

Comparative Analysis of the Legal and Policy Landscape on (Trafficking for the Exploitation of) Surrogacy Across Europe

How is current surrogacy legislation applied
and how are (exploitative) surrogacy practices
connected to human trafficking?

**La Strada International,
October 2025**

Including Country Profiles

About La Strada International (LSI)

La Strada International is a European anti-human trafficking NGO platform, which supports trafficked persons from a human rights perspective. The platform aims to prevent human trafficking, and help trafficked persons to realise their rights. This is done by providing victims with access to adequate assistance and support, and via information and knowledge exchange, capacity building for NGOs and other stakeholders, and the promotion of cross-sectoral cooperation. The platform further works on research, monitoring and advocacy to drive systemic change and ensure that European Anti-Trafficking policies and regulations are implemented effectively and with accountability.

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Glossary of terms

Term	Definition
Surrogacy	Surrogacy is an arrangement between a prospective surrogate/surrogate mother and (a) prospective intended parent(s) that is made before a child is conceived and provides that, following the child's birth, the parties intend for the intended parent(s) to be the child's legal parent(s) and for the child to be placed into the care of the intended parent(s) ¹ .
Gestational surrogacy	A surrogacy arrangement in which the surrogate does not provide her own genetic material and thus the child born is not genetically related to the surrogate. Such an arrangement will usually occur following IVF treatment. The gametes may come from both intended parents, one, or neither. This may be an altruistic or for-profit arrangement. ²
Traditional surrogacy	A surrogacy arrangement where the surrogate provides her own genetic material (egg) and thus the child born is genetically related to the surrogate. Such an arrangement may involve natural conception or artificial insemination procedures. This may be an altruistic or for-profit arrangement. ³
Commercial surrogacy	A surrogacy arrangement in which the intended parent(s) pay the surrogate financial remuneration which goes beyond her "reasonable expenses". This may be termed "compensation" for "pain and suffering" or may be simply the fee which the surrogate mother charges for carrying the child. This may be a gestational or a traditional surrogacy arrangement. N.B. It is often difficult to distinguish between an altruistic surrogacy arrangement and a for-profit arrangement. ⁴
Altruistic surrogacy	A surrogacy arrangement in which the intended parent(s) pay(s) the surrogate nothing or, more usually, only for "reasonable expenses" associated with the surrogacy. No financial remuneration beyond this is paid to the surrogate. This may be a gestational or a traditional surrogacy arrangement. Such arrangements often (but not always) take place between the intended parent(s) and someone they may already know (e.g. a relative or a friend). ⁵

¹ Hague Conference on Private International Law, 2022. Parentage / Surrogacy Experts' Group: Final Report "The feasibility of one or more private international law instruments on legal parentage, <https://assets.hcch.net/docs/6d8eeb81-ef67-4b21-be42-f7261d0cfa52.pdf> (p.25) (accessed on 30 September 2025)

² Hague Conference on Private International Law, 2014. "The desirability and feasibility of further work on the Parentage / Surrogacy Project" (Prel. Doc. No 3 B of March 2014), <https://assets.hcch.net/docs/6403eddb-3b47-4680-ba4a-3fe3e11c0557.pdf> (p.33) (accessed on 30 September 2025)

³ Idem

⁴ Idem

⁵ Hague Conference on Private International Law, 2014. "The desirability and feasibility of further work on the Parentage / Surrogacy Project" (Prel. Doc. No 3 B of March 2014), <https://assets.hcch.net/docs/6403eddb-3b47-4680-ba4a-3fe3e11c0557.pdf> (p.33) (accessed on 30 September 2025)

Surrogate (mother)	The woman who agrees to carry a child (or children) for the intended parent(s) and relinquishes her parental rights following the birth. In this paper, the term is also used to refer to a woman who has not provided her genetic material for the child. In these circumstances, surrogates are called “gestational carriers” or “gestational hosts” in some European states. ⁶
Intended parent(s) or commissioning parent(s)	The person(s) who request(s) another to carry a child for them, with the intention that they will take custody of the child following the birth and parent the child as their own. Such (a) person(s) may, or may not, be genetically related to the child born as a result of the arrangement. ⁷
Gamete (egg) donor	A woman who provides her eggs to be used by (an) other person(s) to conceive a child. In some States, such “donors” may receive compensation beyond their expenses. The question of the anonymity of “donors” also varies among States. ⁸
Palermo Protocol	Protocol to “Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children”, supplementing the United Nations Convention against Transnational Organized Crime. ⁹
THB	Trafficking in human beings
Exploitation of surrogacy	Surrogacy practices that comprise severe exploitative practices, including but not limited to the use of deception or force to obtain consent, taking advantage of someone’s poverty or vulnerability, absence of decent conditions, and lack of adequate compensation.
THB for the exploitation of surrogacy	When exploitation of surrogacy also comprises all the elements of the human trafficking offence (act, means and purpose), i.e. when it involves coercion, deception, or abuse of vulnerability for exploitative purposes.
Continuum of exploitation	A spectrum of exploitation within surrogacy practices with, at one end, practices in which surrogate mothers are treated with dignity and are compensated for their service, bad practices such as rights breaches (e.g. discrimination, lack of compensation) situated along the continuum, and severe exploitation such as human trafficking and forced surrogacy at the opposite end. Where minor breaches of rights occur and are not sufficiently addressed, the risk of more severe exploitation along the continuum increases.
(EU) Anti-trafficking Directive	Directive ((EU) 2024/1712) of the European Parliament and of the Council, of 13 June 2024, amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

⁶ Hague Conference on Private International Law, 2014. “The desirability and feasibility of further work on the Parentage / Surrogacy Project” (Prel. Doc. No 3 B of March 2014), <https://assets.hcch.net/docs/6403eddb-3b47-4680-ba4a-3fe3e11c0557.pdf> (p.34) (accessed on 30 September 2025)

⁷ Idem

⁸ Idem

⁹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

Executive summary

On 14 July 2024, the recast EU Anti-Trafficking Directive entered into force, explicitly recognising the **“exploitation of surrogacy”** as a form of human trafficking, provided it meets the elements of the human trafficking definition (the means, the act, and the purpose of exploitation). While even before this amendment, the exploitation of surrogacy, could in principle already be prosecuted under human trafficking law, as long as all legal criteria were fulfilled, the EU legislators felt this explicit inclusion was needed to reflect the gravity, as well as the (presumed) prevalence and the relevance of this form of exploitation. As such it refers to a legal and political move to explicitly recognize that surrogacy arrangements can be exploitative and may amount to human trafficking, when women are coerced or deceived into acting as surrogate mothers with the purpose of their exploitation.

To gain a deeper understanding of the scope of potentially exploitative surrogacy practices, this study considers the current legal and policy frameworks in Europe and their practical application, while also analysing the conditions under which surrogacy may be linked to, or constitute, human trafficking. Thereto, this comparative report analyses how 38 European countries, including all 27 EUMS, currently regulate surrogacy and deal with trafficking-related risks, ahead of full transposition of the Directive. It has been produced using in-depth desktop analysis of all observed countries, with the findings confirmed by LSI members where possible.

We acknowledge that, due to the ongoing transposition period and the fact that EU Member States are currently revising national laws and regulations, some of the information presented in this report may soon become outdated. This report should therefore be regarded as a baseline against which future developments and changes can be measured.

Key findings

- **Surrogacy is not inherently trafficking in human beings (THB)** and the two practices should be clearly distinguished. Most European legal systems treat surrogacy as a civil matter involving parentage and contracts, not as an issue of criminal law.
- In Europe, only **Moldova** criminalised the exploitation of surrogate mothers under their human trafficking law, prior to the amendment of the EU Anti-Trafficking Directive, and it reported just **one case** in the past decade.
- Where **regulated and altruistic surrogacy** exists (e.g. in Greece, Cyprus and the United Kingdom), legal frameworks include strong safeguards (e.g. medical necessity, court oversight), that arguably help minimise THB risks.
- **Detection or identification of cases of human trafficking for the exploitation of surrogacy remains rare.** In the period from 2022 to 2024, Ukraine identified six trafficking cases involving surrogacy out of a total of 264 surrogacy-related cases, suggesting that such instances were isolated. Other notable but unresolved or limited cases were identified in **Greece, Portugal, and Bulgaria**. For a detailed analysis see [ANNEX 1](#), and for all Ukrainian cases see [ANNEX 5](#).
- Eurojust confirmed that “only two cases involving trafficking in human beings for illegal surrogacy have been registered at Eurojust since 2000, namely in 2021 and 2023”. These two cases, both related to illegal surrogacy, are the only ones recorded over a span of 25 years.

- Despite the recast Directive's assumption of the prevalence and gravity of human trafficking for the exploitation of surrogacy, only **eleven trafficking cases** involving surrogacy have been documented across Europe (see [ANNEX 1](#) for details)
- Notable patterns and tactics that can be discerned from the aforementioned Ukrainian cases and, to the extent that it is possible, from the one case discussed in the Greek media, include:
 - Recruitment framed as a legal income opportunity for vulnerable women
 - False claims about the legitimacy of the programme and the identities of the clients
 - Legal infrastructure (lawyers, translators, notaries) used to facilitate fraud
 - Medical personnel misled
 - Birth certificates falsely registered
 - Children transferred abroad under false pretences
 - Clinic staff **deceived by the clinic director**; medical personnel performed IVF based on false claims that clients were in legal heterosexual relationships
- **Among the non-THB-related criminal cases** we observed, we found that, even when surrogacy arrangements contravene domestic law, authorities tend to prosecute them under charges such as illegal adoption or document fraud rather than as human trafficking offences. In cases in which the intent appeared to be the formation of a family rather than financial gain, courts often showed restraint, resulting in acquittals, suspended sentences or relatively minor fines. This reflects a general reluctance to treat intended parents or surrogates as traffickers, particularly when such prosecution could adversely affect the welfare of the child (for a more detailed analysis see [ANNEX 2](#)).
- In parallel, **jurisprudence from civil, administrative, and human rights cases** in Europe reveals a tension between enforcement of restrictive surrogacy policies and the protection of children's rights. What emerges from these cases – particularly in countries such as Austria, Belgium, Czechia, Finland, Germany, and Luxembourg, as well as from European Court of Human Rights (ECtHR) rulings (*Mennesson, Labassee, Foulon, D. v. France; K.K. v. Denmark; C. v. Italy*) – is a trend towards recognizing parent-child relationships resulting from surrogacy, especially when a genetic link exists. Courts have increasingly prioritized the best interests of the child, emphasizing legal identity and family continuity, which has led even restrictive jurisdictions to allow partial recognition through the acknowledgment of paternity or through adoption pathways (for a more detailed analysis see [ANNEX 2](#)).

Relevant international law

In international law, surrogacy is not defined under any legally binding convention although efforts were made at the Hague Conference on Private International Law (HCCH) to harmonize international surrogacy arrangements. Nevertheless, authoritative sources do exist and can be used as guidance. The most prominent are the so-called “Verona Principles”, along with reports from the working group of the HCCH, as well as the UN Convention on the Rights of the Child. Additionally, and particularly influential in the context of the observed countries, is the jurisprudence of the ECtHR. In that respect, of particular importance is the ECtHR's advisory opinion No. P16-2018-001 (2019, §§ 36–38, 37–46, 43–44, 51–55).¹⁰ This states that, where a de facto parent-child relationship exists, Article 8 requires States to ensure the

¹⁰ Council of Europe, European Court of Human Rights (2019). Advisory Opinion No. P16-2018-001, <https://hudoc.echr.coe.int/fre?i=003-6380464-8364383> (retrieved on 20 April 2025)

possibility of legal recognition of the intended mother, as it is largely accepted that the parenthood of an intended father with a genetic link to a child born out of surrogacy can be acknowledged. The advisory opinion went on to request that this recognition must be prompt and efficient, while leaving the choice of means within the margin of appreciation. This wide discretionary scope is exemplified by the ECtHR's acknowledgement in *Paradiso and Campanelli v. Italy* [GC] (2017, §§ 147–158, 161–165, 203–215)¹¹ that, in the absence of biological links and in breach of domestic law, the permanent removal of the child from intended parents can be considered proportionate and within the State's margin of appreciation.

None of these sources label surrogacy as Trafficking in Human Beings, including the arguably more critical reports from the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. One commonality among them, however, is reference to the inherent risk of exploitation stemming from unregulated commercial surrogacy arrangements. For more details on these sources, please consult section 1 below.

The comparative legal landscape

On the domestic level, analysed in section 2 below and in the country profiles in [ANNEX 3](#), it can be observed that only **nine out of 38 countries** studied, have dedicated surrogacy legislation: Cyprus, Greece, Ireland, Albania, North Macedonia, Belarus, the United Kingdom, Denmark, and Ukraine. Most allow only altruistic surrogacy, while Ukraine and Belarus permit commercial arrangements.

Twenty-four countries criminalise surrogacy¹² in some form, yet only 10 criminalise the actions of intended parents or surrogates themselves¹³. **Italy** is the only country to criminalise surrogacy conducted abroad.

Recognition of international surrogacy arrangements is relatively harmonised. Most countries recognise parenthood established via international surrogacy: 25 allow recognition of both parents¹⁴, six recognise only the father (with adoption required for the mother to be recognised),¹⁵ and seven require both to adopt.¹⁶ These recognition practices often reflect **ECtHR jurisprudence**, which emphasises the child's best interests while granting States a **wide margin of appreciation**.

Implications for implementation

As mentioned, we found only **eleven trafficking cases** involving surrogacy documented across Europe (see [ANNEX 1](#) for details). Most of the identified surrogacy-related legal procedures concern **parentage** rather than coercion or trafficking. Surrogacy only becomes human trafficking when all the elements of the legal human trafficking definition are met (the means, the act and the purpose of exploitation).

¹¹ Council of Europe, European Court of Human Rights (2017). *Paradiso and Campanelli v. Italy* [GC], <https://hudoc.echr.coe.int/eng?i=001-170359> (retrieved on 20 April 2025)

¹² Austria, Bulgaria, Croatia, Czechia, Slovakia, Estonia, Finland, France, Germany, Hungary, Italy, Malta, Netherlands, Portugal, Romania, Slovenia, Spain, Sweden, Serbia, Turkey, Bosnia, Montenegro, Moldova, Switzerland

¹³ Croatia, Slovakia, Estonia, Finland, France, Hungary, Italy, Malta, Slovenia, Spain

¹⁴ Cyprus, France, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Sweden, Serbia, Turkey, Bosnia, Albania, Montenegro, North Macedonia, Moldova, Belarus, United Kingdom, Ukraine, Germany, Switzerland

¹⁵ Austria, Belgium, Bulgaria, Czechia, Slovakia, Finland

¹⁶ Croatia, Estonia, Italy, Lithuania, Malta, Poland, Romania, Bulgaria, Serbia

The current **diverse approaches of EU Member States**, as visible in current national legislation and policy (further analysed in section 2 below and in the country profiles in [ANNEX 3](#)), and the fact that the amendments made to Directive 2011/36/EU by the 2024 Directive do not alter how surrogacy is defined under existing national laws, suggests that a **harmonised legal framework is unlikely**.

The exploitation of surrogacy, like labour exploitation, may exist on a **continuum of exploitation**, making it difficult to state definitively whether criminal thresholds have been met. The 2024 Directive recognizes this in its definition of the exploitation of surrogacy in Point 6 of its Preamble, in which it stipulates that: *“More specifically, as regards **trafficking for the exploitation of surrogacy**, this Directive targets those who coerce or deceive women into acting as surrogate mothers.”* The case from Greece is also relevant here because the prosecution has had difficulties defining the alleged perpetrators as part of a human trafficking ring – despite their portrayal in the media as such – as none of the women living and providing surrogacy services under ostensibly unacceptable conditions agreed to testify in the trafficking-related proceedings. The European Union Agency for Criminal Justice Cooperation (Eurojust) has confirmed this and also highlighted other challenges to the practical implementation of the Directive.¹⁷

Overview of the remainder of this report and its integral annexes

Reaching the conclusions above involved extensive desktop research and LSI member and other experts' input across all the countries observed. As further outlined in part 1.1. of the introductory section below, the methodology leans strongly on local sources and has been checked for credibility with members of LSI where possible.

Having explained the methodology behind the report, this study moves on to look at international law as it strives to summarize all the relevant instruments tackling the matter of (primarily) international surrogacy arrangements.

These considerations, and especially the jurisprudence of the ECtHR, inform the legal landscape of the countries observed to a significant degree. The general overview of these legislative frameworks is examined as the first subsection of the comparative analysis section, which also looks at irregular and illegal practices around surrogacy, asking when these amount to human trafficking for the purpose of exploitation of surrogacy, according to the relevant legislation.

The study then outlines the conclusions inferred from the entirety of the research in section 3 and provides an overview of the report's annexes, including a detailed analysis of the sources used to create the comparative analysis and reach its conclusions.

Similarly, [ANNEX 1](#) contains an overview of all the THB-related cases found and analysed as part of the research – including an analysis of elements of the human trafficking definition relating to the EU Directive – and places these cases in a broader context. In an attempt to establish an overall legal framework, other non-THB related cases where found are summarized in [ANNEX 2](#) of this study.

¹⁷ Eurojust. (2024, October 18). *Surrogacy and human trafficking*. European Union Agency for Criminal Justice Cooperation. <https://www.eurojust.europa.eu/publication/surrogacy-and-human-trafficking> (last accessed on 02.06.2025)

Profiles of the countries examined constitute the most significant part of this study, and are presented in [ANNEX 3](#). These profiles were informed by thematic and country-specific research carried out during the study process and have served as building blocks for this report and other annexes.

One of the goals of this study was to establish a comparable baseline report prior to transposition of the Directive and, for this reason, the information outlined in this report is presented in tabular form in [ANNEX 4](#). Lastly, due to the fact that the Ukrainian case law database yielded more than 300 cases in which the word “surrogacy” is mentioned, a database of these cases was created and is presented in [ANNEX 5](#). Summarized information on cases found in this database is available in [ANNEX 1](#) (with reference to THB-related cases and their relation to the totality of cases examined) and in [ANNEX 2](#) (with reference to non-THB-related case law).

1. Introduction and Relevant International Law

On 14 July 2024, the revised EU Anti-Trafficking Directive entered into force, requiring EU Member States (EUMS) to ensure that trafficking for the exploitation of surrogacy is punishable under human trafficking legislation.¹⁸ The text of the Directive noted that exploitation of surrogacy may already fall within the scope of the human trafficking offence, as defined in Directive 2011/36/EU, if all the criteria constituting this offence are fulfilled. The text of the recast Directive added that, “in view of the gravity of such practice, and in order to tackle the steady increase in the number and relevance of offences concerning trafficking in human beings committed for such purpose, it should be included as forms of exploitation in the Directive.”

For this reason – and due to the lack of adequate data, any recent comparisons with earlier findings, or any evidence clarifying the seriousness of or potential increase in human trafficking cases involving surrogacy – La Strada International (LSI) decided to conduct research into the current legal and policy landscape on surrogacy in Europe and its application in practice, next to checking the linkages of surrogacy practices in Europe with exploitation or human trafficking. The research is focused on all 27 EUMS and 11 other European countries in which LSI has a member organization. Most of these other European countries are EU accession countries and as such must align their legislation with EU law as part of the process of joining the European Union.

This comparative analysis aims to answer the following questions:

1. *Is surrogacy criminalised at the national level (e.g. treated as a separate criminal offence), and what does this entail?*
2. *Are there policies, legislation or criteria related to this, e.g. under which conditions is surrogacy allowed?*
3. *When does surrogacy become human trafficking and how can the three elements of human trafficking be proven?*
4. *Is there some case law/jurisprudence available? Or is there any other evidence of exploitative practices – such as referrals or requests for assistance and support – which might provide information on the gravity and/or possible increase of this form of exploitation in relation to human trafficking.*

1.1. Methodological notes

The methodology employed in this research and its limitations can be summarized as follows:

1. This research is desktop based and, where possible, has been verified by LSI members’ and other experts in relation to their particular country;
2. This research began with the examination of international materials and comparative analyses;

¹⁸ European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0036-20240714> (accessed on 30 September 2025)

3. In addition to these materials, domestic sources of information, obtained from searches of the internet and academic databases in each respective country, were also used;
4. Where non-English sources are used and cited, the original wording has been translated using Google Translate, which may lead to discrepancies;
5. All countries were researched in the same way by employing the following steps:
 - a. An internet search based on a prompt in English (“surrogacy law in [name of country]”);
 - b. An internet search based on a prompt in the local language (for example in German: “*Leihmutterschaft gesetz Deutschland*”);
 - c. These same searches in academic databases;
 - d. An examination of state inputs to GRETA, the monitoring mechanism on human trafficking established by the Council of Europe Convention on Action against Trafficking in Human Beings, including survey responses and reports as published on the dedicated CoE website;¹⁹
 - e. A review of inputs published on the website of an OHCHR-mandated Special Procedure – specifically the section containing submissions from states;
 - f. An examination of the official case law databases of all states examined using the search term “surrogacy” or “surrogacy motherhood” in local languages;
 - g. A review of the most recent reports produced by national anti-trafficking bodies or mechanisms using the search term “surrogacy” in the local language or in English.²⁰
6. For the purposes of confirming our findings, particularly considering the language barriers, LSI members were consulted where possible to verify the credibility of the sources and the accuracy of the research. Changes were then made in accordance with this feedback.
7. Along with the language barrier, one of the most challenging aspects of this research was the absence of clear definitions for “exploitation of surrogacy” or “THB for exploitation of surrogacy” – in fact, only Moldova explicitly mentions some form of exploitation of surrogate mothers in its human trafficking legislation. Furthermore, some of the countries observed define surrogacy differently from others (e.g. in France there is no specific term, but rather the phrase “*La gestation pour autrui*” or literally “*giving birth for another*” is used). Furthermore, the varying levels of publicly available judicial decisions posed a significant challenge. In some countries, such as Ukraine, Spain, or Portugal, nearly all judicial decisions are easily accessible, while in others, such as Greece, only excerpts are available for non-paying users. This creates a risk that some relevant decisions may have been missed. To mitigate this, findings were cross-checked and validated with input from LSI members, where possible.

1.2 Tracking the implications of the revised EU Anti-Trafficking Directive

The 2024 revision of the EU Anti-Trafficking Directive (Directive (EU) 2024/1712) explicitly lists “exploitation of surrogacy” as a form of exploitation under Article 2(3). As explained in Point 6 of the Preamble to the revision, this amendment obliges all EU Member States to criminalise THB for exploitation of surrogacy – meaning only those practices that meet the threshold for trafficking in human beings, i.e.

¹⁹ https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30

²⁰ Please note that, where these reports contained no reference to surrogacy, they are not mentioned or cited

those that involve coercion, deception, or abuse of vulnerability for exploitative purposes. The Directive particularly mentions that it *“targets those who coerce or deceive women into acting as surrogate mothers”*.

It is therefore important to note that the Directive does not criminalize surrogacy as such. This is evident from Article 2(5), which establishes that trafficking involving children is punishable even without the use of coercive means, except in cases of trafficking for the exploitation of surrogacy. This suggests that, in trafficking for exploitation of surrogacy-related cases, the potential victim under EU law is understood to be the surrogate mother, not the child, who is typically intended to be raised by the commissioning parents and is not the one at risk of exploitation in this situation. This distinction is crucial as surrogacy, particularly when altruistic and regulated, remains lawful.

However, EUMS are now expected – due to the obligation to transpose the amended EU anti-trafficking Directive - to reflect this change in their domestic laws, potentially introducing specific criminal provisions (although they are not legally bound to do so) or clarifying existing ones to address exploitation of surrogacy. This is where the potential for more overarching changes to surrogacy policy lies. Although the EU Directive does not require Member States to prohibit surrogacy, their status as parties to the ECHR, and the ECtHR’s recognition of a wide margin of appreciation in this area, may possibly encourage countries to ban the practice entirely, while allowing only limited recognition of foreign surrogacy arrangements. Another challenge here is the absence of agreed definitions on exploitation or the exploitation of surrogacy, and the lack of further guidance for EUMS on transposing the Directive on this point. Moreover, as the exploitation of surrogacy was added to the text at a very late stage of the negotiations, no adequate political debate or exchange among practitioners on the issue has been held. This situation is confirmed by Eurojust in one of its latest thematic publications.²¹

It is with regard to this issue that **this comparative analysis report could also be used. It serves as a baseline for (future) evaluating how EU Member States respond to this new obligation** and how others, such as EU Candidate Countries (e.g. Serbia and Turkey) will align their systems accordingly. For this reason, the report not only provides an overview of relevant legislative and regulatory national and international frameworks, including key applicable provisions in criminal and civil law, but also of national policies or practices allowing recognition of surrogacy, whether domestic or abroad, across all 38 countries. It also expands on the jurisprudence regarding trafficking for the exploitation of surrogacy cases. Going forward, it will be important to assess whether national laws will simply replicate the Directive by listing “exploitation of surrogacy” as a form of trafficking in human beings – essentially the requirement the Directive bears in this regard – or whether they adopt broader measures regulating or restricting surrogacy.

It will also be interesting to assess whether the definition of trafficking for the exploitation of surrogacy will be further defined at the national level, thereby providing more guidance to (legal and other) practitioners, or whether it will be left up to judges to interpret the law when cases of trafficking for exploitation of surrogacy are detected, investigated and prosecuted, and to decide which exploitative

²¹ Eurojust. (2024, October 18). *Surrogacy and human trafficking*. European Union Agency for Criminal Justice Cooperation. <https://www.eurojust.europa.eu/publication/surrogacy-and-human-trafficking> (last accessed on 02.06.2025)

surrogacy practices can be defined as human trafficking and which not, and when all elements of the crime are established.

1.3. Relevant international law

While surrogacy is arguably not specifically regulated in international law, there are several relevant international legal texts that deal with it indirectly. In that sense, the following international legal instruments are the most relevant:²²

- (1) The UN Convention on the Rights of the Child ("CRC");²³
- (2) The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography ("the OPCRC");²⁴
- (3) The 2018 and 2019 reports of the UN Special Rapporteur on the sale of children, child prostitution and child pornography on surrogacy ("the Special Rapporteur's reports")²⁵
- (4) The Verona Principles;²⁶
- (5) The Hague Conference on Private International Law (HCCH) and The Hague Convention on Parental Responsibility and Protection of Children;²⁷
- (6) The stances of the ECtHR based on its jurisprudence and advisory opinion.

