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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 if the expression "legal parentage" as opposed to "biological parentage" is frequently used as well and (iii) "filiation" focuses on the child's perspective of the parent-child relation. On this topic, see BAINHAM A., *Parentage, Parenthood and Parental Responsibility: Subtle, Elusive Yet Important Distinctions'* in GILMORE S. (ed), *Parental Rights and Responsibilities*, London-NewYork, 2017, p. 159; LECKEY R., *Filiation*, in *McGill Law Journal*, 2020, p. 73.

A) Parenthood

1) Relevant private international law rules on parenthood

Please provide an English translation[4] 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

In the absence of uniform European rules on the subject or an international convention, questions relating to cross-border parenthood must be resolved under national private international law rules. In the case of Spain, these are:

International Jurisdiction

In matters of international jurisdiction, reference should be made to the rules set out in the Judicial Branch Act (Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial) (JBA).

Art. 22 quater d) JBA states that, "*in the absence of the aforementioned criteria, Spanish Courts shall have jurisdiction (…):*
d) In matters of parent- child relationship and paternal relations, protection of minors and parental responsibility, when the child or minor is habitually resident in Spain at the time of lodging the claim or the claimant is Spanish, or is habitually resident in Spain or, in any case, at least six months before the claim is lodged"[5].

They are all alternative fora, so that any of them grants international jurisdiction to Spanish courts. Moreover, they apply regardless of whether or not the person whose parenthood is in question is of legal age[6].

[4] Translations of the legal provision of the Judicial Branch Act, the Legal International Cooperation in Civil Matters Act and of the articles 9(4) and 9(9) of Spanish CC have been sourced from the Encyclopedia of Private international Law. Any other translations of legal texts quoted in this document have been translated by the submitter. See Spain National Statutes and Provisions in Basedow J. et al. (eds), *Encyclopedia of Private International Law. Legal Instruments A -Z*, vol. IV, Cheltenham, 2017.
[5] Legal writing has criticized the poor drafting of the provision, which makes it difficult to understand, however, it is understood that the forum of the plaintiff's residence is limited by the requirement that this residence be at least 6 months before filing the lawsuit. See FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado,* 13a edición, Madrid, 2024, p. 376.
[6] CARRASCOSA GONZÁLEZ J., *La filiación en el Derecho internacional privado*, en CUENA CASAS M., YZQUIERDO TOLSADA M. (eds), *Tratado de derecho de la familia: Las relaciones paterno-filiales (I)*, 2.ª ed., vol. 5, Navarra, 2017, p. 510.

The JBA also contemplates the general forum of the defendant's domicile (Art. 22 ter) which is concurrent with and alternative to the special forums of Art. 22 quater. The general forum attributes international jurisdiction to Spanish courts *"irrespective of the subject matter of the proceedings (contractual, non-contractual obligations, etc.), the type of claim (pure declaratory, constitutive or declaratory of condemnation) or the spatial location of the facts or rights in dispute (i.e. whether the dispute concerns facts or rights located within Spain or outside, including territories not subject to state sovereignty*)"[7] with the exceptions of exclusive jurisdiction rules[8].

On the other hand, if the lawsuit concerns the validity of the registration of parenthood in a Spanish public register, Spanish courts have exclusive jurisdiction (Art.22 c) JBA).

Applicable Law

The conflict of law rule for parenthood is contained in the Spanish Civil Code (CC), more specifically in Article 9(4) I.

Unlike the rules of jurisdiction, Art. 9(4) of the Spanish CC establishes subsidiary connecting factors, that is, the next one applies only in the absence of the previous one. Therefore:

Article 9(4) Spanish Civil Code:
4. The determination and nature of a parent- child relationship shall be governed by the law of the child's habitual residence at the time of the establishment of the parent-child relationship. Absent the child's habitual residence, or if that law does not allow the establishment of the parent- child relationship, then the child's national law at that time shall be applied. If that law does not allow the establishment of the parent-child relationship or if the child lacks habitual residence and nationality, then Spanish substantive law shall be applied. Paragraph 5 shall be adhered to with regard to the establishment of a parent-child relationship by adoption.
Art. 9(4) I of the Spanish CC *"is a materially oriented conflict rule",* that is *"the determination of the law applicable to the establishment of parenthood is made with regard to the material content of the applicable law and the material result to which the practical application of this content leads in the concrete case*"[9]. In other words, it pursues the achievement of a material and specific result, i.e. the determination of parenthood.
There are some doubts as regards the interpretation of the phrase "*at the moment of establishing the parent- child relationship*". The prevailing opinion in legal writing is that this 'moment' is the moment when the claim is filed and that it is then that the

[7] GARCIMARTÍN ALFÉREZ F.J., *Derecho internacional privado*, 7.ª ed., Navarra, 2023, 5.2 (online version).
[8] In matters of parenthood, the *prorrogatio fori* is not admissible since parenthood is not a matter subjected to the parties' discretion.
[9] CARRASCOSA GONZÁLEZ J., *Ley aplicable a la filiación por naturaleza: de la ley nacional a la ley de la residencia habitual del hijo*, in*Revista Española de Derecho Internacional* , 2016, p. 171.

criteria for the applicable law must be considered[10]. It is, therefore, a variable rule, whose connection is examined at the moment when parenthood becomes relevant, such as the moment of filing the claim or of registration in the Civil Register.

The habitual residence of the child is a fact and, in today's increasingly globalized world, can be a much closer point of connection than nationality, even from the point of view of cultural identity[11]. Nevertheless, if this law does not allow the child's parenthood to be established or if the child has no habitual residence, the Spanish CC appeals to the 'more classical' criterion, if you will, of the child's nationality.

The nationality criterion raises a few issues. The first of these issues concerns the attribution of nationality: if the child was born in a State that uses *ius soli* as the principle for attributing nationality, the child will have the nationality of that State regardless of whether the parenthood of the child has been established. However, if, the child was born in a State that uses *ius sanguini* as the principle for attributing nationality and the law of that State requires parenthood to be established before nationality can be granted, two possible scenarios may arise: he or she may have the nationality of one of the parents whose parenthood has already been determined, or he or she may have no nationality, as parenthood has not been determined in respect of either parent. The previous wording of Art. 9(4) of the Spanish CC established the personal law of the child as the first point of connection. While this version was in force, the Spanish Supreme Court, in its judgment of 22 March 2000[12], resorted to the anticipated application of Spanish law in a case of a claim for the establishment of parenthood against a Spanish man. In that case, the child was of French nationality (the nationality of the mother), whose law did not allow parenthood to be established since the period of two years from the birth, which French law establishes for the exercise of the action under penalty of prescription, had already elapsed. The Supreme Court anticipated the application of Spanish law, which did allow the action to be brought, on the understanding that, if parenthood with respect to the Spanish man were established, the minor would have Spanish nationality. This interpretation was based on the *favor filii* principle and Spanish public policy. However, the former wording of Art. 9(4) of Spanish CC did not establish the relevant moment for determining the personal law of the child, which allowed for a more flexible interpretation. Now, with the current wording, it seems that the doctrine of anticipation of national law is less meaningful, since if there is no nationality or if the

[10] See Adam Muñoz M.D., *La nueva regulación de la filiación natural en el derecho internacional privado español*, in *Cuadernos de derecho transnacional*, 2016, p. 42; ÁLVAREZ GONZÁLEZ S., *La ley aplicable a la filiación por naturaleza*, in ÁLVAREZ GONZÁLEZ S. et al. (eds.), *Relaciones transfronterizas, globalización y derecho: Homenaje al Prof. Dr. José Carlos Fernández Rozas,* Navarra, 2020, p. 91.

[11] This, however, will depend on circumstances, with some individuals feeling more identified with their state of origin and others with their state of residence. See GONZÁLEZ BEILFUSS C., *Party Autonomy in International Family Law*, in *Recueil Des Cours/ Collected Courses of The Hague Academy of International law*, 408, 2020, p. 184.

[12] Supreme Court Judgment of 22 March 2000 (Rec.289/2000).

law of the nationality does not allow parenthood to be established, substantive Spanish law would anyhow apply[13].

In specific cases of dual nationality, Art. 9(9) of the Spanish CC establishes that "*for the purposes of the present chapter, the provisions of the international treaties shall apply to situations of dual nationality provided under Spanish law, and, in the absence of such provisions, the nationality of the last place of habitual residence and, in the absence thereof, the last nationality acquired shall be preferred. In any event, Spanish nationality shall prevail for persons who also hold another nationality that is not provided for in Spanish statutes or international treaties (…).*" The wording of the article would mean that, if the minor has Spanish nationality, Spanish nationality must always prevail. However, one could argue that, based on the *favor filii* principle, the more favorable law would prevail[14].

Finally, when the minor lacks nationality or, when they have one, and the national law prevents the establishment of parenthood, Spanish law refers to Spanish substantive law. However, it should be noted that Spain has more than one legal system and, therefore, certain Autonomous Communities (territorial units) have their own rules of law in respect of parenthood. To resolve intra-regional conflicts, the conflict of laws rule of Article 9(4) of Spanish CC also applies. Therefore, for example, if the minor has habitual residence in Catalunya, the referral made by Article 9(4) of the Spanish CC to the law of the minor's habitual residence is to Catalan law. However, the final clause that refers to substantive Spanish law leaves open the question of which substantive Spanish law applies. It could be argued that "*the Spanish law allowing the determination of parenthood, whatever that law may be, would apply*"[15].

As to the scope of the applicable law, Art. 9(4) I refers to : (i) "*the ways of establishing parenthood*" (whether by registration in a register, by document, judgment, matrimonial presumption, possession of state, etc.); (ii) "*parenthood legal actions*" (types, time limits, standing, etc.); (iii) "*the means of proof and attribution of parenthood*" (i.e. presumptions of paternity and grounds for destroying such presumptions, the rules of attribution of parenthood, etc)[16]. Matters which, initially,

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[13] RODRÍGUEZ PINEU E., *Determinación de la filiación con elemento transfronterizo tras la reforma del Art. 9.4 CC. Comentario a la STS de 17 de abril 2018 (RJ 2018, 1902)*, in *Cuadernos Civitas de Jurisprudencia Civil*, 2019, p. 95.

[14] FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, cit., p. 480: *"An orientation based on the principle of favor filii would allow, in cases of dual nationality, to choose the law that is most favorable from a combined perspective of articles 9(4) and 9(9). In this way, the residual connection of article 9(4) (Spanish law) would be reserved for cases of absolute indeterminacy of habitual residence and nationality (statelessness)."*

[15] FONT I SEGURA A., *Conflictes interns de lleis*, en FONT I SEGURA A. et al. (eds), *Lliçons de dret internacional privat*, Barcelona, 2023, p. 247.

[16] Carrascosa González J., *La filiación en el Derecho internacional privado*, en en CUENA CASAS M., YZQUIERDO TOLSADA M. (eds), *Tratado de derecho de la familia: Las relaciones paterno-filiales (I)*, cit., p. 562.

could appear to be of a procedural nature and, therefore, regulated by the *lex fori*, such as the means of proof, standing or the time limits for the exercise of parenthood actions, fall under the scope of the applicable law according to Art. 9(4) of the Spanish CC due to the substantial effect they have on the merits of the case[17].

