civil records as her husband and the presumption of his fatherhood will apply.

[15] Convention (No.16) on the issue of multilingual extracts from civil-status records signed at Vienna on 8 September 1976, English text available at the ICCS website, https://ciec1.org/en/.

If there is no mention about the marriage between Maria and Jürgen, than Jürgen cannot be automatically registered as Leo's father in Poland, because the German birth certificate does not name Jürgen as the father. In such a case the presumption of paternity under Polish law will not apply. Jürgen might be recognized as the father in Polish records, if:

1) he voluntarily acknowledges paternity in accordance with Polish law (*uznanie ojcostwa*) — e.g., before a civil registry officer in Poland or Polish consul abroad;
2) paternity is established by a German or Polish court judgment, which can then be recognized in Poland under the Code of Civil Procedure (Article 1145 and following CCP).

- ***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***

Maria cannot directly register Jan (alleged biological father) as Leo's legal father in Poland, because under Polish law, a father cannot be registered at birth without: a legal presumption of paternity, or voluntary acknowledgment of paternity, or a court ruling.

In this case, since there is no presumption (Maria was divorced, and no father is listed in the German certificate), and Jan is not the legal father yet, Maria cannot register Jan as Leo's father at the time of transcription.

In order to establish Jan's paternity, Jan has to agree to acknowledge paternity (*uznanie ojcostwa*) – both Maria and Jan must appear together before a Polish Civil Status Registry, or a Polish consul abroad. If acknowledgment isn't possible or contested, it can be made via court procedure (*sądowe ustalenie ojcostwa*) – Maria or Jan may file a suit in Poland and a final court ruling will establish Jan as the father, which can then be entered into Polish civil records. If Jürgen was listed in Polish civil records as husband and the presumption of his fatherhood applies, Jan and Maria would have to first rebut the presumption of paternity in a procedure before a court (*zaprzeczenie ojcostwa*).

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***

Tom's birth can be registered in Poland via transcription of the Dutch birth certificate. However, if both women are listed as mothers, Polish authorities may refuse to transcribe the birth certificate due to the lack of legal basis in Polish law for recognizing two mothers. The transcription might be denied, or transcription might be performed partially (recording only the biological mother – Valentina – as the mother), unless ordered otherwise by a Polish court.

- ***The value of the Dutch birth certificate be in your State***

The Dutch birth certificate is recognized as a public document, and has evidentiary value under Polish law for civil/legal proceedings (Article 1138 CCP). However, it does not automatically produce full legal effects in Poland if it conflicts with Polish public policy (*ordre public*) — which is the case with same-sex parentage[16].

- ***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***

Initially, Valentina and Jette could not have been considered Tom's legal mothers under current Polish law, since Polish family law recognizes only one mother and one father as legal parents, the concept of two legal mothers is not acknowledged, and same-sex parentage is not regulated. Therefore, only Valentina, as the biological and Polish mother, would have been recognized. Jette would not have been recognized as a legal parent in Poland – even though the Dutch birth certificate legally recognizes both women, Polish law could reject transcription or recognition of Jette's parenthood due to the *ordre public* exception.

This position was confirmed in several rulings of Polish administrative and civil courts, although some individual court cases have challenged this interpretation, especially in light of EU law and the child's best interests.

[16] See MOSTOWIK P., *Resolving Administrative Cases Concerning Child Under the Foreign Custody of Same-Sex Persons Without Violating National Principles on Filiation as the Ratio Decidendi of the Supreme Administrative Court (NSA) Resolution of 2 December 2019*, in *Prawo w Działaniu*, v. 46, 2021, p. 192-195.

Lately, there is a noticeable change in approach to co-motherhood in Polish case law. Initial position was strict refusal: Polish administrative courts and civil registry offices refused to transcribe foreign birth certificates that listed two mothers (or two fathers).[17] The refusal was based on the provisions of FGC (Polish law only recognizes a mother and a father) and public policy clause (*ordre public*) — transcription of two same-sex parents would violate the basic principles of Polish law. However, even then some courts presented divergent views, e.g. one of the administrative courts decided that the transcription of a foreign birth certificate in which two mothers are entered as parents is admissible[18]. This view was later confirmed in the ruling issued by Supreme Administrative Court[19].