1.3.1. The UN Convention on the Rights of the Child (CRC)

The CRC, its implementation guide, and its Optional Protocols all fail to specifically mention surrogacy in any form whatsoever. However, Article 35 of the CRC states that: "State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children **for any purpose or in any form.**" However, the implementation guide to the CRC states that, in order to apply Article 35, one should use the definition of human trafficking from Article 3(a) of the UN Trafficking Protocol, effectively rejecting that interpretation.²⁸ This is because, when one looks at the definition of human trafficking in that protocol from the perspectives of the surrogate mother and the commissioning

²² As summarized by: United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), <https://lawcom.gov.uk/project/surrogacy/> (p. 69-70)(accessed on 30 September 2025 on)

²³ UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989, <https://www.refworld.org/legal/agreements/unga/1989/en/18815> [accessed on 30 September 2025]

²⁴ UN Committee on the Rights of the Child (CRC), Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography : list of issues to be taken up in connection with the consideration of the initial report of Argentina (CRC/C/OPSC/ARG/1), CRC/C/OPSC/ARG/Q/1, 26 March 2010, <https://www.refworld.org/reference/countryrep/crc/2010/en/89634> [accessed on 30 September 2025]

²⁵ M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, 15 January 2018, A/HRC/37/60; and M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, 15 July 2019, A/74/162

²⁶ International Social Service (2021), Principles for the protection of the rights of the child born through surrogacy (Verona Principles)

²⁷ The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

²⁸ Hyder-Rahman, Nishat (2021) Commercial gestational surrogacy: unravelling the threads between reproductive tourism and child trafficking. Anti-Trafficking Review, 2021, link: <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/542/415> (p.14) (accessed on 30 September 2025)

parents, one can reach the following conclusions with respect to the three elements of the UN Trafficking Protocol definition of human trafficking:

i) the act – transferring the child(ren) from the surrogate to the commissioning parents constitutes the “act” in this context; intermediaries may be involved in the transport, harbouring, and receipt of the child(ren), ii) the means – in line with Article 3(b), there is no requirement for this element to be met; however, payments/benefits to the surrogate as the “person in control” of the child, physically and/or legally in her capacity as the automatic legal mother (bearing in mind the conflict of laws viz. parentage), or to the intermediaries in cases where the child(ren) is/are in intermediary care before being collected by the commissioning parents, could nonetheless constitute means, iii) the purpose – when it comes to the purpose however, there is arguably no exploitative purpose as the purpose of the arrangement is to provide a home for the child.²⁹ The CRC Committee never stated that surrogacy is *per se* a violation of Article 35 of the Convention. On the contrary, the CRC Committee acknowledged that surrogacy will not often fall under the definition of trafficking in persons. In its concluding observations on the United States’ report regarding the Optional Protocol to the Convention, regarding the Sale of Children, Child Prostitution and Child Pornography, it stated that:

“While noting that surrogate motherhood is a complex area that raises many different questions that fall outside the scope of the Optional Protocol, the Committee is nevertheless concerned that widespread commercial use of surrogacy in the State party may lead, under certain circumstances, to the sale of children. The Committee is particularly concerned about the situations when parentage issues are decided exclusively on a contractual basis at pre-conception or pre-birth stage. The Committee recommends, in the light of articles 1 and 2 of the Optional Protocol, that the State party consider the possibility of developing legislation that would address the issue of sale of children that may take place in the context of surrogate motherhood and that is outside the scope of family law.”³⁰

This extract shows that the CRC Committee concurs that commercial surrogacy is not, *per se*, the sale of children – an act prohibited under Articles 2 and 3 of the CRC Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography.³¹ This is in contrast to the views expressed with the below cited reports from the UN Special rapporteurs which, ultimately in 2025 found that all commercial surrogacy lead to sale of children (see the summary of the 2025 report below). One of the contributors to the below cited Verona Principles, prof. David M. Smolin, has, in his comments to this report expressed a view according to which most commercial surrogacy as currently practiced constitutes the sale of children, since those are not being practiced in line with the standards set out in the Verona

²⁹ Hyder-Rahman, Nishat (2021) Commercial gestational surrogacy: unravelling the threads between reproductive tourism and child trafficking. Anti-Trafficking Review, 2021,

<https://www.antitraffickingreview.org/index.php/atrjournal/article/view/542/415> (p.14) (accessed on 30 September 2025)

³⁰ Committee on the Rights of the Child, Concluding observations on the second periodic report of the United States of America submitted under article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, CRC/C/OPSC/USA/CO/3-4 (12 July 2017) para 24 and 25

³¹ UN Committee on the Rights of the Child (CRC), Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child> (accessed on 30 September 2025)

principles. This is an argument he also puts forward in his co-authorship chapter in the Handbook on Surrogacy³².

In summary, while it remains the subject of debate, potential of commercial surrogacy to amount to sale of children is not the subject of this report as there is a clear distinction between sale of children and human trafficking (most notably the exploitation intent on part of the intended parents). Nevertheless, it is important to note these relevant debates and views in the process of implementation of commercial surrogacy practices in order to ensure their compliance with the Verona Principles' standards (where these practices are allowed).

1.3.2. The UN Special Rapporteur's reports

The 2018 report

In her 2018 report, the former UN Special Rapporteur on the sale of children, child prostitution and child pornography noted that, in the CRC's Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography, the definition of the sale of children has three components: (1) remuneration or any other consideration, that is payment; (2) transfer of a child; and (3) the exchange of payment for the transfer of a child.³³ Such a definition led the Special Rapporteur to be particularly concerned with commercial surrogacy arrangements in which the surrogate is contractually obligated to hand over the child, physically and legally, to the intended parents.³⁴ In these circumstances it is clear that the surrogate entered an arrangement to provide a child for the intended parents in exchange for payment.³⁵ However, the former UN Special Rapporteur recommended regulating altruistic surrogacy to avoid any reimbursements made to surrogates and intermediaries, such as surrogacy organisations, because they blurred the line between altruistic and commercial arrangements.³⁶

The former Special Rapporteur stated that, in international law, the 'sale of children' requires, in all cases, that the surrogate is the child's legal parent at birth. This recommendation applies to commercial and altruistic surrogacy arrangements. If the surrogate wishes for the intended parents to raise the child, an application should be made to the court after birth to determine whether this arrangement would be in the child's best interests.³⁷ However, the Special Rapporteur arguably clarified her stance later by endorsing the Verona Principles, which explicitly allow commercial surrogacy under certain strict conditions. More on this follows below.

³² Smolin, D., & Boer-Buquicchio, M. d. (2024). "Chapter 5: Surrogacy, intermediaries, and the sale of children". In Research Handbook on Surrogacy and the Law. Cheltenham, UK: Edward Elgar Publishing. Retrieved Oct 16, 2025, from <https://doi.org/10.4337/9781802207651.00010>

³³ M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (January 2018), A/HRC/37/60 para 42

³⁴ M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (January 2018), A/HRC/37/60 paras 47 to 51

³⁵ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), <https://lawcom.gov.uk/project/surrogacy/> (p. 82) (accessed on 30 September 2025)

³⁶ Idem

³⁷ M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (January 2018), A/HRC/37/60 para 71

The 2025 report

In her 2025 report³⁸, the UN Special Rapporteur on violence against women and girls, Reem Alsalem, examined the violence and human rights violations associated with surrogacy. She highlighted that surrogacy - particularly in its commercial form - often involves the sale of children and the exploitation of women and girls. The report emphasized that commercial surrogacy arrangements typically include three key components: (1) remuneration or other consideration (payment); (2) the transfer of a child from the surrogate to the intended parents; and (3) the exchange of payment for the transfer of the child.

The Special Rapporteur expressed particular concern about the commodification of women's bodies and the objectification of children in surrogacy arrangements. She noted that surrogates, often from economically vulnerable backgrounds, are contractually obligated to hand over the child to the intended parents, both physically and legally. This dynamic raises serious questions about consent, exploitation, and human rights violations, as the surrogate's role is reduced to a reproductive service provider in exchange for payment.

The report also addressed altruistic surrogacy, warning that even in these cases, reimbursements to surrogates and intermediaries - such as surrogacy agencies - can blur the line between altruistic and commercial arrangements. The Special Rapporteur underscored that true altruism should not involve financial incentives that could coerce or exploit women, particularly those in precarious economic situations.

In line with international human rights standards, the Special Rapporteur reiterated that legal parentage should be attributed to the birth mother at the time of birth. If the surrogate wishes for the intended parents to raise the child, she recommended that parental rights should only be transferred after birth, through a judicial process, to ensure the arrangement aligns with the best interests of the child. This approach aims to prevent the automatic commodification of children and protect the rights of both the surrogate and the child.

However, the report criticized existing regulatory frameworks for failing to adequately address the exploitation and violence inherent in surrogacy. It called for stronger protections for women and children, including legal recognition of the birth mother, access to justice, and measures to prevent trafficking and abuse. The Special Rapporteur ultimately recommended the abolition of commercial surrogacy and the adoption of strict regulations to prevent human rights violations in all surrogacy arrangements.

1.3.3. The Verona Principles

In line with its mandate to assist children and families confronted with complex social problems as a result of migration, the INGO International Social Service (ISS) conducted a consultation process resulting in the Verona Principles for the protection of the rights of the child born through surrogacy.³⁹ These principles were later endorsed by the UN Special Rapporteur on the sale of children, child prostitution and child pornography⁴⁰ and the UN Committee on the Rights of the Child.⁴¹ The principles establish a

³⁸ United Nations General Assembly. (2025). Report of the Special Rapporteur on violence against women and girls, its causes and consequences: The different manifestations of violence against women and girls in the context of surrogacy (A/80/158). <https://undocs.org/A/80/158>

³⁹ See website here: <https://iss-ssi.org/surrogacy/>

⁴⁰ Idem

⁴¹ See here: https://bettercarenetwork.org/sites/default/files/2021-03/VeronaPrinciples_25February2021.pdf

comprehensive framework for regulating surrogacy and envisage conferring legal parental status on the intended parents at birth, without the need for a post-birth best interests assessment, if: (1) the surrogate confirms consent post-birth; (2) the parties have complied with pre-conception safeguards; (3) there is no conflict between the surrogate and the intended parents with regard to legal parental status or parental responsibility/ parental rights and responsibilities; and (4) there are no unforeseen developments, for example, relating to any party's ability to care for the child, or relating to child sale or trafficking.⁴²

The principles also permit commercial surrogacy if those States that permit it shall ensure, at a minimum, that all payments are separate from the determination or transfer of legal parentage and parental responsibility. Measures should include that: **a.** the surrogate mother at birth retains the right to decide whether or not to consent to transfer of legal parentage and parental responsibility; **b.** any remuneration or any other consideration provided to the surrogate mother (or anyone on her behalf) be made in advance of any post-birth transfer of legal parentage and parental responsibility to the intending parent(s) or post-birth confirmation of the surrogate mother's consent, and be non-refundable (absent fraud); **c.** all payments and reimbursements are reported and properly regulated by law; and **d.** intermediaries are properly regulated by law.⁴³

1.3.4. The Hague Conference's work on international surrogacy arrangements

Pursuant to a mandate from its Members, the Permanent Bureau of the Hague Conference on Private International Law (HCCH) is currently studying the issues of private international law encountered in relation to the legal parentage of children, as well as in relation to international surrogacy arrangements more specifically.⁴⁴

The HCCH has produced various notes and reports on the issues arising from international surrogacy arrangements, in an attempt to find a workable compromise between the positions taken in different states.⁴⁵ In its 2014 Report, it admitted that work in this area would be difficult given the diverse approach of States to questions concerning legal parentage in internal and private international law, as well as the difficult questions of public policy raised in an area traditionally connected with States' cultural and social milieu.⁴⁶

In 2015, the Hague Conference convened an Experts' Group on parentage and surrogacy. The group submitted its final report (the "Experts' Group final report") in November 2022. Following an approach it had proposed in 2018, it considered the feasibility of two separate private international law instruments on legal parentage, a convention dealing with legal parentage in general, and an optional protocol dealing with legal parentage established as a result of an international surrogacy arrangement. In respect of international surrogacy arrangements, the Experts' Group final report concluded that: "...in order to respect the policy concerns of many States, as well as the various approaches to surrogacy globally, the most feasible way forward would be to exclude legal parentage resulting from ISAs [international

⁴² International Social Service, Verona Principles (February 2021) paras 10.6 and 10.7.

⁴³ International Social Service, Verona Principles (February 2021) para 14.7.

⁴⁴ See website of the project here: <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy>

⁴⁵ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), link: <https://lawcom.gov.uk/project/surrogacy/> (p. 74-77) (accessed on 30 September 2025)

⁴⁶ Idem

surrogacy arrangements] from the scope of an instrument on legal parentage generally (a Convention) and address such legal parentage in a separate instrument (a Protocol).⁴⁷

The final report of the Experts' Group noted that it had discussed various safeguards and standards for an optional protocol dealing with international surrogacy arrangements, including consent of the surrogate and intended parents, a requirement of a genetic link, the eligibility and suitability of the surrogate and intended parents, and regulation of the financial aspects of the arrangement.⁴⁸ In that respect, one of the standards discussed to mitigate the risks of human trafficking in surrogacy was to implement the guidelines outlined in UNICEF's paper on children's rights and surrogacy, which specifically required that contractual provisions purporting to determine definitive legal parentage or parental responsibility pre-birth should not be enforceable.⁴⁹ Another was to invoke the safeguards endorsed by the UN Special Rapporteur, as described above.⁵⁰ The final report concluded that: "There was general agreement that to be feasible, a Protocol would need to include safeguards/standards." However, with respect to overall feasibility, experts had different views on:

- which safeguards/standards to include;
- how safeguards/standards should be included (i.e. as part of a definition, as conditions for recognition, as grounds for refusal, as general obligations, with an opt-in or opt-out mechanism, or through a declaration procedure); and
- how these should feature, either (i) as uniform safeguards/standards directly included in a Protocol or (ii) as State-specific safeguards/standards included indirectly in a Protocol (i.e. safeguards/standards applicable in the domestic law of the State of establishment of legal parentage).

Experts acknowledged that safeguards/standards represent a challenge. Notwithstanding this, most of them considered that having uniform safeguards/standards is the best way to guarantee the protection of the human rights of the child and the persons concerned. Others considered that State-specific safeguards/standards would be preferable as they would give States flexibility to decide whether another State Party's legal framework was robust enough to allow them to apply a Protocol with that State.⁵¹

In respect of domestic surrogacy arrangements, the Experts' Group agreed that it would be desirable to include legal parentage established as a result of a domestic surrogacy arrangement in the scope of either a Convention or (as proposed for international surrogacy arrangements) a Protocol. It considered that further discussion would be needed to determine the type of instrument in which legal parentage as a result of domestic surrogacy should be included. The Group also concluded that further discussion would be needed on whether such legal parentage should be dealt with in a chapter of the proposed Convention or in rules that were separate from those dealing with children who were not born of surrogacy arrangements, noting that such an approach risks being discriminatory towards those born of surrogacy

⁴⁷ Idem

⁴⁸ Idem

⁴⁹ UNICEF and Child Identity Protection Briefing Note, Key Considerations: Children's Rights and Surrogacy, February 2022 available at <https://www.unicef.org/media/115331/file> (last visited 30 September 2025)

⁵⁰ Hague Conference on Private International Law Experts Group on the Parentage / Surrogacy project, Final Report: The feasibility of one or more private international law instruments on legal parentage, 1 November 2022. Available at <https://assets.hcch.net/docs/6d8eeb81-ef67-4b21-be42-f7261d0cfa52.pdf> (last visited 30 September 2025) (see footnote 64).

⁵¹ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), <https://lawcom.gov.uk/project/surrogacy/> (p. 74-77) (accessed on 30 September 2025)

arrangements. The final report noted that favouring either one of these options might have an impact on the overall feasibility of both instruments.

Finally, the Experts' Group report recommended that the Council on General Affairs and Policy (CGAP) consider establishing a working group to further inform policy considerations and decisions in relation to the scope, content and approach of any Convention, and any Protocol on international surrogacy arrangements. Any such working group should proceed on the basis that the aim of any new instrument would be to provide greater predictability, certainty and continuity of legal parentage in international situations for all persons concerned, taking into account their human rights including, for children, those enshrined in the UNCRC and in particular the right that their best interests be a primary consideration in all actions taken concerning them. The Experts' Group did not discuss the issue of exploitation in relation to domestic surrogacy or international surrogacy arrangements.

1.3.5. The jurisprudence of the ECtHR

Because the recognition of parenthood in surrogacy arrangements is a controversial issue lacking consensus among Council of Europe Member States, the European Court of Human Rights (ECtHR) has faced considerable challenges in adjudicating cases. The Court's evolving jurisprudence reflects a nuanced balancing act between individual rights under Article 8 of the European Convention on Human Rights (ECHR) and legitimate public policy objectives pursued by States – such as safeguarding public order, preventing human trafficking, and/or protecting the health and rights of women and children.

The ECtHR's approach has gradually shifted towards a more child-centred and context-sensitive understanding of legal parentage, particularly where biological ties exist or where an intended parent has assumed de facto parental responsibilities. At the same time, the Court affirms that States retain a margin of appreciation in determining the means by which legal recognition is granted. This margin, however, narrows at the point at which a child's identity and family life are directly impacted. Ultimately, the Court's case law underscores the primacy of the best interests of the child, the need for procedural efficiency, and the requirement that domestic legal frameworks provide realistic pathways to legal recognition. In that sense, one can observe the following conclusions in Table 1 below:

Table 1: Key principles from the ECtHR's rulings on surrogacy

Case	Key Principles or Findings
C v. Italy (2023, § 68) ⁵²	Legal procedures for establishing the parent-child relationship between the biological parent and the child born via surrogacy abroad must be focused on the best interests of the child, free from excessive formalism, and capable of achieving this interest independently of procedural defects. Domestic courts must assist by

⁵² Council of Europe, European Court of Human Rights (2023). C v. Italy, § 68. <https://hudoc.echr.coe.int/eng?i=001-226391> (retrieved on 20 April 2025)

	indicating legally viable solutions, regardless of the parties' procedural positions.
A.M. v. Norway (2022, §§ 110–111) ⁵³	If family life is not established, the private life limb of Article 8 may nevertheless be engaged. The Court recognised that interference with this right may occur in cases involving refusal of adoption, especially where the intended parent has assumed a parental role.
K.K. and Others v. Denmark (2022, §§ 74–77) ⁵⁴	Where a child born through surrogacy abroad has a de facto relationship with the intended mother designated as the legal mother abroad, the child's right to private life under Article 8 requires that domestic law provide a means of recognising that relationship.
H. v. the United Kingdom (2022, §§ 54–56) ⁵⁵	A legal presumption that the woman who carried the child is the legal mother and, if she is married, that her husband is the father falls within the State's wide margin of appreciation. Article 8 does not require that the biological father be listed on the birth certificate at birth.
D.B. and Others v. Switzerland (2022, § 89) ⁵⁶	Proceedings concerning the legal relationship between intended parents and a child born via surrogacy must be conducted with exceptional diligence to avoid the determination of legal issues on the basis of a <i>fait accompli</i> .
A.L. v. France (2022, §§ 52, 54) ⁵⁷	The best interests of the child are paramount. Legal proceedings on the recognition of parentage in surrogacy arrangements must be handled with exceptional diligence to prevent decisions based on a <i>fait accompli</i> .
S.-H. v. Poland (2021, §§ 73-77) ⁵⁸	Refusal to grant citizenship to children born through a surrogacy arrangement abroad was upheld. The decision reflects the State's discretion in citizenship matters and did not breach Article 8.

⁵³ Council of Europe, European Court of Human Rights (2022). A.M. v. Norway, no. §§ 110–111.

<https://hudoc.echr.coe.int/fre?i=001-216348> (retrieved on 20 April 2025)

⁵⁴ Council of Europe, European Court of Human Rights (2022). K.K. and Others v. Denmark, n, §§ 74–77.

<https://hudoc.echr.coe.int/fre?i=001-221261> (retrieved on 20 April 2025)

⁵⁵ Council of Europe, European Court of Human Rights (2022). H. v. the United Kingdom (dec.), §§ 54–56.

<https://hudoc.echr.coe.int/eng?i=001-218220> (retrieved on 20 April 2025)

⁵⁶ Council of Europe, European Court of Human Rights (2022). D.B. and Others v. Switzerland,

<https://hudoc.echr.coe.int/fre?i=001-220955> (retrieved on 20 April 2025)

⁵⁷ Council of Europe, European Court of Human Rights (2022). A.L. v. France, <https://hudoc.echr.coe.int/eng?i=001-216632> (retrieved on 20 April 2025)

⁵⁸ Council of Europe, European Court of Human Rights (2021). S.-H. v. Poland (dec.), <https://hudoc.echr.coe.int/eng?i=001-214296> (retrieved on 20 April 2025)

Valdís Fjölvisdóttir and Others v. Iceland (2021, §§ 59–62, 65, 75) ⁵⁹	The Court examined whether family life existed by assessing emotional ties, length of the relationship, and legal certainty. It acknowledged a wide margin of appreciation due to lack of European consensus on surrogacy. It evaluated the practical hindrances in the enjoyment of family life and the measures taken by the State to regularise the family bond.
D. v. France (2020, §§ 63–72) ⁶⁰	The obligation for a genetic mother to adopt her child born via surrogacy abroad, in order to obtain legal recognition, does not violate Article 8. This approach is consistent with the principles in Mennesson v. France and the 2019 Advisory Opinion.
C. and E. v. France (2019, § 43) ⁶¹	It would not impose an excessive burden on children born through surrogacy abroad to require the intended mother to initiate adoption proceedings in order to be recognised as the legal mother.
Advisory Opinion No. P16-2018-001 (2019, §§ 36–38, 37–46, 43–44, 51–55) ⁶²	Where a de facto parent-child relationship exists, Article 8 requires States to provide a possibility for legal recognition of the intended mother. This recognition must be prompt and efficient. The choice of the means remains within the margin of appreciation, but the procedures must be capable of producing a result without excessive delays.
Paradiso and Campanelli v. Italy [GC] (2017, §§ 147–158, 161–165, 203–215) ⁶³	Surrogacy may raise serious public interest concerns such as human trafficking and unlawful adoption. In the absence of biological links and in breach of domestic law, the permanent removal of the child from intended parents was considered proportionate and within the State's margin of appreciation.
D. and Others v. Belgium (2014, §§ 49, 58–59, 63) ⁶⁴	Family life may exist based on emotional ties and cohabitation even without biological links. The temporary delay in authorising the child's travel to verify the family relationship was justified under the State's margin of appreciation.

⁵⁹ Council of Europe, European Court of Human Rights (2021). Valdís Fjölvisdóttir and Others v. Iceland, <https://hudoc.echr.coe.int/fre?i=001-209992> (retrieved on 20 April 2025)

⁶⁰ Council of Europe, European Court of Human Rights (2020). D. v. France, <https://hudoc.echr.coe.int/eng?i=001-203565> (retrieved on 20 April 2025)

⁶¹ Council of Europe, European Court of Human Rights (2019). C. and E. v. France (dec.), <https://hudoc.echr.coe.int/eng?i=001-216707> (retrieved on 20 April 2025)

⁶² Council of Europe, European Court of Human Rights (2019). Advisory Opinion No. P16-2018-001, <https://hudoc.echr.coe.int/fre?i=003-6380464-8364383> (retrieved on 20 April 2025)

⁶³ Council of Europe, European Court of Human Rights (2017). Paradiso and Campanelli v. Italy [GC], <https://hudoc.echr.coe.int/eng?i=001-170359> (retrieved on 20 April 2025)

⁶⁴ Council of Europe, European Court of Human Rights (2014). D. and Others v. Belgium (dec.), <https://hudoc.echr.coe.int/eng?i=001-155182> (retrieved on 20 April 2025)

Labassee v. France (2014, §§ 54, 56–59) ⁶⁵	There is no European consensus on surrogacy, granting States a wide margin of appreciation. However, the margin narrows where the lack of recognition interferes with the child’s identity and family ties under Article 8.
Mennesson v. France (2014, §§ 62, 77–80, 97–100) ⁶⁶	Refusal to recognise a parent-child relationship established abroad may serve legitimate aims such as protecting health and the rights of others. However, Article 8 requires that domestic law provide a possibility for recognising the legal relationship where the intended father is the biological father. Failure to do so violates the child’s private life.

2. Comparative Analysis

2.1. The general legal landscape

When assessing Europe’s legal and policy framework in relation to surrogacy, it can be observed that nine out of 38 countries have a specific legal act regulating surrogacy in a detailed manner. Of the other 29 countries, 24 have some form of criminal provision against surrogacy,⁶⁷ meaning that five of the observed countries have neither a criminal prohibition nor a distinct legal act regulating surrogacy in a more detailed manner.⁶⁸ In this latter group of countries, four have no prohibition of surrogacy whatsoever (even as a misdemeanour), leaving surrogacy completely within the remit of civil law or the interpretation of other criminal acts.⁶⁹

What is also important to note is that, out of the 24 European countries that criminalise surrogacy, only 10 of them criminalise the actions of the involved parties (the intended parents and/or the surrogate mother) at the national level⁷⁰ and almost none prohibits international surrogacy arrangements. The only outlier is Italy, which is the only country that criminalizes engaging in surrogacy agreements abroad and at home, as of October 2024.⁷¹

2.2. States with surrogacy-specific laws

Of the nine countries that have distinct legal acts regulating surrogacy (Cyprus, Greece, Ireland, Albania, North Macedonia, Belarus, the United Kingdom, Denmark and Ukraine), some have put the following

⁶⁵ Council of Europe, European Court of Human Rights (2014). Labassee v. France, <https://hudoc.echr.coe.int/eng?i=001-145180> (retrieved on 20 April 2025)

⁶⁶ Council of Europe, European Court of Human Rights (2014). Mennesson v. France, <https://hudoc.echr.coe.int/eng?i=001-145389> (retrieved on 20 April 2025)

⁶⁷ Austria, Bulgaria, Croatia, Czechia, Slovakia, Estonia, Finland, France, Germany, Hungary, Italy, Malta, Netherlands, Portugal, Romania, Slovenia, Spain, Sweden, Serbia, Turkey, Bosnia, Montenegro, Moldova, Switzerland

⁶⁸ Belgium, Latvia, Lithuania, Luxembourg, Poland

⁶⁹ Belgium, Luxembourg, Poland

⁷⁰ Croatia, Slovakia, Estonia, Finland, France, Hungary, Italy, Malta, Slovenia, Spain

⁷¹ see this report : <https://www.giurisprudenzapenale.com/2024/10/17/maternita-surrogata-il-senato-ha-approvato-in-via-definitiva-il-ddl/>

conditions in place: 1) surrogacy is limited to altruistic arrangements (except in Ukraine and Belarus, where commercial surrogacy is also allowed); 2) intended parents are typically required to demonstrate medical necessity; 3) surrogates must usually meet strict criteria relating to their individual circumstances, with common requirements including prior childbirth, falling within a specified age range, and passing health assessments; 4) legal parentage is often transferred post-birth through court orders or contracts, with half of the systems allowing the surrogate a window to withdraw consent (Greece, Cyprus, the United Kingdom, and Ireland).

