

Response of the Government of Latvia

Identity, origins and parentage

5. Provide information on existing laws, regulations or practices for the establishment, recognition and contestation of legal parentage.

Pursuant to paragraph 2, article 8 of the Law on the Protection of the Rights of the Child, a child has the right to retain his or her identity.

Pursuant to article 24 of the Law on Registration of Civil Status Documents, it is the duty of the parents to inform the General Registry institution about the birth of a child within a month from birth. If the parents fail to do so, a midwife, doctor or other person who was present at the birth has the duty to notify the General Registry. To notify the General Registry one must submit a medical certificate issued by a medical treatment institution or a medical practitioner confirming the birth.

Surrogacy in the meaning of a health care service is not recognized or legally regulated in Latvia. There is no legislation recognising surrogacy and hence there is no way to transfer parentage to the commissioning parent. Even though the term „surrogacy” and „surrogate-mother” is not used and prohibition of surrogacy is not included in legislation, interpreting the norms of the Civil Law and Sexual and Reproductive Health Law one can conclude that surrogacy is not allowed in Latvia. Article 146 of the Civil Law states that the mother of a child is the woman who has given birth to the child. Moreover, the Sexual and Reproductive Health Law indirectly indicates prohibition of commercial surrogacy by prohibiting the use of gametes of the donor or the embryo for commercial purposes.

At the same time the legislation of Latvia provide options for potential parents who are infertile or do not wish to give birth to a child. A person may become a parent either by undergoing medical impregnation or through adoption.

The Sexual and Reproductive Health Law regulates legal affairs in the sphere of sexual and reproductive health, including diagnosis and treatment of infertility, medical impregnation, protection of unborn life, and the sexual and reproductive health of every person. The law defines that a medical impregnation shall be carried out only in medical treatment institutions that comply with legal requirements and use medical technologies certified in Latvia.

Legislation on adoption does not provide for the possibility to adopt a concrete child, even in cases when the adopters are donors of gametes or embryo. The Adoption procedure is regulated by the Civil Law and the 30 October 2018 Cabinet Regulation No. 667 „Procedures for Adoption”. The Republic of Latvia has also ratified the European Convention on the Adoption of Children and the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. According to Article 169 of the Civil Law all parties of the adoption must give their consent: the adopter; the adoptee if he or she has reached the age of twelve years; the parents of a minor adoptee if they have not had custody rights removed, or a guardian. A mother may not give her consent to the adoption of her child earlier than six weeks after birth. Article 168 states that an adoption may not be limited by any conditions or terms whatsoever. This means that a surrogate mother cannot give her consent for the adoption for a concrete adopter (donor of

gametes or embryo).

In addition to the legal status of a child born as a result of medical fertilization, the Sexual and Reproductive Health Law (Section 21) prescribes that a child born as a result of medical impregnation is considered to be born of the marriage, if the marriage of the potential parents at the time of medical impregnation was registered. In cases where the marriage of the potential parents is not registered, for determination of the legal status of a child born as a result of medical impregnation, the provisions of the Civil Law shall be applied, insofar as they are not contrary to the provisions of this Law.

Regarding paternity, the Sexual and Reproductive Health Law (Section 22) foresees that potential parents, their parents and guardians do not have the right to request the recognition of paternity of the gamete donor for a child conceived as a result of medical impregnation. The parents and guardians of a child born via medical impregnation do not have the right to request recognition of paternity of the gamete donor. Meanwhile a gamete donor shall not have the right to recognition of paternity or to request the recognition of paternity of a child born as a result of medical impregnation. The parents and guardians of the gamete donor also cannot request recognition of paternity.

If parents of the child do not make a claim for their child, adoption is vacillated to provide the child a safe environment for his or her development (Article 31 of the Children Rights Protection). Adoption of a minor child shall be permitted if it is in the interests of the child.

The Ministry of Health has no information on cases when Latvian women provided surrogate services to foreign families or Latvian families used foreign surrogate services. However, in the experience of the Ministry of Welfare, there was a case when surrogacy was regulated through adoption. A husband stated a filiation (paternity) to a child conceived as a result of a medical impregnation and born from another woman, not his wife; the woman who gave birth gave her consent to the adoption and the wife of the child's father adopted the child as her spouse's child.

4. 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.