Later, a slightly different attitude was shown in a **resolution of the Supreme Administrative Court of Poland of December 2019**[20]**.** The background to the case concerned a child whose foreign birth certificate indicated two women of Polish nationality as parents: a biological mother and her partner in a *de facto* union. The parents applied for a transcription of the foreign birth certificate in order to apply subsequently for the child to be issued with a passport. The Supreme Administrative Court stated that it was not possible to transcribe into the domestic civil status register a foreign birth certificate indicating two persons of the same sex as parents. At the same time, it underlined that a transcription of the birth certificate into the domestic civil status register should not be indispensable for the child to obtain a passport, as the child has, by operation of law, already acquired Polish nationality[21].

It is worth mentioning the preliminary question referred to the Court of Justice of the EU by Polish court in the *Rzecznik Praw Obywatelskich* case[22]. In this case, two woman, one of Polish, the other of Irish, nationality, decided to have a child by using an artificial reproductive techniques. As a result, a child was born in Spain and, as in *Pancharevo* case, the Spanish birth certificate records both women as parents. The parents wanted the Spanish birth certificate to be transcribed into the Polish civil status register, which is a prerequisite for applying for a Polish identity document. The administrative authorities refused, explaining that such transcription would be contrary to the public policy (*ordre public*) clause. In June 2022 the Court of Justice of

[17] See for example: Judgment of the Supreme Administrative Court of 17 December 2014, signature: II OSK 1298/13.

[18] Judgement of the Voivodship Administrative Court in Kraków of 10 May 2016, signature: III SA/Kr 1400/15.

[19] Judgment of the Supreme Administrative Court of 27 February 2023, signature: II OSK 388/20.

[20] Resolution of the Supreme Administrative Court of 2 December 2019, signature: II OPS 1/19.

[21] See WYSOCKA-BAR A., *Same-Sex Parenthood in the Cross-Border Landscape in Pancharevo*, in *Yearbook of Private International Law*, vol. 23, 2021/2022, p. 323-338.

[22] Order of The Court (Tenth Chamber) of 24 June 2022, C-2/21.

the EU ruled this case by reasoned order referring to *Pancharevo* on numerous occasions[23].

In the light of the presented above evolution of approach to co-motherhood, currently – most probably – both Valentina and Jette would be considered Tom's legal mothers, as according to the prevailing view, lack of transcription does not question the other mother's parentage.

[23] See WYSOCKA-BAR A., *Same-Sex Parenthood in the Cross-Border Landscape in Pancharevo*, cit., p. 326-327.

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 Poland surrogacy, including international surrogacy, is neither expressly regulated nor expressly prohibited. Hence, the attitude of the legal order towards surrogacy might only be deducted from the existing legislation (for instance, Article 61[9] FGC, which provides that the mother of the child is only the woman who gave birth to the child). So far, such attitude was articulated in the case law of administrative courts (see answer to question B.2. below).

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 Poland there are no specific rules which were designed to apply to children born abroad following a surrogacy agreement. Hence, the general rules (of PILA, CCP, FGC, LCSR) as described in this report 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.

As mentioned above, in Poland surrogacy is not expressly prohibited, but at the same time, it is also not regulated.

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.

Parenthood of children born following a surrogacy agreement is discussed in Poland in **administrative law cases** concerning applications for transcription of foreign birth certificates[24] and applications for the confirmation of the acquisition of Polish

[24] See, for example: Judgement of the Supreme Administrative Court of 13 December 2023 r., signature: II OSK 641/21

nationality by birth[25]. We are not aware of cases in which common courts would discuss parenthood of children born following a surrogacy agreement for the purpose of civil matters (for instance, for the purpose of maintenance or inheritance).

