Questionnaire on Safeguards for the protection of the rights of children born from surrogacy arrangements

Identity, origins and parentage

1. *Describe safeguards protecting identity rights (CRC art. 7 and 8) that are currently being implemented in your State. Safeguards include laws, judicial and administrative procedures, enforcement actions, and other practices intended to prevent or remedy violations of human rights norms. Note whether and how such general safeguards protecting identity rights apply in the context of surrogacy arrangements.*

Article 13 of the Law of Ukraine “On State Registration of Civil Status Acts” establishes the acquisition of the **Ukrainian citizenship by birth. The S**tate registration of birth of a child is carried out simultaneously with determination of the child's origin and assigning family name, first name and the patronimic upon a written or an oral request of the parents or one of them at the place of the child's birth or of residence of the parents.

In case of death of the parents or in case they cannot register the child's birth for other reasons, the state registration of birth is made upon the request of relatives, other persons, authorized representative of health facility where the child was born or stays. The state registration of birth is carried out within one month after his/her birth, and in the event of a stillbirth – within three days.

According to the “Rules of State Registration of Civil Status Acts in Ukraine”, enacted by the decree of the Ministry of Justice of Ukraine №52/5 of October 18, 2000, in case of birth of a child by a woman to whose organism the human's embryo was transferred, concented by spouses as a result of assisted reproductive technologies (ART), the state registration of birth of the child is made on the basis of the statement of spouses, who gave permission to such transfer. In such a case together with the document, that confirms the fact of the child’s birth by that woman, the statement of that woman is submitted to record the spouses as parents of the child, and the reference about the genetic cognation of the parents/mother/father with the child. The signature on the statement of the woman, that have given birth to the child, must be [certified by notary](https://www.multitran.com/m.exe?s=certified%20by%20notary&l1=1&l2=2).

Article 7 of the Law “On Citizenship of Ukraine” provides for the acquisition of **Ukrainian citizenship by birth.**

The following persons shall be citizens of Ukraine:

- whose parents or one of parents were citizens of Ukraine at the time of that person's birth;

- born in the territory of Ukraine of stateless parents being lawful residents of Ukraine;

- born outside Ukraine of stateless persons being lawful permanent residents of Ukraine and if that person did not acquire foreign citizenship by birth;

- born in the territory of Ukraine of foreign citizens lawfully residing in Ukraine and if that person did not acquire either parent's citizenship at birth;

- born in the territory of Ukraine, one of whose parents has the refugee status or is granted asylum in Ukraine and if that person did not acquire by virtue of birth either parent's citizenship or acquired by virtue of birth the citizenship of the parent having the refugee status or asylum in Ukraine;

- born in the territory of Ukraine of a foreign citizen and of a stateless person permanently and lawfully residing in Ukraine and if that person did not acquire the foreign parent's citizenship by virtue of birth;

- a newborn child found in the territory of Ukraine, both of whose parents are unknown (a foundling).

A person entitled to the Ukrainian citizenship by virtue of birth shall be a citizen of Ukraine from the date of birth.

1. *Describe safeguards protecting the access to origins (CRC art. 7 and 8) that are currently being implemented in your State. Note whether and how such general safeguards protecting the access to origins apply in the context of surrogacy arrangements.*

N/A

1. *Describe how the right to access to origins is balanced with the right to privacy of parents and gamete donors. Indicate specifically how the best interests of the child are factored in.*

The donors undertake the obligation not to establish the personality of the patient (recipient) and of the child, born as a result of using ART, by signing the informed voluntary consent for gamete donation and the informed voluntary consent for embryo’s donation (the forms of the relevant consents are adopted by the order of the Ministry of HealthCare of Ukraine on September 09, 2013, No 787 On approval of the Order on the use of assisted reproductive technologies in Ukraine).

1. *Describe safeguards protecting the family environment (CRC art. 7, 8, 9, 10, 20) that are currently being implemented in your State. Note whether and how such general safeguards protecting the family environment apply in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in.*

The Chapter 13 of the Family Code of Ukraine (FCU) establishes the personal non-property rights and obligations between parents and children.

In particular, Article 141 establishes equality of the rights and obligations of parents concerning a child, irrespectively whether they were married or not.

Article 153 of the FCU establishes the right of parents and a child for unimpeded communication with each other, except the cases when this right is limited by the law.