It is also important to note that, while Greece and Cyprus do not allow commercial surrogacy, their understanding of profit in that regard differs from that of the United Kingdom and Ireland. This is because both Greece and Cyprus entitle the surrogate mother to receive compensation for lost earnings during an employment break taken in order to meet surrogacy obligations (i.e. to reduce physical and mental stress for the benefit of the child), which means refraining from working during certain periods. From this, one can conclude that Greece and Cyprus seem to recognize surrogacy as labour.

While, in general, sources on the judicial implementation of these laws are scarce, a valuable study of some 250 cases in Greece can be used to see how these systems operate (or can operate) in practice. A review of 256 court decisions from 2003 to 2017 shows that Greek courts strictly enforced safeguards to prevent abuse.⁷² The study shows that:⁷³

- Surrogacy was allowed only as a last resort, requiring proof of medical necessity and a court order.
- Residency requirements for intended parents prevented surrogacy tourism, while most surrogates were foreign-born women living in Greece, often in low-income jobs.
- Applications falling outside these strict criteria, such as cases involving intended mothers who already had one child, were denied. Courts were particularly cautious when surrogates had prior employment or dependent relationships with the intended parents, to guard against coercion. Overall, Greece's approach is narrowly focused on preventing exploitation, limiting surrogacy to cases of absolute infertility, and ensuring it remains non-commercial.

2.3. Recognition of international surrogacy arrangements

Despite the differences noted above, most of the countries examined have mechanisms in place to recognize international surrogacy arrangements. Twenty-five allow recognition of intended parenthood established via surrogacy arrangements abroad, often through the recognition of foreign birth certificates.⁷⁴ Six countries distinguish between an intended father who is also genetically connected to a child born out of an international surrogacy agreement, and its intended mother. These countries⁷⁵ do so by allowing direct recognition of the intended father as a parent, while requiring the intended mother to

⁷² Παβδάς, Παντελής. "Surrogate motherhood in Greece: Statistical data derived from court decisions." *Bioethica* 3, no. 2 (2017): 39-58. , link: <https://ejournals.epublishing.ekt.gr/index.php/bioethica/article/download/19723/17249> (conclusions) (accessed on 30 September 2025)

⁷³ Παβδάς, Παντελής. "Surrogate motherhood in Greece: Statistical data derived from court decisions." *Bioethica* 3, no. 2 (2017): 39-58. , link: <https://ejournals.epublishing.ekt.gr/index.php/bioethica/article/download/19723/17249> (conclusions) (accessed on 30 September 2025)

⁷⁴ Cyprus, France, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Sweden, Serbia, Turkey, Bosnia, Albania, Montenegro, North Macedonia, Moldova, Belarus, United Kingdom, Ukraine, Germany, Switzerland

⁷⁵ Austria, Belgium, Bulgaria, Czechia, Slovakia, Finland

establish her legal parenthood through adoption. The remaining seven countries⁷⁶ require both intended parents to pursue adoption procedures, regardless of whether they have a genetic link to the child.

This relative uniformity arguably stems from ECtHR case law, which obliges Member States to at least allow adoption as a means to recognise parenthood, thus prioritizing the child's best interests over restrictive domestic surrogacy policies. However, the ECtHR has also accepted a wide margin of appreciation on the part of States in this matter, accepting that recognition may be limited to cases in which the intended father has a genetic link to the child. This wide margin of appreciation is also seen in the specific requirements around international surrogacy laid down by several of the observed countries. For instance, Ireland requires a two-step process for international surrogacy: pre-conception approval by the Assisted Human Reproduction Regulatory Authority (AHRRA) and a post-birth court order. In the Netherlands, recognition of foreign surrogacy requires case-by-case court proceedings, often involving DNA testing and Child Protection Council approval. As of 2024, courts in France may recognize the parenthood of both the intended mother and father, even without genetic links, if surrogacy was court-validated abroad and safeguards around consent and fraud were satisfied. Although domestic surrogacy is illegal in Germany, it allows recognition of international surrogacy arrangements as long as one intended parent is genetically linked to the child and there is judicial oversight in the country where the surrogacy was carried out. As the ECtHR has also accepted the removal of a child from non-genetically-related intended parents, it appears that the margin of appreciation for Member States is wide beyond this core tenet: where at least one intended parent is genetically connected to the child (usually the father), States are obliged to provide the intended parents with a pathway to adoption that enables them and the child born out of surrogacy abroad to realise their Article 8 ECHR rights.

2.4. Exploitation of surrogacy as THB

Finally, before the recast anti-Trafficking Directive was adopted, only one European country (Moldova) had included the exploitation of surrogacy (exploitation of surrogate mothers) in its criminal law on human trafficking.

This seems to be a consequence of the fact that very limited data or case law is available on trafficking for the exploitation of surrogacy. Specialised national data providers such as National Rapporteurs have practically no data and nor do relevant bodies operating at the European level, including the EU ATC, Europol and Eurojust. As defined in EU law, surrogacy becomes human trafficking if all three constitutive elements of the human trafficking definition (offence) are present, including the means criterion.

In terms of the case law identified in the research, the most analytically valuable information comes from six verdicts from Ukrainian courts reached between 2022 and 2024. These verdicts exposed a trafficking scheme involving four clinics that used commercial surrogacy as a cover. Vulnerable women were recruited under false pretences and promised fair compensation, only to be later subjected to coercion and deception. The women were not initially told that the clinics' clients were mainly same-sex couples from abroad – such couples are not allowed to enter into surrogacy arrangements under Ukrainian law. Once this information became known, however, the women were coerced into continuing with the arrangement under threat of being exposed for participating in an unlawful practice. This scheme involved

⁷⁶ Croatia, Estonia, Italy, Lithuania, Malta, Poland, Romania, Bulgaria, Serbia

at least 25 foreign clients, mainly from France, Italy, and Germany. Furthermore, clients paid large sums, yet the women were paid very little in comparison, indicating an exploitative situation. Their payments were also often significantly delayed, making them more likely to comply with the ringleaders' demands out of financial desperation.

Courts confirmed that all three elements of human trafficking under the EU Directive were present. Still, it is important to put these cases into context – the number of formally recognized victims was small in relation to Ukraine's estimated 2,000 to 4,000 surrogacy births per year, indicating that such cases are the exception rather than the norm. The overall share of these clinics in the total estimated number of surrogacies in Ukraine was less than 3 per cent. Even if the majority of surrogate mothers involved in arrangements in one of these four clinics had been exposed to THB for the exploitation of surrogacy, such cases would still represent the exception rather than the norm. More details on this group of cases is available in [ANNEX 1 of this study](#).

Elsewhere in Europe, a similarly limited number of cases and related patterns have emerged. In Greece, a 2023 case involving an international criminal network led to multiple arrests, but the prosecution stalled due to difficulties proving coercion, as many of the women involved seem to have testified to their voluntary engagement in the arrangements.⁷⁷ Bulgaria extradited suspects linked to this case. In Portugal, a pending case involves a Brazilian woman who agreed to give up her baby in exchange for financial support; trafficking charges were filed, but proceedings are delayed.

Taken together, these cases show that, while trafficking for the exploitation of surrogacy can occur, it remains relatively rare and legally complex. This could be partially ascribed to the fact that the practice of surrogacy is inherently complex and demands the participation of many actors, including qualified professionals with their own professional standards. It is therefore highly relevant that all the countries studied in which surrogacy is allowed impose several safeguards around these arrangements – it appears that these safeguards are indeed having a positive impact, at least to the extent of preventing exploitation of surrogacy reaching the human trafficking end of the continuum of exploitation. Such a conclusion is further supported by the finding that, where cases of trafficking for exploitation of surrogacy did occur, they revolved around ambiguous consent, misuse of legal loopholes, fraudulent documentation, deception of clinic staff, and procedures that took place outside of recognized and regulated regimes (as was the case in Ukraine, for example) – rather than the clear-cut coercion typically associated with trafficking offences. Prosecuting such cases under anti-trafficking frameworks has therefore proven difficult.

3. Conclusion

The central questions posed by this report are: under what circumstances does the exploitation of a surrogacy arrangement meet the definition of human trafficking, and how often has that situation occurred across the 38 observed countries?

⁷⁷ Eurojust, 2024. Focus Group of Specialised Prosecutors against Trafficking in Human Beings. (2024, June 26–27). *Outcome report of the 3rd meeting of the Focus Group of Specialised Prosecutors against Trafficking in Human Beings*. Eurojust. <https://www.eurojust.europa.eu/publication/focus-group-specialised-prosecutors-against-human-trafficking-outcome-report-3rd> (p. 4, last accessed on 30 September 2025)

Based on the international UN definition (the Palermo Protocol) – upon which the EU human trafficking definition is based – trafficking in human beings requires three elements: an act (such as recruitment or transfer), by certain means (coercion, fraud, abuse of vulnerability, etc.), for the purpose of exploitation. Our study shows that, across the countries examined, most surrogacy situations do **not** satisfy these criteria, seeing how in a typical regulated surrogacy, the surrogate mother consents and is not coerced, and the intended parents plan to raise the child (not to exploit the child).

Thus, the essential elements needed to prove severe exploitation or the crime of human trafficking are absent. Indeed, the vast majority of legal cases around surrogacy in Europe have been civil cases – dealing with contract enforcement, parental rights, or citizenship of children – rather than criminal matters. These civil disputes, and multiple rulings by the ECtHR,⁷⁸ reinforce the assertion that surrogacy itself is not equivalent to trafficking in human beings.

Only in exceptional, severely exploitative cases can surrogacy cross into human trafficking. Such scenarios include forced surrogacy (women being trafficked for the purpose of bearing children) or schemes tantamount to the selling of children (trafficking in infants for adoption or profit). These are very rare, and the eleven cases found related to such practices are presented above.

This leads us to conclude that, although the inclusion of trafficking for the exploitation of surrogacy in the EU Trafficking Directive suggests it is a grave and prevalent issue, current evidence does not support this premise, although the possibility that it may be an emerging crime should not be ignored. However, our research identified only eleven trafficking cases involving surrogacy across 38 European countries over the past decade, and most surrogacy-related court decisions focus on issues of legal parenthood. It can therefore be concluded that surrogacy is not inherently exploitative; it becomes a trafficking concern only when it involves coercion or deception – situations that remain rare. With respect for the rights of all involved, clear legal safeguards, and the implementation of these safeguards through judicial oversight and consistent prosecution of those rare cases involving THB for exploitation of surrogacy, the practice can be ethically and safely undertaken.

We can also conclude that approaches to this issue by EU Member States are indeed highly varied. This is not only visible in current national legislation and policy but also confirmed by the fact that the amendments made by the 2024 Directive to Directive 2011/36/EU are without prejudice to existing national definitions of surrogacy, suggesting that a harmonized legal framework across Europe is unlikely. The core difficulty lies in establishing the point at which poor or irregular conditions cross the threshold into criminal exploitation. As with labour trafficking, surrogacy may exist on a continuum of exploitation, making it difficult for practitioners to consistently apply anti-trafficking laws. More detailed guidance and ongoing conversations among stakeholders will be essential to bring greater clarity and consistency to this evolving area of law.

In that respect, and in order to prevent potential abuse, states are encouraged to strengthen regulatory frameworks, for example by defining surrogacy in law, setting strict conditions for permissible arrangements, and improving cross-border cooperation to address illegal intermediaries. These

⁷⁸ For example, in cases like *Mennesson v. France* and *Paradiso & Campanelli v. Italy*, the ECtHR emphasized the child's best interests and stopped short of branding the surrogacy arrangements as human trafficking, even when the arrangements violated domestic law.

preventive steps can help ensure that surrogacy serves as a legitimate means of family formation. Particularly helpful in this regard are the Verona Principles outlined in subsection 1.3.3 above and the ECtHR established principles of ECHR implementation and interpretation outlined in subsection 1.3.5 above. Indeed, many of the countries observed have started implementing these safeguards within their procedures. For instance, Ireland mandates a two-step process: pre-conception approval by AHRRA and a post-birth court order. The Netherlands requires court proceedings for each case, including DNA testing and approval from the Child Protection Council. France, as of late 2024, permits recognition of both intended parents – even without genetic ties – if the foreign surrogacy was court-validated and safeguards such as consent and absence of fraud were complied with. Germany, despite domestic bans, recognize international surrogacy if one parent is genetically linked to the child and judicial oversight exists in the country in which the surrogacy occurred.

Safeguards such as these, coupled with closer international cooperation and coordination, have arguably already contributed to the low number of cases of trafficking for exploitation of surrogacy identified. For instance, the safeguards required by Germany appear to have had a positive impact on surrogacy practices taking place in Ukraine. As seen in [Annex 5](#) (sheet analysis), approximately two thirds of all the court cases we identified relating to surrogacy in Ukraine included court decisions validating arrangements in which the intending parents were from Germany. This is not just a strong indicator that many surrogacy arrangements taking place in Ukraine involve intended parents from Germany, but also that these sorts of safeguards succeed in ensuring that the vast majority of the clinics (more than 97 per cent) adhere to strict ethical standards. This conclusion is reinforced by the fact that the rare cases of THB for the exploitation of surrogacy in Ukraine identified as part of our research occurred in clinics operating within grey areas of the law.

Similarly, Greece and Cyprus have allowed surrogacy for a number of years, as has the United Kingdom. None of these countries have recorded any significant numbers of cases of THB for the exploitation of surrogacy. The case in Greece mentioned above, however, indicates that further guidance is needed as none of the surrogate or potential surrogate mothers involved in the scheme were willing to confirm their exploitation. While this scheme may not be fully compatible with the country's legal framework for surrogacy, it may not be on the human trafficking side of the continuum of exploitation either. This is exactly why further guidance and guidelines are required, as has been noted by Eurojust.⁷⁹ This study endeavours to contribute to these efforts, as will the follow-up study on the implementation of the Directive, once the two-year deadline for transposing of the Directive has lapsed.

⁷⁹ Eurojust. (2024, October 18). *Surrogacy and human trafficking*. European Union Agency for Criminal Justice Cooperation. <https://www.eurojust.europa.eu/publication/surrogacy-and-human-trafficking> (last accessed on 02.06.2025)

ANNEX 3: Country Profiles

In this annex to the report, we profile each of the countries examined, based on our research and analysis. For ease of reference, we start with countries that have surrogacy-specific laws and regulations, then move on to other countries, using a consistent structure for each profile. Unless otherwise stipulated in this annex, all abbreviations employed herein shall have the same meaning as the ones outlined in the main body of the report: [Comparative analysis of the legal and policy landscape on \(trafficking for the exploitation of\) surrogacy across Europe](#).

3.1. PROFILES OF STATES WITH A SURROGACY-SPECIFIC REGULATORY FRAMEWORK

Albania

General legal provisions

Surrogacy is allowed in Albania under Article 261 of its Family Code, which states that, “For surrogate adoption, pursuant to the law number 8876, adopted on 4 April 2002 ‘On reproductive health’ the same criteria and procedures of adoption apply, in accordance with this Code and the respective legislation.”⁸⁰ In light of the fact that this law has not yet been amended, we can surmise that surrogacy is allowed in Albania, albeit not regulated in greater detail.⁸¹ The regulatory gap seems to be filled according to the practice of the clinics performing the procedures, but only with respect to altruistic surrogacy.⁸²

In addition to this, the Albanian Government tabled a draft law on sexual and reproductive health, which regulates and allows surrogacy.⁸³ It does so by defining “surrogate mother” in Article 3 as “...a woman who becomes pregnant through an embryo created with IVF and carries a fetus in her uterus until birth on behalf of another couple who is unable to give birth to a child in the normal way.”⁸⁴ However, the bill has still not passed into law, ostensibly because of the debates it sparked. With all this in mind, it is also clear that, in Albania, domestic commissioning parents can indeed adopt a child born

⁸⁰ Family code of Albania, 2003, link: <https://faolex.fao.org/docs/pdf/alb208226.pdf> (article 261) (accessed on 30 September 2025)

⁸¹ KASTRATI, ROVENA. "ETHICAL AND LEGAL ASPECTS OF SURROGACY IN ALBANIAN LEGISLATION." *hand* (2019): 23. Link: <https://www.ijern.com/journal/2019/February-2019/06.pdf> (p. 7) (accessed on 30 September 2025)

⁸² KASTRATI, ROVENA. "ETHICAL AND LEGAL ASPECTS OF SURROGACY IN ALBANIAN LEGISLATION." *hand* (2019): 23. Link: <https://www.ijern.com/journal/2019/February-2019/06.pdf> (p. 8) (accessed on 30 September 2025)

⁸³ Republic of Albania, Draft law on sexual and reproductive health, 2024, link: [https://shqiptarja.com/uploads/ckeditor/662293cbf15b2RENJK_727_Projektligji-per-konsultim-publik%20\(1\).pdf](https://shqiptarja.com/uploads/ckeditor/662293cbf15b2RENJK_727_Projektligji-per-konsultim-publik%20(1).pdf) (accessed on 30 September 2025)

⁸⁴ Republic of Albania, Draft law on sexual and reproductive health, 2024, link: [https://shqiptarja.com/uploads/ckeditor/662293cbf15b2RENJK_727_Projektligji-per-konsultim-publik%20\(1\).pdf](https://shqiptarja.com/uploads/ckeditor/662293cbf15b2RENJK_727_Projektligji-per-konsultim-publik%20(1).pdf) (accessed on 30 September 2025)

from a surrogacy agreement executed abroad, as confirmed in the study of the ECtHR preceding its advisory opinion on surrogacy.⁸⁵

General criminal law provisions on surrogacy

See previous section.

Relevance of surrogacy in the context of human trafficking

As none of the criminal codes of the three entities mention surrogacy-specifically in their definition of THB,⁸⁶ it can be assumed that surrogacy would be categorised as THB only if it features the required three elements as laid out in the Palermo Protocol in a given case.

Civil court practice on surrogacy

No publicly available cases found.⁸⁷

Criminal court practice on surrogacy

See previous section.

Belarus

General legal provisions

Surrogacy has been legal in Belarus since 2006.⁸⁸ In its current form, it requires the conclusion of a notarised agreement which has to be approved by the Ministry of Health,⁸⁹ and is gestational in nature, involving combining a sperm and an egg removed from the body of the genetic mother, or a donor egg donated by someone other than the surrogate mother.⁹⁰ Additionally, in line with Article 20 of the 2012 Law On Assisted Reproductive Technologies, the Belarusian framework allows both commercial and altruistic surrogacy, as the requirements of the surrogacy contract explicitly mention that the costs for

⁸⁵ Council of Europe: European Court for Human Rights, Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, Requested by the French Court of Cassation

, April 2019, link: <https://hudoc.echr.coe.int/eng?i=003-6380464-8364383> (para. 23, 24) (accessed on 30 September 2025)

⁸⁶ Republic of Albania, Criminal code, link: <https://track.unodc.org/uploads/documents/BRI-legal-resources/Albania/27-Albania-Criminal-Code-1995-am2017-en.pdf> (art. 110) (accessed on 30 September 2025)

⁸⁷ Albanian court case law Databases examined: 1) https://www.gjk.gov.al/web/Lista_e_Vendimeve_92_1.php, and 2) <https://app.gjykataelarte.gov.al/kerko-vendimet> <https://gjykata.gov.al/rrethi-gjirokast%C3%ABr/gjykata-e-shkall%C3%ABs-s%C3%AB-par%C3%AB-e-juridiksionit-t%C3%AB-pergjithsh%C3%ABm-gjirokast%C3%ABr/c%C3%ABshtjet-gjyq%C3%ABsore/c%C3%ABshtjet-civile/>

⁸⁸ Belarusian Notary Chamber for the National legal internet portal, 2019, link: <https://pravo.by/novosti/novosti-pravo-by/2019/august/38815/> (accessed on 30 September 2025)

⁸⁹ Belarusian Notary Chamber for the National legal internet portal, 2019, link: <https://pravo.by/novosti/novosti-pravo-by/2019/august/38815/> (accessed on 30 September 2025)

⁹⁰ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 1) (accessed on 30 September 2025)

services rendered by the surrogate mother are an essential part of the contract.⁹¹ Furthermore, commercial surrogacy seems to be the rule, whereas altruistic arrangements are the exception.⁹²

1. **Conditions for the intended parents** – With respect to the intended parents, the law requires that:
 - 1.1. There is an established evidence-based medical need on the part of the intended mother, which means that bearing and giving birth to a child is physiologically impossible for medical reasons or is associated with a risk to her life and/or the life of her child.⁹³
 - 1.2. The intended parents must be at least 18 years of age and have full legal capacity.⁹⁴
 - 1.3. The intended parents have enough funds to pay for the provision of services under a surrogacy agreement on a reimbursable basis, including reimbursement of expenses for medical care, food, and accommodation during pregnancy, childbirth and the postpartum period, unless otherwise provided by the surrogacy agreement.⁹⁵

2. **Conditions for the surrogate mother:**⁹⁶ – With respect to the surrogate mother, the law requires that:
 - 2.1. A surrogate mother must be a woman aged 20 to 35 years inclusive, married and having had a child, unless other requirements for her age and marital status are established by Part Two of this Article, who has no medical contraindications to surrogacy, and who, at the time of the conclusion of the surrogacy agreement:
 - 2.1.1. has not been recognised by a court as incompetent or of limited capacity;
 - 2.1.2. has not been deprived of parental rights by a court or had them restricted;
 - 2.1.3. has not been removed from her duties as a guardian or trustee for improper performance of the duties assigned to her;
 - 2.1.4. is not a former adoptive parent where the adoption was annulled by the court as a result of her actions;
 - 2.1.5. has not been convicted of committing a serious or especially serious crime against a person;
 - 2.1.6. is not a suspect or accused in a criminal case.
 - 2.2. A surrogate mother can be a woman between the ages of 20 and 49 inclusive, provided that she is:

⁹¹ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 21) (accessed on 30 September 2025)

⁹² Belarusian Notary Chamber for the National legal internet portal, 2019, link: <https://pravo.by/novosti/novosti-pravo-by/2019/august/38815/> (accessed on 30 September 2025)

⁹³ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 20) (accessed on 30 September 2025)

⁹⁴ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 6) (accessed on 30 September 2025)

⁹⁵ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 23) (accessed on 30 September 2025)

⁹⁶ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 22 and 23) (accessed on 30 September 2025)

- 2.2.1. a relative of the genetic mother or of the woman who used the donor egg, or a relative of the spouse of the genetic mother or of the spouse of the woman who used the donor egg, and is also married and has a minor child;
- 2.2.2. a relative of the genetic mother or of the woman who used the donor egg, or a relative of the spouse of the genetic mother or of the spouse of the woman who used the donor egg, and who also has an adult child and does not have a minor child.

3. **The surrogacy contract** – The surrogacy contract is governed by Article 21 of the said 2012 Law On Assisted Reproductive Technologies which states that:⁹⁷

The contract is concluded between the surrogate mother and the genetic mother or the intended mother using a donor egg, in writing, and is subject to notarisation. Married persons conclude the surrogacy contract with the written consent of their spouses.

The essential elements of the surrogacy agreement are:

- 3.1. provision by one woman (surrogate mother) to another woman (genetic mother or intended mother using a donor egg) of the service of bearing and giving birth to a child (children) conceived with the participation of an egg (eggs) removed from the body of the genetic mother, or a donor egg (eggs);
- 3.2. the number of embryos that will be transferred into the surrogate mother's uterus;
- 3.3. indication of the healthcare organisation(s) in which the following will take place: the union of the sperm(s) and the egg(s) removed from the body of the genetic mother or the egg(s) donor, the transfer of this embryo(s) into the uterus of the surrogate mother, monitoring of the course of her pregnancy, and childbirth;
- 3.4. the obligation of the surrogate mother to comply with all the instructions of the attending physician and to provide the genetic mother or the intended mother using a donor egg and her spouse with information about her health status and the health status of the child (children) being carried;
- 3.5. place of residence of the surrogate mother during the period of bearing the child (children);
- 3.6. the obligation of the surrogate mother to transfer the child (children) to the genetic mother or the intended mother using a donor egg after his (their) birth and the period within which the said transfer must be made;
- 3.7. the obligation of the genetic mother or the intended mother using a donor egg to accept the child (children) from the surrogate mother after his (their) birth and the period within which the child (children) must be accepted;
- 3.8. the cost of the service provided by the surrogate mother under the surrogacy agreement (except in cases where the surrogacy agreement is concluded free of charge);
- 3.9. the procedure for reimbursing expenses for medical care, food, and accommodation of the surrogate mother during pregnancy, childbirth, and the postpartum period.
- 3.10. A surrogacy agreement may be concluded free of charge in cases in which the surrogate mother is a relative of the genetic mother or the intended mother using a donor egg, or a relative of the spouse of the genetic mother or the intended mother using a donor egg.