In certain cases, concerning transcription of foreign birth certificates, the courts tried to explain the **attitude of the legal order towards surrogacy and problems related to it**. For example, in the judgement of the **Supreme Administrative Court of 13 December 2023 (signature: II OSK 641/21)**, the court upheld a judgement of the first instance court and consequently the decisions of the administrative authorities of two instances (including a Civil Status Registry) refusing **transcription of the birth certificate of a child born through surrogacy** based on public policy clause. Here, it should be reminded that in accordance with Article 107(3) LCSR), the transcription of a foreign civil status certificate is refused if the transcription would be contrary to the fundamental principles of the legal order of the Republic of Poland.

In this case, as the judgment explains, the foreign birth certificate and accompanying documents filed with the Civil Status Registry together with the application for transcription revealed that "*A. G. is the legitimate father and sole parent of D. G.*" and that "*after the birth of the child M. H., the surrogate mother (surrogate), voluntarily relinquished all her rights over the child (the applicant) in terms of inheritance, legal custody and other parental rights or obligations*"[26]. The Court explained that the foreign birth certificate does not provide information about the mother. In the box provided for data concerning the other parent, it is written: 'information not recorded'.

Firstly, the court confirmed the attitude of administrative authorities and the administrative court of the first instance that such a transcription would violate the principle of Polish family law provided for in Article 61^9 FGC, which stipulates that the mother of the child is the woman who gave birth to the child, "*and would also sanction a surrogacy agreement, which is not allowed under Polish law* (...)".

Then, the Court explained the **nature of transcription** by stating that the authority transcribing a foreign civil status certificate into Polish Civil Status Registry, pursuant to Article 107 LCSR is obliged to examine whether this certificate does not contain contents contrary to the Polish legal order or whether there are any concerns as to its accuracy. The Court underlined that "*the effect of transcription is the creation of a Polish civil status certificate which, in a way, becomes detached from the certificate on which it was based and its further fate in the Polish legal order is independent of the fate of the foreign certificate constituting the basis for transcription.*" The Court, by

[25] See, for example: Judgement of the Supreme Administrative Court of 16 February 2022 r., signature: II OSK 128/19

[26] Parts of judgements cited in this report are translated into English by the authors of the report.

referring to legal literature[27], explained that the purpose of transcription is the use of a Polish civil status certificate before Polish public administration authorities without the need for a sworn translation each time.

In view of the Court, it stems from the above that "*the transcription of a birth certificate must be carried out on the basis of the provisions of Polish law, and in the case of a birth certificate, the transcribed certificate must contain exactly the same data as the Polish birth certificate and that the meaning of the terms used in the birth certificate should be consistent with their understanding under Polish law. It follows that the data contained in a Polish birth certificate (including surnames, forenames and surnames at birth, date and place of birth of parents - Article 60(4) of the Civil Code), regardless of whether prepared on the basis of the event itself or as a result of a transcription, must consider the content of the provisions of the Polish law*."

Than the court referred to the above-mentioned **resolution of the Administrative Supreme Court of 2 December 2019, signature II OPS 1/19** and tried to find similarities with the case at hand. The Court noted that in the case resulting in the above-mentioned resolution the Administrative Supreme Court considered whether, in the case of a foreign birth certificate in which the data of same-sex (female) parents are given, it is possible to leave the box designed for the data of the "father" blank, providing only the data of the mother - the woman who gave birth to the child. In the resolution it was pointed out that Polish law does not provide for the possibility of leaving the "father" box blank. *Pursuant to Article 61(2) LCSR: "If there has been no acknowledgment of paternity or judicial establishment of paternity, the birth certificate contains as the father's forename the name indicated by the person declaring the birth, and in the absence of such an indication, the birth certificate contain as the father's forename the name chosen by the head of register office; the surname of the mother at the time of the child's birth shall be entered as the father's surname and his maiden name, with an indication of the entry of the mother's surname and chosen forename as the father's data*." Then, the Court pointed out that since it is not possible to draw up the birth certificate leaving the box designed for data of the "father" blank, a minori ad maius it is impossible to leave the box designed for the data of the "mother" blank, bearing in mind the *mater semper certa est* principle provided for in Article 61^9 FGC.