Recognition and enforcement of judgments

The recognition of judgments on parenthood in Spain can be done either through the courts or through the Civil Registry. Judicial recognition can be made by way of a specific procedure of recognition (*exequatur*) and by way of incidental recognition, the effects of which are limited (see *infra*). On the other hand, an incidental recognition may be made before the Registrar or the facts may be registered by virtue of a judicial resolution, once the latter has obtained the *exequatur.*

Therefore, if we go **through the judicial proceedings,** for cases in which the foreign decision derives from a State with which Spain does not have a bilateral agreement, the Legal International Cooperation in Civil Matters Act (Law 29/2015, of 30 July, on international legal cooperation in civil matters) (LICCMA) will be applied for the recognition of foreign judgments, as a general regime[18].

In accordance with Art. 41 and 42 of the LICCMA, only final foreign judgments[19] can be recognised and enforced. Moreover, interim and provisional measures may also be recognised and enforced, provided that (i) refusal to recognise them would violate effective judicial protection and (ii) the measure has been adopted after hearing the opposing party.

Furthermore, the LICCMA allows for the recognition of judgments that contemplate measures unknown to Spanish law[20]. Art. 44(4) LICCMA provides for the adaptation of the unknown measure to a known measure that "*has equivalent effects attached to it and which pursues similar aims and interests"*, limiting the effects of such a measure to those provided for in the law of the State of origin.

That being said, the grounds for refusal of recognition are set out in Art. 46 LICCMA and constitute a closed list. The wording of the precept establishes that:

1. *Foreign definitive judgments shall not be recognized:*

(a) if they are contrary to public policy;

[17] FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S.*, Derecho Internacional Privado*, cit., p. 480.

[18] This is the general regime which is, in turn, subsidiary, as it must be borne in mind that, in matters of adoption, certificates issued by a foreign registry and voluntary jurisdiction proceedings, there are special regulations.

[19] One against which no appeal is possible in the State of origin. Article 43 b) LICCMA.

[20] Explanatory Memorandum LICCMA.

(b) where the judgment has been given with a manifest infringement of the rights of the defence of any party. Where the judgment was given in default of appearance, it is deemed that there is a manifest infringement of the rights of the defence if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;

(c) where the foreign judgment had decided on a matter within the exclusive jurisdiction of Spanish courts or on any other matter if the jurisdiction of the court of origin is not the result of a reasonable connection. The existence of a reasonable connection with the dispute shall be presumed when the foreign court had relied for its international jurisdiction on grounds similar to those provided for under Spanish law;

(d) if the judgment is irreconcilable with a judgment given in Spain;

(e) if the judgment is irreconcilable with an earlier judgment given rendered in another state, provided
that the earlier judgment fulfils the conditions necessary for its recognition in Spain.

(f) if proceedings between the same parties and having the same subject matter are pending in Spain and those proceedings were instituted first.

2. Foreign court settlements shall not be recognized if they are contrary to public policy.

Art. 48 LICCMA explicitly prohibits the review of the merits of the decision that is the object of the application for *exequatur* and establishes that the fact that the foreign court has applied a different law to that "*which would have been applicable according to the rules of Spanish private international law"* is not a cause for refusal of recognition. It also provides for both the recognition and partial enforcement (Art. 49 and 50(3) LICCMA) of judgments when they deal with different claims and not all of them can be recognised.

Having said the above, the recognition of foreign judgments **by way of registration** will be developed below (see below *how a foreign judgment on parenthood is recognised in your State*). However, it is now relevant to mention the recognition of foreign decisions of voluntary jurisdiction[21].

[21] According to Art. 1 LVJ, *"for the purposes of this Law, voluntary jurisdiction proceedings are considered to be all those that require the intervention of a court for the protection of rights and interests in matters of civil and commercial law, without there being a controversy that must be substantiated in a contentious proceeding."* In other words, voluntary jurisdiction proceedings are non-contentious proceedings, contentious being understood as those where there are conflicting interests of the parties.

Acts of voluntary jurisdiction are those where the authority (not always judicial) mainly records private declarations, acting more as a formality to give them legal effect than as an administrator of private rights[22]. That being said, a foreign final decisions of voluntary jurisdiction issued by a judicial body[23], is subject to recognition and enforcement in Spain by virtue of the analysed provisions of the LICCMA (Art. 41(2) LICCMA), however, as regards their registration on the Civil Registry, we must refer to Law on Voluntary Jurisdiction (Ley 15/2015, de 2 de julio, de la Jurisdicción Voluntaria) (LVJ).

More specifically, Art. 11 LVJ establishes "*a double or alternative system for a registral recognition*"[24]. *"Foreign final decisions of voluntary jurisdiction issued by a judicial body may be registered in the Spanish Civil Registry":* (i) if they have already been recognised by *exequatur* or incidentally[25] or (ii) when the Registrar of the corresponding Civil Registry deems it necessary and, provided that he verifies the concurrence of the requirements for this purpose[26]. This regime also "*extends to foreign decisions adopted by non-judicial authorities in the case of acts whose competence in Spain implies knowledge, under the voluntary jurisdiction regime, by judicial authorities".*[27]

The recognition of foreign acts and files of voluntary jurisdiction, is automatic without the need for an *exequatur*[28]. Therefore, either the "*Spanish judicial body or the competent public registrar"* may recognise such acts, after having verified that none of the causes for refusal of recognition established in Art. 12(3) LVJ apply, which are:

(a) if the act was adopted by a foreign authority which manifestly lacks jurisdiction. The foreign authority shall be deemed to have jurisdiction if the case has a well-founded connection with the foreign State whose authorities have granted the

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[22] *See* FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 13.ª ed., Madrid, 2024, p. 179: "*those acts of voluntary jurisdiction in which the authority (not necessarily judicial) develops a mere receiving function of declarations of private will, acting more as a condition of formal effectiveness of the business than as an administrator of private rights (ad ex. approval of the recognition of parenthood, renunciation).*"

[23] This terminology has been interpreted by legal writing as referring *"to decisions in which the intervention of the judicial authority has a constitutive or decision-making character (adoption, disability support measure, declaration of absence) and it is, therefore, this constitutive effect of the decision that is the object of recognition; these are acts in which the authority not only intervenes passively, as a mere spectator, authorising or authenticating officer, as a condition of the form of the act provided for by law, but also, in a broad sense, decides, interpreting and applying the law, assessing and sanctioning in one sense or another the constitution of the act and the rights deriving from it." See* FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 13.ª ed., Madrid, 2024, p. 179.

[24] FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 13.ª ed., Madrid, 2024..

[25] If they have not been previously recognised, only preventive annotation is possible.

[26] Legal writing understands that a reference is being made to Art. 46 LICCMA. See FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 13.ª ed., Madrid, 2024, p. 179.

[27] Article 11.3 LVJ. FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 13.ª ed., Madrid, 2024, p. 179.

[28] FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 13.ª ed., Madrid, 2024, p. 178.

act. In any case, the foreign authorities shall be considered to be manifestly incompetent when the case involves a matter whose exclusive competence corresponds to the Spanish judicial bodies or authorities.

(b) if the act has been agreed in manifest breach of the rights of defence of any of the parties involved.

c) If the recognition of the act would produce effects manifestly contrary to Spanish public policy.

d) If the recognition of the act would imply the violation of a fundamental right or public freedom of our legal system.

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;

Actions for the determination of parenthood can be joined and brought together with other actions such as actions for maintenance claims, actions for access rights, actions for inheritance claims, among others[29]. Nevertheless, parenthood actions will be the main actions since the others depend on the prior determination of parenthood.

- may recognise a foreign judgment on filiation for the purpose of taking its decision on the other matter:

Yes, Art. 44(2) LICCMA provides for the possibility of an incidental recognition of a foreign judgment, however, the effects of such recognition will be limited to that procedure.

Article 44(2) LICCMA: *"2. When the recognition of a foreign judgment is raised as an incidental issue in judicial proceedings, the court shall decide on the recognition in each proceedings in accordance with procedural law. The effects of incidental recognition shall be limited to the main proceedings and shall not prevent a request for exequatur of the foreign judgment."*

Please clarify which is the law applicable to:
- limitations:
- legal standing:
- evidence (including presumptions):

These matters (time limitations, legal standing and evidence) fall under the law applicable to parenthood (Art. 9(4) of the Spanish CC (see applicable law *supra*).

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

[29] GARCÍA VICENTE J.R., *Las acciones de filiación*, in CUENA CASAS M., YZQUIERDO TOLSADA M. (eds), *Tratado de derecho de la familia: Las relaciones paterno-filiales (I)*, cit., p. 390

As explained above, the recognition of judicial decisions in Spain can be done either through judicial or registry proceedings. In the first case, it is possible to carry out recognition by *exequatur* and/or incidentally the effects of which will be limited to this procedure. On the other hand, through the registral proceeding, an incidental recognition can be made before the Registrar, or the facts may be registered by virtue of a judgment, once it has obtained the *exequatur*.

By judicial proceedings:

With respect to the incidental recognition of a judgment in a judicial proceeding we refer to what has already been mentioned above (see above *may recognize a foreign judgment on parenthood for the purpose of taking its decision on the other matter*).

In order to recognize in Spain a foreign judgment in matters of parenthood, an *exequatur* procedure must be carried out in accordance with the provisions of the LICCMA.

The *exequatur* procedure is regulated in articles 51 to 55 LICCMA[30]. It is a contradictory proceeding, with the intervention of the Public Prosecutor's Office in all cases. It is initiated by means of a lawsuit [31], which is filed before the court of first instance of: (i) the domicile of "*the party against whom recognition or enforcement is is sought, or of the person to whom the effects of the foreign judgment refer."* (Art. 52 LICCMA) or, subsidiarily, (ii) those of the place "*of enforcement or by the place where the judgment is intended to produce its effects, and in the last instance the Court of First Instance before which the claim is lodged shall be competent."*

Any person with a legitimate interest (Art. 54 LICCMA) may file the claim. The LICCMA provides that the assistance of a lawyer and a Court representative is mandatory.

The recognition may be refused for the reasons set forth in Art. 46(1) LICCMA (already explained above).

Art. 48 LICCMA explicitly prohibits the review of the merits of the decision that is the object of the application for *exequatur* and establishes that the fact that the foreign court has applied a different law to that "*which would have been applicable according to the rules of Spanish private international law"* is not a cause for refusal of recognition.

[30] This is the general procedure, which is, in turn, subsidiary, since it must be taken into account that, in matters of adoption, certifications issued by a foreign Registry and records of Voluntary Jurisdiction are subject to special regulations.

[31] Accumulation of *exequatur* claim and request for enforcement, without proceeding to enforcement until the *exequatur* order has been issued. Art. 54 LICCMA.

The procedure ends by means of an Court Order[32] and, once the judgment is recognized in Spain, it will produce "*the same effects as in the State of origin*" (Art.44(3) LICCMA), which means that, following the same solution that inspires the European texts, "*the scope of res judicata of a foreign judgment is set by the law of the State of origin, not by Spanish law*"[33].

Through the Civil Registry:

After a foreign decision concerning a Spanish citizen is recognized by means of *exequatur* the birth is recorded in the Civil Registry.