⁹⁷ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 21) (accessed on 30 September 2025)

4. **Rights of the surrogate mother** – Article 22 of the law prescribes that the surrogate mother has the right to:⁹⁸
 - 4.1. be provided with the conditions necessary for living;
 - 4.2. be provided with the conditions necessary for bearing a child (children);
 - 4.3. the provision of services under a surrogacy agreement on a reimbursable basis, and in cases stipulated by this Law, on a gratuitous basis;
 - 4.4. reimbursement of expenses for medical care, food, accommodation during pregnancy, childbirth, and the postpartum period, unless otherwise provided by the surrogacy agreement;
 - 4.5. state benefits assigned in accordance with the law;
 - 4.6. other rights provided for by the surrogacy agreement.
5. **Obligations of the surrogate mother** – In addition to the obligations of the surrogate mother referred to in Article 21, Article 22 expressly prescribes the duties of the surrogate mother, by laying down that the surrogate mother is obliged to:⁹⁹
 - 5.1. provide the woman who has entered into a surrogacy agreement with her and her spouse with information about the results of medical examinations, as well as information about the health of her child;
 - 5.2. undergo medical examinations within the timeframes determined by the attending physician;
 - 5.3. follow all instructions of the attending physician and provide the woman who has entered into a surrogacy agreement with her, and her spouse, with information about her health status and the health status of the child (children) being carried;
 - 5.4. transfer the child (children) to the woman who has entered into a surrogacy agreement with her after his (their) birth within the time period specified in the surrogacy agreement;
 - 5.5. keep confidential information about the conclusion of a surrogacy agreement and about the persons who have concluded such an agreement;
 - 5.6. perform other duties stipulated by the surrogacy agreement.
6. **Procedural requirements** – the surrogacy procedure appears to be much simpler than in most examined systems. It includes only the conclusion of a medical practitioner that surrogacy as a form of assisted reproductive technologies is to be used and a confirmation of the contract by the public notary in Belarus.¹⁰⁰ In line with the opinion of the official chamber of public notaries, they will confirm the contract even without such an opinion but as a contract which only enters into force upon its obtainment (with a suspensive condition).¹⁰¹ The public notary will mostly rely on representations and warranties of the parties except for requiring: 1) the said medical opinion on the necessity of execution of surrogacy, 2) consent of the spouses when necessary, 3) verification

⁹⁸ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 22) (accessed on 30 September 2025)

⁹⁹ Republic of Belarus, Law on assisted reproductive technologies, 2024, link: <https://etalonline.by/document/?regnum=h11200341> (article 22) (accessed on 30 September 2025)

¹⁰⁰ Belarusian Notary Chamber for the National legal internet portal, 2019, link: <https://pravo.by/novosti/novosti-pravo-by/2019/august/38815/> (accessed on 30 September 2025 on 15 08 24)

¹⁰¹ Belarusian Notary Chamber for the National legal internet portal, 2019, link: <https://pravo.by/novosti/novosti-pravo-by/2019/august/38815/> (accessed on 30 September 2025 on 15 08 24)

that the relative of the intended parents is legally allowed to engage in altruistic surrogacy, where applicable.¹⁰² The public notary is also required to inform the parties in written form of the consequences of the surrogacy contract.¹⁰³ These are outlined below.

7. **Consequences, parental rights** – in line with the respected provisions of the law, the consequences of the surrogacy on parental rights are as follows:¹⁰⁴
 - 7.1. the mother of a child born by a surrogate mother is recognised as the woman who entered into a surrogacy agreement with the surrogate mother, as she is obliged to accept the child no matter how it was born.
 - 7.2. The father of a child born by a surrogate mother is recognised as the spouse of the woman who entered into a surrogacy agreement with the surrogate mother.
 - 7.3. After the birth of the child, the intended parents are registered in the Birth Registry as the parents of the child.
 - 7.4. A surrogate mother, a woman who has entered into a surrogacy agreement with a surrogate mother, as well as their spouses who have given their consent to the conclusion of a surrogacy agreement in accordance with the established procedure, do not have the right to challenge the maternity and (or) paternity of a child born by a surrogate mother, except in cases where there is evidence that the surrogate mother did not become pregnant as a result of the use of assisted reproductive technologies.
8. **Penal provisions** – The law indicates no penal provisions.

General criminal law provisions on surrogacy

See previous section.

Relevance of surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB,¹⁰⁵ it can be assumed that surrogacy would be categorised as THB only if it features the required three elements as laid out in the Palermo Protocol in a given case.

Court practice on surrogacy

There are several decisions of the constitutional court on the matter of surrogacy found in publicly available sources.¹⁰⁶ In its latest 2019 decision, the Constitutional Court confirms the constitutionality of some amendments to the relevant law.¹⁰⁷ In a similar manner, the Court stated in its 2014 decision that

¹⁰² Belarusian Notary Chamber for the National legal internet portal, 2019, link: <https://pravo.by/novosti/novosti-pravo-by/2019/august/38815/> (accessed on 30 September 2025 on 15 08 24)

¹⁰³ Belarusian Notary Chamber for the National legal internet portal, 2019, link: <https://pravo.by/novosti/novosti-pravo-by/2019/august/38815/> (accessed on 30 September 2025)

¹⁰⁴ Belarusian Notary Chamber for the National legal internet portal, 2019, link: <https://pravo.by/novosti/novosti-pravo-by/2019/august/38815/> (accessed on 30 September 2025)

¹⁰⁵ Republic of Belarus, 2023, Criminal Code, link: <https://pravo.by/document/?guid=3871&p0=hk9900275> (article 181) (accessed on 30 September 2025)

¹⁰⁶ This portal was observed: <https://etalonline.by/>

¹⁰⁷ See decision here: <https://pravo.by/document/?guid=3961&p0=K91901175>

the amendment of the Criminal Code, which introduced THB exploitation of surrogacy as one of the acts of the human trafficking crime, is in line with the Constitution.¹⁰⁸

Cyprus

Surrogacy is regulated in **Cyprus** under 69(I)/2015 Act on the Application of Medically Assisted Reproduction.¹⁰⁹ This Act was revised several times and even suspended once for almost two years (from Dec 2015 until Sept 2017).¹¹⁰ As with the Greek system, the Cypriot framework only allows altruistic surrogacy, while prohibiting commercial surrogacy¹¹¹ and also stipulates that a surrogate mother is not only entitled to reimbursement of her costs, but also of her lost income if employed, or her potentially lost income if she is unemployed.¹¹² The law prescribes that the eggs to be implanted in the uterus should not belong to the surrogate, but should come either from the woman who wishes to have a child or from a donor.¹¹³ The act is not clear with respect to donorship of the male genetic material.

Cypriot law lays down certain conditions for the execution of surrogacy, which are detailed below:

1. Conditions for the intended parents

¹⁰⁸ See decision here: <https://pravo.by/document/?guid=12551&p0=K91400952>

¹⁰⁹ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (accessed on 30 September 2025)

¹¹⁰ Zervogianni, Eleni. "Regulating surrogacy: Chances and pitfalls." *Pro Justitia: Ηλεκτρονική Επετηρίδα Νομικής Σχολής ΑΠΘ* 1 (2018): 102-126, link: <http://ejournals.lib.auth.gr/projustitia/article/viewFile/6652/6516> (p. 5) (accessed on 30 September 2025)

¹¹¹ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 22, para. 6 and 7) (accessed on 30 September 2025)

¹¹² Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 22, para. 6 and 7) (accessed on 30 September 2025)

¹¹³ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 23, para. 3 (d) (accessed on 30 September 2025)

- 1.1. Gender and relations of intended parents – Access is granted only to heterosexual couples and single women¹¹⁴ (Note: while access may soon be granted to same-sex couples,¹¹⁵ single men are explicitly excluded.)¹¹⁶
- 1.2. Medical necessity on the part of the intended parents – Only when a person is unable to conceive for medical reasons could there be recourse to surrogacy.¹¹⁷
- 1.3. Age limitations – The age limit is set at 53 for intended mothers.¹¹⁸ There are no age limitations for men.
- 1.4. Citizenship and residency – Although the law poses no restrictions related to citizenship, it does require that both the intended mother and the surrogate shall have a domicile or habitual residence in Cyprus. However, if it is not possible to find a surrogate in Cyprus, special permission can be granted by the competent board for an arrangement with a surrogate mother from outside Cyprus. Nonetheless, even in this case, the surrogate must stay in Cyprus from the 28th week of pregnancy until the birth of the child, unless this is impossible for medical reasons.¹¹⁹
- 1.5. Other criteria – Intended parents must not have been condemned for a sexual crime, such as child pornography, rape, etc.¹²⁰

2. Conditions for the surrogate

- 2.1. Fitness of the surrogate – The surrogate must be physically and psychologically fit to bear a child, as determined by medical experts on a case-by-case basis.¹²¹

¹¹⁴ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (Art. 22 para. 1 and 23 para. 3 (accessed on 30 September 2025)

¹¹⁵ seeing how there is a bill to regulate same sex parents ,see: ILGA Europe, 2024, ANNUAL REVIEW OF THE HUMAN RIGHTS SITUATION OF LESBIAN, GAY, BISEXUAL, TRANS, AND INTERSEX PEOPLE COVERING THE PERIOD OF JANUARY TO DECEMBER 2023, link: https://www.ilga-europe.org/files/uploads/2024/02/2024_cyprus.pdf (p.2) (accessed on 30 September 2025)

¹¹⁶ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (Art. 23 para. 3 (a) (accessed on 30 September 2025)

¹¹⁷ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (Art. 23 para. 3 (a) (accessed on 30 September 2025)

¹¹⁸ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (Art. 21 para. 2 (accessed on 30 September 2025)

¹¹⁹ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 23, para. 3 (e) (accessed on 30 September 2025)

¹²⁰ Zervogianni, Eleni. "Regulating surrogacy: Chances and pitfalls." *Pro Justitia: Ηλεκτρονική Επετηρίδα Νομικής Σχολής ΑΠΘ* 1 (2018): 102-126, link: <http://ejournals.lib.auth.gr/projustitia/article/viewFile/6652/6516> (p. 13) (accessed on 30 September 2025)

¹²¹ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 23, para. 3 (accessed on 30 September 2025)

- 2.2. Previous **motherhood** – The surrogate mother must already have at least one child of her own.¹²²
- 2.3. **Maximum number of surrogacies** – A surrogate can perform the act of surrogacy twice, provided that each pregnancy leads to birth (and not counting her own pregnancies).¹²³
- 2.4. Age limitations – The law does not specify an age limit for the surrogate.
- 2.5. Consent of the partner of surrogate – Consent of the husband or registered partner is required,¹²⁴ if the surrogate is in such a partnership.
- 2.6. Citizenship and residency – Although the law poses no restrictions relating to citizenship, it does require that both the intended mother and the surrogate shall have a domicile or habitual residence in Cyprus. However, if it is not possible to find a surrogate in Cyprus, and after special permission has been granted by the competent board, a foreigner can also be a surrogate. Even then, the surrogate must stay in Cyprus from the 28th week of pregnancy until the birth of the child, unless this is impossible for medical reasons.¹²⁵

3. Conclusion of the surrogacy contract after approval

Cypriot law requires parties to enter into a contract only after their application to the National Council for Assisted Medical treatments has been approved¹²⁶ and the decision of the competent court made.¹²⁷ Cypriot law-makers also require the surrogacy contract to include extensive mandatory elements, which are laid down in Article 25(2).¹²⁸ They include that:

- 3.1. The surrogate will not be the parent of the child;

¹²² Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 23, para. 9 (accessed on 30 September 2025))

¹²³ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 23, para. 8 (accessed on 30 September 2025))

¹²⁴ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 22, para. 1) and Article 4 of the Law 184(I)/2015, link: https://www.cylaw.org/nomoi/enop/non-ind/2015_1_184/full.html (accessed on 30 September 2025)

¹²⁵ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 23, para. 3 (e) (accessed on 30 September 2025))

¹²⁶ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 24, para. 1 (accessed on 30 September 2025))

¹²⁷ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 25, para. 1 (accessed on 30 September 2025))

¹²⁸ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 25, para. 2 (accessed on 30 September 2025))

- 3.2. The surrogate mother shall, on the birth of the child, immediately deliver it to the couple with whom she entered into the arrangement or to the single woman with whom she entered into the arrangement;
- 3.3. The couple who signed the agreement are the parents of the child and, in cases where the agreement was signed by a single woman, she is the parent of the child from the time of its creation and implantation in the womb;
- 3.4. Before the placement of the embryo, a letter of credit must be issued for a period of eleven (11) months, to cover the costs of pregnancy and childbirth (including caesarean sections) in the event that the couple or the single woman who signed the agreement do not cover the costs of monitoring the pregnancy, childbirth and caesarean section including the costs of any post-natal complications;
- 3.5. The costs of monitoring the pregnancy will be covered and after the birth of the child the undersigned couple or single woman will immediately assume the care of the child and the costs of the delivery;
- 3.6. the surrogate mother remains in Cyprus from the 28th week of pregnancy until the birth of the child, except for exceptional medical reasons and on the basis of a medical certificate that requires her to stay in the Republic.

Cypriot law does not contain specific provisions for the possibility of withdrawal from the contract. However, the principles detailed in the outline on Greece (below) would be applicable as Cyprus is party to the ECHR and allows abortion (up to the 12th week of pregnancy).¹²⁹

4. Approvals required

Pre-approval is mandatory before the transfer of genetic material, but only after the conclusion of the surrogacy contract, subject to judicial consideration and approval of the contract and its conditions.¹³⁰

Criminal sanctions

The couple or the single woman who had a child through surrogacy and who refuses to receive it or abandons it for any reason commits a criminal offence and, if convicted, is subject to a prison sentence not exceeding five years.¹³¹

¹²⁹ Republic of Cyprus, 2024, Criminal Code, link: https://www.cylaw.org/nomoi/enop/non-ind/0_154/full.html (article 169a) (accessed on 30 September 2025)

¹³⁰ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (articles 23 and 24 (accessed on 30 September 2025)

¹³¹ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](#) (article 22, para. 4) (accessed on 30 September 2025)

A person who violates the provisions of Article 25, which prohibits negotiation of surrogacy agreements on a commercial basis, commits a criminal offence and, if convicted, is subject to a prison sentence not exceeding one year and/or a fine not exceeding €50,000.¹³²

A person who violates the provisions of Article 27, which regulates advertising for donors and/or surrogate mothers, as well as the provision of information on these matters, is committing a criminal offence and, if convicted, is subject to various prison sentences or fines, dependent on the circumstances and the deed.¹³³

Consequences of surrogacy-legal parenthood

Under Cypriot law, the surrogate mother has six months to bring a maternity claim, counted from the birth of the child. If she does not act inside this deadline, such a child is considered to be a child of the intended mother.¹³⁴ In any case, the surrogate mother may bring a claim only if it is proven that the child is biologically hers.¹³⁵

Relevance of surrogacy in the context of human trafficking

The relevant criminal law framework in Cyprus does not specifically mention surrogacy.¹³⁶

Civil court jurisprudence

There are several decisions on discrimination against intended mothers in respect to State-paid allowances for maternity leave, ruling that such discrimination is contrary to the Cypriot Constitution.¹³⁷ Additionally, there are court disputes about surrogacy agreements carried out abroad.¹³⁸

Apart from these, a search for the words “surrogacy” and “surrogate mother” in Greek on the relevant website¹³⁹ did not yield many more results.

¹³² Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](https://www.cylaw.org/nomoi/enop/non-ind/2014_1_60/full.html) (article 26, para. 5) (accessed on 30 September 2025)

¹³³ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](https://www.cylaw.org/nomoi/enop/non-ind/2014_1_60/full.html) (article 27) (accessed on 30 September 2025)

¹³⁴ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](https://www.cylaw.org/nomoi/enop/non-ind/2014_1_60/full.html) (article 22 in conjunction with article 25(5) (accessed on 30 September 2025)

¹³⁵ Republic of Cyprus, 2023, Act on the Application of Medically Assisted Reproduction, link: [The Implementation of Medically Assisted Reproduction Law of 2015 - 69\(I\)/2015 \(cylaw.org\)](https://www.cylaw.org/nomoi/enop/non-ind/2014_1_60/full.html) (article 25(5) (accessed on 30 September 2025)

¹³⁶ framework law: https://www.cylaw.org/nomoi/enop/non-ind/2014_1_60/full.html and criminal code provisions:

¹³⁷ see for instance this decision: <https://www.cylaw.org/cgi-bin/open.pl?file=administrative/2020/202009-165-17.html&qstring=%F0%E1%F1%E5%ED%E8%E5%F4%2A%20and%20%EC%E7%F4%F1%EF%F4%E7%F4%2A>

¹³⁸ Republic of Cyprus, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://rm.coe.int/inf-2016-4-addendum-update-june-2021-e/1680a3229f> (see page 13)

¹³⁹ <https://www.cylaw.org/advanced.html>

Criminal court jurisprudence

The same as for civil court jurisprudence.

Denmark

Denmark's new law, effective 1 January 2025, establishes distinct legal frameworks for both domestic and foreign surrogacy agreements¹⁴⁰. This legislation was enacted to implement the judgment from the European Court of Human Rights in the case of K.K. and Others v. Denmark (Application No. 25212/21)¹⁴¹. In respect to domestic Surrogacy Agreements, the law requires:

- Pre-Approval: The agreement must be approved by the Family Court before the surrogate mother becomes pregnant.
- Altruistic Nature: The surrogate cannot receive any payment or compensation. A close relationship between the surrogate and the intended parents is presumed.
- Fulfilment of Strict Conditions: The surrogate mother must be a resident of Denmark, at least 25 years old, and have previously given birth to at least one child. The intended parents must have a genetic link to the child.

As per the foreign Surrogacy Agreements, the law creates a new process to legally recognize parenthood for children born through surrogacy abroad, including commercial arrangements. The law allows intended parents in these arrangements to apply to the Family Court after the child is born to have their parenthood legally established in Denmark, after the following key requirements were fulfilled: 1. There is proof of a genetic link to at least one intended parent, 2. There is a notarised statement from the surrogate, issued after the birth, confirming her wish to transfer parenthood, 3. A surrogacy agreement is concluded.

¹⁴⁰ *Lov om ændring af børneloven, adoptionsloven, forældreansvarsloven og forskellige andre love (Familiedannelse ved surrogataftaler, medfar som retlig forælder, forenkling af familiedannelse ved voksenadoption m.v.)* [Act amending the Children's Act, the Adoption Act, the Parental Responsibility Act and various other acts (Family formation through surrogacy agreements, co-father as legal parent, simplification of family formation through adult adoption, etc.)] (Lov nr. 1687 af 30. december 2024) [Act No. 1687 of 30 December 2024]. (2024). Retsinformation. <https://www.retsinformation.dk/eli/lt/2024/1687>

¹⁴¹ Government of Denmark. (2025, March 20). Action Report: Communication from Denmark concerning the case of K.K. and Others v. Denmark (Application No. 25212/21) (Document No. DH-DD(2025)336). Committee of Ministers, Council of Europe. [https://hudoc.exec.coe.int/eng?i=DH-DD\(2025\)336E](https://hudoc.exec.coe.int/eng?i=DH-DD(2025)336E)

Relevance of Surrogacy in the context of human trafficking

No direct indication, the domestic THB legislation includes the standard definition of THB¹⁴².

Civil Court jurisprudence

No case law found on the official court cases database¹⁴³.

Criminal court jurisprudence

Same as civil court jurisprudence.

Cases in front of the ECtHR

K.K. and Others v. Denmark - [25212/21](#), Judgment 6.12.2022¹⁴⁴

In 2013, a Ukrainian surrogate gave birth to twins for the first applicant and her husband, the biological father. Ukrainian authorities issued birth certificates naming the intended parents as the legal parents. However, Danish law recognizes the birth mother as the legal parent, nullifying the surrogacy agreement. The twins gained Danish **citizenship**, and in 2018, joint custody was granted to the intended parents, but stepchild adoption was denied under the Adoption Act, which bans paid consent to adoption.

The European Court of Human Rights assessed under Article 8 (respect for family and private life). It found no violation regarding family life, as the applicants lived together without legal obstacles. However, regarding private life, it found a violation for the twins due to legal uncertainty in their identity and inheritance rights caused by the denial of adoption, despite Danish law's cumulative solutions. The Court ruled this refusal failed to balance the children's best interests against concerns about surrogacy.

Greece

Greece was the first EU country to introduce a regulation of surrogacy. It did so back in 2002 firstly through amending appropriate parts of the Greek Civil code¹⁴⁵ and later through specifying further conditions in its Act on Medical Assistance in Reproduction of 2005¹⁴⁶. The latter law only allows altruistic surrogacy and gestational surrogacy¹⁴⁷, while prohibiting commercial surrogacy.¹⁴⁸ The law also

¹⁴² Republic of Denmark, Criminal Code, 2024, link: <https://www.retsinformation.dk/eli/lt/2024/1145> (articles 262a and 262b) (accessed on 30 September 2025)

¹⁴³ Republic of Denmark, court cases database, link: <https://domsdataasen.dk/>

¹⁴⁴ ECtHR, 2022, link: <https://hudoc.echr.coe.int/eng?i=002-13915>

¹⁴⁵ Republic of Greece, 2022, Law 3089/2002, link: <https://www.kodiko.gr/nomothesia/document/175735/nomos-3089-2002> (accessed on 30 September 2025)

¹⁴⁶ Republic of Greece, 2022, Law 3305/2005 on Medical Assistance in reproduction, link: <https://www.kodiko.gr/nomothesia/document/164338/nomos-3305-2005> (accessed on 30 September 2025)

¹⁴⁷ Republic of Greece, 2022, Greek Civil Code, link: <https://www.kodiko.gr/nomothesia/document/437467/p.d.-456-1984> (Article 1458) (accessed on 30 September 2025)

¹⁴⁸ Republic of Greece, 2022, Law 3305/2005 on Medical Assistance in reproduction, link: <https://www.kodiko.gr/nomothesia/document/164338/nomos-3305-2005> (Article 26, para. 8 in connection to Article 13) (accessed on 30 September 2025)

allows that sperm, and fertilized ovary can come from donors as well¹⁴⁹. In an effort to distinguish how remuneration of costs the surrogate mother has to bear because of the pregnancy, the law outlines that the surrogate mother is entitled to reimbursement of her costs but also of her lost income, if employed or her potentially lost income if she is unemployed.¹⁵⁰ The Greek National Authority of Assisted Reproduction issued a decision that the compensation in total shall not exceed 10.000 EUR.¹⁵¹

In order to have recourse to a surrogacy procedure, the regulations outline several conditions to be fulfilled. Those can be grouped in the following manner.

Conditions on part of intended parents

- 1.1. **Gender and relations of intended parents** regulate that heterosexual couples¹⁵² and single women have access to surrogacy¹⁵³.
- 1.2. **Medical necessity on part of intended parents** - stipulate that only when a person is unable to conceive due to medical reasons could there be recourse to surrogacy¹⁵⁴
- 1.3. **Age limitations** - The general upper limit for both surrogate and the intended mother is 50 years, while those older than 50 and younger than 54 must obtain special permission¹⁵⁵. The regulation prescribes no age maximum for men wanting to be intended parents.
- 1.4. **Citizenship and residency** – Although the law poses no restrictions on part of citizenship, it does require that either the woman asking for the court permit **and** the woman who gestated have their permanent or provisional residence in Greece¹⁵⁶

Conditions on part of the surrogate

The surrogate also has to fulfil certain conditions in order to be allowed to perform the act of surrogacy. There are several conditions here as well, namely:

¹⁴⁹ Dacoria, Eugenia (2023) - Surrogate mother: the Greek law. In Gomes, Ana Sofia da Silva, coord. - Vida intrauterina, início da personalidade, família e crianças: direito interno e transnacional. Lisboa: Universidade Lusíada. ISBN 978-989-640-257-0. P. 19-29. (p. 12) (accessed on 30 September 2025)

¹⁵⁰ Republic of Greece, 2022, Law 3305/2005, link: <https://www.kodiko.gr/nomothesia/document/164338/nomos-3305-2005> (Article 13, para. 4) (accessed on 30 September 2025)

¹⁵¹ Republic of Greece, Decision n 36/2008 of the National Authority of Assisted Reproduction, Government Gazette, issue B, nr. 670 of 16 April 2008, link: https://www.dsanet.gr/Epikairothta/Nomothesia/apof36_08.htm (article 4) (accessed on 30 September 2025)

¹⁵² Republic of Greece, 2022, Law 3305/2005, link: <https://www.kodiko.gr/nomothesia/document/164338/nomos-3305-2005> (Article 4, which sets out no specific provisions) (accessed on 30 September 2025)

¹⁵³ Republic of Greece, 2022, Law 3305/2005, link: <https://www.kodiko.gr/nomothesia/document/164338/nomos-3305-2005> (Article 4, which sets out no specific provisions) (accessed on 30 September 2025)

¹⁵⁴ Republic of Greece, 2022, Greek Civil Code, link: <https://www.kodiko.gr/nomothesia/document/437467/p.d.-456-1984> (Article 1458 and Art. 1455 para. 1 sent. 1) (accessed on 30 September 2025)

¹⁵⁵ Republic of Greece, 2022, Law 3305/2005, link: <https://www.kodiko.gr/nomothesia/document/164338/nomos-3305-2005> (Article 4, para. 1) (accessed on 30 September 2025 on

¹⁵⁶ Dacoria, Eugenia (2023) - Surrogate mother: the Greek law. In Gomes, Ana Sofia da Silva, coord. - Vida intrauterina, início da personalidade, família e crianças: direito interno e transnacional. Lisboa: Universidade Lusíada. ISBN 978-989-640-257-0. P. 19-29. (p. 12) (accessed on 30 September 2025)

- 1.1. Fitness of the surrogate** - the surrogate must be physically and psychologically fit to bear a child, as determined by medical experts on a case-by-case basis¹⁵⁷
- 1.2. Age limitations** – the surrogate must be older than 25 and younger than 54¹⁵⁸
- 1.3. Consent of the partner of surrogate** - consent of the husband or registered partner required¹⁵⁹, if the surrogate is in such partnerships
- 1.4. Citizenship and residency** – Although the law poses no restrictions on part of citizenship, it does require that either the woman asking for the court permit **and** the woman who gestated have their permanent or provisional residence in Greece¹⁶⁰

Conclusion of the surrogacy contract before judicial approval

The Greek law requires the intended parents and the surrogate to already conclude a surrogacy contract prior to a judicial decision which will enable it to take legal effect¹⁶¹. However, the applicable regulations do not require any particular mandatory elements save for the determinations regarding the reimbursement of costs of the surrogate. Any party can withdraw from the surrogacy contract at any time before the embryo transfer¹⁶². However, in line with the prohibition of any medical acts on a person without his/her informed consent, it should also be accepted that it is up to the surrogate to decide to (legally) to abort or to not abort the embryo. For the very same reasons, this should also hold as to the performance of prenatal tests, especially, but not only, those of invasive nature, such as amniocentesis.¹⁶³

Pre-approvals required

The Greek system includes two oversight mechanisms. There is a mandatory pre-approval that must be obtained before transfer of genetic material. These procedures include: 1) application to the Council of

¹⁵⁷ Republic of Greece, 2022, Law 3305/2005, link: <https://www.kodiko.gr/nomothesia/document/164338/nomos-3305-2005> (Article 13, para. 2) (accessed on 30 September 2025)

¹⁵⁸ Republic of Greece, 2022, National Authority for Medically Assisted Reproduction, Decision 1704/2022 - Official Gazette 5524/B/26-10-2022, link: https://www.dsnet.gr/Epikairothta/Nomothesia/ya73_2017.htm (article 1) (accessed on 30 September 2025)

¹⁵⁹ Republic of Greece, 2022, Law 3089/2002, link: <https://www.kodiko.gr/nomothesia/document/175735/nomos-3089-2002> (article 1458) and Article 12 of Law 4356/2015 for registered partnerships, link: <https://www.kodiko.gr/nomothesia/document/140974/nomos-4356-2015> (accessed on 30 September 2025)