Further the Court elaborated on **the motherhood** under Polish law. It stated that Article 61^9 FGC unambiguously resolves the question of the origin of the child from a particular woman, regardless of whether the source of the genetic material was another woman's gamete, and thus regardless of whether there is a genetic relationship between the woman and the child. The Court underlined that "*the legal event creating the maternity*

[27] See WOJEWODA M. in PAZDAN M. (ed), *System prawa prywatnego. Prawo prywatne międzynarodowe. Tom 20c*, Warszawa, 2015, p. 595.

relationship is the birth of a child by a woman". It explained that even in a situation where the child does not genetically originate from the woman who gave birth, the current regulation of the FCG does not provide **any possibility to claim the establishment of maternity by a woman who is the donor of genetic material**. As a result, in a situation where a child is born by a surrogate mother whose genetic material was not used in the process of insemination, in accordance with Polish law, this surrogate mother would be entered in the birth certificate as the child's mother.

The Court also elaborated on **Article 18 of the Constitution of the Republic of Poland**, which reads: "*Marriage as a union between a man and a woman, family, maternity and parenthood are under the protection and guardianship of the Republic of Poland*". The Court explained that the legal protection of parenthood presupposes the right of the parents to establish the ties of kinship with the child in accordance with the actual state of affairs. This right partly overlaps with the child's right to establish their biological origin.

At the same time the Court underlined that in the case at hand **the paternity of the man entered as "father" in the foreign birth certificate is not called into question**. Similarly, **Polish citizenship of the child was confirmed** by a decision of a competent administrative authority in Poland. As a result, in view of the Court, in the case at hand the case-law of the ECtHR in *Mennesson v. France* (application no 65192/11) and *Labassee v. France* (application no 65941/11) is not relevant.

The Court also reflected on the case law of the Court of Justice of the EU in *Pancharevo* case (C-490/20) and similar Polish case in *Rzecznik Praw Obywatelskich* (C-2/21)[28]. It explained that the Court of Justice of the EU in these cases basically confirmed the view presented in the **resolution of the Administrative Supreme Court of 2 December 2019 (signature II OPS 1/19)** that the authorities of a Member State are obliged to issue to a minor who is a national of that State an identity card or passport, regardless of whether that Member State transcribes the foreign birth certificate of that child to its civil status register.
Surrogacy appeared and was discussed also in **cases concerning acquisition of nationality by birth**. For example, in its **judgement of 6 May 2015 (signature: II OSK 2372/13) the Supreme Administrative Court** when confronted with a foreign birth certificate indicating two males as parents refused to confirm that a child is a Polish national on the grounds that one of the parents is a Polish national[29]. In this case the

[28] See WYSOCKA-BAR, A., *Same-sex Parenthood in a Cross-Border Landscape in Pancharevo*, cit., p. 333-348.
[29] The case was widely commented in Poland. See for example: PILICH M., *Mater semper certa est? Kilka uwag o skutkach zagranicznego macierzyństwa zastępczego z perspektywy stosowania klauzuli porządku publicznego* in *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* 2018, pp. 7-35. The case reached also ECtHR, which did not find violation of of Article 8 (respect for private and family life) or Article 14 (discrimination on grounds of parents' sexual

child was born in the US by a married surrogate mother. The Court underlined that Polish law does not know the institutions of „same-sex parents", „surrogate mother" and does not recognize "surrogacy agreements". Then, the Court reminded that pursuant to Article 14(1) of the Law on Polish nationality[30], a minor acquires Polish nationality by birth, if at least one of the parents is a Polish national. The Court stated that for the purpose of applying the above-mentioned provision, parenthood must be established in accordance with Polish substantive family law, which in Article 61^9 FGC provides that a mother is a woman who gave birth to the child and in Article 62 § 1 FGC provides for the presumption of paternity of this woman's husband. The presumption can be rebutted only in a court proceeding.