It is also possible to request an incidental recognition by the Registrar which would not have the effect of *res judicata* [34] and would not prevent the parties from requesting an *exequatur* at a later date or from filing an appeal before the Directorate General of Registries and Notaries. The Registrar must verify: "*(i) the regularity and formal authenticity of the documents presented; (ii) that the Court of origin had based its international jurisdiction on criteria equivalent to those contemplated in Spanish law; (iii) that all parties were duly notified and had sufficient time to prepare the proceedings; (iv) that the registration of the decision is not manifestly incompatible with Spanish public policy.*" (Art. 96(2) 2º CRA). There is no control of the applicable law to the merits of the case[35].

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***

[32] Subject to appeal and, subsequently, to cassation or extraordinary appeal for breach of procedure. Art. 55 LICCMA.

[33] GARCIMARTÍN F., *Lecciones: reconocimiento y ejecución de sentencias extranjeras en España*, in *Almacén de Derecho*, 2015.

[34] GARAU JUANEDA L., *La Ley 20/2011, del Registro Civil, y sus efectos en el Derecho internacional privado español*, in *Revista Española de Derecho Internacional*, 2017, p. 25; HEREDIA CERVANTES I., *La Ley del Registro Civil de 2011 y la inscripción de las resoluciones judiciales extranjeras*, in FONT I MAS M. (ed), *El Documento Público Extranjero en España y en la Unión Europea*, Bogota, 2014, p. 308.

[35] GARAU JUANEDA L., *La Ley 20/2011, del Registro Civil, y sus efectos en el Derecho internacional privado español*, in *Revista Española de Derecho Internacional*, 2017, p. 26.

According to the provisions of Art. 9 CRA, "*the Civil Registry will contain the inscribable facts and acts that affect Spaniards and those referring to foreigners, which took place in Spanish territory. Moreover, the facts and acts that have taken place outside Spain will be registered, when the corresponding inscriptions are required by the Spanish Law"*[36].

Furthermore, Art. 68 Civil Registry Regulation (CRR) establishes that births "*(...) shall be registered in the Municipal or Consular Registry of the place where they occur (...) and when a Consular Registry is competent, if the promoter is domiciled in Spain, the registration must first be made in the Central Registry, and then, by transfer, in the corresponding Consular Registry*." That is to say, if there is evidence that one of the promoters is domiciled in Spain, the registration must be made in the Central Civil Registry (Madrid) and not in the Consular Civil Registry, even if the event to be registered (for example, the birth) has occurred abroad[37].

Now, in matters of parenthood, the following scenarios may occur in relation to the Civil Registry:

(1) **Registration of foreign judicial rulings:** Already explained above (see *supra*).

(2) **Registration of foreign public documents of extrajudicial nature:** In matters of parenthood, the most common situation is to find *certificates of entries issued in foreign Registries*, such as birth certificates, which, despite being a foreign public document[38], have their own regulation within the CRA. The transcription in the Spanish Civil Registry of the foreign certificate requires that the legality of the fact be verified under Spanish law[39]. As only those registry entries with constitutive effect may be subject to recognition, what is truly being recognized is the legal fact or act that has been registered in another State, rather than the registry certificate itself. Ultimately, the certificate is merely a foreign public document that serves as evidence of the registered act[40]. It functions as a means of proof, establishing both the occurrence of the fact and its legality under foreign law. However, since what is being recognized is the fact itself—not the certificate—the Civil Registry official must determine whether that fact (for instance, the birth of a child) can be registered under national law[41].

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[36] An example of the latter is Art. 29 of the International Adoption Act, which establishes that *"when the international adoption has taken place abroad and the adopters have their habitual residence in Spain, they must request the registration of the birth of the child and of the adoption in accordance with the regulations contained in the Civil Registry Law so that the adoption is recognised in Spain."*

[37] Art. 10 of the CRA establishes that "*if the (events) take place abroad, registration shall be requested and, where appropriate, carried out at the Consular Office of the corresponding district. In the latter case, registration may also be requested and carried out at any of the General Offices."*

[38] GARAU JUANEDA L., *La Ley 20/2011, del Registro Civil, y sus efectos en el Derecho internacional privado español*, in *Revista Española de Derecho Internacional*, 2017, p. 28.

[39] OREJUDO PRIETO DE LOS MOZOS P., *Reconocimiento en España de la filiación creada en el extranjero a través de una maternidad de sustitución*, in NAVAS NAVARRO S. et al. (eds), *Iguales y diferentes ante el derecho privado*, Valencia, 2012, p. 484.

[40] Art. 81 Civil Registry Regulation.

[41] OREJUDO PRIETO DE LOS MOZOS P., *Reconocimiento en España de la filiación creada en el extranjero* , cit., p. 484.

As per to Art. 98 CRL, the Registrar must verify: "(*i) that the certification has been issued by a competent foreign authority in accordance with the legislation of its State; (ii) that the foreign Registry of origin has, as for the facts to which it attests, analogous guarantees to those required for registration by Spanish law; (iii) that the fact or act contained in the foreign registration certification is valid under the legal framework designated by the Spanish rules of private international law; (iv) that the inscription of the foreign registration certification is not manifestly incompatible with Spanish public policy*. The third requirement, *that the fact or act contained in the foreign registration certification is valid under the legal framework designated by the Spanish rules of private international law"*, implies that the parenthood contained in the foreign birth certification must be valid under the law that would be applicable under the Spanish conflict of law rules, in other words, according to the aforementioned Art. 9(4) of the Spanish CC[42].

It is also interesting to note that if, for example, a foreign ruling establishes parenthood and then, said ruling is registered in the foreign Civil Registry, in Spain what should be requested is the recognition of the ruling, not the foreign registry certification (Art. 98.2 CRA)[43].

Art. 85 CRR establishes that "*the lack of registration in the foreign registry does not prevent registration in the Spanish registry by means of a sufficient title".* Therefore, a person of Spanish nationality could request the registration of the birth and, therefore, parenthood of a minor, by means of the declaration of birth and not by providing certifications of entries made in foreign registries. That is to say, we would be in a case where the access to the Spanish Civil Registry would not be made through a public document or foreign judicial ruling, but through a declaration[44]. E.g.: the father (of Spanish nationality) declares the birth of the child before the Consular Registrar of the place where the child was born.

The Consular Registrar must determine whether the fact or act is valid according to the applicable law under Spanish conflict of law rules, that is, whether this - fact or

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[42] CARRASCOSA GONZÁLEZ J., *Filiación natural*, in CALVO CARAVACA A.L. et al. (eds), *Tratado de Derecho Internacional Privado. Tomo II*, Valencia, 2020, p. 1807 and p. 1865.

[43] Which they did not do in the case that led to the Supreme Court judgement of 6 February 2014. In this case, the intended parents asked the Registrar of the Spanish Consular Civil Registry in Los Angeles (USA) to register the birth of the children (resulting from a surrogacy agreement) by providing the US Registrar's certificates, despite the existence of an American court ruling declaring the parenthood. The Spanish Supreme Court, while noting that it "*could be questioned whether the decision of the foreign authority to be recognised is that of the practice of the registry entry in which the parenthood of the minors is recorded or that of the previous sentence issued by the judicial authority that determined such parenthood based on the surrogacy agreements and by application of the laws of California,* recognises that *this issue has not been raised at any point in the litigation, and it is not essential to address it in order to decide the relevant issues that are the subject of the appeal, so that entering into considerations about it would completely change the terms in which the procedural debate has taken place and would only obscure the solution to the appeal."*

[44] The CRA makes a distinction between, on the one hand, authentic documents for making entries (public documents and judicial rulings), which are regulated in Art. 27 CRA, and, on the other hand, the declarations of the persons obliged to make entries, which are regulated in Art. 29 CRA.

act - conforms to the law that would be applicable under the Spanish rules of Private International Law (Art. 99(1) CRA). This implies that the determination of parenthood will depend on the law designated by Art. 9(4) of the Spanish CC (see *supra*).
Moreover, the law applicable to the capacity and legitimacy of the declarant must also be considered. It will be determined by the national law of the declarant, as established in the conflict of law rule of Art. 9(1) of the Spanish CC[45].
The act or fact (in this case the declaration of birth) will have access to the Registry according to the forms, procedures and modalities established in the Spanish Civil Registry Act (Art. 99(2) CRA).
All documents submitted to the Registry must be drafted in official Spanish languages. If they are written in another language, they must be translated by the competent body or official, unless the Registrar "*is aware of the content of the document",* in which case, the translation may be dispensed with (Art. 95(1) CRA). Documents issued by a foreign official or authority must be legalized, except when the authenticity of it is known to the Registrar (Art. 95(2) CRA). The aforementioned notwithstanding, there are specific European provisions on this matter stated in the Regulation (EU) 2016/1191 on the requirements of public documents in the EU[46].
The facts registered in the Civil Registry are presumed to be correct, since "*the Civil Registrars are obliged to ensure the concordance between the registered data and the extra-registral reality (...) it is presumed that the registered facts exist and the acts are valid and accurate as long as the corresponding entry is not rectified or cancelled* (Art. 16(1) and (2) CRA), and only *when the acts and facts registered in the Civil Register are judicially challenged, should the rectification of the corresponding entry be requested"*[47] (Art. 16(3) CRA). Moreover, Art. 82 CRR establishes that "*final judgments and resolutions are sufficient titles to register the fact that they constitute or declare",* but if they contradict facts already registered, they must order the rectification of what was previously inscribed to be registrable. That said, for a foreign judgment to be registrable, it must be previously recognized in Spain through the *exequatur* procedure (see *supra*) (Art. 83 I CRR). Once the *exequatur* of the foreign judgment has been obtained, is it possible to proceed to request the rectification of the inscription of the birth that appears in the Spanish Registry.

[45] See SÁNCHEZ JIMÉNEZ M.A., *Artículo 99*, in COBACHO GÓMEZ J.A., LECIÑENA IBARRA A. (eds), *Comentarios a la Ley del Registro Civil*, Navarra, 2012, p. 1369.
[46] Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012.
[47] Judgment of the Provincial Court of La Rioja, of March 10, 2021. Rec. 173/2020 and Court Order of the Provincial Court of Barcelona, of February 11, 2020. Rec. 245/2019

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):***

As this case contains a foreign element, the Registrar, when determining parenthood for the purposes of registering the birth, will have to apply the law resulting from the conflict rules contained in Article 9(4) of the Spanish Civil Code.

Leo is born in Spain and his habitual residence is therefore considered to be in Spain[48]. By virtue of Art. 9(4) of the Spanish CC, Spanish law would be applicable as it is the law of the habitual residence of the child at the time of registration of the parenthood in the Civil Registry.

Spanish law contemplates a series of presumptions regarding the mother's husband "*as a rule for the attribution of the parenthood of those born of a married mother*"[49]. Therefore, as established by the Spanish CC in its Art. 116, "*children born after the celebration of the marriage and before the three hundred days following its dissolution or the legal or de facto separation of the spouses* will be presumed to be *children of the husband.*" The moment from which the 300 days start to count is from the legal or *de facto* separation and not from the final divorce judgment[50], since, by itself, the lodging of the annulment, separation or divorce claim implies the disappearance of the presumption of marital cohabitation (Art. 102(1) of the Spanish CC).

In this case, whether Jürgen will be registered (or not) as Leo's father will depend on when the divorce application was filed[51]: if less than 300 days have passed between

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[48] Since, for example, Maria moved to Spain after the divorce.