¹⁶⁰ Dacoronía, Eugenia (2023) - Surrogate mother: the Greek law. In Gomes, Ana Sofia da Silva, coord. - Vida intrauterina, início da personalidade, família e crianças: direito interno e transnacional. Lisboa: Universidade Lusíada. ISBN 978-989-640-257-0. P. 19-29. (p. 12) (accessed on 30 September 2025)

¹⁶¹ Republic of Greece, 2022, Law 3089/2002, link: <https://www.kodiko.gr/nomothesia/document/175735/nomos-3089-2002> (article 1458) (accessed on 30 September 2025)

¹⁶² Republic of Greece, 2022, Law 3089/2002, link: <https://www.kodiko.gr/nomothesia/document/175735/nomos-3089-2002> (article 1456)

¹⁶³ Zervogianni, Eleni. "Regulating surrogacy: Chances and pitfalls." *Pro Justitia: Ηλεκτρονική Επετηρίδα Νομικής Σχολής ΑΠΘ* 1 (2018): 102-126, link: <http://ejournals.lib.auth.gr/projustitia/article/viewFile/6652/6516> (p. 19 and authorities used in footnotes) (accessed on 30 September 2025)

Medically Assisted Reproduction and, only if their approval is issued, 2) an application for a Court order. Only after the court has issued its decision, can a surrogacy contract take effect.¹⁶⁴

Criminal Sanctions

Whoever participates in the process of obtaining a child through surrogacy, without complying with the conditions of articles 1458 of Law 3089/2002 and Article 13 of Law 3305/2005, is punished with a prison sentence of at least two (2) years and a fine of at least 1,500.00 euros. The same penalty applies to anyone who publicly or through the circulation of documents, images or representations announces, displays or advertises, even if covertly, the procreation of a child through a third woman or who professionally provides brokerage services for any kind of consideration or offers his own services in the same way or another to achieve this purpose.¹⁶⁵

Consequences of surrogacy - Legal parenthood

If the child is born after medically assisted reproduction of a surrogate mother, under the conditions of Art. 1458 Greek Civil Code, it is presumed that the intended mother shall be deemed as mother as she will then usually be the one who has obtained the court permit.¹⁶⁶ The Greek act allows a maternity claim by the surrogate mother only inside a 6 months period counted from the birth of the child and only if it is proven that the child is biologically descended from her.¹⁶⁷

Relevance of Surrogacy in the context of human trafficking

No particular jurisprudence was found in Greece, mostly because there is no centralised database of court rulings. However, two cases of human trafficking allegedly involving THB exploitation of surrogate mothers have been reported in the last 5 years.¹⁶⁸ The relevant general criminal legal framework does not specifically mention surrogacy.¹⁶⁹ In addition to this, a more recent case of alleged trafficking on the

¹⁶⁴ Republic of Greece, 2022, Law 3089/2002, link: <https://www.kodiko.gr/nomothesia/document/175735/nomos-3089-2002> (article 1458)

¹⁶⁵ Republic of Greece, 2022, Law 3305/2005 on Medical Assistance in reproduction, link: <https://www.kodiko.gr/nomothesia/document/164338/nomos-3305-2005> (article 26, para.8) (accessed on 30 September 2025)

¹⁶⁶ Republic of Greece, 2022, Law 3089/2002, link: <https://www.kodiko.gr/nomothesia/document/175735/nomos-3089-2002> (article 1458) and Article 12 of Law 4356/2015 for registered partnerships, link: <https://www.kodiko.gr/nomothesia/document/140974/nomos-4356-2015> (Article 1464) (accessed on 30 September 2025)

¹⁶⁷ Republic of Greece, 2022, Law 3089/2002, link: <https://www.kodiko.gr/nomothesia/document/175735/nomos-3089-2002> (article 1458) and Article 12 of Law 4356/2015 for registered partnerships, link: <https://www.kodiko.gr/nomothesia/document/140974/nomos-4356-2015> (Article 1464) (accessed on 30 September 2025)

¹⁶⁸ see report of Europol for 2019 here: <https://www.europol.europa.eu/media-press/newsroom/news/66-suspected-of-arranging-illegal-adoptions-and-surrogacies-and-human-egg-trafficking-in-greece> and in 2023 see here: https://ekka.org.gr/images/KOINONIKON-PAREMBASEON/%CE%95%CE%9C%CE%91/NRM_REPORT_2023_ENGLISH.pdf (page 89)

¹⁶⁹ for an overview of regulations see here: <https://eucpn.org/document/greek-policy-on-trafficking-in-human-beings>

island of Crete has recently been reported by the Greek Public prosecutor during a focus group meeting at the Eurojust¹⁷⁰.

Namely, In 2023, a case in Chania, Crete, involved an investigation into alleged unlawful activities linked to commercial surrogacy. The case concerned a criminal organisation reportedly composed of a fertility clinic owner, an embryologist, clinic staff, and intermediaries ("brokers"). The organisation is alleged to have recruited foreign women—primarily from Ukraine, Romania, Moldova, Georgia, and Albania—to serve as egg donors and surrogate mothers. These women were transported and housed in controlled environments to undergo fertility procedures, some of which were allegedly sham embryo transfers¹⁷¹. The organisation also facilitated what authorities describe as illegal adoptions and falsified medical and legal documentation, while the women involved reportedly perceived their participation as a form of labour and voluntarily entered into the surrogacy arrangements¹⁷². According to police data, the financial gain per surrogacy arrangement ranged from €70,000 to €120,000, with most of it retained as profit. On 8 August 2023, a police operation led to the arrest of eight individuals connected to the organisation, who were charged with multiple offenses, including human trafficking, illegal adoption, forgery, and violations of laws on medically assisted reproduction¹⁷³. At the moment this document was finalized, there were no new reports on this case nor on its epilogue. Analysing this case, it is important to note that even the prosecutor seems to imply that this case likely cannot fall under the definition of trafficking in human beings. This is because the women involved reportedly saw their participation as labour and appear to have entered the arrangement voluntarily - undermining one of the key elements of trafficking under the Palermo Protocol: coercion, fraud, or abuse of vulnerability.

As we noted throughout this study, surrogacy only qualifies as trafficking if all three legal elements are met: act, means, and purpose. Here, while irregularities like forged documents and illegal adoptions were present, the absence of clear coercion challenges the trafficking classification.

Civil Court jurisprudence

Despite a lack of a centralised database of court rulings, a study from 2017 covering 256 court decision between 2003-2017 in some Greek courts¹⁷⁴ provided some of the following insights:

- Almost negligible share of assisted reproduction fell on surrogacy, as data indicate that it was a measure of last resort,
- Until 2017 no surrogacy tourism at least on part of intended mothers (before the changes to the residency requirements), with this trend changing afterwards

¹⁷⁰ Eurojust, 2024. Focus Group of Specialised Prosecutors against Trafficking in Human Beings. (2024, June 26–27). *Outcome report of the 3rd meeting of the Focus Group of Specialised Prosecutors against Trafficking in Human Beings*. Eurojust. <https://www.eurojust.europa.eu> (p. 5, last accessed on 30 September 2025).

¹⁷¹ Ibid

¹⁷² Ibid

¹⁷³ Ibid

¹⁷⁴ Ραβδός, Παντελής. "Surrogate motherhood in Greece: Statistical data derived from court decisions." *Bioethica* 3, no. 2 (2017): 39-58. , link: <https://ejournals.epublishing.ekt.gr/index.php/bioethica/article/download/19723/17249> (conclusions) (accessed on 30 September 2025)

- Intended mothers were mostly Greek citizens whereas more gestational surrogates were mainly foreign citizens
- Whenever there has been a concrete indication of prior existence of any kind of professional relationship between the parties, the gestational surrogate was often a foreign citizen and an employee of the commissioning parents, in a broader sense
- The different judges that tried the relevant applications appear to have made scrupulous efforts to examine the facts of each particular case.

In addition to this, a limited access to court decisions managed in the [Qualex database](#), the summaries of court decisions indicate the following:

- Paying costs to achieve the pregnancy is not considered as compensation.
- This decision concerns a woman's application to use a surrogate mother in order to have a second child, as she is no longer able to conceive due to medical treatment for breast cancer. The application was rejected by the court, which clarified that the laws governing assisted reproduction in Greece only allow the application of such techniques to deal with the physical inability to have children, providing that only childless couples or people with a physical inability have access to these methods having children. This interpretation of the law confirms the restrictive nature of the use of assisted reproduction and surrogacy, as the provisions are designed to ensure that their use is focused on addressing the inability of couples to have children naturally.

Criminal court jurisprudence

No particular jurisprudence was found, mostly because there is no centralised database of court rulings. However, a couple of cases of alleged trafficking are examined above.

Ireland

Ireland is the most recent EU Member State that has a detailed regulation allowing surrogacy as of June 2025.¹⁷⁵

The new law has provisions on both domestic and international surrogacy.

With respect to domestic surrogacy, it outlines the following¹⁷⁶:

- 1) Only non-commercial and gestational surrogacy is allowed, whereby reimbursement of reasonable, reasonable expenses will be permitted. The Law also specifies which exact costs shall be reimbursable including the expense of reimbursing the surrogate mother for any loss of income but only for a) a period of not more than 6 months during the which the birth occurred or was expected to happen; b) any other period during the pregnancy or thereafter, not exceeding

¹⁷⁵ see the way of the bill here: <https://www.oireachtas.ie/en/bills/bill/2022/29/?tab=documents>

¹⁷⁶ Republic of Ireland, 2024, Health (Assisted Human Reproduction) Act 2024 (link: <https://data.oireachtas.ie/ie/oireachtas/act/2024/18/eng/enacted/a1824.pdf> (accessed on 30 September 2025)). For an analysis of these provisions see: Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link: <https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 320-349)

12 months in total, when the surrogate mother was unable to work on medical grounds related to the pregnancy or birth.

- 2) Access to surrogacy is to be made available on the basis of medical need.
- 3) The Law also sets out additional criteria which must be met by the intending parents in order for the surrogacy arrangement to be approved by the Regulatory Authority, which approval lasts for 2 years¹⁷⁷. For example, each intending parent must be at least 21, and at least one intending parent in each surrogacy must be habitually resident in Ireland.
- 4) The law establishes a court-based mechanism for transfer of parentage from the surrogate (and her husband) to the intending parents. At least one of the intending parents has to be genetically related to the child.
- 5) The law establishes a national surrogacy register where the contact details of any person involved in a surrogacy, e.g. sperm or oocyte donor, intending parent and surrogate, will be recorded. Once a person born to a surrogate reaches the age of 18, he or she may access the full information contained in the national surrogacy register, unless there are exceptional circumstances
- 6) Traditional or partial surrogacy will be prohibited and only gestational surrogacy is to be permitted.
- 7) Advertisements seeking a person to act as a surrogate or offering to act as a surrogate are prohibited.
- 8) Receiving remuneration for arranging a domestic surrogacy agreement is prohibited.

With respect to international surrogacy agreements, it is specified that¹⁷⁸:

- 1) a two-step process is introduced to allow for the recognition of parentage in future international surrogacy arrangements, encompassing pre-conception approval by the Assisted Human Reproduction Authority (AHRRA) and a post-birth court process for the granting of a Parental Order for Surrogacy.
- 2) persons seeking to undertake international surrogacy arrangements are required to meet the legal criteria both in the jurisdiction in which the surrogacy is intended to take place and also the criteria specified in the Irish legislation, which corresponds largely to the conditions to be met for a permitted domestic surrogacy agreement.
- 3) surrogate mothers cannot be paid more than the reasonable expenses which are incurred;
- 4) a process is introduced to allow the possibility for the recognition of parentage in respect of surrogacy arrangements – both domestic and international – undertaken prior to the commencement of the AHR Bill, as long as some key criteria are met. These criteria will include, in particular:
 - i) that the surrogacy was not unlawful at the time in the relevant jurisdiction,
 - ii) that it was a purely gestational surrogacy (the egg not provided by the surrogate mother),

¹⁷⁷ Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link: <https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 325)

¹⁷⁸ Republic of Ireland, 2023, announcement of the government on new policies related to international surrogacy, link: <https://www.gov.ie/en/press-release/b5e0d-government-approves-policy-proposals-on-international-surrogacy-and-recognition-of-past-surrogacy-arrangements/> (accessed on 30 September 2025)

- iii) that the surrogate mother has provided her consent to the granting of a Parental Order for Surrogacy

Civil Court jurisprudence

With respect to relevant case law in Ireland, it appears that there are no criminal law cases, while civil cases mostly related to international surrogacy agreements and reflect the principles outlined above¹⁷⁹.

Criminal court jurisprudence

Same as civil court jurisprudence.

Relevance of Surrogacy in the context of human trafficking

With reference to connections between surrogacy and human trafficking, a report by Professor Conor O'Mahony, Special Rapporteur on Child Protection outlines extensively against making blanket bans on surrogacy in this respect by positing, *inter alia*, that¹⁸⁰:

- The definition of sale of children in both international and Irish law includes the making of a payment for the child. Post-birth court proceedings on the transfer of parentage, occurring after the fact, are not an effective vehicle for preventing illicit payments being made to surrogates. Should such payments come to light during post-birth court proceedings concerning domestic surrogacy arrangements in Ireland, the parties involved would be subject to prosecution under the Criminal Law (Human Trafficking) Act 2008; but even then, the UN Special Rapporteur recommends that criminalising the parties is not normally in the best interests of the child.
- Stipulating in legislation that a court should refuse to recognise a surrogacy arrangement in such a scenario would leave the child in a legal limbo whereby the intending parents who have been caring for him or her are not permitted to continue to do so, and the surrogate may not wish to. The only alternative would be to place the child in care, and it is difficult to see how this could be in the best interests of the child. Laws designed to prevent the sale of children need to be aimed at preventing surrogacy arrangements of this, commercial nature from occurring in the first place rather than at penalising them after the child has been born.
- A requirement for a post-birth judicial procedure transferring parentage does not achieve this. For these reasons, the report concludes that pre-conception authorisation and transfer of parentage in properly regulated domestic altruistic surrogacy arrangements does not amount to sale of children and provides a sufficient safeguard for the best interests of the child. Post-birth safeguards other than a blanket rule that the surrogate retains parentage at birth could still be provided and could trigger judicial involvement in appropriate cases.

¹⁷⁹ Republic of Ireland, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=212608350#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=212608350#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see legal regulation) (accessed on 30 September 2025)

¹⁸⁰ Republic of Ireland, Professor Conor O'Mahony, Special Rapporteur on Child Protection, 2020, A Review of Children's Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law, link: <https://assets.gov.ie/130886/e66b52d7-9d3e-4bb4-b35d-cf67f9eea9fa.pdf> (p. 24-25)

In a more recent reflection on the matter, the Irish Human Rights and Equality Commission expressed its stance on the new law¹⁸¹, praising the framework for including stringent criteria for surrogate mothers and intended parents, aiming to prevent exploitation¹⁸². However, the Commission also expressed concerns over the Law's provisions on international surrogacy as they leave space for potential double standards in protection¹⁸³. The Commission also expressed concerns on the effectiveness of enforcing regulations across different legal and cultural contexts¹⁸⁴. In that vein, they raised the question regarding the practicality and enforceability of these provisions of pre-approving international surrogacy arrangements, one of the measures envisaged in the law¹⁸⁵. The role of intermediaries in international surrogacy was also pointed out to further complicate the issue, as it has been noted that the Law's allowance for their use could lead to commercial surrogacy¹⁸⁶.

The Commission further stated that the definition and enforcement of "reasonable expenses" in surrogacy arrangements present additional complexities. The Law outlines what constitutes reasonable expenses, which must be actually incurred and verifiable¹⁸⁷. However, ensuring that payments are reasonable in an international context is challenging due to economic disparities. Questions arise about how courts or the Irish regulatory authority can enforce these provisions and how surrogate mothers can assert their right to reimbursement¹⁸⁸.

¹⁸¹ Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link:
<https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 325-350)

¹⁸² Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link:
<https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 324)

¹⁸³ Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link:
<https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 329)

¹⁸⁴ Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link:
<https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 332)

¹⁸⁵ Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link:
<https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 329)

¹⁸⁶ Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link:
<https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 330)

¹⁸⁷ Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link:
<https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 334)

¹⁸⁸ Irish Human Rights and Equality Commission, 2024, Trafficking in Human Beings in Ireland – Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, link:
<https://www.ihrec.ie/app/uploads/2024/09/Trafficking-in-Human-Beings-in-Ireland-2023.pdf> (p. 334)

North Macedonia

General legal provisions

Surrogacy is allowed in North Macedonia, within the remits of a special regulatory framework enshrined in the 2014 amendments to the Law on Biomedical Assisted Fertilization.¹⁸⁹ This law does not use the terms surrogate motherhood and surrogate mother but uses the term: “Fertilization by inserting an embryo obtained with own or donated gametes of a married couple in the uterus of a woman - gestational carrier”¹⁹⁰. The gestational carrier must not in any circumstances be genetically connected to the child she is carrying¹⁹¹, which means that the legislation in question allows only gestational surrogacy with the genetical material to be provided either by the commissioning parents or third party.¹⁹² As per the conditions to be fulfilled for the surrogacy to be executed, the law stipulates several categories of conditions which are analysed below.

1. **Conditions on part of intended parents** – with respect to the intended parents, the law requires that:

They must be a married heterosexual couple and citizens of the Republic of North Macedonia¹⁹³

- 1) There is an evidence based established medical need, either:
 - i. the woman has a congenital/acquired absence of the uterus or congenital anomaly of the ovaries or
 - ii. the husband has infertility that cannot be cured or
 - iii. when at least three unsuccessful pregnancies of the woman are recorded.¹⁹⁴

¹⁸⁹ Shabedin, Sibeldzan Maksud, and Nikola Tuntevski, 2020 "SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA." In *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital society"*, p. 168, link: <https://eprints.uklo.edu.mk/id/eprint/6169/1/Conference-Proceedings-vol.2.pdf#page=168> (p. 170) (accessed on 30 September 2025)

¹⁹⁰ Shabedin, Sibeldzan Maksud, and Nikola Tuntevski, 2020 "SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA." In *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital society"*, p. 168, link: <https://eprints.uklo.edu.mk/id/eprint/6169/1/Conference-Proceedings-vol.2.pdf#page=168> (p. 170) (accessed on 30 September 2025)

¹⁹¹ Selmani-Bakiu, Arta, and Besa Arifi, 2022. "A LEGAL FRAMEWORK FOR SURROGATE MOTHERHOOD IN THE REPUBLIC OF NORTH MACEDONIA." Link <https://epi.org.mk/wp-content/uploads/Yearbook-on-European-Law-Policies-and-Institutions.pdf#page=95> (p.98)) (accessed on 30 September 2025)

¹⁹² Shabedin, Sibeldzan Maksud, and Nikola Tuntevski, 2020 "SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA." In *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital society"*, p. 168, link: <https://eprints.uklo.edu.mk/id/eprint/6169/1/Conference-Proceedings-vol.2.pdf#page=168> (p. 170) (accessed on 30 September 2025)

¹⁹³ Antonovska D. Surrogacy: A novelty concept in North Macedonia. *Women Health Open J.* 2021; 7(1): 4-6. doi: 10.17140/WHOJ-7-140

¹⁹⁴ Antonovska D. Surrogacy: A novelty concept in North Macedonia. *Women Health Open J.* 2021; 7(1): 4-6. doi: 10.17140/WHOJ-7-140

2. Conditions that should be fulfilled by the surrogate mother¹⁹⁵:

- 1) To be a citizen of the Republic of North Macedonia.
- 2) To be in good psycho-physical and general health condition.
- 3) To be at least 25 years of age, until the age at which the woman is in good psycho-physical and general health condition that enables a healthy pregnancy and the giving birth of a healthy child.
- 4) Mother of at least one child at the moment of starting the BAF procedure.
- 5) Parental Rights of the surrogate as a mother has not been revoked or restricted.
- 6) Legal capacity of the surrogate as a mother is not limited or taken away.
- 7) The surrogate mother must not be mentally ill or a person with intellectual disabilities.
- 8) Surrogate Mother must not be addicted to drugs or other psychotropic substances or alcohol.
- 9) Surrogate Mother must not have a severe chronic disease or not to be ill with an incurable infectious disease

3. Reimbursement of costs of the surrogate - The material expenses related to the surrogacy are covered by the contracting couple on a monthly basis, ensuring that this does not exceed the average monthly salary in the RNM. The contracting couple are obliged to inform the Ministry of Health of these expenses once a month, providing receipts for their expenses. In order to avoid the commercialization of surrogacy, the law penalizes the act of requesting or receiving compensation, money, valuables, real estate or any other kind of material profit in exchange for surrogacy. with a risk of imprisonment of between six months and five years (art. 69-d). Furthermore, the married couple cannot give gifts to the gestational carrier which exceed the amount of 100 Euros during the entire process of BAF up until after the birth of the child (art. 12-g, para. 15).¹⁹⁶

4. Procedural requirements – the fulfilment of these conditions is checked in a procedure laid down by the said law. This procedure is comprised of the following steps:

- 1) The first step that those interested should take is to contact the Ministry of Health by submitting appropriate documentation as confirmation that they meet the legally prescribed conditions. The Ministry of Health maintains two registers, one for women who are potential gestational carriers and the other for married couples. After determining that the conditions are met, the Ministry enters the data in these registers.

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¹⁹⁵ Shabedin, Sibeldzan Maksud, and Nikola Tuntevski, 2020 "SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA." In *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital society"*, p. 168, link: <https://eprints.uklo.edu.mk/id/eprint/6169/1/Conference-Proceedings-vol.2.pdf#page=168> (p. 171) (accessed on 30 September 2025)

¹⁹⁶ Selmani-Bakui, Arta, and Besa Arifi, 2022. "A LEGAL FRAMEWORK FOR SURROGATE MOTHERHOOD IN THE REPUBLIC OF NORTH MACEDONIA." Link <https://epi.org.mk/wp-content/uploads/Yearbook-on-European-Law-Policies-and-Institutions.pdf#page=95> (p.103) (accessed on 30 September 2025)

¹⁹⁷ Shabedin, Sibeldzan Maksud, and Nikola Tuntevski, 2020 "SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA." In *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital society"*, p. 168, link: <https://eprints.uklo.edu.mk/id/eprint/6169/1/Conference-Proceedings-vol.2.pdf#page=168> (p. 171) (accessed on 30 September 2025)

- 2) The second step that should be taken by the interested married couples is to submit a request to the Ministry of Health for inspection of the appropriate register in order to select a gestational carrier.¹⁹⁸
- 3) The third step is for interested couples to contact the Ministry of Health with: a written request for initiating the BPO procedure with a gestational carrier; to submit a written statement notarised; to be previously expertly advised on the psychological and legal consequences of this procedure by the Commission for Psychological Counseling and the Commission for Legal Counseling¹⁹⁹
- 4) After receiving the written request, the Ministry of Health will determine whether all the conditions of this law are met for initiating a BAF procedure with a gestational carrier and will notify the married couple and the potential gestational carrier in writing. If the conditions for initiating a BAF procedure with a gestational carrier are met, the married couple and the potential gestational carrier enter into an agreement regulating the mutual rights and obligations arising from that procedure²⁰⁰.

5. Consequences, parental rights:

- 1) The gestational carrier, according to the provisions of this law, has no parental rights. This is in respect to obligations towards the child and to initiate a procedure for determining maternity or exercise of parental rights.
- 2) However, the gestational carrier has the right to initiate a procedure for termination of pregnancy up to the expiration of the 10th week. On the other hand, the intended parents also have the right to request termination of the pregnancy of the gestational carrier if medical indications are determined.²⁰¹
- 3) After the birth of the child, the intended parents are registered in the Birth registry as the parents of the child.²⁰² Only in certain, exceptional cases when the child/children are either left by the intended parents or in case both parents are dead, and the child has no other living relative then the gestational carrier has a right to request to be registered as

¹⁹⁸ Shabedin, Sibeldzan Maksud, and Nikola Tuntevski, 2020 "SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA." In *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital society"*, p. 168, link: <https://eprints.uklo.edu.mk/id/eprint/6169/1/Conference-Proceedings-vol.2.pdf#page=168> (p. 171) (accessed on 30 September 2025)

¹⁹⁹ Shabedin, Sibeldzan Maksud, and Nikola Tuntevski, 2020 "SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA." In *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital society"*, p. 168, link: <https://eprints.uklo.edu.mk/id/eprint/6169/1/Conference-Proceedings-vol.2.pdf#page=168> (p. 171-172) (accessed on 30 September 2025)

²⁰⁰ Shabedin, Sibeldzan Maksud, and Nikola Tuntevski, 2020 "SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA." In *International Scientific Conference "Towards a Better Future: Human rights, Organized crime and Digital society"*, p. 168, link: <https://eprints.uklo.edu.mk/id/eprint/6169/1/Conference-Proceedings-vol.2.pdf#page=168> (p. 172) (accessed on 30 September 2025)

²⁰¹ Antonovska D. Surrogacy: A novelty concept in North Macedonia. *Women Health Open J.* 2021; 7(1): 4-6. doi: 10.17140/WHOJ-7-140

²⁰² Selmani-Bakui, Arta, and Besa Arifi, 2022. "A LEGAL FRAMEWORK FOR SURROGATE MOTHERHOOD IN THE REPUBLIC OF NORTH MACEDONIA." Link <https://epi.org.mk/wp-content/uploads/Yearbook-on-European-Law-Policies-and-Institutions.pdf#page=95> (p.101) (accessed on 30 September 2025)

a mother of the child²⁰³. In that case, she would have to go through a procedure similar to adoption.²⁰⁴

6. **Penal provisions** - The law indicates penal sanctions for criminal offences related to the surrogacy process:

- 1) The penal sanctions consist of up to three years imprisonment for natural persons and fees for legal persons for those, who with use of force, serious threat, fraud or in any other way lure one or more women into becoming gestational carriers or mediate the process of surrogacy in order to gain profit (art. 69-a). The law provides for harsher penalties if somebody organizes a group, band or other form of organisation to commit the above-mentioned offences, they will be punished with imprisonment of between one and ten years (art. 69-b, para.1).²⁰⁵
- 2) The law prohibits the advertising of the surrogacy process, as well as the recruitment of surrogate mothers and penally sanctions these criminal offences. Specific sanctions apply to the organized forms of these crimes. The law indicates that a person who, using a public call, public medium or another similar form of advertisement, requests or offers the service of giving birth for someone else for compensation, will be fined or will be sentenced to imprisonment of up to three years.²⁰⁶

General Criminal law provisions on surrogacy

See previous section.

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB²⁰⁷, it can be assumed that surrogacy would be categorised as THB only if it fulfils the required 3 elements of the Palermo protocol in a given case.

General Criminal law provisions on surrogacy

See previous section.