Later a shift in the attitude of the Supreme Administrative Court in cases concerning confirmation of the acquisition of Polish nationality could be observed. An example can be t**he Supreme Administrative Court's judgement of 30 October 2018 (signature: II OSK 1871/16),** which also concerns the child (the applicant in the case), who was born by a surrogate mother in the US. Polish citizen was entered in the US birth certificate as the father. The Court stated that "*the moment of birth (birth) of the child is decisive for the acquisition of Polish nationality. The applicant derives Polish citizenship from the fact that her father is a Polish citizen, and thus she acquired Polish citizenship by operation of law*. (...) *The issue of the admissibility in Poland of surrogacy contracts is also irrelevant in this case, as it was not in Poland that this type of contract was concluded and it was not in Poland that the child conceived through it was born*."

Than the Court explained that it does not dispute that there is no such institution in Polish family law as an "agreement on surrogate motherhood" and that agreement is **invalid** in Poland, as the child is treated then as an object. At the same time the Court noted that "*the refusal to confirm Polish nationality after the father, affects the legal status of the child in the country of the father's nationality. The best interest of the child is an overriding value, and any decision by a competent authority or court should be made in accordance with this value (Article 3(1) of the Convention on the Rights of the Child). For the legal status of the child* (...) *it is irrelevant whether the child was born to a surrogate mother, but that a human being endowed with inherent and inalienable dignity is born who is entitled to citizenship if one of the parents is a Polish citizen*." As opposed to the case commented earlier, the fact that a child has a parent who is a Polish citizen was derived from the foreign birth certificate. The Court stated that the "*descent from a Polish citizen was established under US law*".

orientation) of the European Convention on Human Rights: ECHR, 16 November 2021, S.-H. v. Poland, App. nos. 56846/15 and 56849/15.

[30] Ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim, Dz.U.2023, poz. 1989.

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

In the Advisory Opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother requested by the French Court of Cassation (Request no. P16-2018-001), the ECtHR considered a situation, where a child was conceived using the gametes of the intended father and a donor and where only the parent-child relationship with the intended father has been recognised in France (but not with the intended mother). In accordance with the Opinion, the child's right to respect for private life (Article 8 of the ECHR[31]) requires that domestic law provide a possibility of recognition of a parent-child relationship also with the intended mother, who is designated in the birth certificate legally established abroad as the legal mother. Such recognition does not have to take the form of registration in France of the details of the foreign birth certificate. The ECtHR provided that, another means, such as adoption of the child by the intended mother, may be used.

Assuming that the parent-child relationship with the intended father is recognized in Poland, in case of a married couple (of opposite-sex), there indeed is a possibility of adopting a child by the other spouse provided that the parents (the intended father and the surrogate mother) give their consent to adoption in front of the court or only the father gives such consent in case where the surrogate mother was beforehand deprived of the parental responsibility (Article 119^{1a} FGC).

It was pointed out in the legal literature that Article 119^{1a} FGC might serve exactly as a tool of "*legalisation*" of the effects of surrogacy agreements[32]. Different examples of such cases were given. First, a surrogate mother and the intended father (who acknowledged his paternity towards a child, with whom he is indeed genetically related) indicate the wife of the intended father as an adoptive mother. Second, a surrogate mother and the intended father (who acknowledged his paternity towards a child, with whom he is not genetically related), indicate the wife of the intended father (who is indeed genetically related to the child) as an adoptive mother. Third, a surrogate mother and the intended father (who acknowledged his paternity towards a child, with whom he is genetically related), indicate the wife of the intended father (who is also genetically related to the child) as an adoptive mother[33].

[31] Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, CETS No.005.
[32] BAGAN-KURLUTA K in FRAS M., HABAS M (eds), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa, 2021, p. 1293.
[33] BAGAN-KURLUTA K in FRAS M., HABAS M (eds), *Kodeks rodzinny i opiekuńczy. Komentarz* , Warszawa, 2021, p. 1293.