[49] VAQUERO PINTO M.J., *La filiación matrimonial*, in CUENA CASAS M., YZQUIERDO TOLSADA M. (eds), *Tratado de derecho de la familia: Las relaciones paterno-filiales (I)*, cit., p. 135.

[50] "*As this would imply maintaining the presumption of matrimonial paternity in force during a period in which the spouses would normally no longer live together*". NANCLARES VALLE J., *Artículo 116*, in DE PABLO CONTRERAS P., VALPUESTA FERNÁNDEZ R.(eds), *Código Civil comentado. I: Título preliminar, de las normas jurídicas, su aplicación y eficacia; Libro 1, de las personas; Libro 2, de los bienes, de la propiedad y de sus modificaciones (artículos 1 a 608)*, 1ª ed., Madrid, 2011, p. 620.

[51] Example of this RDGRN, 7 January 2009 (RJ 2010, 98661).

the filing of the divorce application and the birth of Leo, then Jürgen will be registered as Leo's father.

- ***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***

Spanish law as the law of the child's habitual residence applies. If the birth has taken place "*before 300 days have elapsed since the legal or de facto separation of the spouses, it is obligatory to register the matrimonial parenthood, given the probative force (Art. 113 of the Spanish CC) of the presumption of paternity of the mother's husband (Art. 116 of the Spanish CC)"*[52].
Therefore, in principle, Jan could not be registered as Leo's father because the presumption of paternity of Jürgen would apply. Even though , the presumption of paternity is a rebuttable (*iuris tantum*) presumption *(*Art. 385 CPA), i.e. it can be rebutted by providing, for example, proof of the "*legal or de facto separation of the spouses at least 300 days before the birth"*[53] and Art. 185 CRR establishes that the non-marital parenthood, when the declaration is made within the term[54], "*of the child of a married woman, as well as the recognition of the paternal parenthood of a parent other than the husband,* may be registered *if it is proven before the registration that the legal presumption of paternity of the latter does not apply"* in practice, it is very likely that the presumption of paternity will be difficult to challenge through the Civil Registry process. Consequently, the child will generally be registered as the child of the mother's husband, and it will be necessary to initiate judicial proceedings in order to overturn this presumption.
If it is not possible to destroy the presumption of paternity of Jürgen and it is Jürgen who is registered as Leo's father, under Spanish law, Jan's paternity can be determined in court through the actions of determination and contestation of parenthood.

[52] RDGRN of 10 October 2018 (RJ 2019, 344068); RDGRN (54th) of 15 December 2023, *Boletín del Ministerio de la Presidencia, Justicia y Relaciones con las Cortes.* Year LXXIX, January 2025, no. 2.283, 42.
[53]RDGRN (9th) of 19 September 2019, *Bulletin of the Ministry of the Presidency, Justice and Relations with the Courts.* Year LXXIV, September 2020, no. 2.233, 09.
[54] *"(...) And when the registration is requested after the deadline, if what emerges from the file is that the aforementioned presumption applies, but the child does not have the status of matrimonial parenthood, only the maternal parenthood may be registered, and the paternal parenthood corresponding to the husband must not appear, although the paternal parenthood with respect to another parent other than the husband may not appear as long as the legal presumption of Article 116 CC is not destroyed".* RDGRN (12th) of 23 September 2019, *Bulletin of the Ministry of the Presidency, Justice and Relations with the Courts.* Year LXXIV, September 2020, no. 2.233, 17.

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***

"In order for a birth occurring abroad to be registered in the Spanish Civil Register, it is necessary that it affects a Spanish citizen (cfr. Art. 15 CRA and 66 CRR)"[55]. As Maria (the mother) is of Spanish nationality, Leo's birth can be registered in the Spanish Civil Registry, through the procedure established in Art. 98 CRA (see *supra*).

Now, following the rule explained in the previous case, the Registrar will have to check that the parenthood to be registered is valid under the law that would be applicable according to Art. 9(4) of the Spanish CC, in this case, Leo's habitual residence is in Germany and therefore the applicable law will be German law.

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

In Spain, the foreign birth certificate has the status of a foreign public document[56]. Art. 27.1 CRA establishes that, like Spanish public documents, foreign public documents that meet the requirements established by law, will be sufficient title to register the event or act that enters the Civil Registry[57].

Births may be registered by transcription of the foreign certification "*provided that there is no doubt as to the reality of the registered fact and its legality under Spanish law (Art. 23, II, CRA) and provided that the foreign registration is regular and authentic, so that the entry certified, as regards the facts to which it attests, has guarantees analogous to those required for registration under Spanish law (Art. 85, I, CRR)"*[58]. For their part, "*the Registrars of the Civil Registry shall verify ex officio the reality and legality of the facts and acts whose registration is sought, as shown by the documents that accredit and certify them, examining in all cases the legality and accuracy of the said documents"* (Art. 13 CRA).

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[55] RDGRN (32nd) of 22 December 2023, *Boletín del Ministerio de la Presidencia, Justicia y Relaciones con las Cortes.* Year LXXIX, January 2025, no. 2.283, 32.

[56] GARAU JUANEDA L., *La Ley 20/2011, del Registro Civil, y sus efectos en el Derecho internacional privado español*, in *Revista Española de Derecho Internacional*, 2017, p. 28.

[57] RUIZ SUTIL C., *Artículo 97*, in COBACHO GÓMEZ J.A., LECIÑENA IBARRA A. (eds), *Comentarios a la Ley del Registro Civil*, Navarra, 2012, p. 1331.

[58] RDGRN (32nd) of 22 December 2023, *Boletín del Ministerio de la Presidencia, Justicia y Relaciones con las Cortes.* Year LXXIX, January 2025, no. 2.283, 32-33.

Therefore, the German birth certificate will commonly be sufficient to register Leo's birth in the Spanish Civil Registry and can be recognised as long as it meets the requirements of Spanish law (see *supra*).

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

Jürgen is not mentioned in the German birth certificate. The Registrar will check the content of the document to determine that it is in accordance with German law; which is the law applicable to parenthood. This implies that Jürgen will only be registered if there is a paternity presumption under German law applying to the case.

- ***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***

In this case we would no longer be dealing with a transcription of a foreign birth certificate but with a declaration in the Spanish Civil Register by Jan. Declarations of knowledge or will are regulated in Art. 99 CRA, which establishes that *"the facts and acts that affect the civil status of persons and whose access to the Civil Registry is by means of a declaration of knowledge or will, must comply with the corresponding applicable legal system, determined in accordance with the Spanish rules of private international law".*

Therefore, if the parenthood (the act to be registered) is in accordance with German law, which would be the applicable law according to Art. 9(4) of Spanish CC, Jan can be registered as Leo's father.

Co-motherhood

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

Please clarify

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

"In order for a birth occurring abroad to be registered in the Spanish Civil Registry, it is necessary that it affects a Spanish citizen (cfr. Art. 15 CRA and 66 CRR)" [59]. As Valentina (the mother) is of Spanish nationality, Tom's birth can be registered in the Spanish Civil Registry (see considerations made in point 3 *infra*).

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

In Spain, the foreign birth certificate has the status of a foreign public document[60]. Art. 27.1 CRA establishes that, like Spanish public documents, foreign public documents that meet the requirements established by law, will be sufficient title to register the event or act that enters the Civil Registry[61].

The Dutch birth certificate is sufficient to register the birth in the Spanish Civil Registry and can be recognised, as long as it complies with the requirements of Spanish law (see *supra*).

- ***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***

Yes, Valentina and Jette will be considered as legal mothers for all purposes.

The law applicable to parenthood is Dutch law which we assume is the law of the habitual residence of the child, since the child was born in the Netherlands and there is no indication that habitual residence is in Spain. Public policy is not applicable since dual maternity was introduced by article 7(3) of the Assisted Human Reproduction Techniques Act (AHRTA)[62].

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[59] RDGRN (32nd) of 22 December 2023, *Boletín del Ministerio de la Presidencia, Justicia y Relaciones con las Cortes.* Year LXXIX, January 2025, no. 2.283, 32.

[60] GARAU JUANEDA L., *La Ley 20/2011, del Registro Civil, y sus efectos en el Derecho internacional privado español*, cit., p. 28.

[61] RUIZ SUTIL C., *Artículo 97*, in COBACHO GÓMEZ J.A., LECIÑENA IBARRA A. (eds), *Comentarios a la Ley del Registro Civil*, Navarra, 2012, p. 1331.

[62] BARBER CÁRCAMO R., *Doble Maternidad Legal, Filiación y Relaciones Parentales*, in *Derecho Privado y Constitución*, 2014, p. 93.

Art. 7(3) AHRTA establishes that "*when the woman is married, and not legally or de facto separated, to another woman, the latter may declare in accordance with the provisions of the Civil Registry Act that she consents to the determination of parenthood in her favour in respect of the child born to her spouse.*" Following the entry into force, in 2023, of the Law for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people, the Spanish Civil Code is modified in its Art. 120, which regulates non-marital parenthood, and replaces the term "father" with "father or non-gestational parent", which "*implies the possibility, for female couples, and male couples when one of the members is a trans man with gestational capacity, of proceeding to non-marital parenthood by declaration of consent in the same terms as in the case of heterosexual couples*"[63]. This law also modifies Art. 44 CRA, to allow the registration of non-marital maternity of female couples.

Hence, after the 2023 reform, it would no longer be possible to refuse registration on the grounds that the two mothers were not married. On the other hand, it does not seem to be necessary to justify the use of assisted reproduction techniques in order to register the marital maternity of the non-pregnant woman. An example of this is the RDGRN (1st), of 7 February 2017[64] which accepts the registration of the marital maternity of the spouse of the biological mother, even if no evidence of the use of assisted reproduction techniques was provided, understanding that *"the intention of the legislator has been to facilitate the determination of the parenthood of children born within the framework of a marriage formed by two women, regardless of whether or not they have resorted to assisted reproduction techniques.*

[63] Explanatory Memorandum Law 4/2023, of 28 February, for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people.
[64] RDGRN (1st), 7 February 2017, *Bulletin of the Ministry of the Presidency, Justice and Relations with the Courts.* Year LXXII, February 2018, no. 2.205, 9-12.

B) Parenthood following an International surrogacy agreement (hereinafter ISA)[65]

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.

Under Spanish law, the surrogacy agreement[66] is null and void and is, in itself, contrary to Spanish public policy[67]. Therefore, in principle, parenthood based on a surrogacy contract cannot be recognised in Spain. This, however, does not prevent the determination of the parent-child relationship- by the legal means established in Spanish law if the best interest of the child so requires.