²⁰³ Antonovska D. Surrogacy: A novelty concept in North Macedonia. Women Health Open J. 2021; 7(1): 4-6. doi: 10.17140/WHOJ-7-140

²⁰⁴ Selmani-Bakiu, Arta, and Besa Arifi, 2022. "A LEGAL FRAMEWORK FOR SURROGATE MOTHERHOOD IN THE REPUBLIC OF NORTH MACEDONIA." Link <https://epi.org.mk/wp-content/uploads/Yearbook-on-European-Law-Policies-and-Institutions.pdf#page=95> (p.101) (accessed on 30 September 2025)

²⁰⁵ Selmani-Bakiu, Arta, and Besa Arifi, 2022. "A LEGAL FRAMEWORK FOR SURROGATE MOTHERHOOD IN THE REPUBLIC OF NORTH MACEDONIA." Link <https://epi.org.mk/wp-content/uploads/Yearbook-on-European-Law-Policies-and-Institutions.pdf#page=95> (p.102) (accessed on 30 September 2025)

²⁰⁶ Selmani-Bakiu, Arta, and Besa Arifi, 2022. "A LEGAL FRAMEWORK FOR SURROGATE MOTHERHOOD IN THE REPUBLIC OF NORTH MACEDONIA." Link <https://epi.org.mk/wp-content/uploads/Yearbook-on-European-Law-Policies-and-Institutions.pdf#page=95> (p.102) (accessed on 30 September 2025)

²⁰⁷ Republic of Montenegro, 2023, Criminal Code, link: <https://www.gov.me/dokumenta/c4dcee51-ee88-430f-a8db-de91f38eadc4> (article 444)

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB²⁰⁸, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case. However, the penal provisions of the Law on Biomedical Assisted Fertilization also indicate that this law prohibits abusing surrogacy processes for THB exploitation purposes. Nevertheless, the publicly available case law showed no practice in this regard.

Civil court practice on surrogacy

The only case where surrogacy is mentioned is the case П4-845/22 of the *Основен граѓански суд Скопје* of April 2023 – here the Court ordered the State to pay the fees due to expert commission members on establishing the psychosocial fitness of intended parents and surrogate mothers to undergo the procedure²⁰⁹.

Criminal Court practice on surrogacy

No relevant decisions found.²¹⁰

Portugal

The surrogacy legal framework in Portugal is also ridden with several modifications and rises and falls. Namely, Portugal adopted its regulatory framework in 2016²¹¹, which only became operational in the second half of 2017 and after it was further concretized by a presidential Decree.²¹² Nine months after, in April 2018, the Constitutional Court of Portugal declared many of the Act's provisions unconstitutional and rendered the surrogacy contracts unenforceable and illegal²¹³ except for those contracts where

²⁰⁸ Republic of North Macedonia, 2023, Criminal Code, link: <https://jorm.gov.mk/wp-content/uploads/2016/03/%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8%D0%BA-%D0%BF%D1%80%D0%B5%D1%87%D0%B8%D1%81%D1%82%D0%B5%D0%BD-%D1%82%D0%B5%D0%BA%D1%81%D1%82.pdf> (article 418-a)

²⁰⁹ Decision available in Macedonian only, link: http://www.vsrn.mk/wps/portal/central/sud/odluki!/ut/p/z1/04_Sj9CPyKssy0xPLMnMz0vMAfljo8zidxNTAwsvA183ANCzQ0cfV0MPEIsYwsjMz0C7ldFQH_rOQ-/ (p. 9) (accessed on 30 September 2025)

²¹⁰ Portal used: http://www.vsrn.mk/wps/portal/central/sud/odluki!/ut/p/z1/04_Sj9CPyKssy0xPLMnMz0vMAfljo8zidxNTAwsvA183ANCzQ0cfV0MPEIsYwsjMz0C7ldFQH_rOQ-/

²¹¹ Republic of Portugal, 2016, Law nr. 25/2016 on access to surrogacy, a law making the third amendment to Law no. 32/2006 , of 26 July (medically assisted procreation)

, link <https://diariodarepublica.pt/dr/detalhe/lei/25-2016-75177806> (accessed on 30 September 2025)

²¹² Republic of Portugal, 2017, Regulatory Decree nr. 6/2017, Diário da República nr. 146/2017, Series I of 31 July 2017, link <https://diariodarepublica.pt/dr/detalhe/decreto-regulamentar/6-2017-107785481> (accessed on 30 September 2025)

²¹³ Araújo, Marisa. (2023). The Portuguese law on Surrogacy – Promises and Perils. *Frontiers in Law*. 2. 82-94. https://www.academia.edu/download/106443101/FLV2A10_Araujo.pdf (abstract) (accessed on 30 September 2025)

therapeutic procedures had already been initiated at the time of the decision²¹⁴. This decision also revoked the 2017 Decree²¹⁵. Afterwards the Parliament adopted a new law in 2021, accommodating the rulings of the Constitutional Court²¹⁶. However, this law is also still not operational as the Government's necessary complementary regulations have still not been adopted²¹⁷. In that vein, albeit the regulatory framework in Portugal is incomplete, it is clear that surrogacy is not banned in Portugal and hence the current outlines of the said most recent consolidated version of the relevant law²¹⁸ will be described below.

Type of surrogacy allowed

In Portugal, the law only allows altruistic surrogacy, while prohibiting commercial²¹⁹ and as long as it is gestational²²⁰ with gametes coming from at least one of the respective beneficiaries.²²¹ Unlike the Greek and the Cypriot legislator, in Portugal the policymakers opted for a stricter approach: only expenses can be reimbursed and only if they are documented²²², hence excluding lost income.

²¹⁴ Vera Lúcia Raposo, "Rise and fall of Surrogacy Arrangements in Portugal (in the Aftermath of Decision n. 465/2019 of the Portuguese Constitutional Court)", *BioLaw Journal / Rivista de Biodiritto*, n. 1/2020, pp. 339-353
Doi: <http://dx.doi.org/10.15168/2284-4503-531> (p.11) (accessed on 30 September 2025)

²¹⁵ Araújo, Marisa. (2023). The Portuguese law on Surrogacy – Promises and Perils. *Frontiers in Law*. 2. 82-94.
https://www.academia.edu/download/106443101/FLV2A10_Araujo.pdf (p. 7)

²¹⁶ Araújo, Marisa. (2023). The Portuguese law on Surrogacy – Promises and Perils. *Frontiers in Law*. 2. 82-94.
https://www.academia.edu/download/106443101/FLV2A10_Araujo.pdf (p. 7)

²¹⁷ Rubio Grundell, L. Regulating surrogacy across Western Europe: A usual case of (gendered) morality politics?. *Comp Eur Polit* (2024). <https://doi.org/10.1057/s41295-024-00377-5> (p. 6) (accessed on 30 September 2025)

²¹⁸ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link:
<https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (accessed on 30 September 2025)

²¹⁹ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link:
<https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (article 39) (accessed on 30 September 2025)

²²⁰ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link:
<https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (article 8, para. 4) (accessed on 30 September 2025)

²²¹ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link:
<https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (Article 8, para.4) (accessed on 30 September 2025)

²²² Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link:
<https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (article 8, para. 7) (accessed on 30 September 2025)

Conditions on part of intended parents

- 1.1. **Gender and relations of intended parents** - Access granted to heterosexual couples and single women²²³, same-sex couples of women but not couples of men nor single men.²²⁴
- 1.2. **Medical necessity on part of intended parents** - stipulates that only when a person is unable to conceive due to medical reasons²²⁵
- 1.3. **Age limitations** - the maximum age for women is capped at 50, whereas it is set at 60 for men²²⁶
- 1.4. **Citizenship and residency** – In Portugal, the rules are only applicable to Portuguese citizens and foreigners with a permanent residence in Portugal.²²⁷
- 1.5. **Other criteria** - A similar condition related to criminal record of intended parents to that of the Cypriot act is set out in the Portuguese law²²⁸

Conditions on part of the surrogate

The surrogate also has to fulfil certain conditions in order to be allowed to perform the act of surrogacy. There are several conditions here as well, namely:

- 1.1. **Fitness of the surrogate** - the surrogate must be physically and psychologically fit to bear a child, as determined by medical experts on a case-by-case basis²²⁹
- 1.2. **Previous motherhood** – Preference is given to a surrogate which already has at least one child of her own, but it is not a mandatory element²³⁰
- 1.3. **Age limitations** – the law does not specify any age limit for the surrogate

²²³ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (article 6) (accessed on 30 September 2025)

²²⁴ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (article 6) (accessed on 30 September 2025)

²²⁵ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (Art. 8 para. 2) (accessed on 30 September 2025)

²²⁶ Republic of Portugal, decisions of the NATIONAL COUNCIL OF MEDICALLY ASSISTED PROCREATION, 2017 and 2018, link: <https://www.cnpma.org.pt/cnpma/Paginas/Deliberacoes-mandato-II.aspx> (accessed on 30 September 2025)

²²⁷ Republic of Portugal, Law No. 91/2021 Act on amending the Act of Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/detalhe/lei/90-2021-175983728> (article 2) (accessed on 30 September 2025)

²²⁸ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (article 6) (accessed on 30 September 2025)

²²⁹ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (implied from Art. 8 para. 2 through 5) (accessed on 30 September 2025)

²³⁰ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (article 8, para. 3) (accessed on 30 September 2025)

- 1.4. **Relations to the intended parents** – the law requires that the surrogate is not in an employment relation or economic subordination to the intended parents²³¹
- 1.5. **Consent of the partner of surrogate** - not required²³²
- 1.6. **Citizenship and residency** – In Portugal, only Portuguese citizens or those with a permanent residence can enter into a surrogacy agreement²³³.

Conclusion of the surrogacy contract after approval

Like the Cypriot law, the Portuguese act requires from the parties to enter into a contract only after the approval of the National Council for Medically Assisted Procreation²³⁴. The law also specifies the following compulsory elements²³⁵:

- 1) The surrogate acts in compliance with medical guidelines of the obstetrician and is to carry medical exams and therapeutic acts for the follow-up of the pregnancy, to ensure a normal evolution and the well-being of the fetus
- 2) The surrogate has the right to participate in all decisions regarding delivery and the place where will take place
- 3) The surrogate has the right to psychological support through the pregnancy and after delivery
- 4) Other rights and obligations of the surrogate, such as to refuse to undergo diagnostic testing, such as amniocentesis, and traveling
- 5) Information to the parties about clinical techniques and potential health risks
- 6) Information to the parties about the consequences of the surrogate's lifestyle on embryonic and foetal development
- 7) Provisions to be observed regarding health intercurrents
- 8) Provisions to be observed in cases of voluntary abortion (in accordance with Portuguese legislation. Article 140 of the Portuguese Penal Code)
- 9) Possibility to terminate the contract by any of the parties in the event of a number of failed pregnancy attempts
- 10) Terms of revocation of consent or contract
- 11) The subsystems or health insurance that may be associated with the object of the contract
- 12) The means of conflict resolution adopted

²³¹ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (implied from Art. 8 para. 8) (accessed on 30 September 2025)

²³² Araújo, Marisa. (2023). The Portuguese law on Surrogacy – Promises and Perils. *Frontiers in Law*. 2. 82-94. link: https://www.academia.edu/download/106443101/FLV2A10_Araujo.pdf (p. 11) (accessed on 30 September 2025)

²³³ Republic of Portugal, Law No. 91/2021 Act on amending the Act of Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/detalhe/lei/90-2021-175983728> (article 2) (accessed on 30 September 2025)

²³⁴ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (Article 8, para.5) (accessed on 30 September 2025)

²³⁵ Overview taken from: Araújo, Marisa. (2023). The Portuguese law on Surrogacy – Promises and Perils. *Frontiers in Law*. 2. 82-94. link: https://www.academia.edu/download/106443101/FLV2A10_Araujo.pdf (p. 10) (accessed on 30 September 2025)

- 13) To refrain from imposing on the surrogate any conducts that violates her rights, namely: the right to be informed about medical, psychological, social, and legal implications of the surrogacy contract and health risks related to complications during pregnancy, the right to have the embryo transferred in an authorized centre; the right to be assisted by a doctor and a psychologist.
- 14) The contract cannot diminish the surrogate's fundamental rights, including social and labour rights

Intended parents/ mother(s) must give written informed consent to the procedure, and, after ART procedures start, it cannot be revoked. The surrogate has to give written informed consent to the procedure, and, after the child is born, and until the registration of the child, she can revoke it.²³⁶ Additionally, the Portuguese law specifically guards the right of the surrogate mother to perform an abortion in accordance with provisions of articles 140-142 of the Portuguese Criminal code by prohibiting the surrogacy agreement to impair it in any way²³⁷

Approvals required

Pre-approval mandatory before transfer of genetic material and conclusion of contract. This approval procedure requires the authorization of the National Council of Medically Assisted Reproduction and a prior mandatory hearing from the Order of Doctors and the Order of Psychologists²³⁸.

Criminal Sanctions

The law provides criminal liability for²³⁹:

- Intended parents and surrogates that engage in a commercial surrogacy contract
- Intended parents and surrogates that engage in a surrogacy contract in violation of the provisions from Article 8(2), (4), (5), (7), (8)
- Anyone who promotes and intermediates a contract in violation of the provisions of Article 8(2), (4), (5), (7), (8)
- Anyone who has an economic gain to celebrate or promote a surrogacy contract.

Consequences of surrogacy-Legal parenthood

Considering article 8(1) (9) (10) we can conclude that the legislator adopted a legal transfer of parenthood. There is no need for a parental order, before or after the procedure. The intended parents, or intended mother(s), are, by contract, the legal parents (mother(s)) of the child, although, the

²³⁶ Overview taken from: Araújo, Marisa. (2023). The Portuguese law on Surrogacy – Promises and Perils. *Frontiers in Law*. 2. 82-94. link: https://www.academia.edu/download/106443101/FLV2A10_Araujo.pdf (p. 11) (accessed on 30 September 2025)

²³⁷ Republic of Portugal, Criminal Code, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1995-34437675> (accessed on 30 September 2025)

²³⁸ Republic of Portugal, Law No. 32/2006 Medically assisted reproduction, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2006-34529775> (Article 8, para.5) (accessed on 30 September 2025)

²³⁹ Overview taken from: Araújo, Marisa. (2023). The Portuguese law on Surrogacy – Promises and Perils. *Frontiers in Law*. 2. 82-94. link: https://www.academia.edu/download/106443101/FLV2A10_Araujo.pdf (p. 11-12) (accessed on 30 September 2025)

surrogate can revoke her consent until after the child is born (until the child is registered) (article 8(1) (9) (10), article 14 (2)).²⁴⁰

Relevance of Surrogacy in the context of human trafficking

Neither the relevant general criminal law framework²⁴¹ nor the provisions related to trafficking in human beings do not specifically mention surrogacy.²⁴²

Civil Court jurisprudence

Apart from the decisions of the constitutional court already described above and in line with the fact that the law was never effectively implemented, there aren't any court decisions according both to a free search of the relevant jurisprudence database²⁴³.

Criminal court jurisprudence

Although the official case law database yielded no results, media reports of an ongoing trial the Tribunal of Leiria has postponed the trial of a "surrogate mother" case involving a Brazilian woman and a couple accused of human trafficking and document forgery crimes. The court accepted the defence lawyer's request, contesting the Public Ministry's (MP) separation of the process for the woman residing in Brazil. The MP had extracted and sent a certificate to Brazil, but the court deemed the woman's presence essential for the trial. The court has ordered the Brazilian Embassy in Portugal to provide the woman's address for notification. The trial has been postponed indefinitely²⁴⁴.

The case dates back to 2022 when one of the defendants, planning to become a father, communicated with several pregnant Brazilian women on social media platforms. He arranged for one of these women to travel to Portugal to give birth, with all her expenses covered, including medical care and accommodation. The baby was registered under the defendant's name, but authorities later placed the newborn in temporary foster care. The defendants are accused of acting deliberately to falsify the civil registry and achieve their paternity goals.

²⁴⁰ Quote from: Araújo, Marisa. (2023). The Portuguese law on Surrogacy – Promises and Perils. *Frontiers in Law*. 2. 82-94. link: https://www.academia.edu/download/106443101/FLV2A10_Araujo.pdf (p. 7) (accessed on 30 September 2025)

²⁴¹ Republic of Portugal, 2023, Criminal code, link: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1995-34437675> (article 160) (accessed on 30 September 2025 on 10.01.2025)

²⁴² see detailed explanation here: Republic of Portugal, 2019, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Portugal.docx> (p. 4) (accessed on 30 September 2025)

²⁴³ see here: <https://www.dgsi.pt/>

²⁴⁴ See this media report: <https://www.jn.pt/1161734171/tribunal-adia-julgamento-para-barriga-de-aluguer-brasileira-responder-por-crime-em-portugal/>

Ukraine

General legal provisions

While surrogacy is not regulated in detail in Ukraine, the permissive approach of the state authorities has made it one of the few European states that allow commercial surrogacy foreign citizens to enter into surrogacy arrangement with Ukrainian women²⁴⁵. There are several acts that partially regulate surrogacy starting from the Ukrainian civil code which lays down the foundations of reproductive rights²⁴⁶, surrogacy itself is allowed in Article 123 of the Family code. This provisions, especially in its para. 2 states that²⁴⁷: “2. *If a human embryo conceived by a couple (man and woman) as a result of the use of assisted reproductive technologies is transferred into another woman's body, the parents of the child are the spouses.*”

In that vein, this provision makes the surrogacy contract enforceable and allows the intended parents to get inscribed as parents in the birth registry, although it restricts access to surrogacy to married heterosexual couples²⁴⁸. Lastly, articles 136 and 139 of the Family Code state that a surrogate mother cannot claim recognition of her motherhood, even in court²⁴⁹.

More detailed provisions on the conditions to carry out the surrogacy, are outlined in the Order of September 9, 2013 No. 787 of the Ministry of Health of Ukraine²⁵⁰ which order contains a separate chapter (chapter 6) on surrogacy. As can be seen from this Order, surrogacy is executed on grounds of a notarised contract between the intended parents and the surrogate mother²⁵¹. However, there are no strict legislative restrictions on the content of this contract²⁵², which has been interpreted also as an

²⁴⁵ Sarnacka, Emilia, and Ivan Demchenko. "Legal Regulation of Surrogacy in Poland and Ukraine—a Comparative Analysis." Review of European and Comparative Law 57.2 (2024): 223-248. Link: <https://czasopisma.kul.pl/index.php/recl/article/download/17247/15256> (p.10) (accessed on 30 September 2025 on 27.08.2024)

²⁴⁶ Sarnacka, Emilia, and Ivan Demchenko. "Legal Regulation of Surrogacy in Poland and Ukraine—a Comparative Analysis." Review of European and Comparative Law 57.2 (2024): 223-248. Link: <https://czasopisma.kul.pl/index.php/recl/article/download/17247/15256> (p.10) (accessed on 30 September 2025 on 27.08.2024)

²⁴⁷ Republic of Ukraine, 2024, Family Code, link: <https://ips.ligazakon.net/document/T022947?an=821005> (accessed on 30 September 2025)

²⁴⁸ Sarnacka, Emilia, and Ivan Demchenko. "Legal Regulation of Surrogacy in Poland and Ukraine—a Comparative Analysis." Review of European and Comparative Law 57.2 (2024): 223-248. Link: <https://czasopisma.kul.pl/index.php/recl/article/download/17247/15256> (p.12) (accessed on 30 September 2025 on 27.08.2024)

²⁴⁹ Reznik, Oleg M., and Yuliia M. Yakushchenko. "Legal considerations surrounding surrogacy in Ukraine." Wiadomości Lekarskie 73.5 (2020): 1048-1052. Link: <https://www.wiadlek.pl/wp-content/uploads/archive/2020/WLek202005139.pdf> (p. 2) (accessed on 30 September 2025)

²⁵⁰ Republic of Ukraine, 2013, Order of September 9, 2013 No. 787, link: <https://ips.ligazakon.net/document/RE24229?an=309> (accessed on 30 September 2025)

²⁵¹ Republic of Ukraine, 2013, Order of September 9, 2013 No. 787, link: <https://ips.ligazakon.net/document/RE24229?an=309> (Chapter 6) (accessed on 30 September 2025)

²⁵² Reznik, Oleg M., and Yuliia M. Yakushchenko. "Legal considerations surrounding surrogacy in Ukraine." Wiadomości Lekarskie 73.5 (2020): 1048-1052. Link: <https://www.wiadlek.pl/wp-content/uploads/archive/2020/WLek202005139.pdf> (p. 4) (accessed on 30 September 2025)

authorization of practicing commercial surrogacy as well. Said lack of clear regulation has also reportedly led to situations when a surrogate mother refuses to transfer a newborn child to genetic parents, threatens to terminate the pregnancy, requires additional funds, and threatens to disclose information about the birth of a child²⁵³. Other situations include the customer's refusal to pay the surrogate mother the agreed compensation, the lack of proper conditions during pregnancy and childbirth, etc²⁵⁴.

In line with this Order, the decision on allowing surrogacy is made by a competent and authorized Health care center after the following preconditions to execute a surrogacy arrangement are met²⁵⁵:

- 1) the presence of medical indications on part of the intended parents showing inability to conceive, provided for in greater detail in clause 6.2 of this section (unsuccessful repeated attempts of DRT (4 or more times) with repeated receipt of high-quality embryos, the transfer of which did not lead to pregnancy among others)
- 2) that one of the future parents, in whose interests the surrogacy arrangement is carried out, must have a genetic connection with the child;
- 3) **that the surrogate mother must:**
 - a. not have a **direct** genetic connection with the child, while a woman is allowed to carry the pregnancy by close relatives of the future parents (mother, sister, cousin, etc.).
 - b. be an adult woman with legal capacity,
 - c. have her own healthy child,
 - d. have no medical contraindications prescribed in greater detail in Section II and Clause 3.2 of Section III of the Order
 - e. must be examined by a psychiatrist
 - f. must have the consent of her husband to her participation in the surrogate motherhood programme
 - g. must fill a voluntary written application of the surrogate mother in the form given in Appendix 17 to the Order,
- 4) **that the intended parents must:**
 - a. submit the filled out form of statement used by the patient/patients regarding the use of assisted reproductive technologies-as they are the ones benefiting from surrogacy as a form of assisted reproductive technology procedure ;
 - b. submit their copies of passports;
 - c. submit a copy of the marriage certificate;
 - d. submit a notarised copy of a written joint contract between the surrogate mother and themselves.

²⁵³ STRELNYK, Viktoria, H. R. E. S. Natalia, and Tetiana CHURILOVA. "Legal support of the rights of the child and the gestational courier in the context of the fourth generation of human rights in Ukraine." *Revista Jurídica Portucalense* (2024): 513-539. (link: <https://revistas.rcaap.pt/juridica/article/view/34974/25202>) (p.16) (accessed on 30 September 2025)

²⁵⁴ STRELNYK, Viktoria, H. R. E. S. Natalia, and Tetiana CHURILOVA. "Legal support of the rights of the child and the gestational courier in the context of the fourth generation of human rights in Ukraine." *Revista Jurídica Portucalense* (2024): 513-539. (link: <https://revistas.rcaap.pt/juridica/article/view/34974/25202>) (p.16) (accessed on 30 September 2025)

²⁵⁵ Republic of Ukraine, 2013, Order of September 9, 2013 No. 787, link: <https://ips.ligazakon.net/document/RE24229?an=309> (chapter 6) ((accessed on 30 September 2025))

Overall, it can be stated that the fact that the Family Code specifies the rights only of genetic parents, not surrogate mothers and that the said Order 787 mostly describes the procedure but does not establish any rights or guarantees of the rights for the parties, which can be claimed/protected in court. Thus, while it might seem that surrogacy is allowed in Ukraine or that the state 'endorses it', it is fairer to say that there is legal vacuum and 'temporary' regulation until state adopts a clear position on the issue. However, this 'temporary' state turned into permanent due to inaction of the state in this area, leaving space for much potentially negative repercussions on the rights of the surrogate mothers.

General Criminal law provisions on surrogacy

It appears that there is no specific provision in the criminal code on the matter of breach of rules regulating the way in which surrogacy is executed²⁵⁶. This is confirmed by the fact that there is a specific proposal on amending the criminal law framework in this regard in 2020²⁵⁷, which has not yet passed as the version of the Criminal code in force contains no reference either to an embryo, surrogacy or reproductive technologies and procedures.

Relevance of Surrogacy in the context of human trafficking

Even though the criminal code does not mention surrogacy-specifically in its definition of THB in Article 148²⁵⁸, it does follow the Palermo protocol definition and specifies forced pregnancy as one of the modalities of acts which can be deemed THB if other elements are fulfilled. In that sense, it can be assumed that surrogacy would be categorised as THB only if it fulfils the required 3 elements of the Palermo protocol definition in a given case. In one of the most recent cases with a court epilogue, a vast criminal network of organized THB exploitation of surrogacy was pierced. A detailed analysis follows:

These five Ukrainian court verdicts reveal a transnational human trafficking scheme centered around commercial surrogacy services, targeting vulnerable Ukrainian women and serving foreign commissioning parents (mostly from France, Italy, and Germany). The criminal network exploited women through deception, coercion, and abuse of vulnerability to facilitate illegal cross-border transfer of children.