In that respect, one might argue that Polish law is consistent with the Opinion, however it is not that a new law was enacted in order to implement the indications of the Opinion. It is rather a "side effect" of Article 119[1a] FGC.

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

As mentioned above, a birth certificate of a child born following a surrogacy agreement – if the fact of the surrogacy is revealed - would be refused transcription into Polish Civil Status Registry based on public policy clause (see: for example, the judgement of the Supreme Administrative Court of 13 December 2023, signature: II OSK 641/21 described above).

On the contrary, a birth certificate of a child born following a surrogacy agreement – if the fact of the surrogacy is not revealed neither in the birth certificate itself or the accompanying documents filed together with the application for transcription – could be transcribed into Polish Civil Status Registry in accordance with general rules on transcription of foreign civil status records, including foreign birth certificates. Please note that this scenario would be possible to materialize only in case of a birth certificate indicating opposite-sex parents.

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

Foreign adoption decisions might provide basis for recording in the Polish Civil Status Registry if they are recognized in Poland. Recognition might be subject to domestic rules of CCP (in such case the decision might be recognized by the Civil Status Registry itself), bilateral agreements (in such case the decision might be recognized by the Civil Status Registry itself or might require recognition in a court proceeding) and multilateral agreements (for example, 1993 Hague Convention[34])[35].

There are no specific rules concerning recognition of adoptions by the intentional parent. We have not identified any case, in which the adoption by the intentional parent would be discussed.

[34] Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

[35] See GNELA B. in PAZDAN M (ed), *System prawa prywatnego. Prawo prywatne międzynarodowe. Tom 20c* (Warszawa, 2015, p. 426; KASPRZYK P., *Przysposobienie zagraniczne i jego rejestracja*, in MOSTOWIK P., *Międzynarodowe prawo rodzinne. Filiacja. Piecza nad dzieckiem. Alimentacja*, Warszawa, 2023, p. 202-205.

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

If the birth certificate or documents accompanying the application for the transcription of the foreign birth certificate do not reveal the fact that the child was born following a surrogacy agreement, a foreign birth certificate could be transcribed in accordance with the standard procedure of transcription of foreign civil status certificates, including foreign birth certificates.

If, on the contrary, the birth certificate and documents accompanying the application for the transcription do reveal the fact that the child was born following a surrogacy agreement, transcription of the birth certificate might face refusal due to public policy clause. However, in this case (of opposite-sex parents) the arguments, which might be used against transcription would become "weaker" than in identified case-law (for example, when the data of the mother is missing or same-sex couple is mentioned as parents in the foreign birth certificate).

One might only suspect that in practice such birth certificates (where two opposite-sex intending parents are indicated, while the child was born by a surrogate mother) might indeed be transcribed in Poland, as within the case-law concerning refusal of the transcription of foreign birth certificates no case concerning opposite-sex couple was identified.

Please note that the refusal of the transcription of a foreign birth certificate does not necessarily amount to the challenge of the parenthood resulting from the foreign birth certificate. For example, **in the judgement of 10 September 2020, signature II OSK 3362/17 concerning the confirmation of the acquisition of Polish nationality by birth, the Supreme Administrative Court** stated that "*the refusal to transcribe a foreign birth certificate for the reason that it is contrary to the fundamental principles of the legal order of the Republic of Poland due to the indication in it that the child was born by an unknown surrogate mother (Article 107, point 3 of the Law on Civil Status Records)*

does not prevent the child from acquiring Polish citizenship as of the date of birth (...) *if in the light of that certificate the father is a man who is a Polish citizen.*"

Additionally, as explained in the (above-mentioned) **resolution of the Administrative Supreme Court of 2 December 2019** the refusal of a transcription based on public policy clause does not mean that public authorities can disregard the constitutional and international principle of the best interest of the child. As a result, in view of the Court, a foreign birth certificate (even without its transcription, which was refused based on public policy clause) constitutes exclusive evidence of the events stated in it. Consequently, the parents of the child and the child should be able to rely on such a certificate in all administrative and judicial proceedings concerning their rights.