The contravention of Spanish public policy concerning surrogacy agreements is explicitly and clearly addressed in the recent judgment of the Spanish Supreme Court dated December 4, 2024. The Court affirms that:

"(...) what violates the dignity and free development of the personality of both the surrogate mother and the children born under the surrogacy agreement is the conclusion of the surrogacy contract itself, in which the woman and the child are treated as mere objects, as well as the claim that a contract, however "validated" by a foreign judgment, can determine a parent-child relationship. The pregnant mother is obliged from the outset to give up the child she is going to gestate and renounces before the birth, even before conception, any right derived from her maternity. The future child, who is deprived of the right to know its origins, is "objectified" because it is conceived as the object of the contract, which the pregnant woman (and, in this case, also her husband) undertakes to hand over to the commissioning parent or parents". (LB 3º)

Furthermore, the recent Law 1/2023, of 28 February, which amends the Sexual and Reproductive Health and Voluntary Termination of Pregnancy Act, establishes that surrogacy is a form of violence against women[68], along with sterilisation, forced contraception and forced abortion. Moreover, the Law reinforces the illegality of surrogacy by prohibiting advertising by intermediary agencies and modifying its Art. 10 quinques and establishing the obligation of public administrations to promote and

[65] **All in-line quotations have been translated by the submitter.**

[66] Understood as "*whereby gestation is agreed, with or without price, at the expense of a woman who renounces maternal parenthood in favour of the contracting party or a third party".* Art. 32 of Sexual and Reproductive Health and Voluntary Interruption of Pregnancy Act.

[67] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024); Supreme Court Judgment of 31 March 2022 (Rec.277/2022); Supreme Court Judgment of 6 February 2014 (Rec. 835/2013).

[68] This classification of surrogacy as a form of reproductive violence against women has also been affirmed in the recent Supreme Court Judgement of 4 December 2024 (RJ 1626/2024) LB 3º.

encourage advertising *"campaigns that demystify all forms of violence in the reproductive sphere contained in the present law, such as surrogacy".*
Finally, the Supreme Court has been forceful in its pronouncements on surrogacy and the sale of children. Thus, in its Judgment of 31 March 2022, it relies on the Report of the United Nations Special Rapporteur on the sale and sexual exploitation of children and states that *"as highlighted in the Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, UN General Assembly, 15 January 2018, the expression "for any purpose or in any form" used in the aforementioned Article. 35 of the Convention implies that surrogacy is not an exception to the prohibition on the sale of children in the Convention. And that commercial surrogacy falls squarely within the definition of "sale of children" in Article 2(a) of the Optional Protocol when all three elements required by that definition are present: a) "remuneration or other consideration"; b) the transfer of the child (from the woman who has gestated and delivered the child to the principals); and c) the exchange of "a)" for "b)" (payment for the delivery of the child). The delivery to which the surrogate mother is obliged does not necessarily have to be present (i.e. of a child already born), it can be future, as is the case in the surrogacy contract. It is seriously detrimental to the dignity and moral integrity of the child (and may also be detrimental to its physical integrity given the lack of control of the suitability of the principals) to consider it as the object of a contract, and it also violates its right to know its biological origin*"[69].

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.

Spain indirectly prohibits surrogacy agreements. Art. 10 of the Assisted Human Reproduction Techniques Act establishes the full nullity of surrogacy contracts. This will result in their invalidity in Spanish law, with the result that:

1) Motherhood is determined by childbirth, that is to say, the mother will be the gestational mother, since in Spanish law the principle of *mater semper certa est* applies.
2) Fatherhood (of the biological father) will be determined by the possible paternity claim action. In other words, the determination of the biological paternal link will be made through the judicial route by virtue of the actions for claiming parenthood.

Article 10. Surrogacy (Assisted Human Reproduction Techniques Act):

[69] Supreme Court Judgment of 31 March 2022 (Rec.277/2022) LB 3º.

1. A contract by which it is agreed that a woman who renounces maternal parenthood in favour of the contracting party or a third party shall be deemed null and void.

2. The parenthoodof children born through surrogacy shall be determined by birth.

3. The possible claim of paternity against the biological father shall remain unaffected, in accordance with the general rules.

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.

The main issue facing the courts in these cases is whether, in the best interests of the child, parenthood (validly determined abroad) should be recognised despite the fact that surrogacy is contrary to Spanish public policy.

In addressing this problem, the Spanish Supreme Court has concluded that "*the protection of the interests of the minors cannot be based on the existence of a surrogacy contract and on the parenthood in favour of the intended parents provided for in* foreign *legislation*, *but must be based, if such data are true, on the severance of any link between the children and the woman who gestated and gave birth to them, the existence of a biological paternal parenthood and of a family unit in which the children are integrated*"[70]. It further adds that *"the determination of what in each case constitutes the interest of the child should not be made according to the interests and criteria of the commissioners of surrogacy, but taking into consideration the values assumed by society as its own, contained both in the legal rules and in the principles that inspire national legislation and international conventions on civil status and childhood (...) "The interest of the minor is not a cause that allows the judge to attribute parenthood. It is the legislator who, in establishing the system for determining parenthood and the actions to contest and claim parenthood, must assess in the abstract the best interests of the child alongside the other interests present (freedom of procreation, the right to know one's origins, the certainty of relationships, the stability of the child)"*[71]. Finally, it understands that *"a surrogacy contract such as the one validated by the judgment of the* foreign *court whose recognition is sought in this appeal entails exploitation of the woman and harm to the best interests of the child. Therefore, the recognition of the effects of that judgment, which entails the recognition of the effects of the surrogacy contract validated in that judgment, is contrary to public policy*"[72].

[70] Supreme Court Judgment 06 February 2014 (Rec. 835/2013) and Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024).

[71] Among others Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 5º.

[72] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024); LB 3º.

Furthermore, since 2014 the Supreme Court has been warning that *"the indiscriminate invocation of the "interests of the child" would thus serve to make a clean sweep of any violation of the other legal interests taken into consideration by the national and international legal system that may have occurred (...)"*[73] and *"it cannot be accepted that the only way to satisfy the best interests of children born through surrogacy is to recognise the bond of parenthood validly established abroad in favour of those who have used this practice to become parents, on the grounds that they are in a better position to provide the child with the care and protection necessary for its well-being than the surrogate (....)"* since "*the acceptance of such arguments should lead to admitting the determination of parenthood in favour of persons from developed countries, in a good economic situation, who have managed to have a child delivered to them from dysfunctional families or from problematic environments in impoverished areas, whatever the means by which they have achieved it, since the best interests of the child would justify its integration in a family in a good position and interested in it"*[74].

It also accepts that always recognising parenthood based on surrogacy, by virtue of the best interests of the child, could result in more violations of the rights and interests of children and surrogate mothers. This is what the Supreme Court makes clear when it warns that "*the rights of surrogate mothers and of children in general (...) would be seriously harmed if the practice of commercial surrogacy were to be promoted by facilitating the activities of surrogacy agencies, in the event that they were able to ensure their potential clients the almost automatic recognition in Spain of the parenthood resulting from the surrogacy contract, despite the violation of the rights of the surrogate mothers and of the children themselves, who are treated as mere merchandise and without even checking the suitability of the principals to be recognised as holders of parental authority over the child born of this type of gestation*"[75].

In short, it is not understood by the case law, that parenthood derived from a surrogacy agreement should be recognised by virtue of the best interests of the child since such agreements are contrary to Spanish public policy (for the reasons mentioned above, see *supra*) and the best interests of the children are guaranteed by *"the provisions of the laws and conventions applicable in Spain, and by the case law that interprets and applies them, taking into consideration their current situation, establishing the relationship of parenthood through the determination of biological paternal parenthood, adoption, or allowing the integration of minors into a family nucleus through the figure of foster care"*[76]. Following the same argumentation, the Supreme Court responds to the question of whether or not there is a violation of Art. 8 of the

[73] Supreme Court Judgment of 06 February 2014 (Rec. 835/2013) LB 5º.
[74] Constitutional Court Judgment 28/2024, of 27 February 2024. Individual opinion by Judge María Luisa Balaguer Callejón. LB 3º; Supreme Court Judgment of 06 February 2014 (Rec. 835/2013) LB 5º.
[75] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 5º.
[76] Among others, Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 5º.

ECHR by not recognising parenthood: the Court understands that there is not, since the Spanish legal system provides for the possibility of determining parenthood through the legal means established for this purpose. This last point will be discussed below (see *infra*).

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

According to the Advisory Opinion No. P16-2018-001 recognition of a foreign decision or document may be refused on grounds of public policy if (i) there is the possibility, within the national legal system, of determining parenthood with the commissioning father when he is the biological father and (ii) there is the possibility, within the national legal system, of recognising a parent-child relationship between the commissioning mother and the child, for example, through adoption and procedures are resolved in a timely manner.

Even before the issuance of Advisory Opinion No. P16-2018-001, the Spanish Supreme Court acknowledged, in its Judgment of 06 February 2014, that the decision not to recognise a parent-child relationship based on a surrogacy contract due to its contravention of Spanish public policy, could be harmful to the children whose parenthood was in dispute.[77] The best interests of the children were, however guaranteed because the Spanish legal system allowed for the determination of biological paternity and family integration: *"Art. 10 of the Law on Assisted Human Reproduction Techniques, in its third paragraph, allows the claim of paternity with respect to the biological father, so that if any of the appellants were the biological father, paternal parenthood could be determined with respect to him. Moreover, legal figures such as foster care or adoption allow the legal formalisation of the real integration of the minors in such a family unit*"[78].

In the Judgment of 31 March 2022, the Spanish Supreme Court expressly refers to Advisory Opinion P16-2018-001 and states that "*the route by which the determination of parenthood should be obtained is that of adoption. The Opinion of the European Court of Human Rights of 10 April 2019 accepts as one of the mechanisms to satisfy the best interests of the child in these cases "adoption by the commissioning mother [...] to the extent that the procedure established by national law ensures that they can be applied promptly and effectively, in accordance with the best interests of the child"*[79].

[77] Supreme Court Judgment of 6 February 2014 (Rec. 835/2013) LB 5º.
[78] Supreme Court Judgment of 6 February 2014 (Rec. 835/2013) LB 5º.
[79] Supreme Court Judgment of 31 March 2022 (Rec. 277/2022) LB 4º.

Finally, in the most recent judgment, dated 4 December 2024, it again stresses this point, even more explicitly, saying that *"the protection to be granted to these minors must be based on the provisions of the laws and conventions applicable in Spain, and the case law that interprets and applies them, taking into consideration their current situation, establishing the relationship of parenthood by determining biological paternal parenthood, adoption, or allowing the integration of the minors into a family nucleus through foster care. This solution satisfies the best interests of the child, assessed in concrete terms, as required by the aforementioned Opinion of the European Court of Human Rights, but at the same time attempts to safeguard the fundamental rights that the aforementioned court has also considered worthy of protection, such as the rights of expectant mothers and children in general (judgments of 24 January 2017, Grand Chamber, Paradiso and Campanelli case, paragraphs 197, 202 and 203, and of 18 May 2021, Valdís Fjölnisdóttir and Others v Iceland , paragraph 65) (...)"*[80].

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

Art. 2(1) II CRA[81] establishes that "*the Civil Registrars must comply with the orders, instructions, resolutions and circulars of the Ministry of Justice and the Directorate General of Registers and Notaries".* Moreover, the Explanatory Memorandum of the CRA states that *"the unity of action is guaranteed by the binding nature of the instructions, resolutions and circulars of the General Directorate of Registries and Notaries, as well as by the establishment of a system of appeals".* This duty of compliance imposed by the aforementioned provisions is a consequence of the hierarchical structure of the Civil Registry, *"insofar as the civil service relationship, of a statutory and objective nature, subjects civil servants to a special dependency and hierarchical subjection."*[82]

Prior to the entry into force of the Instruction of 28 April 2025, of the Directorate General for Legal Security and Public Trust, on updating the registration system for the parenthood of births through surrogacy, the regime for the registration of the parenthood of children born through surrogacy was established by two Instructions of the former Directorate General of Registries and Notaries that are relevant: The first was the Instruction of 5 October 2010[83] and the second was the Instruction of 18 February 2019[84] which updated it.