Since surrogacy is not legally regulated in Latvia, there are no special safeguards that apply in the context of surrogacy arrangements. Section 7.1 of the Law on the Protection of the Children's Rights states that each child has an inalienable right to family. According to Section 181 of the Civil Law the child has the right to maintain personal relations and direct contact with both parents (access rights). Each parent has the duty and the right to maintain a personal relationship and direct contact with the child. This rule also applies if the child is separated from the family or does not live with one of the parents or both parents. The parent who does not live with the child has the right to receive information about him/her, especially about his / her development, health, educational progress, interests and local circumstances. A child has the right to maintain personal relations and direct contact with his brothers, sisters and grandparents, as well as with other persons with whom the child has lived in the common household for a long time, if this is in the best interests of the child (access rights). Everyone has a duty to refrain from activities that may have a negative impact on the child's relationship with the parent.

Legally the separation of the child from the family is allowed only if the life, health or development of the child is seriously threatened due to violence or if there are justified suspicions regarding violence against the child, as well as due to lack of care or due to the circumstances of his or her home (social environment; the child is seriously threatening his or her health or development by using alcohol, narcotic or toxic substances; or the child has committed a criminal offence). In the case mentioned above the child shall be separated from the family if it is not possible to allay the circumstances unfavorable to the development of the child if he or she remains in the family. The eviction of a family from their accommodation/housing is not a reason to separate a child from his or her parents.

When separating a child from his or her family, he or she shall be ensured out-of-family care with a guardian, a foster family or in a childcare institution, as well as free-of-charge emergency care in medical treatment institutions or assistance in rehabilitation institutions. A child shall be primarily ensured a possibility to grow with a guardian or in a foster family. Out-of-family care in a childcare institution shall be ensured if care received from a guardian or in a foster family is not appropriate for the particular child. The child shall stay in a childcare institution until he or she is ensured appropriate care by a guardian or in a foster family (Section 27 of the Law on the Protection of the Children's Rights). Even if a child has been placed under guardianship or with a foster family or has been placed in a childcare institution, he or she according to Section 33 of the Law on the Protection of the Children's Rights still has the right to maintain personal relationship and direct connection with parents, as well as with brothers, sisters, grandparents and persons with whom the child has lived for a longer period of time in a common household.

5. 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 national legislation, regulations related to the paternity of a child and any dispute thereof shall be decided in accordance with Latvian law, if the place of residence of the mother of the child at the time of the birth of the child was Latvia (Section 14 of the Civil Law). Regarding the establishment and recognition of parentage, Latvian law provides the following.

According to Section 146 of the Civil Law the mother of a child is recognized as the woman who has given birth to the child. If the child is born to a woman who is married, the husband is recognized as the father (paternity presumption). The same presumption of paternity applies if the marriage ended due to the death of the husband, a divorce, or the declaration of the marriage was annulled – if the said birth occurred no later than 306 days after the end of the marriage. Meanwhile a child who is born to a woman not later than 306 days after the end of a marriage, shall, if the woman has already remarried, be considered born in the new marriage. Filiation of the child from the father who is in marriage or has been in marriage with the mother of the child shall be certified by a record in the marriage register. Paternity presumption shall not be in force if paternity has been acknowledged differently in the case, if the mother of the child, husband of the mother of the child or former husband of the mother of the child or natural father of the child submit a joint application to the General Registry Office. If the filiation of a child from the father cannot be determined in conformity with the provisions mentioned above or a court has acknowledged that the child has not been born of his or her mother's husband, the filiation of the child from the father shall be based upon the voluntary acknowledgement of paternity or by the determination by a court

proceeding (Section 154 of the Civil Law). Section 148 of the Civil Law states that paternity presumption may be contested in court. Contestation of paternity presumption shall be commensurable with the right of the child to identity and a stable family environment. The same provision is laid down in the context of contesting the acknowledgment of paternity (Paragraph 5 of Section 156 of the Civil Law).

Cases regarding the determination of the parentage of a child shall be examined in accordance with general provisions laid down in the Civil Procedure Law and observing the exceptions provided for in this in Chapter 30 of the Civil Procedure Law.

There are no special procedural rules for surrogacy situations, including for determining the parentage if the child is born from surrogacy agreement concluded outside of Latvia, however, according to Section 1 of the Civil Procedure Law every natural or legal person has the right to protection of their infringed or disputed civil rights or interests protected by law in court. The person who has applied to a court has the right to have their case examined by a court in accordance with the procedures laid down in law.