Articles 157-159 of the FCU contain the provisions concerning parents’ decisions upon the matters relating to upbringing of the child; decisions by the Custody and Care Authority or the court of the dispute about participation in the child’s upbringing by the parent who does not live with the child.

Article 161 of the FCU contains provisions on considering the dispute between a mother and a father about the place of residence of a minor child.

According to Article 168 of the FCU a mother, a father deprived of their parental rights may take legal action for obtaining the right to access to their child. The court may allow one-time, periodic access to the child unless such access is damageable to the life, health and moral upbringing of the child, on the condition of the presence of another person.

Article 170 of the FCU provides for the cases when a court or Custody and Care Authority may order the separation of a child from his/her parents without depriving them of parental rights, in particular when the child’s life or health is seriously endangered.

Article 171 determines that a child has the right to due regard to his/her view in decisive matters related to his/her life.

Section IV of the FCU provides for the possibilities of placement of children deprived of parental care.

According to Article 123 of the FCU if a wife is fertilized by using ART upon written consent of her husband, the latter is registered as a father of a child born by his wife.

In case of transfer into the woman's organism a human's embryo, concepted by spouses (man and woman) as a result of ART, the latters are the child's parents.

The spouses are also considered to be the parents of the child, born by the wife after transfer into her organism of a human's embryo, concepted by her husband and another woman as a result of ART.

Thus, the provisions of the FCU regarding the rights and obligations of children and parents apply to a child born as a result of ART and to the relations between the partiesof surrogacy arrangements.

1. *Provide information on existing laws, regulations or practices for the establishment, recognition and contestation of legal parentage. Indicate specifically how the best interests of the child are factored in.*

According to Article 122 of the FCU a child born in marriage is presumed to originate from the spouses. The fact that a child is originated from the spouses is established on the basis of a marriage certificate and a document of the medical institution attesting that a wife has given birth to a child.

A child born before ten months has elapsed after the termination of the marriage or its annulment is considered originated from the spouses.

The spouses, a wife and a husband, whose marrige was terminated, in case a child was born before ten months has elapsed after the termination of their marriage, have the right to submit to the State civil registration authority a joint statement on not recognizing the husband (former husband) as the child’s father. Such a request may be satisfied unless the other person or the mother of the child applies for the recognition of the paternity/maternity.

If a child was born before ten months has elapsed after the termination of the marriage due to the death of a husband, the origin of the child from the father may be etablished by the joint statement of a mother and a man who considers himself as a father.

If a mother and a father of a child are not married to each other, the origin of the child from the mother is determined on the basis of the certificate issued by a health care institution about the delivery of the child by her, and origin from the father – upon the statement of the child’s mother and father or by a judicial decision (Art. 125 of the FCU).

The origin of a child from a father is determined by the statement of a woman and a man if they are not married to each other. Such a statement may be filed to the State civil registration authority both before and after the birth of a child (Art. 126 part 1 of the FCU).

Recognition of paternity may be made by the court decision in case of absence of the statement of parents.

According to part 3 of Article 128 of the FCU a claim for establishing parentage may be brought by a mother, custodian, caretaker of a child, person who supports and upbrings the child, as well as the child himself/herself provided that he/she has attained the full age. A person who claims to be the child’s father may bring a claim for establishing paternity.

For claims on the recognition of the parentage, a limitation period of one year is provided, starting with the day when a person learned or could learn about his paternity (Art.129 of the FCU).

Part 1 of Article 130 of the FCU determines that in case of death of a man who was not married to a child’s mother, the fact of his paternity may be established by a judicial decision.

A person who considers herself the mother of the child may apply to the court for recognition of her maternity if the State registration of birth of the child whose parents are unknown is performed upon the decision of a tutorship and guardianship authority (Art.131 of the FCU).

According to part 1 of Article 132 in case of death of a woman who claimed to be a child’s mother, the fact of her maternity may be established by a judicial decision.

A court gives effect to the application for establishing the fact of maternity if a record on the mother has been entered in the Birth Register in accordance with part 2 of Article 135 of the FCU.

Article 136 of the FCU provides for contesting parentage by a person who has been registered as a child’s father.

Thus, a person who has been registered as a child’s father in accordance with Articles 122, 124, 126 and 127 of the FCU has the right to contest his parentage by bringing a claim to withdraw his name as the child’s father from the birth record.