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[80] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 5º; also, in Supreme Court Judgment of 31 March 2022 (Rec. 277/2022) LB 4º.

[81] Civil Registry Act.

[82] Guillamón Roca, Juan, "Artículo 2", in *Comentarios a la Ley del Registro Civil*, ed. Cobacho Gómez, José Antonio & Leciñena Ibarra, Ascensión, 1.ª ed. (Navarra: Thomson Reuters Aranzadi, 2012), 92.

[83] Instruction of 5 October 2010, of the Directorate General of Registries and Notaries, on the registry system for the parenthood of children born through surrogacy (BOE-A-2010-15317).

[84] Instruction of 18 February 2019, of the Directorate General of Registries and Notaries, on updating the registry system for the parenthood of children born through surrogacy (BOE-A-2019-2367).

The Instruction of 5 October 2010, issued by the Directorate General of Registries and Notaries, allowed the registration of the birth of a minor born abroad as a result of surrogacy techniques, provided that the application for registration was accompanied by a judicial decision[85] issued by the competent court in which the parenthood of the child was determined.[86] Prior to the registration of the birth, the decision had to be subject to an *exequatur* procedure in accordance with the rules established for it in Spanish law. Nevertheless, the Instruction of 5 October 2010 also provided for the possibility of such a decision being recognised incidentally by the Registrar of the Civil Registry "*in the event that the foreign court decision originated in a procedure analogous to a Spanish voluntary jurisdiction procedure.*"[87]

In addition, the criteria for the incidental control carried out by the Registrar were those established by the Instruction of 5 October 2010 itself and not those established by the Civil Registry Act in its Art. 96(2) for incidental recognition before the Registrar.[88] It could be deduced, comparing both precepts, that they were equivalent, however, the criteria established by the Instruction of 5 October 2010 do not contemplate the verification of the compliance of the judicial resolution with Spanish public policy, which is required by Art. 96(2) CRA.[89] Therefore, under the previous regime, if the Registrar considered that the foreign decision determining parenthood by virtue of a surrogacy agreement was a decision issued in the framework of a procedure analogous to a Spanish voluntary jurisdiction procedure, he could recognise it incidentally provided that it complied with the criteria established in the Instruction of 5 October 2010, which did not include public policy control. This is notwithstanding the Public Prosecutor being able to appeal against the decision taken by the Civil Registrar.

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[85] *"The requirement of a judicial decision in the country of origin has the purpose of controlling the fulfilment of the requirements of perfection and content of the contract with respect to the legal framework of the country where it has been formalised, as well as the protection of the interests of the minor and of the gestational mother. In particular, it makes it possible to verify the full legal capacity and capacity to act of the pregnant woman, the legal effectiveness of the consent given because she has not been in error as to the consequences and scope of the same, nor has she been subjected to deception, violence or coercion or the possible foreseeability and/or subsequent respect for the right to revoke consent or any other requirements provided for in the legal regulations of the country of origin. It also makes it possible to verify that there is no simulation in the surrogacy contract that conceals the international trafficking of minors*". (Instruction of 5 October 2010).

[86] Instruction of 5 October 2010, of the Directorate General of Registries and Notaries, on the registry system for the parenthood of children born through surrogacy (BOE-A-2010-15317). 3

[87] The distinction between acts of non-contentious jurisdiction and contentious proceedings also becomes relevant because only final foreign judgments in contentious proceedings must be subject to *exequatur* (Art. 41 LICCMA), relegating acts of non-contentious jurisdiction to incidental recognition "*by the organ or authority before which the particular effects deriving from them are to be asserted.*"(Supreme Court Order of 31 July 2003 (Rec. 815/2002)).

[88] See *supra "how a foreign judgment on parenthood is recognised in your State."*

[89] Art. 96(2) CRA: "*provided that it verifies (...) that the registration of the decision is not manifestly incompatible with Spanish public policy."*

That said, the Instruction of 28 April 2025, which came into force on 1 May 2025, repeals the Instruction of 5 October 2010 and the Instruction of 18 February 2019 and completely changes the landscape by establishing that:

"Under no circumstances shall the Registrar of civil registries, including consular civil registries, accept as a valid document for the registration of the birth and parenthood of children born through surrogacy a foreign registry certificate, or a simple declaration accompanied by a medical certificate relating to the birth of the child, or a final judgment of the judicial authorities of the country concerned." [90]

This change in regime is due, as the Instruction of 28 April 2025 itself states, to the fact that *'the situation has changed since the publication of the ruling of the First Chamber (Plenary) of the Supreme Court 1626/2024, of 4 December, which ratifies the refusal to recognise the effects of a foreign ruling in a case of surrogacy."*[91] In this ruling, the Spanish Supreme Court declared that the surrogacy agreement is in itself contrary to Spanish public policy and a foreign judgment that determines parenthood as a consequence of a surrogacy agreement cannot be recognised in Spain.[92] The fact that the surrogacy contract is contrary to Spanish public policy is an issue already established in the the Supreme Court Judgments of 6 February 2014 and 31 March 2022[93], a fact acknowledged in the Instruction of 28 April 2025.

The Instruction also states that, although the purpose of the Instruction of 5 October 2010 *"was fundamentally aimed at providing full legal protection for the best interests of minors, as well as protecting other competing interests in such cases of surrogacy"*, the Supreme Court, in the aforementioned ruling of 4 December 2024, declares that:

"The determination of what constitutes the best interests of the child in each case should not be made in accordance with the interests of the commissioning parents, but rather by taking into consideration the values assumed by society as its own, contained both in legal rules and in the principles that inspire national legislation and international conventions on civil status and childhood. (...) the protection of children cannot be achieved by uncritically accepting the consequences of the surrogacy contract signed by the appellants (...) The protection of the interests of children cannot be based on the existence of a surrogacy contract and on the parenthood in favour of the intended parents provided for by [foreign] legislation, but must be based (...) on the severing of all ties between the children and the woman who carried and gave birth to them, the existence of a biological paternal filiation and a family unit in which the

[90] Second Guideline. Instruction of 28 April 2025, from the Directorate General for Legal Security and Public Trust, on updating the registration system for the filiation of births through surrogacy (BOE-A-2025-8647). 3

[91] Instruction of 28 April 2025, from the Directorate-General for Legal Security and Public Trust, on updating the registration system for the filiation of births through surrogacy (BOE-A-2025-8647). 2.

[92] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 3º.

[93] Supreme Court Judgment of 06 February 2014 (Rec. 835/2013); Supreme Court Judgment of 31 March 2022 (Rec.277/2022), and now also on the Supreme Court Judgment of 25 March 2025 (Rec. 496/2025).

children are integrated. Therefore, the protection to be granted (...) must be based on the provisions of the laws and conventions applicable in Spain and the case law that interprets and applies them, taking into account their current situation, establishing the parent-child relationship by determining biological paternal filiation, adoption or allowing the integration of the children into a family unit through foster care. This solution satisfies the best interests of the child, assessed on a case-by-case basis, (...) but at the same time seeks to safeguard the fundamental rights (...) that would be seriously harmed if the practice of commercial surrogacy were to be promoted (...)."[94]

Therefore, based on the Spanish Supreme Court's interpretation of how the best interests of the child should be protected, as well as the Court's repeated rulings that surrogacy contracts are contrary to Spanish public policy and the consideration of surrogacy as a form of violence against women as established in Organic Law 2/2010 on sexual and reproductive health and voluntary termination of pregnancy and the European Parliament Resolution of 17 December 20 on the annual report on human rights and democracy in the world and the European Union's policy, the Directorate General, *"in accordance with the interpretation made by the Supreme Court and in order to ensure that the registration treatment in cases of surrogacy is in line with our legal system and international standards on the rights of minors and pregnant women"*[95], repeals the two previous Instructions and modifies the registration regime for the parenthood of births through surrogacy.

Additionally, in its Fourth Guideline, the Instruction of 28 April 2025 establishes that "*applicants may obtain from the local authorities, if applicable, the passport and corresponding permits for minors to travel to Spain and, once there, the determination of parenthood shall be carried out through the ordinary means provided for in Spanish law: biological filiation, where applicable, with respect to one of the intended parents, and subsequent adoptive filiation when the existence of a family unit with sufficient guarantees is proven.*" The Instruction of 18 February 2019, which updated the Instruction of 5 October 2010, already provided for a similar guideline[96] for cases where the birth could not be registered in the Consular Registers. However, it contemplated the possibility that once in Spain, *"the corresponding proceedings for the registration of parenthood could be initiated, with the intervention of the Public Prosecutor's Office"* before the Registrar of the Civil Registry *"in order to ensure that all guarantees are met with the necessary evidentiary rigour."* Today, under the new regime, this possibility no longer exists, and the determination of parenthood will be carried out through the ordinary means provided for this purpose under Spanish law.

[94]Instruction of 28 April 2025, from the Directorate-General for Legal Security and Public Trust, on updating the registration system for the filiation of births through surrogacy (BOE-A-2025-8647). 2.
[95] Instruction of 28 April 2025, from the Directorate-General for Legal Security and Public Trust, on updating the registration system for the filiation of births through surrogacy (BOE-A-2025-8647). 2.
[96] Instruction of 18 February 2019, of the Directorate General of Registries and Notaries, on updating the registry system for the parenthood of children born through surrogacy (BOE-A-2019-2367). 1.

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

The recognition in Spain of adoptions constituted abroad is carried out through the registration of the same in the Civil Registry as an "*act of voluntary jurisdiction that does not necessarily require exequatur*"[97]. This is established in Art. 29 of the Law on International Adoption (IAA): *"When the international adoption has been constituted abroad and the adopters have their habitual residence in Spain, they must request the registration of the birth of the minor and of the adoption in accordance with the rules contained in the Civil Registry Act in order for the adoption to be recognised in Spain".* Therefore, the role of the Civil Registry is essential in cases of intercountry adoptions. However, it must be borne in mind that Spain is a Contracting State to the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (HC 1993) and, therefore, a distinction must be made between adoptions that fall under the Convention's scope and adoptions that are constituted outside of the Convention's scope.

- **Foreign adoptions constituted under the HC 1993:**

HC 1993 shall apply where *"where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin"* (Art. 2(1) HC 1993).
The HC 1993 establishes a system of recognition by operation of law[98], without detriment to the public policy exception[99]. On the other hand, the certificate of conformity to the HC 1993 issued by the State of origin is required, which will include the conformity of the Spanish authorities (receiving State) with the procedure of foreign adoption required by Art. 17 c) of the HC 1993[100] under penalty of non-application of the Convention itself (Art. 3 HC 1993)[101].
The role of the Registrar in cases of adoptions under the HC 1993 is to carry out an incidental control of the validity of the adoption. As stated in Art. 27 I IAA *"(....) the Registrar of the Civil Registry in which the registration of the adoption constituted abroad is instigated for its recognition in Spain, shall check, incidentally, the validity of the said adoption in Spain in accordance with the rules contained in the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, by means of the presentation of the certificate in accordance*

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[97] FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 9.ª ed., cit., p. 490.
[98] Art. 23(1) HC 1993: *"An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given".*
[99] Art. 24 HC 1993: *"The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child".*
[100] Art. 17 c) HC 1993: *"the Central Authorities of both States have agreed that the adoption may proceed".*
[101] See FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 9.ª ed., cit., p. 495.

with the provisions of Article 23 thereof and that the cause for non-recognition provided for in Article 24 of the said Convention has not been incurred".
With regard to what could be considered contrary to Spanish public policy, see *infra.*
Finally, it should be borne in mind that simple adoptions, i.e. adoptions that do not break the link with the family of origin, can also be constituted under the HC 1993, and these are covered by the system of recognition by operation of law stated in the Convention. The treatment in Spain of simple adoptions constituted by a foreign authority will be regulated by the specific regulations contemplated in Art. 30 IAA, since HC 1993 does not regulate issues regarding registration or nationality. Both points will be developed in more detail below.