Sale of children

In order to facilitate and make the protection of the child from illegal activities more effective, Paragraph 2 of Section 51 of the Law on the Protection of the Children's Rights states that a child who is a victim of a criminal offence, exploitation, sexual abuse, violence or any other unlawful, cruel or demeaning acts, shall, in accordance with procedures stipulated by the Government, be provided with emergency assistance free of charge, so that a child may regain physical and mental health and reintegrate into society. Such medical treatment and reintegration shall take place in an environment favorable to the health, self-esteem and trust of a child, carefully guarding the child's intimate secrets.

The Criminal Law does not provide direct criminal liability for violations of the rights of children born through surrogacy, because the question of surrogacy is not regulated in Latvian legislation. At the same time, criminal liability for human trafficking as provided for in Section 154.1 of the Criminal Law may be considered in certain cases, depending on the actual circumstances of the case. Section 154.2 of the Criminal Law contains a definition of human trafficking, which provides that human trafficking is the recruitment, transportation, transfer, concealment, accommodation or reception of persons for the purpose of exploitation, committed by using violence or threats or by means of deceit, or by taking advantage of the dependence of the person on the offender or of his or her state of vulnerability or helplessness, or by the giving or obtaining of material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent. Paragraph 2 provides that recruitment, transportation, transfer, concealment, accommodation or reception of a minor for the purpose of exploitation shall be recognized as human trafficking also in such cases, if it is not connected with use of any of the means referred to the Paragraph one of this Section. Paragraph 3 of the Section states that within the meaning of this Section, exploitation is the involvement of a person in prostitution or other kinds of sexual exploitation, the compulsion of a person to perform labor, to provide services or to commit criminal offences, the holding of a person in slavery or other forms thereof (debt slavery, serfdom or compulsory transfer of a person into dependence upon another person), and holding a person in servitude or also the illegal removal of the person's tissues or organs.

Regarding child trafficking, a list of activities is referred to in Paragraph 1 of Section 154.2 of the Criminal Law. Namely recruitment, transportation, transfer, concealment, accommodation or

reception, and the purpose referred to in Paragraph 3 of the Section: exploitation - sexual exploitation, compulsion of a person to perform labor, provide services or commit criminal offences, holding of a person in slavery or other similar forms (debt slavery, serfdom or compulsory transfer of a person into dependence upon another person), and holding a person in servitude or also the illegal removal of the person's tissues or organs.

Furthermore, Article 1(d) of the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices to Slavery, provides that institutions and practices similar to slavery is any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor.

Currently there is no criminal liability arising directly for infringements of the legal aspects of surrogacy. Liability would be applicable if other criminal activities were identified, which are currently covered by the Criminal Law.

Although Latvian legislation does not provide special regulations for situations when it is necessary to protect a child born from a surrogacy agreement, Latvia ensures the rights and freedoms of all children without any discrimination. When necessary and jurisdiction allows, Latvia provides assistance and protection as the best interests of the child requires.

Data

4. For countries where surrogacy is prohibited, please indicate the number of cases where nationals have made a surrogacy arrangement abroad and have returned to their country of origin with the surrogate-born child.

Such cases are not explicitly registered and therefore no data is available.

Article 3 of the Law on Registration of Civil Status Documents prescribes that a diplomatic and consular representation of the Republic of Latvia in a foreign state shall register the fact of birth when notified.

According to Article 31 of the Law on Registration of Civil Status Documents, when registering the fact of the child's birth in the Birth Register, data about the child's parents shall be included. Article 34 stipulates that information regarding the mother of a child shall be entered on the basis of a medical certificate issued by a medical treatment institution or a medical practitioner, confirming the fact of the birth of the child because, as stated above, Latvia recognizes the mother as the woman who has given birth. If filiation (paternity) of the child is not known before registering the birth, only data of the mother is recorded.

However, one should note that Latvian citizens who have used the services of a surrogate mother abroad also have the possibility to register the birth of the child in the Civil Status Register of the foreign state. In such cases, the birth of the child will be registered according to the laws of the state where the child was born. Latvian normative acts do not allow for the possibility to not acknowledge a child whose birth was registered abroad. Thus, if a woman has used a surrogate mother abroad and, in line with the laws of the given state, registered herself as the mother of the child, Latvia would also recognize her as the mother, despite the fact that she was not the one to

give birth to the child. The same would apply in the case if a Latvian citizen or non-citizen agrees to become a surrogate mother, giving birth and registering the child abroad, and acknowledging as his mother another woman, not herself who has given birth, in a state where laws provide for such a possibility.