The Snizhana group of cases

Source Verdicts

1. Verdict № 756/15734/23, 05.09.2024²⁵⁹(Verdict 1)

²⁵⁶ Звірко, Олександр Євстафійович. "Кримінальна відповідальність за порушення умов та порядку застосування допоміжних репродуктивних технологій (ДРТ)." (2014). Link:

https://essuir.sumdu.edu.ua/bitstream-download/123456789/53052/7/Zvirko_Kryminalna_vidpovidalnist_za_porushennia.pdf;jsessionid=E5EC1302467306C69EFCC08847F06D03

²⁵⁷ See this article: https://www.unian.ua/society/surogatne-materinstvo-v-ukrajini-proponuyut-vvesti-kriminalnu-vidpovidalnist-novini-ukrajini-11002472.html?fbclid=IwAR1zG-w_t00O6sSHUCtK3iY3g-TdrMnWF36Xo4QDiuJ7FU6ubXajE0_DnPs and also this draft proposal of the law: https://ips.ligazakon.net/document/view/ji02106a?an=48&ed=2020_05_15 n

²⁵⁸ Republic of Ukraine, 2024, Criminal code, link: <https://ips.ligazakon.net/document/T012341?an=912534> (Article 148) (accessed on 30 September 2025)

²⁵⁹ Available here: <https://reyestr.court.gov.ua/Review/121455104>

2. Verdict № 756/15737/23, 13.08.2024²⁶⁰ (**Verdict 2**)
3. Verdict № 756/1293/24, 2024²⁶¹ (**Verdict 3**)
4. Verdict № 756/11007/22, 23.11.2022²⁶² (**Verdict 4**)
5. Verdict № 756/381/24, 12.01.2024²⁶³ (**Verdict 5**)

Key Comparative Table

Category	Findings from the Verdicts	Sources
Clinics Involved	3 clinics repeatedly named: "Сніжана" (Kharkiv), "Ла Віта Нова" (Kharkiv), "Мілартіс" or "Натівіта" (Kyiv). Used for IVF, birth, recruitment, and handover.	Verdict 1, (pp. 10, 27) Verdict 2, (pp. 1–10, 18) Verdict 5, (p. 2) Verdict 2, (pp. 2, 6, 8)
Commissioning Parents (Clients)	At least 25 foreign clients identified: Mostly French and Italian nationals– Some German citizens– Several in same-sex partnerships	Verdict 1, (pp. 10, 14, 19) Verdict 2, (pp. 7–9, 16–17) Verdict 5, (pp. 2, 29) Verdict 4, (pp. 2–3) Verdict 5, (pp. 1–2) Verdict 2, (pp. 6–9)
Victims (Surrogates)	14 surrogate mothers explicitly recognised as victims: All in financial hardship– Coerced and misled about client identity and terms	Verdict 1, (pp. 27–29) Verdict 2, (pp. 1–8) Verdict 5, (pp. 41–42) Verdict 4, (p. 2) Verdict 2, (pp. 2–5, 8)
Perpetrators (Convicted/Suspected)	6 convicted persons: Lawyers, translators, coordinators– Additional suspects under investigation in Germany– Others tried in separate proceedings	Verdict 1, (p. 31) Verdict 2, (pp. 1, 10) Verdict 5, (pp. 1–2) Verdict 4, (pp. 2–4) Verdict 5, (pp. 1–2) Verdict 2, (pp. 1, 10)

²⁶⁰ Available here: <https://reyestr.court.gov.ua/Review/121030581>

²⁶¹ Available here: <https://reyestr.court.gov.ua/Review/122621823>

²⁶² Available here: <https://reyestr.court.gov.ua/Review/107605925>

²⁶³ Available here: <https://reyestr.court.gov.ua/Review/116276462>

Amount Paid by Clients	€48,000–€60,000 per child , paid in 5 tranches: €9,000 in cash upfront– Remaining via wire transfers	Verdict 1, (p. 21) Verdict 2, (pp. 6, 9, 17) Verdict 5, (p. 29) Verdict 2, (pp. 6–7)
Amount Received by Surrogates	€12,000–€14,000 total : €250/month– €1,100 mid-term– €9,100 after delivery– Many received only partial payment	Verdict 1, (p. 27) Verdict 2, (pp. 2, 5, 8) Verdict 5, (pp. 41–42) Verdict 2, (pp. 5–6)
Estimated Surrogacies per Year	Verdicts refer to "dozens" of births annually per clinic ; only a fraction led to prosecution	Verdict 2, (p. 8) Verdict 5, (pp. 2, 29) Verdict 2, (p. 8)
Voluntary Participation	Courts found systemic coercion : No verified voluntary cases– Other women not formally declared victims, but recruited under same deceptive conditions	Verdict 1, (pp. 27–29) Verdict 2, (pp. 2–5, 8–9) Verdict 5, (pp. 41–42) Verdict 2, (pp. 2–5, 8–9)

Palermo Protocol Elements Across Cases

Element	Key Evidence and Patterns (from Verdicts)	Sources
Act	– Recruitment via ads (internet/newspapers)– Intake interviews conducted at Kharkiv clinics– Surrogates directed to IVF facilities and forced to register births fraudulently	Verdict 1, (p. 27) Verdict 2, (pp. 2–5) Verdict 5, (p. 41) Verdict 2, (p. 2)
Means	– Delayed payments to enforce compliance– Threats of contract penalties and abortion – Misrepresentation of client identity and legality– Isolation and financial manipulation	Verdict 1, (pp. 27–29) Verdict 2, (pp. 5–8) Verdict 5, (pp. 41–42) Verdict 2, (pp. 5–6)
Purpose	– To exploit women for profit– To transfer children to foreign clients under false paternity– To bypass foreign laws on surrogacy (e.g., France, Italy)	Verdict 1, (pp. 29) Verdict 2, (pp. 6–9) Verdict 5, (p. 41) Verdict 2, (pp. 6–9)

Notable Patterns and Tactics

- Recruitment framed as legal income opportunity for vulnerable women
- False claims about the legitimacy of the programme and identities of the clients

- Legal infrastructure (lawyers, translators, notaries) used to facilitate fraud
- Medical personnel misled; birth certificates falsely registered
- Babies transferred abroad under false pretenses; in some cases, confiscated at borders
- Clinic staff at "Hartivita" were **deceived by the clinic director**. Medical personnel performed IVF based on false claims that clients were in legal heterosexual relationships (Verdict 2, pp. 6-7).

The cases involving transfer into the Czechia

In addition to the *Snizhana* cases, several decisions describe an ostensibly other criminal group performing human trafficking of women under the guise of surrogacy in Ukraine. The modus operandi of this group has repeatedly been summarized in these decisions in the following fashion²⁶⁴:

The pre-trial investigation established that PERSON_6, being...a person with significant experience in the field of reproductive medicine, having certain life experience, organisational skills, leadership qualities and appropriate authority among doctors and potential customers on the territory of Ukraine and beyond, no later than May 2017, decided to organize a stable association - an organized group for the purpose of illegal enrichment at the expense of recruiting women who are in a vulnerable state, with the aim of their further exploitation under the time of participation in commercial surrogacy programmes with the use of deception and a vulnerable state in relation to them (hereinafter - the surrogate mother, the victim), their transfer across the state border of Ukraine to the Czech Republic and the transfer of newborn children for a monetary reward to persons, including from countries with a prohibited regime surrogate motherhood, as well as those who are known not to meet the requirements of clause 6.1. and clause 6.2. order of the Ministry of Health dated 09.09.2013 No. 787 (hereinafter - to foreign customers).

The cases involving fictitious marriages

Another group of cases recognised²⁶⁵ involved a scheme whereby members of the group would recruit Ukrainian women to enter into fictitious marriages with foreign citizens so that the pair could execute a surrogacy arrangement. The women recruited were usually those with a low social status and who, under various circumstances, needed money. The recruited women were offered a reward in the form of cash in the amount of 1,000 US dollars, if they enter into a fictitious marriage with a foreign citizen, while the members of the group will make a certificate for her stating that she cannot be pregnant (for surrogate motherhood) and will further issue permission to the foreign citizen involved to take the child outside of Ukraine. Also, the members of the group indicated to the recruited women that the actions are apparently without violation of the current legislation of Ukraine.

Once the recruited women accepted the offer and got into marriage with the said foreign citizens, one of the members of the group convinces the recruited woman to grant him and his representatives of the criminal group a power of attorney to represent her interests so that she does not waste her time and money on various types of travel, for which the latter usually issued a notarised power of attorney. This power of attorney was later used for control of the commissioning mother, who was then also convinced to give notarial consent to the export of the newborn child to the country of origin of the foreign citizen involved. In essence, the whole plan reveals a possible commission of a crime of human trafficking, committed against minors (i.e. children born through surrogacy).

²⁶⁴ See one of the relevant decisions here: [Єдиний державний реєстр судових рішень \(court.gov.ua\)](http://court.gov.ua)

²⁶⁵ See one of the relevant decisions here: [Єдиний державний реєстр судових рішень \(court.gov.ua\)](http://court.gov.ua)

Civil court practice on surrogacy

Given the vast number of cases, this outline will represent the main findings of the analysis of meritory cases found in the official publicly accessible database of court decisions²⁶⁶. More detailed overview is available in Annex 2 to this Report (see sheet *Ukrainian court cases*). By far the most frequently found cases are those where a Ukrainian court practically validates the already established facts of parenthood of intending parents (some 70 %) (Annex 2 to this Report - see sheet *Analysis*). Inside those, the most commonly examined cases are those where courts validate the results of the execution of a surrogacy arrangement for the purpose of future recognition of parenthood of commissioning parents in Germany (a country which requires such court decisions to allow the recognition) (see Annex 2, sheet: *Ukrainian court cases*). Other relevant cases include those where surrogate mothers sued surrogacy clinics involved to claim damages in cases of miscarriage. There is also a case where a surrogacy clinic sued a surrogate mother for reputational damages due to the fact that the surrogate ostensibly became pregnant with another man during the time when she was supposed to become pregnant using the genetic material of commissioning parents. As this arose suspicions of human trafficking aimed at the clinic, the surrogacy clinic involved ostensibly suffered reputational damages and claimed them from the surrogate mother. The court rejected the claim (see Annex 2, sheet: *Ukrainian court cases*).

Other Criminal Court practice on surrogacy

With respect to criminal cases, it is important to note that, while the database exhibits more results, most of them relate to decisions on matters not related to the merits, i.e. mostly extension of interrogative committal and other procedural decisions. The number of such procedural decisions led to the decision to focus the research on all criminal law related decisions (sentences, decrees). Out of all of the decisions examined, by far the most commonly referred is the relatively recent case involving a ring of human trafficking in various clinics across Ukraine. In the database in 1, these cases are referred to as *Snizhana* cases (based on the name of one of the clinics) and are already described above. In that vein, this subsection will cover other cases found.

Fraud against potential commissioning parents

The third group of identified criminal cases involves cases where potential commissioning parents were purportedly victims of frauds. Here two cases were identified.

The first case does not go into too much detail, but states only that the investigation revealed that two persons deceived a German citizen into paying \$1,989.90 USD under the pretense of providing surrogacy services. The funds were transferred in October 2020²⁶⁷.

In the other case²⁶⁸, one of the perpetrators, while traveling on a train, falsely presented himself as a doctor to another person and his wife and provided misleading information about assisted reproductive technologies. The misled pair, believing said person later contacted him for assistance. Said perpetrator, continuing the deception, pretended to be a doctor and convinced them to send medical documents via the Viber app.

Later, in October 2020, the pair visited an office where the said perpetrator impersonated a doctor and with the help of another perpetrator posing as an embryologist, had them sign a fraudulent agreement

²⁶⁶ The Ukrainian official court case law database available here: <https://reyestr.court.gov.ua/>. Search term used: "сурогатне материнство", types of decisions used: "Рішення", "Вирок", "Постанова", up to 31.12.2024

²⁶⁷ See one of the relevant decisions here: [Unified State Register of Court Decisions](#)

²⁶⁸ See one of the relevant decisions here: [Єдиний державний реєстр судових рішень \(court.gov.ua\)](#)

for ART services costing \$34,500. Both perpetrators provided false information about the legal entity and director in the agreement. After that the purported commissioning parents paid the total fee which was allegedly used by the two purported perpetrators for their own purposes.

Attempted murder of a surrogate mother and her child

The case involves a man, who, upon discovering that his former partner was pregnant through a surrogacy programme, threatened her to terminate the pregnancy. After she refused, he intended to murder her. In early January 2022, the perpetrator allegedly began planning the murder, seeking accomplices and a potent drug to kill both his former partner and her unborn child. He then arranged with an accomplice to acquire the drug, discussed payment terms, and received instructions on how to use it to make the death appear natural. Later, he met the accomplice at a railway station, confirmed his criminal intentions, and paid 2500 hryvnias for the murder. However, he was arrested at the meeting before the crime could be completed²⁶⁹.

The cases of international aid provided to Italian authorities

In addition to the above cases, a case involving the rendering of aid of Ukrainian authorities to Italian authorities was also discovered. In this case, the Italian authorities started an investigation into an offense provided for in Art. 110, 48, 567 ko. 2 of the criminal code of Italy because, the commissioning parents allegedly misled the civil status officer of the into changing the marital status of a newborn and registering her as born the commissioning parents even though the child was born using the technique of "surrogate motherhood"²⁷⁰ (which is prohibited in Italy both in domestic sphere and abroad).

United Kingdom

General legal provisions

In view of the fact that UK recently deliberated on amending its surrogacy framework, the section on the UK will rely heavily on the expert work behind this, still active, regulatory reform²⁷¹.

Surrogacy in the UK is legal since 1985 under the Surrogacy Arrangements Act 1985 (SAA 1985) and the Human Fertilisation and Embryology Act 2008 (HFEA 2008). However, the Surrogacy Arrangements Act 1985 makes clear that surrogacy arrangements are unenforceable by law.²⁷² Under the current law, the surrogate is the child's legal mother at birth and will be registered on the child's birth certificate. Her spouse or civil partner, if she has one, will be registered as the child's father or second parent.

²⁶⁹ See one of the relevant decisions here: [Єдиний державний реєстр судових рішень \(court.gov.ua\)](https://court.gov.ua)

²⁷⁰ See one of the relevant decisions here: [Єдиний державний реєстр судових рішень \(court.gov.ua\)](https://court.gov.ua)

²⁷¹ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

²⁷² United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

Alternatively, in some circumstances (including where the surrogate is single), one of the intended parents be listed as the other legal parent on the birth certificate.²⁷³

After the birth of the child, the intended parents must apply to the court for a parental order so that they can become the legal parents of the child, using provisions in section 54 or 54A of the HFEA 2008. A parental order is a formal order of the court, which ends the legal parental status of the surrogate mother and any second parent listed on the birth certificate, and makes the intended parents the child's legal parents. This order enables a parental order certificate to be issued in the intended parents' names, which can be used in the same way as a child's birth certificate.²⁷⁴

The paramount consideration for the court when deciding whether or not to make a parental order is the child's lifelong welfare. On that basis courts rarely refuse to grant parental orders, because the child is usually living with the intended parents and they are the people who want to and plan to care for the child²⁷⁵. Other requirements for making an order include that²⁷⁶:

- 1) One of the intended parents must be genetically related to the child;
- 2) The child's home must be with the applicants, at the time of the application and the making of the order; and
- 3) the surrogate and any other legal parent of the child must have given their consent to the grant of the parental order.
- 4) Although, in general, intended parents are obliged to lodge a request for a parental order within six months of the birth of the child, case law has watered down the rigidity of this time limit²⁷⁷

There is nothing in the current law that restricts the use of surrogacy to where it is medically necessary; that is, where there is a diagnosis of infertility, such that the intended parents are unable to carry and give birth to a baby. In many cases, this inability will be on the part of the intended mother; however, it may also result from the individual or couple not having a womb (for example, a single man or male same-sex couple).²⁷⁸

²⁷³ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

²⁷⁴ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

²⁷⁵ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

²⁷⁶ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

²⁷⁷ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), link: <https://lawcom.gov.uk/project/surrogacy/> (p. 238-239) (accessed on 30 September 2025)

²⁷⁸ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), link: <https://lawcom.gov.uk/project/surrogacy/> (p. 184) (accessed on 30 September 2025)

For a court to make a parental order, it must be satisfied that no money or other benefit, other than for expenses reasonably incurred, has been paid by the intended parents to the surrogate. However, even in cases where payments have been made beyond reasonable expenses, the court is able to authorize those payments and grant a parental order. Also, the meaning of “expenses reasonably incurred”, the language used in the HFEA 2008, is not defined in that Act. Although payments in some parental order cases do exceed “expenses reasonably incurred”, we are not aware of a case where a court has refused a parental order because of such payments.²⁷⁹

Until 3 January 2019, an application for a parental order could only be made by a couple who were married, in a civil partnership, or living together in an enduring family relationship. The law was then changed so that single intended parents can apply for a parental order.²⁸⁰ The law distinguishes between legal parental status and parental responsibility, in England and Wales, or parental responsibilities and parental rights in Scotland (“PRRs”).²⁸¹ Parental responsibility/PRRs describe the set of responsibilities, rights, duties, and powers a person has in relation to a child. Currently, intended parents do not hold parental responsibility/PRRs for the child at birth. That means that even though the intended parents are caring for the child from birth they cannot make decisions about the child, such as about medical care. Those decisions must be made by the surrogate.

If a parental order is made in favour of the intended parents, they will have parental responsibility/PRRs for the child, and the surrogate will cease to have them. If the surrogate does not consent to a parental order, the court may still grant intended parents parental responsibility/PRRs, but it cannot change a child’s legal parental status.²⁸²

The SAA 1985 also makes it clear that surrogacy arrangements are unenforceable – so, for example, a surrogate cannot be required by law to hand over a child to intended parents because she previously said that she would.²⁸³

The numbers of children born each year as a result of a surrogacy agreement are unknown. According to statistics from the Ministry of Justice, 436 parental order applications were made in England and Wales in 2021.¹⁵ The actual number of surrogacy agreements is likely to be higher, because a number of intended parents and surrogates may not know that they ought to apply for a parental order. In Scotland, 15 parental orders were made in the period covering 2021 and the last four to five months of

²⁷⁹ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

²⁸⁰ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

²⁸¹ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 27) (accessed on 30 September 2025)

²⁸² United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 28) (accessed on 30 September 2025)

²⁸³ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 29) (accessed on 30 September 2025)

2020²⁸⁴. Whilst the exact number of surrogate births is uncertain, they certainly represent a tiny fraction of the 700,000 live births in the UK each year. While surrogacy affects a small proportion of the UK population, its impact on the lives of the surrogates, intended parents and children whom it does affect is profound.²⁸⁵

As for international surrogacy agreements, in the UK, the legal parents of a child born through an international surrogacy arrangement are the surrogate, and (if she is married or in a civil partnership) her spouse or civil partner. This is the case regardless of whether the intended parents are recognised as the legal parents in the country of the child's birth and are named on the child's birth certificate. As a result, where the intended parents bring the child into the UK to raise them here, it is necessary to apply for a parental order. It is only on the grant of a parental order that the intended parents become the legal parents under UK law, and the parenthood of the surrogate (and of her spouse or civil partner) is extinguished.²⁸⁶

General Criminal law provisions on surrogacy

The SAA 1985 provides for criminal offences in relation to surrogacy. It makes it a criminal offence to initiate, take part in, or agree to negotiate a surrogacy arrangement on a commercial basis, or compile information for use in doing so. Surrogates and intended parents are excluded from this offence, so they can legally negotiate their own surrogacy arrangement. But, for example, a solicitor cannot give professional advice on a surrogacy arrangement in exchange for payment²⁸⁷.

The SAA 1985 also prohibits placing advertisements that someone is willing to be a surrogate, or is looking for one. This prohibition applies across all media, from newspapers to the internet. Breaching either of these provisions can result in a prison sentence of up to three months.

The writers of the study are not aware that any prosecutions have happened²⁸⁸, neither are the competent bodies involved²⁸⁹.

²⁸⁴ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 29) (accessed on 30 September 2025)

²⁸⁵ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 30) (accessed on 30 September 2025)

²⁸⁶ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), link: <https://lawcom.gov.uk/project/surrogacy/> (p. 552) (accessed on 30 September 2025)

²⁸⁷ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 28) (accessed on 30 September 2025)

²⁸⁸ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 28) (accessed on 30 September 2025) and United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), link: <https://lawcom.gov.uk/project/surrogacy/> (p. 469) (accessed on 30 September 2025)

²⁸⁹ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), link: <https://lawcom.gov.uk/project/surrogacy/> (p. 449) (accessed on 30 September 2025)

The HFEA 2008 introduced an exception to these offences for non-profit-making bodies. Non-profit surrogacy organisations, for example, can now initiate negotiations and compile information on surrogacy in return for reasonable payments, and can advertise that they are able to do so.²⁹⁰

Relevance of Surrogacy in the context of human trafficking

The cited report highlighted that the expert team deems it highly unlikely that there were cases of THB exploitation of surrogacy as a form of human trafficking in the UK.²⁹¹ Also, as the relevant act (Modern slavery act) does not mention surrogacy-specifically in its definition of THB²⁹², it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

See the first section, where rules were built not only through Statutes but also relevant court case law.

Criminal Court practice on surrogacy

See first section.

Cases in front of the ECtHR

H v. the United Kingdom (dec.), no. [32185/20](#)

H, a British citizen born in 2016 via surrogacy, lives with same-sex partners A and B, who are her intended parents. A DNA test confirmed A as H's genetic father. Following disputes with surrogate parents C and D, a UK court granted A and B parental responsibility, but C and D remained listed as H's legal parents on her birth certificate under the Human Fertilisation and Embryology Act 2008 (HFEA). A and B could not obtain a parental order to amend the certificate as C and D withheld consent. H, through B, sought judicial review, alleging a violation of her Article 8 rights to private life. The High Court ruled that the interference with H's rights was justified, as the HFEA struck a fair balance between competing interests and allowed for mechanisms like parental orders. The Court of Appeal denied permission to appeal, emphasizing the statutory framework's consideration of ethical issues and proportionality.

The Court reviewed a complaint regarding the legal recognition of parent-child relationships in surrogacy cases, focusing on the automatic recognition of the biological father on a child's birth certificate. The Court reiterated prior rulings that a lack of legal recognition of family ties could interfere with private and family life under Article 8 of the Convention. However, it found that the applicant was not deprived of a legal relationship with her intended parents, who had parental responsibility and

²⁹⁰ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law Volume I: Core Report, link: <https://lawcom.gov.uk/project/surrogacy/> (p. 28-29) (accessed on 30 September 2025)

²⁹¹ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), link: <https://lawcom.gov.uk/project/surrogacy/> (p. 34) (accessed on 30 September 2025)

²⁹² United Kingdom, Modern Slavery and human trafficking: offences and defences, including the section 45 defence, 2024, link: <https://www.cps.gov.uk/legal-guidance/modern-slavery-and-human-trafficking-offences-and-defences-including-section-45> (accessed on 30 September 2025)

shared her surname. Additionally, the applicant faced no practical or material disadvantages due to the legal framework in question.

The Court noted the UK's legislative framework, which prioritizes gestational mothers and their spouses as legal parents at birth to avoid enforcing surrogacy arrangements, falls within the wide margin of appreciation allowed to states on sensitive moral and ethical issues. The Court concluded that there is no consensus across Europe on surrogacy and upheld the UK's laws as proportionate. The application was unanimously declared inadmissible.

3.2. PROFILES OF STATES WITHOUT A SURROGACY-SPECIFIC REGULATORY FRAMEWORK

Austria

General legal provisions

Surrogacy is prohibited because it is deemed contrary to Articles 2 and 3 of the Reproductive Medicine Act.²⁹³ This act prohibits all forms of surrogacy²⁹⁴, but only as an administrative offence.²⁹⁵ Nevertheless, as established in the court practice described further, the Austrian courts have held that this ban is not a rule of international public order. Therefore, they allow recognition of surrogacy established abroad.

General Criminal law provisions on surrogacy

General criminal law - Seeing how surrogacy is deemed contrary to Articles 2 and 3 of the Reproductive Medicine Act, the provisions of the Articles 22-25 of the same act stipulate criminal sanctions up to 50.000 EUR or two weeks of imprisonment.²⁹⁶ However, in line with the inputs from the Austrian State, only physicians or other facilitators of technical support for surrogacy bear the potential to be criminally liable.²⁹⁷

²⁹³ Republic of Austria, Reproductive medicine act. 2018. Link:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003046> (articles 2,3)

²⁹⁴ Republic of Austria, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine

(link: [https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see legal aspects)

²⁹⁵ European Union: European Commission, Study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States, March 2022, link: <https://commission.europa.eu/system/files/2023-01/ICF%20Final%20Report%20-%20Recognition%20of%20parenthood%20between%20MSs%20-%20FINAL.pdf> (p. 169) (accessed on 30 September 2025)

²⁹⁶ Republic of Austria, Reproductive medicine act. 2018. Link:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296> (articles 2,3 and 22-25)

²⁹⁷ Republic of Austria, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine

(link: [https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see applicable law)

Relevance of Surrogacy in the context of human trafficking

Trafficking in human beings is regulated in Austria primarily through article 104a of the Criminal code²⁹⁸. Apart from many news articles and blog inputs, there is not much official data on surrogacy being mentioned in the context of trafficking in human beings²⁹⁹. In that vein, and as the definition of THB in the Criminal code follows the internationally acclaimed one, it appears that Austrian legislation deems surrogacy to be THB only if all elements of the definition are fulfilled. Additionally, the website of the National Rapporteur for the THB and latest reports also showed no specific results for surrogacy.³⁰⁰

Civil court practice on surrogacy

Civil court practice: Jurisprudence from 2010's of the Constitutional court, wanting to align with the decisions of the ECtHR is still valid. This created a system where desired parents for whom there is a decision of a competent foreign authority establishing them as the child's parents, can be certified as the parents in Austria, as long as one of the parents is genetically connected to the child. Where there is no such decision, Austrian authorities make this determination and then acknowledge the father of the child (again if he is genetically connected to the child) but not the mother. For the mother, the avenue of adoption is then open.³⁰¹ No new relevant case law was found using the official case law website.³⁰²

Criminal Court practice on surrogacy

No criminal law cases were found, neither in the articles, reports and studies reviewed, nor using the free search on the internet nor using the Country's official database for court case law(<http://www.ris.bka.gv.at/>). The same situation applies with respect to criminal cases where surrogacy was used in the context of THB.

²⁹⁸ Republic of Austria, 2024, Criminal code, link: <https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296&Paragraf=104a&ShowPrintPreview=True> (accessed on 30 September 2025 on 10.01.2025)

²⁹⁹ Reports and data checked: 1) https://www.bundeskriminalamt.at/304/files/Lagebericht_2022_Schlepperei_Menschenhandel_bf_25042023.pdf and 2) <https://www.bundeskriminalamt.at/303/start.aspx> and 3) https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/NAP_Endbericht.pdf and 4) <https://thbregionalimplementationinitiative.wordpress.com/?s=surrogacy> and 5) https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Broschuere_zu_Menschenhandel.pdf

³⁰⁰ <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings> (as per stance)

³⁰¹ Bauer, Carina, Surrogacy in Austria? : limits and possibilities, 2024 <https://unipub.uni-graz.at/obvugrhs/download/pdf/9739958?originalFilename=true> (p. 76) (accessed on 30 September 2025 on 14.06.2024) and Council of Europe: European Court for Human Rights, Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, Requested by the French Court of Cassation

, April 2019, link: <https://hudoc.echr.coe.int/eng?i=003-6380464-8364383> (para. 24) (accessed on 30 September 2025)

³⁰² <https://www.ris.bka.gv.at/Judikatur/>

Belgium

General legal provisions

No legal provisions but tolerated and performed in praxis³⁰³. This is backed by open advertisement of some of the providers.³⁰⁴ On the other hand, commercial surrogacy is deemed prohibited and devoid of legal value under certain principles in the Civil Code, such as the principle according to which the human body is extra-patrimonial and therefore cannot be traded.³⁰⁵ Additionally, the legal vacuum led to different criteria being applied by different medical providers (e.g. some of them require infertility of the intended parent(s) while some not)³⁰⁶. While it still a policy document, the latest government coalition agreement in Belgium from early 2025, contains a paragraph outlining the will to legislate altruistic surrogacy in the following manner³⁰⁷:

- Altruistic, gestational surrogacy will be permitted, with no genetic link allowed between the surrogate and the child.
- A written agreement between the intended parents and the surrogate must be concluded in advance and ratified by the family court.
- Following judicial approval, full parental rights are granted to the intended parents from birth, without the need for post-birth legal procedures.
- Eligibility is inclusive, extending to single intended parents and LGBT+ couples
- Commercial surrogacy is explicitly prohibited: neither the surrogate nor third parties may profit.
- Only reasonable pregnancy-related expenses, as defined in the forthcoming legal framework, can be reimbursed.
- All parties must participate in mandatory medical and psychological support, provided through recognised fertility centers.