Please note however that the lack of transcription, in practical terms, might condemn parents of the child and the child on prolonged administrative hurdles (for example, when it comes to issuance of identity documents in cases when the administrative authorities do not follow the views presented in the above-mentioned resolution)[36].

- whether Michela's parenthood can be recognised?

The answer for Michela would be the same as for Michel (see above).

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

As explained above, Michela and Michel may apply for the transcription of the foreign birth certificate or – in case the transcription was indeed refused – use the foreign birth certificate in all administrative and judicial proceedings concerning their rights.

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

Transcription might be refused based on public policy clause. However, as explained, in accordance with the existing case-law a foreign birth certificate constitutes in Poland exclusive evidence of the events stated in it. Consequently, the parents of the child and the child should be able to rely on such a certificate in all administrative and judicial proceedings concerning their rights.

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

The answer would be the same as for Michel (see above), with the exception of parts specifically related to opposite-sex parents.

[36] See the official intervention of the Polish Ombudsman to the Ministry of Internal Affairs and Ministry of Foreign Affairs available at the website of the Ombudsman at https://bip.brpo.gov.pl/pl/content/rpo-dzieci-ze-zwiazkow-osob-jednej-plci-bez-prawa-do-polskich-dokumentow (accessed 21 April 2025).

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

The answer would be the same as for Michel (see above), with the exception of parts specifically related to opposite-sex parents.

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

Under Polish law Michele has no right to be recognize as a parent. Neither surrogacy nor same-sex parenthood is regulated and consequently there is no procedure by which Michele (who is not a biological father, but a same-sex partner of the biological and party to the surrogacy agreement) could try to enforce his rights (for example, to have his parenthood established or to adopt Agnese).

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

As surrogacy is not regulated either a man or a woman may successfully ask for the recognition of parenthood based on the fact of being an 'intentional parent' in the surrogacy agreement.

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

As surrogacy is not regulated there are also no rules (and therefore no 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 surrogacy is not regulated there are also no rules concerning the establishment of parenthood with regard to the intentional (non-biological) parent of a surrogacy agreement.

Recognition of a foreign decision establishing parenthood

Clara (intending mother) and Peter (intending father), resident in Poland entered into a commercial gestational surrogacy agreement (i.e. the intentional 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 Poland and require the recognition of the foreign judgment.

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

Please note that we are not aware of cases where recognition of a foreign decision establishing parenthood following a surrogacy agreement was sought. We have only identified cases in which transcription of foreign birth certificates of children born following a surrogacy agreement was sought. In practice however it happens that the court does not recognize a foreign judgment but instead orders applicants to provide a birth certificate transcribed into Polish Civil Status Registry.

Theoretically, in a case as the one of Clara and Peter, parents could seek judicial recognition of a foreign decision. We assume that in such case, the following scenarios could be envisaged.

If the foreign judgement or documents accompanying the application for the recognition of the foreign judgment do not reveal the fact that the child was born following a surrogacy agreement, a foreign judgement could be recognised based on standard procedure provided for in the CCP.

If, on the contrary, the foreign judgment or documents accompanying the application for the recognition of the foreign judgment do reveal the fact that the child was born following a surrogacy agreement, a foreign judgement might be refused recognition due to public policy clause if the common court adheres to the standpoint presented by administrative courts in cases concerning transcription or (some of) administrative courts in cases concerning confirmation of acquisition of nationality. We cannot exclude also the possibility that the common court would not find such recognition as violating public policy and would rather focus on the best interest of the child and would recognize the foreign decision.

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

As there are no specific rules in Poland concerning recognition of adoptions by the intentional parent, existing rules would apply, meaning that foreign adoption decision may be recognized in Poland (based on domestic rules of CCP, rules provided for in bilateral agreements and rules provided for in multilateral agreements or example, 1993 Hague Convention). Please note however that we have not identified such case (where the recognition of adoption by the intending parent would be discussed) in Poland.