In case of proving the absence of blood relationship between a child and a person registered as the father, a court decides to withdraw the name of the person as the child’s father from the record of birth of this child.

Parentage may be contested after the child was born and untill the child has attained the age of majority.

Contesting parentage is not allowed in case of the child’s death.

A person recorded as the father of a child has no right to contest paternity if at the time of registration as the father he knew that he was not the child`s father.

The same relates to a person who has agreed to use ART in accordance with the law (part five of Art.136 of the FCU).

Article 137 of the FCU provides for contesting parentage after the person registered as the child’s father has died.

Thus, if a person registered as the child’s father had died before the child’s birth, his heirs have the right to contest his paternity, provided that when he was still alive, he has lodged with a notary the application for non-recognition of his paternity.

If a person registered as the child’s father dies after he lodged the application for withdrawing his name as a child’s father from the birth record, his heirs may maintain the statement of claim in the court.

If, for valid reasons, a person was unaware that he had been registered as a child’s father and died, his heirs (wife, parents and children) may contest his paternity.

The statute of limitations does not apply to a man’s claim to withdraw his name as a child’s father from the birth record.

According to Article 138 of the FCU, a woman who has given birth to a child when being married has the right to contest paternity of her husband.

One year statute of limitations is applied to the mother’s claim to introduce changes to the birth record. Such statute of limitations starts to run on the day, when the child’s birth was registered.

Article 139 of the FCU provides for the right of a woman, registered as a child’s mother, to contest her maternity.

A woman who claims to be a child’s mother may bring an action against the woman registered as the child’s mother to establish her maternity. Contesting maternity is not allowed in cases of consent for ART.

One-year statute of limitations is applied to the claim for establishing maternity. Such statute of limitations starts running on the day when the person has learned or could have learned that she was the child’s mother.

1. *Specify how the establishment of parentage occurs in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in.*

According to Article 123 of the FCU in case of transfer into the woman's organism of a human's embryo, consented by spouses (man and woman) as a result of ART, the spouses are the child's parents. Spouses are also considered to be the parents of a child, born by a wife after transfer into her organism of a human's embryo, consented by her husband and another woman as a result of ART.

A person recorded as the father of a child does not have the right to contest the paternity if at the time of registering himself as the father he knew that he wasn’t the child’s father, as well as a person who agreed to use ART in accordance with the law (part 5 of Art.136 of the FCU).

Sale of children

1. *Provide information on the laws prohibiting the sale and trafficking of children as well as corresponding implementation measures. Note whether and how such general safeguards against the sale and trafficking of children apply in the context of surrogacy arrangements.*

The prohibition of sale and trafficking in human beings, in particular minors, is established in Article 149 of the Criminal Code of Ukraine.

**Article 149.** Trafficking of human beings

1. Trafficking in human beings, as well as recruitment, transportation, harbouring, transfer or receipt of a person, committed for the purpose of exploitation, by means of use of force, abduction, deception, blackmail, financial or other dependency of the victim, his/her vulnerable situation or bribing of the third person, who controls the victim, in order to get a consent to his/her exploitation shall be punishable by imprisonment for a term of three to eight years.

1. The acts specified in Part 1 of this Article, committed in respect of **a minor** or of several persons, or repeatedly, or committed by a group of persons acting in conspiracy, or by an official with the abuse of his/her official position, or accompanied by violence, which poses no threat to life or health of the victim or his/her relatives, or with threat of such violence, shall be punishable by imprisonment for a term of five to twelve years, with or without the forfeiture of the property.
2. The acts specified in Part 1 or Part 2 of this Article, when committed in respect of a child [aged from 14 to 18 years](https://www.multitran.com/m.exe?l1=1&l2=2&s=minors%20aged%20from%2014%20to%2018%20years&split=1) by his parents, adoptive (foster parents, guardian or tutor), or committed in respect of a child [aged from 0 to 14 years](https://www.multitran.com/m.exe?l1=1&l2=2&s=minors%20aged%20from%2014%20to%2018%20years&split=1), or by an organized crime group, or accompanied by violence, which poses threat to life or health of the victim or his/her relatives, or accompanied by threat of violence, or if those acts caused any grave consequences shall be punishable by imprisonment for a term of eight to fifteen years with or without the forfeiture of the property.

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