- **Foreign adoptions constituted outside the scope of application of the HC 1993:**

Adoptions constituted in a country that is not a Contracting State to the HC 1993 fall under the Intercountry Adoption Act (IAA).
As established in Art. 27 II of the IAA, *"in the cases of minors coming from non-signatory countries* (referring to the HC 1993), *the Registrar will carry out this incidental control verifying whether the adoption meets the conditions of recognition foreseen in Articles 5.1.e), 5.1.f) and 26."*
Art. 26 of the IAA, establishes the requirements for the validity in Spain of adoptions arranged by foreign authorities which are the following:
1º. *That* (the adoption) *has been constituted by a competent foreign authority. The foreign authority shall be considered competent if the case has reasonable links with the foreign State whose authorities have constituted it. In any case, it shall be presumed that they are competent by reciprocal application of the rules of competence provided for in Article 14 of this Act.* That is, jurisdiction shall lie with the foreign public authority of the nationality or habitual residence of the adopter or the adoptee. This reasoning is based on the fact that, under Art. 14 IAA, the jurisdiction of the Spanish authority derives precisely from the fact that either the adopters or the adoptee are Spanish or have their habitual residence in Spain[102].
2º. That the adoption doesn't contravene Spanish public policy, understanding as contrary to public policy *"those adoptions in whose constitution the best interests of the child have not been respected, in particular when the necessary consents and hearings have been disregarded, or when it is established that they were not informed and free or were obtained by payment or compensation.*
On the other hand, when the adopter or adoptee is Spanish, recognition of the foreign adoption will only be possible in Spain if the legal institutions for adoption are substantially equivalent (Art. 26(2) IAA)[103]. This is especially important when we are dealing with the recognition of simple adoptions, since said article requires that the basic elements of adoption in Spanish law be present in the foreign adoption, namely: "*in particular, the Spanish authorities will control that the adoption constituted by a foreign authority produces the extinction of substantial legal ties between the adoptee*

[102] ÁLVAREZ GONZÁLEZ S., *Reconocimiento e inscripción en el registro civil de las adopciones internacionales*, in *Revista española de derecho internacional*, 2006, p. 687.
[103] FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 9.ª ed., cit., p. 491.

and his previous family, that it gives rise to the same ties of parenthood as those of parenthood by nature and that it is irrevocable by the adopters. Moreover, it is required that *when the foreign law admits that the adoption constituted under its protection may be revoked by the adopter, it will be an indispensable requirement that the latter, before the transfer of the minor to Spain, renounces the exercise of the power to revoke it. The renunciation must be formalised in a public document or by appearance before the Registrar of the Civil Registry."*

That said, it is understood that provided that neither the adoptee nor the adopter is of Spanish nationality and without detriment to the public policy exception of Art. 31 IAA[104], it is possible to recognise a simple adoption *"that is in accordance with the applicable law according to Article 9(4) of the CC, which will determine its conditions of validity and effects and the attribution of parental authority*"[105]*.* Simple adoptions, however, may not be registered in the Spanish Civil Register[106] as an adoption (only as a marginal annotation) and will have no evidentiary effect but only informative[107]. Moreover, "*simple adoptions do not entail the acquisition of Spanish nationality"* (Art. 30(3) IAA).

When the adopter is Spanish and resident in Spain, a declaration of suitability must be made, prior to the establishment of the adoption by the foreign authority, by the Spanish Public Entity, which will not be required in cases where it would not be required either if the adoption had been established in Spain (on this point see in more detail below *Please describe the requirements for the establishment of parenthood in favour of the non-biological (intentional) parent of a surrogacy agreement).*

Finally, as established in Art. 26(4) IAA "*if the adoptee was Spanish at the time of the constitution of the adoption before the competent foreign authority, the consent of the Public Entity corresponding to the last residence of the adoptee in Spain will be necessary*".

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[104] Art. 31 IAA: *"In no case shall the recognition of a foreign decision of simple or less than full adoption proceed if it produces effects manifestly contrary to Spanish international public order. For this purpose, the best interests of the minor shall be taken into account".*

[105] FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 13.ª ed., cit., p. 386.

[106] It should be noted that the IAA provides for the possibility of converting a simple adoption into a full adoption provided that the requirements of Art. 42 of the Law on Voluntary Jurisdiction and Art. 30(4) IAA are met. Such conversion shall be governed by the law determined by virtue of the law of its constitution. See FERNÁNDEZ ROZAS J.C., SÁNCHEZ L.S., *Derecho Internacional Privado*, 9.ª ed., cit., p. 494.

[107] Sánchez Cano M.J., *Hacia la recuperación de la adopción simple en el Derecho español*, in *Cuadernos de Derecho* Transnacional, 2018, p. 668.

CASES

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

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

No, Marco and Michela's parenthood cannot be recognised by virtue of the foreign birth certificate, as this certificate cannot be registered in the Spanish Civil Registry.

As established in the Instruction of 28 April 2025, *"Under no circumstances shall the Registrar of civil registries, including consular civil registries, accept as a valid document for the registration of the birth and parenthood of children born through surrogacy a foreign registry certificate, or a simple declaration accompanied by a medical certificate relating to the birth of the child, or a final judgment of the judicial authorities of the country concerned."*[108]

Additionally, *"applications pending of registration of the parenthood of children born through surrogacy on the date of publication* (1 May 2025) *of this Instruction in the Official State Gazette"* will not be processed either.[109]

What procedure shall be followed (if any)

Given the impossibility of registering the foreign birth certificate, parenthood shall be established by the ordinary means provided in Spanish law for the determination of biological paternity and adoption. The procedures to be followed will be those proper to these means of determination.

Fourth Guideline of the Instruction of 28 April 2025: "*(...) parenthood shall be determined through the ordinary means provided for in Spanish law: biological filiation, where applicable, with respect to one of the intended parents, and subsequent*

[108] Second Guideline. Instruction of 28 April 2025, from the Directorate General for Legal Security and Public Trust, on updating the registration system for the filiation of births through surrogacy (BOE-A-2025-8647). 3
[109] Third Guideline. Instruction of 28 April 2025, from the Directorate General for Legal Security and Public Trust, on updating the registration system for the filiation of births through surrogacy (BOE-A-2025-8647). 3

adoptive parenthood when the existence of a family unit with sufficient guarantees is proven."

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

The Directorate General, *"in accordance with the interpretation made by the Supreme Court and to ensure that the registration process in cases of surrogacy complies with our legal system and international standards on the rights of minors and pregnant women"*, establishes, in its Second Guideline, a prohibition on the registration of the birth and parenthood of children born through surrogacy.

See previous answer *"whether Marco's parenthood can be recognized"*

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

Under the previous registration regime, a foreign birth certificate that did not include the mother's name was not considered a valid document for registering the birth and parenthood of the child. This was established in the second guideline of the Instruction of 5 October 2010, which stated that:

"Second. -In no case shall a foreign registration certificate or a simple declaration, accompanied by a medical certificate relating to the birth of the child, in which the identity of the pregnant mother is not stated, be accepted as a suitable certificate for the registration of the birth and parenthood of the child."

Therefore, without a foreign judicial decision determining parenthood, the foreign birth certificate where two men were stated as parents and, therefore, where the pregnant mother was not mentioned, could not be registered in the Spanish Civil Registry as it was not an apt title.[110]

It is worth mentioning that by virtue of this second guideline, which established the obligation for the identity of the pregnant mother to be stated in the foreign registry or medical certificates, registration were also refused in cases where a foreign birth certificate is provided which stated a maternal parenthood that did not coincide with the information stated in the medical birth certificate.[111]

[110] See as an example the RDGRN (88th) of 22 December 2023, *Boletín del Ministerio de la Presidencia, Justicia y Relaciones con las Cortes.* Year LXXIX, January 2025, no. 2.283, 36.

[111] See RDGRN (3rd) of 19 June 2020, *Boletín del Ministerio de la Presidencia, Justicia y Relaciones con las Cortes.* Year LXXV, July 2021, no. 2.242, 46; RDGRN (4th) of 23 September 2023, *Boletín del Ministerio de la Presidencia, Justicia y Relaciones con las Cortes.* Year LXXVIII, July 2024, no. 2.277, 20; RDGRN (32nd) of 25 August 2021, *Boletín del Ministerio de la Presidencia, Justicia y Relaciones con las Cortes.* Year LXXVI, April 2022, no. 2.250, 42.

That said, this problem seems to have been overcome with the new registration regime established by the Instruction of 28 April 2025, since, in principle, it seems to follow from it that whether or not two men are listed on the foreign registration certificate or whether or not the surrogate mother is listed, if the parenthood derives from a surrogacy agreement, it cannot be registered in the Civil Registry on that basis alone.

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

See previous answer.

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

As mentioned above and following the line of the Spanish Supreme Court, the intended parents, who are not the biological parents, must resort to the figure of adoption to establish the bond of parenthood with the child. This solution is also supported by the Spanish Constitutional Court[112].

Under Spanish law parenthood does not derive exclusively from the biological fact, since "*alongside the biological fact there are other links, such as those derived from adoption (...) From these other possible links determining parenthood it also follows that parenthood can be legally determined with respect to two persons of the same sex. This recognises that not only biological factors, but also other factors of a social and cultural nature have a bearing on the legal determination of parenthood*"[113].

That said, however, there is neither a right to adopt nor a right to be a parent in the Spanish legal system. This is established by the Constitutional Court when it states that *"no constitutional precept recognises a fundamental right to adopt and as this court has underlined, following the jurisprudence of the European Court of Human Rights, "adoption is 'giving a family to a child, and not a child to a family'*"[114]. The Supreme Court also emphasises the non-existence of a right to be a parent, alleging not only that no such right exists in the Spanish legal system, but recalling that Art. 8 of the ECHR does not guarantee a right to found a family or the right to adopt as the right to respect for family life does not protect the simple desire to found a family. There is also the Report of the Spanish Bioethics Committee of 2017 (cited by the Supreme Court), which states that "*the desire of a person to have a child, however noble it may be, cannot be realised at the expense of the rights of other people*"[115].

[112] Constitutional Court Judgment 28/2024 of 27 February 2024.
[113] Supreme Court Judgment of 06 February 2014 (Rec. 835/2013) LB 3º.
[114] Constitutional Court Judgment 28/2024, of 27 February 2024. LB 5º; Constitutional Court Judgment 198/2012, of 6 November 2012. LB 12º.
[115] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 3º.

In short, Michele does not have a right, *per se*, to be recognised as a parent. However, it must be borne in mind that, if viewed from the child's perspective, where there is a *de facto* family life between the child and the intended father (which does not appear to be the case here), the best interests of the child and the right to respect for private and family life enshrined in Art. 8 ECHR, require that "*if the child has de facto family relations with the person seeking recognition of the paternal or maternal-filial relationship in his or her favour, the solution to be sought both by the applicant and by the public authorities involved should be based on this fact and allow the development and protection of these links, in accordance with the case law of this Court and of the European Court of Human Rights, which has recognised the existence of a de facto family life even in the absence of biological ties or a legally recognised bond, provided that certain personal emotional ties exist and have a relevant duration*"[116].

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

If the intended father is not the biological father, the treatment will be the same as that of the intended mother, i.e., they will have to resort to the figure of adoption to have the parental relationship recognised. In the context of adoption, no distinction is made according to whether the adopter is a man or a woman.

However, the difference lies when the intended father is also the biological father. Art. 10(2) and (3) AHRTA[117] establishes that the maternity of the children born by surrogacy shall be determined by birth, and that actions to claim paternity with respect to the biological father are still possible. Therefore, if the intended father is the biological father, the father-child relationship will be determined through the exercise of the action of claiming paternity through the courts.

Regarding the mother-child relationship, as the principle of *mater semper certa est* applies, this will be determined by the birth, that is, regardless of whether or not the intended mother has provided her genetic material, as she is not the one who gives birth, she must resort to the figure of adoption to establish parenthood regarding the child, following the line of Advisory Opinion No. P16-2018-001[118], as explained above.

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[116] Supreme Court Judgment of 31 March 2022 (Rec.277/2022) LB 4º.

[117] It will apply when Spanish law is applicable. The conflict rule contained in 9(4) of the Spanish CC establishes that "*the determination and character of parenthood by nature shall be governed by the law of the habitual residence of the child at the time of the establishment of parenthood".* In cases of international surrogacy, the child will almost always, if not always, have his or her habitual residence in Spain by the time the recognition of the parent-child relationship is requested.

[118] It is worth mentioning that, in this Advisory Opinion, the ECtHR emphasises and considers it important to highlight that when the child has been conceived using the intended mother's eggs *"the need to provide for a possibility of recognition of the legal relationship between the child and the intended mother applies with greater force in such a case."* par. 47, p. 11.

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

Given the fact that the non-biological intended parent must resort to the adoption of the child, the requirements[119] to establish parenthood will be the same as for this figure.

Art. 175 of the Spanish CC establishes, with regard to the adopter, that he/she must be:

a) Over twenty-five years of age. If there are two adopters, it shall be sufficient for one of them to have reached that age.
b) In any case, the difference in age between the adopter and the adoptee shall be at least sixteen years and may not exceed forty-five years, except in the cases provided for in Article 176(2). If the prospective adopters are in a position to adopt siblings or minors with special needs, the maximum age difference may be greater.

Moreover, the adopter must have full capacity to grant the necessary consent required by Art. 177(1) of the Spanish CC for the constitution of the adoption and must not incur in any prohibition. Specifically, a descendant, a relative in the second degree of the collateral line by blood or affinity or a ward may not be adopted by his or her guardian until the justified general account of the guardianship has been definitively approved (Art. 175(3) of the Spanish CC)[120].

On the other hand, adoption proceedings may not be initiated without the prior proposal[121] of the Spanish Public Entity in favour of the adoptive parent. In turn, the said Public Entity may not make the proposal without the prior declaration of suitability of the adopter for the exercise of parental responsibility (Art. 176(1) of the Spanish CC). As established in Art. 176(3) of the Spanish CC, *"suitability is understood as the capacity, aptitude and adequate motivation to exercise parental responsibility, taking into account the needs of the minors to be adopted, and to assume the peculiarities, consequences and responsibilities that adoption entails*"[122].

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[119] This question will be answered under Spanish common civil law, however, please note that there may be further requirements depending on the Autonomous Community concerned.

[120] PÉREZ ÁLVAREZ M.A., *Article 175*, in DE PABLO CONTRERAS P., VALPUESTA FERNÁNDEZ R.(eds), *Código Civil comentado. I: Título preliminar, de las normas jurídicas, su aplicación y eficacia; Libro 1, de las personas; Libro 2, de los bienes, de la propiedad y de sus modificaciones (artículos 1 a 608)*, 1ª ed., Madrid, 2011, p. 903.

[121] *See* Art. 35 Law 15/2015, of 2 July, on Voluntary Jurisdiction (LVJ).

[122] *"The declaration of suitability by the Public Entity shall require a psychosocial assessment of the personal, family, relational and social situation of the adoptive parents, as well as their capacity to establish stable and secure ties, their educational skills and their aptitude to care for a minor according to their unique circumstances. Said declaration of suitability shall be formalised by means of the corresponding decision. Those who are deprived of parental authority or whose exercise of parental authority has been suspended, or those who have entrusted the care of their child to the Public Entity, may not be declared suitable for adoption".* (Art. 176(3) II and III of the Spanish CC).

However, it should be mentioned, as it is especially relevant in situations of surrogacy, that this proposal of suitability by the Public Entity will not be necessary when the adoptee is "*the child of the spouse or of the person united to the adopter by an analogous relationship of affectivity to the conjugal one"* (Art. 176(2) 2nd). This does not mean that the suitability of the adopter will not be considered in these cases, but that such consideration will be made exclusively by the judge taking into account, in addition, the best interests of the adoptee (of the child)[123].

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

Yes, the consent of the biological father and of the surrogate mother is necessary to establish the parenthood of the intended parent insofar as such parenthood is established through adoption.

Art. 177(2) of the Spanish CC establishes that: *They shall assent*[124] *to the adoption:*

1. The spouse or person united to the adopter by an analogous relationship of affectivity to the spousal relationship, unless there is a legal separation or divorce or a break-up of the couple that is reliably recorded, except in cases in which the adoption is to be formalised jointly.

2. The parents of the adoptee who is not emancipated, unless they are deprived of parental authority by a final judgement or have legal grounds for such deprivation. This situation may only be assessed in the contradictory judicial procedure which shall be processed in accordance with the Law on Civil Procedure.

In cases of surrogacy, the biological parent is normally the spouse/partner of the other intended parent and therefore he must assent to the adoption as the biological parent and as the spouse of the adopter.

Moreover, it is worth noting that the consent of the surrogate mother "*cannot be given until six weeks have elapsed since the birth, and consent given by the mother before* this time *has elapsed will be null and void*"[125][126]. This requirement responds, in the

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[123] *"Adoption shall be constituted by judicial decision, which shall always take into account the interests of the adoptee and the suitability of the adopter or adopters for the exercise of parental authority".* (Art. 176(1) of the Spanish CC).

[124] Art. 177(2) of the Spanish CC: "*Assent shall not be necessary when those who should give it are unable* (death, absence or incapacity) *to do so, an impossibility which shall be assessed with reasons in the judicial decision constituting the adoption. Nor will the consent of the parents whose parental authority has been suspended be necessary when two years have elapsed since the notification of the declaration of abandonment, in the terms provided for in Article 172.2, without opposition to it or when, if filed within the time limit, it has been rejected."*

[125] PÉREZ ÁLVAREZ M.A., Artículo 177, in DE PABLO CONTRERAS P., VALPUESTA FERNÁNDEZ R.(eds), *Código Civil comentado. I: Título preliminar, de las normas jurídicas, su aplicación y eficacia; Libro 1, de las personas; Libro 2, de los bienes, de la propiedad y de sus modificaciones (artículos 1 a 608)*, 1ª ed., Madrid, 2011, p. 914.

[126] *"The effect of the contravention of a mandatory rule is none other than nullity as of right (Art. 6.3 CC). The nature of the defect is such that it extends to the entire content of the document, conceived*

words of the Spanish Supreme Court, to the "*need to guarantee the full concurrence of the essential faculties of freedom and conscience in the biological mother, to calibrate and carefully and serenely consider the abdication of the exercise of her maternity with the transfer of the child for adoption*"[127].

Finally, the consents (and the assents) must be granted freely, in writing and in the required legal form, having previously informed of the consequences thereof (Art. 177(4) of the Spanish CC) before the judge or public entity; or in a public document (Art. 37(1) II LVJ).

with a view to obtaining expeditiously (and, of course, contra legem) the authorisation to adopt, especially when the identity of the reason for considering the prior consent invalid subsists, in accordance with Art. 173 with regard to fostering". (Supreme Court Judgment of 21 September 1999 (Rec. 2854/1994) LB 4º).

[127] Supreme Court Judgment of 21 September 1999 (Rec. 2854/1994) LB 4º.

Recognition of a foreign decision establishing parenthood

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

In the absence of European regulations on the matter and of an international convention, the procedure to be followed for the recognition of the foreign judicial decision is the *exequatur,* regulated in arts. 41 to 55 of the Legal International Cooperation in Civil Matters Act and explained above (see *supra* part A).

Art.46 LICCMA establishes the grounds for refusal of recognition of the foreign decision, among them the violation of Spanish public policy.

On 4 December 2024, the Supreme Court issued a ruling declaring the surrogacy agreement itself to be contrary to Spanish public policy. This judgment is particularly relevant as it is the first time that the Spanish Supreme Court has ruled on the possibility of recognising a foreign judgment that determines parenthood resulting from surrogacy[128] and it does so, moreover, without any dissenting opinions.

The Court declares, therefore, the impossibility of recognising the foreign judgment[129] as the recognition of the effects of the judgment would imply the recognition of the effects of the surrogacy agreement validated by said judgment and this - the contract - is contrary to Spanish public policy[130].

"A surrogacy contract such as that validated by the judgment of the Texas court whose recognition is sought in this action entails exploitation of the woman and harm to the best interests of the child. Therefore, recognition of the effects of that judgment, which entails recognition of the effects of the surrogacy contract validated in that judgment, is contrary to public policy"[131].

[128] It had previously ruled on the possibility of the registration in the Civil Registry of a foreign registration certificate (Supreme Court Judgment 06/02/2014) and on the determination of the parenthood of the mother of intention by possession of state (Supreme Court Judgment 31/03/2022).
[129] Judgment of the 73rd Judicial District Court of Bexar County, Texas (USA), in the instant case.
[130] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 3º.
[131] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 3º.

The compatibility between the protection of the best interests of the child and this decision, according to the Court, is to be found, on the one hand, in the possibility of determining parenthood by the legal means established in Spanish law, such as the judicial claim for determination of parenthood by the biological father and adoption; and, on the other hand, in the possibility of integrating the children into a household through foster care. This argumentation is understood to respect and follow the line of the ECHR Advisory Opinion No. P16-2018-001[132].

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

The recognition of adoptions made abroad in Spain is carried out through the registration of the adoption in the Civil Registry as an "*act of voluntary jurisdiction that does not necessarily require exequatur*"[133].
See above "*how foreign adoption decisions (concerning adoption by the intentional parent) are considered by the Civil Registrars in your legal order".*

[132] Supreme Court Judgment of 04 December 2024 (Rec. 1626/2024) LB 5º.
[133] Fernández Rozas J.C., Sánchez L.S., *Derecho Internacional Privado*, 9.ª ed., cit., p. 490.