General Criminal law provisions on surrogacy

In accordance with the inputs of the State, no criminal law provisions regarding the practice of surrogacy.³⁰⁸

³⁰³ Belgian Constitutional Court. 2023, Case report 56/2023, link: <https://www.const-court.be/public/n/2023/2023-056n-info.pdf> (p.2, para.1) (accessed on 30 September 2025)

³⁰⁴ see for instance hereÖ <https://www.uzgent.be/patient/zoek-een-arts-of-dienst/vrouwenkliniek/reproductieve-geneeskunde/donatie-en-draagmoederschap>

³⁰⁵ Republic of Belgium, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see Legal aspects) (accessed on 30 September 2025)

³⁰⁶ Republic of Belgium, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see Specific criteria)

³⁰⁷ De Wever, B. (2025). *Federaal Regeerakkoord 2025-2029*. Belgium.be. Retrieved 29 March 2025, from https://www.belgium.be/sites/default/files/resources/publication/files/Regeerakkoord-Bart_De_Wever_nl.pdf

³⁰⁸ Republic of Belgium, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see Applicable law) (accessed on 30 September 2025)

Relevance of Surrogacy in the context of human trafficking

The case of Hanne and Elke as well as inputs of the State³⁰⁹ suggest that covering of the costs of the surrogate is not deemed as to have a commercial or transactional element. The value of the costs varies from case to case, but the 2010 case showed that 30.000 EUR was not considered to be too much, albeit due to lack of evidence. The Criminal code defines THB in article Art. 433 *quiquies*, without mentioning surrogacy. It follows the standard definition of THB, ergo surrogacy can fall under it if it fulfils all elements.³¹⁰ Same applies to the special THB related law of 22.5.2019³¹¹. Additionally, the website of the National Rapporteur for the THB and latest reports also showed no specific results for surrogacy.³¹²

Civil court practice on surrogacy

Similar to courts in Austria, Belgium Courts also recognize surrogacy parentage, in the best interest of the child.³¹³ As per establishment of the parentage of the intended parents, the intended genetic father can be recognised as such as long as the surrogate mother is not married. If yes, the intended father will have to contest the paternity of the husband of the surrogate mother, who is a legally presumed father. As per the intended mother, the breaking of parentage can only occur with the adoption by the intended mother and this, following the waiving of the rights by the surrogate mother.³¹⁴

Criminal Court practice on surrogacy

In a case related to baby Donna in 2010, a surrogate mother and her husband were sentenced for commercial surrogacy to a year of deferred imprisonment and a fine of 1,650 EUR on grounds of “inhumane and degrading treatment” to the baby. The Dutch couple who made the payment was also sentenced to a 1,650 EUR fine.³¹⁵ In another case, Hanne and Elke (surrogacy taking place in Ukraine by

³⁰⁹ Republic of Belgium, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see Financial aspects) (accessed on 30 September 2025)

³¹⁰ Republic of Belgium, Criminal code, 2024 Link: https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1867060801 (article 433*quiquies*) (accessed on 30 September 2025)

³¹¹ Republic of Belgium, Law on Trafficking in Human Organs and on the Principle of Non-Punishment for Victims of Trafficking in Human Beings, 2024 Link: https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1867060801 (accessed on 30 September 2025)

³¹² <https://www.myria.be/en#:~:text=Human%20trafficking%20and%20smuggling,of%20human%20beings%20in%20Belgium>. (as per stance)

³¹³ Republic of Belgium, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see Parentage)

³¹⁴ Republic of Belgium, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[1\]}](https://www.coe.int/el/web/bioethics/surrogacy-search?q=&Country=212608352&delta=4&start=2#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[1]})) (see Parentage)

³¹⁵ European Parliament, Directorate-General for Internal Policies of the Union, King, D., McCandless, J., Carruthers, J. et al., A comparative study on the regime of surrogacy in EU Member States, Publications Office, 2013, <https://data.europa.eu/doi/10.2861/2624> (p. 74-75)

heterosexual intended parents), it was revealed that an amount of 30.000 EUR was paid by the intended parents to the Ukrainian law firm. According to the parties, these costs aimed at covering not only judicial advice but also all practical aspects of surrogacy: fees related to travels, translations, contact with professionals in a private clinic of fertilization, attempts to perform IVF, ultrasounds, medical follow-up of the surrogate mother, etc. When the procedure of adoption was engaged by the adopting mother, the tribunal considered it did not possess enough objective information to know if the amount exceeded the normal amount of compensation concerning the costs resulting from surrogacy and concluded that the parties acted without the intention to make profit.³¹⁶ No additional cases found on the official case law database.³¹⁷

Cases in front of the ECtHR

D. and Others v. Belgium (dec.) - [29176/13](#) Decision 8.7.2014, legal summary³¹⁸

A. was born via surrogacy in Ukraine in 2013. Belgian authorities initially refused to issue a travel document for A., separating him from the applicants, who wished to care for him as parents. The Brussels Court of Appeal later ordered the issuance of a document, enabling A. to travel to Belgium in August 2013. The applicants claimed the separation violated their Article 8 rights to family life.

The Court acknowledged de facto family ties and found that the separation interfered with the applicants' right to family life. However, it deemed the interference lawful, aiming to prevent human trafficking and protect the rights of the surrogate and A. The separation lasted three months and was not unreasonably long given the need for legal checks. The delay was partly due to the applicants' insufficient evidence of biological ties. The Belgian State was not obligated to expedite the process or facilitate prolonged stays in Ukraine. The Court ruled the State acted within its margin of appreciation.

Conclusion: Inadmissible.

Bosnia and Herzegovina

General legal provisions

Surrogacy is prohibited in the Federation Bosnia and Herzegovina Entity as well as Republika Srpska entity. In the Bosnia and Herzegovina Entity, the Law on the treatment of infertility by biomedically assisted insemination, explicitly prohibits surrogacy in its Articles 45 and 63. Article 63 of this law lays down criminal liability for all involved except for the commissioning parents and the would-be surrogate mothers³¹⁹. In the bill for this law, the government invoked the annual report on human rights of the

³¹⁶ European Parliament, Directorate-General for Internal Policies of the Union, King, D., McCandless, J., Carruthers, J. et al., A comparative study on the regime of surrogacy in EU Member States, Publications Office, 2013, <https://data.europa.eu/doi/10.2861/2624> (p. 96)

³¹⁷ <https://juportal.be/home/welkom>

³¹⁸ ECtHR, 2014, link: <https://hudoc.echr.coe.int/eng?i=002-10163>

³¹⁹ The Law of the Bosna And Herzegovina entity on treatment of infertility by biomedically assisted insemination is available here: https://parlamentfbih.gov.ba/dom_naroda/v2/userfiles/file/Usvojeni%20materijali_2018/Zakon%20BMPO%20-%20bos.pdf (accessed on 30 September 2025)

European Parliament (of the EU) condemning surrogacy³²⁰. A similar law of the Republika Srpska entity also prohibits surrogacy, albeit only as misdemeanor and again without liability of the commissioning parents and the would-be surrogate mothers (see Article 57, point 18) in connection to Article 73, point 24)³²¹. This prohibition was adopted in 2018 for Federation Bosnia and Herzegovina Entity and 2020 for the Republika Srpska entity. The third entity, Brcko district, apparently does not have a separate law on this matter³²² and arguably does not regulate surrogacy³²³.

Similar to the situation in Serbia and many other countries observed, some authors argue that in this situation, commissioning parents may recognize children born out of gestational surrogacy abroad, while commissioning mothers may have recourse to adoption procedures.³²⁴ Additionally in favour of such argument is the finding that the stances of the ECtHR have an constitutional power in Bosnia and Herzegovina and one can directly invoke those decisions in court procedures.³²⁵ With that in mind and the advisory opinion of the ECtHR in this area, the adoption option does seem to be the one that would likely be the only option available for commissioning mothers with respect to foreign executed surrogacy arrangements. However, as this is not tested in practice, significant risks do remain.

General Criminal law provisions on surrogacy

See previous section.

Relevance of Surrogacy in the context of human trafficking

As the criminal codes of all three entities do not mention surrogacy-specifically in their definition of THB³²⁶, it can be assumed that surrogacy would be categorised as THB only if it fulfils the required 3 elements of the Palermo protocol in a given case.

³²⁰ Federation B&H, bill of Law on treatment of infertility by biomedically assisted insemination, link: https://parlamentfbih.gov.ba/dom_naroda/v2/userfiles/file/Materijali%20u%20proceduri_2018/Prijedlog%20zakona%20BMPO_bos.pdf (p. 52) (accessed on 30 September 2025)

³²¹ The Law of the Republika Srpska entity on treatment of infertility by biomedically assisted insemination is available here: <https://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni/zakon-o-lije%C4%8Denju-neplodnosti-postupcima-biomedicinski-potpomognute-oplodnje> (accessed on 30 September 2025)

³²² Judging from the list of laws of the said District, available here: <https://skupstinabd.ba/index.php/ba/zakon.html> (accessed on 30 September 2025)

³²³ Durakovic, Anita, and Jasmina Alihodzic. "The Effects of Cross-Border Surrogate Motherhood: The Practice of National Courts and the European Court of Human Rights." In *Collection Papers from Conf. Org. on Occasion Day Fac. L.*, p. 125. 2020. Link: https://www.pravni.ues.rs.ba/Download/Zbornik-Pravo_tradicija_i_promjene/Tom_II/8_Anita_Durakovic.pdf (p. 4) (accessed on 30 September 2025)

³²⁴ Durakovic, Anita, and Jasmina Alihodzic. "Comparative Legal Overview of Provisions on Surrogacy-A Review of Respective Legislation in Bosnia and Herzegovina." *Zbornik Radova Pravnog Fakulteta u Tuzli* 5. Link: <http://pf.untz.ba/dokumenti/casopisi/2019-1/1.pdf> (p. 30) (accessed on 30 September 2025)

³²⁵ Durakovic, Anita, and Jasmina Alihodzic. "The Effects of Cross-Border Surrogate Motherhood: The Practice of National Courts and the European Court of Human Rights." In *Collection Papers from Conf. Org. on Occasion Day Fac. L.*, p. 125. 2020. Link: https://www.pravni.ues.rs.ba/Download/Zbornik-Pravo_tradicija_i_promjene/Tom_II/8_Anita_Durakovic.pdf (p. 5) (accessed on 30 September 2025)

³²⁶ Criminal code of B&H available here: <https://www.paragraf.ba/propisi/bih/krivicni-zakon-bosne-i-hercegovine.html> (art 186), Criminal code of Republika Srpska here: <https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html> (art. 145) and Criminal code of Brcko Distrikt here: <https://www.paragraf.ba/propisi/brcko/krivicni-zakon-brcko-distrikta-bosne-i-hercegovine.html> (Art. 207a)

Civil court practice on surrogacy

No publicly available court practice.³²⁷ The only data found on cases on surrogacy is an estimate outlined in the bill for the law on the treatment of infertility by biomedically assisted insemination of the B&H entity, where one of the participants of the public debates stated that Clinical Center Zenica had some 10 to 15 requests for surrogacy before 2018 and that all of those were rejected by the Ethic's board.³²⁸

Criminal Court practice on surrogacy

See previous section.

Bulgaria

General legal provisions

Albeit there are inconsistent sources found³²⁹, the general overtone is that the surrogacy itself is prohibited in Bulgaria under Article 182a of the Criminal code³³⁰. The inconsistency seems to be caused by the fact that in Bulgaria there use to be an administrative act which explicitly forbid surrogacy. However, this act was repealed³³¹. This fact, coupled with the fact that the Article 182a of the Criminal Code led some authors to conclude that the Article 182a can mostly be applicable to an intermediary which has commercial motives³³² is likely the cause of said inconsistencies. Nevertheless, the provisions of Article 182b of the Criminal code, can be made applicable in cases of commercial surrogacy as this provision explicitly establishes criminal liability on behalf of a women who gives consent to the sale of her child at home or abroad either before or after the birth of the child³³³. Nevertheless, foreign surrogacy is often pursued by Bulgarian citizens³³⁴. Recognition of legal parenthood in such cases

³²⁷ The official database searched: <https://portalfo1.pravosudje.ba/vstvfo/B/142/kategorije-vijesti/141/simple>

³²⁸ Federation B&H, bill of Law on treatment of infertility by biomedically assisted insemination, link: https://parlamentfbih.gov.ba/dom_naroda/v2/userfiles/file/Materijali%20u%20proceduri_2018/Prijedlog%20zakona%20BMPO_bos.pdf (p. 53) (accessed on 30 September 2025)

³²⁹ <https://www.gov.uk/government/publications/bulgaria-knowledge-base-profile/bulgaria-knowledge-base-profile#bulgaria-surrogacy> for instance states that surrogacy is allowed in Bulgaria.

³³⁰ D. Furtunova, 'Parenting and legal family formats in Bulgaria', in: K. Waaldijk et al. (eds.), The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples, Paris: INED, 2017, <https://www.ined.fr/Xtradocs/lawsandfamilies/LawsAndFamilies-BG-Section3.pdf> (p. 10)

³³¹ Nikodimova, Radostina (2023) - Legal aspects of surrogacy in Bulgaria. In Gomes, Ana Sofia da Silva, coord. - Vida intrauterina, início da personalidade, família e crianças : direito interno e transnacional. Lisboa : Universidade Lusíada. ISBN 978-989-640-257-0. P. 147-157.(p.6) (accessed on 30 September 2025).

³³² Peneva, L. (2021). Surogacy â€“ challenge to the legislation of the Republic of Bulgaria. *Law Journal of New Bulgarian University*, 16(3), 31–47. <https://doi.org/10.33919/ljnbu.20.3.3> (p.14) (accessed on 30 September 2025) and D. Furtunova, 'Parenting and legal family formats in Bulgaria', in: K. Waaldijk et al. (eds.), The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples, Paris: INED, 2017, www.LawsAndFamilies.eu (p.10) (accessed on 30 September 2025 on 15.6.2024)

³³³ Bulgaria, Criminal code, link: <https://justice.government.bg/home/normdoc/1589654529> (accessed on 05.03.2025)

³³⁴ D. Furtunova, 'Parenting and legal family formats in Bulgaria', in: K. Waaldijk et al. (eds.), The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples, Paris: INED, 2017, <https://www.ined.fr/Xtradocs/lawsandfamilies/LawsAndFamilies-BG-Section3.pdf> p. 9-10

remains unregulated and uncertain. According to Article 60 of the Family Code, the legal mother is the woman who gave birth, and this cannot be contested—even in cases involving medically assisted reproduction. This strongly suggests that **traditional surrogacy (where the surrogate is genetically related to the child) is not permitted**, as the law mandates that the birth mother is the legal mother, and no exceptions are made for genetic contributions. Furthermore, while foreign birth certificates may be recognised for civil registration purposes, there is **no clear domestic legal mechanism for establishing parentage in surrogacy cases**, especially absent a genetic link³³⁵.

General Criminal law provisions on surrogacy

See previous subheading.

Relevance of Surrogacy in the context of human trafficking

No direct indication, the domestic THB legislation includes the standard definition of THB.³³⁶

Civil court practice on surrogacy

Similarly to what was written about Austria, there are some opinions that, if a Bulgarian citizen goes through surrogacy abroad and asks for the inscription into the domestic civic registry the fact of parenthood, it is likely that the inscription will occur³³⁷. This is because the lack of regulatory framework leaves the recognition of the parenthood open and dependent on the foreign legislation³³⁸. However, there are also other views, which were reflected in the European Court's 2019 advisory opinion³³⁹, which state that the only way to recognize parenthood is via adoption, as the Bulgarian Family code provides that the women who gives birth to a child shall be considered as its mother³⁴⁰. No other cases

³³⁵ D. Furtunova, 'Parenting and legal family formats in Bulgaria', in: K. Waaldijk et al. (eds.), The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples, Paris: INED, 2017, <https://www.ined.fr/Xtradocs/lawsandfamilies/LawsAndFamilies-BG-Section3.pdf> p. 9-10

³³⁶ Researched material on the website of the National Raporteur (<https://antitrafficking.government.bg/en/about>) , 2) the Criminal code (<https://lex.bg/laws/ldoc/1589654529>) and 3) the THB law (<https://www.mlsp.government.bg/uploads/1/blgarsko-zakonodatelstvo/en/combating-trafficking-in-human-beings-act.pdf>)

³³⁷ European Union: European Commission, Study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States, March 2022, link: <https://commission.europa.eu/system/files/2023-01/ICF%20Final%20Report%20-%20Recognition%20of%20parenthood%20between%20MSs%20-%20FINAL.pdf> (p. 169) (accessed on 30 September 2025)

³³⁸ Peneva, L. (2021). Surrogacy â€“ challenge to the legislation of the Republic of Bulgaria. *Law Journal of New Bulgarian University*, 16(3), 31–47. <https://doi.org/10.33919/ljnbu.20.3.3> (p.14) (accessed on 30 September 2025) and D. Furtunova, 'Parenting and legal family formats in Bulgaria', in: K. Waaldijk et al. (eds.), The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples, Paris: INED, 2017, www.LawsAndFamilies.eu (p.10) (accessed on 30 September 2025 on 15.6.2024)

³³⁹ Council of Europe: European Court for Human Rights, Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, Requested by the French Court of Cassation, April 2019, link: <https://hudoc.echr.coe.int/eng?i=003-6380464-8364383> (para. 24) (accessed on 30 September 2025)

³⁴⁰ Bulgaria, Family Code, Article 60, link: <https://www.justice.government.bg/home/normdoc/2135637484/> (accessed on 05.03.2025)

are found on the official case law database.³⁴¹ Also similarly to previously outlined jurisdiction, adoption is an option for intended parents in Bulgaria as well.³⁴²

Criminal Court practice on surrogacy

No cases found on the official case law database with direct reference to surrogacy³⁴³. However, several cases involving illegal adoption practices and one of selling of the child were noted, albeit the details found are not consistent enough to warrant categorizing these cases as related to THB exploitation of surrogacy. Namely, out of the 4 cases found, 3 of them are related to European arrest warrant cases originating from Greece and requesting the extradition of an individual suspected of being involved in illegal adoption practices. One case is related to selling of the child in Bulgaria. The reason why these cases cannot be directly linked to surrogacy lies in the fact that all of them point to the selling occurring after the birth of the child and leave little indications on any contacts between the “buyers” and the sellers before the birth of the child, which is the essence of surrogacy agreements. Nevertheless, these cases are worth mentioning especially those related to European arrest warrant requests from Greece, as they could be linked to Greek authorities prosecution of illegal commercial surrogacy. See the list of cases with summary below.

Case	Summary	Mentions surrogacy?
Verdict No. 63 of 23.02.2015 by the Sofia City Court ³⁴⁴	The Sofia City Court found the defendant guilty of agreeing to sell her child and sentenced her to eight months' imprisonment, suspended for three years. The court considered mitigating factors such as the defendant's personal circumstances and clean criminal record. This sentence was later confirmed by the Supreme court as well. ³⁴⁵	No
Decision No. 176 of 08.07.2024 by the Burgas District Court ³⁴⁶	The Burgas District Court reviewed and approved the execution of a European Arrest Warrant (EAW) for the surrender of a Bulgarian citizen to Greek authorities. The individual consented to the surrender and did not invoke the principle of specialty. The court confirmed the identity and legal grounds for the EAW, ordering the individual's surrender	No

³⁴¹ <https://www.vks.bg/>

³⁴² Council of Europe: European Court for Human Rights, Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, Requested by the French Court of Cassation

, April 2019, link: <https://hudoc.echr.coe.int/eng?i=003-6380464-8364383> (para. 24) (accessed on 30 September 2025)

³⁴³ Bulgarian court cases database researched is available here: <https://www.vks.bg/>

³⁴⁴ Присъда № 63 от 23.02.2015 г. по н. д. № 38/2015 г. на Софийски градски съд

³⁴⁵ Решение № 239 от 28.08.2015 г. по н. д. № 563 / 2015 г. на Върховен касационен съд, 2-ро нак. отделение

³⁴⁶ Решение № 176 от 08.07.2024 г. по ч. н. д. № 859 / 2024 г. на Окръжен съд - Бургас

	to face criminal proceedings in Greece. The case involves allegations of illegal adoption practice.	
Decision No. 208 of 30.07.2024 by the Burgas District Court ³⁴⁷	The Burgas District Court reviewed and approved the execution of a European Arrest Warrant (EAW) for the surrender of a Bulgarian citizen to Greek authorities. The individual consented to the surrender and did not invoke the principle of specialty. The court confirmed the identity and legal grounds for the EAW, ordering the individual's surrender to face criminal proceedings in Greece. The case involves allegations of illegal adoption practices, with multiple instances of facilitating adoptions for payment.	No
Decision No. 219 of 15.08.2024 by the Burgas District Court ³⁴⁸	The Burgas District Court reviewed and approved the execution of a European Arrest Warrant (EAW) for the surrender of a Bulgarian citizen to Greek authorities. The individual consented to the surrender and did not invoke the principle of specialty. The court confirmed the identity and legal grounds for the EAW, ordering the individual's surrender to face criminal proceedings in Greece. The case involves allegations of illegal adoption practices, with specific details provided about the incident.	No

Croatia

General legal provisions

Surrogacy is explicitly forbidden in Croatia. The Law on medically assisted fertilization that provides for such a prohibition (Article 31)³⁴⁹ lays down misdemeanor liability, with no jail time while the Criminal code related provision of Article 107 criminalizes it if it has all three elements of the human trafficking crime.³⁵⁰

³⁴⁷ Решение № 208 от 30.07.2024 г. по ч. н. д. № 852 / 2024 г. на Окръжен съд - Бургас

³⁴⁸ Решение № 219 от 15.08.2024 г. по ч. н. д. № 1073 / 2024 г. на Окръжен съд - Бургас

³⁴⁹ available in Croatian here <https://www.zakon.hr/z/248/Zakon-o-medicinski-pomognutoj-oplodnji>

³⁵⁰ available in Croatian here <https://www.zakon.hr/z/98/Kazneni-zakon> and see interpretation here: Republic of Croatia, 2018, Inputs for 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, link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Croatia.docx> (accessed on 30 September 2025)

General Criminal law provisions on surrogacy

See previous subheading, for further confirmation of interpretation see here.³⁵¹

Relevance of Surrogacy in the context of human trafficking

No direct indication, the domestic THB legislation includes the standard definition of THB.³⁵²

Civil court practice on surrogacy

No court practice available online³⁵³.

Criminal Court practice on surrogacy

No court practice available online³⁵⁴.

Czechia

General legal provisions

In the Czech Republic, surrogacy is not legally regulated. It is only mentioned in the provision of § 804 of Act No. 89/2012 Coll., which states that "adoption is excluded between direct relatives and siblings. This does not apply in the case of surrogacy."³⁵⁵ These provisions have been interpreted as opening a permissive approach to surrogacy with the one-off steps being regulated by the laws of MAR, adoption, determination of parenthood, and the donation of parts of the body.³⁵⁶ In accordance with the already cited inputs, Czechia does not allow ways for direct recognition of the intended mother.³⁵⁷

Seeing how Surrogacy is not regulated by law, the Czech MAR Society has issued recommendations (exclusively medical indications, weighting with the applicants' own gametes, transfer of a single embryo, age of the surrogate mother under 49, surrogate mothers permanent residence in the Czech Republic, etc.), but the compliance is not enforceable.³⁵⁸ The parentage can be transferred using the

³⁵¹ Republic of Croatia, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/rom/web/bioethics/surrogacy-search?p_id=138808833&Country=242616167&delta=4&start=1#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}](https://www.coe.int/rom/web/bioethics/surrogacy-search?p_id=138808833&Country=242616167&delta=4&start=1#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]}))

³⁵² Researched material on the website of the National Raporteur (<https://ljudskaprava.gov.hr/suzbijanje-trgovanja-ljudima/599>) , 2) the Criminal code (<https://www.zakon.hr/z/98/Kazneni-zakon>)

³⁵³ Croatian Court database researched: <https://sudskapraksa.csp.vsrh.hr/search>

³⁵⁴ Croatian Court database researched: <https://sudskapraksa.csp.vsrh.hr/search>

³⁵⁵ HONZOVÁ, Ivana, and Roman SVATOŠ. "Surrogacy—a comparison of criminal law in the Czech Republic and the Slovak Republic." (2021), link: https://kbr.vsbm.sk/2021/n2/honzova_svatos.pdf (p. 3) (accessed on 30 September 2025).

³⁵⁶ Republic of Czech, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://rm.coe.int/inf-2016-4-addendum-update-june-2021-e/1680a3229f> (see page 5)

³⁵⁷ Republic of Czech, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://rm.coe.int/inf-2016-4-addendum-update-june-2021-e/1680a3229f> (see page 40)

³⁵⁸ Republic of Czech, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://rm.coe.int/inf-2016-4-addendum-update-june-2021-e/1680a3229f> (see page 24)

procedure of adoption³⁵⁹. This could change soon as an analysis of the competent ministry proposed a new law on surrogacy in Czechia³⁶⁰. This analysis proposes to legalize altruistic surrogacy—allowing only expense reimbursement, requiring a genetic link to at least one intended parent, and mandating strict health, psychological, and court approvals before fertilization³⁶¹. Intended parents would be recognised as legal parents from birth, ensuring child protection and ethical standards, with surrogacy remaining a last-resort option for infertility, that is expected to continue being applied extremely rarely³⁶².

General Criminal law provisions on surrogacy

Surrogacy (in general) is not considered illegal. However, commercial surrogacy (the provision of a reward for the pregnancy and delivery of a surrogate mother and the handing over of the child to the couple who have ordered it) fulfills the features of the criminal offense of Entrusting a child to another from Article 169 of the Criminal code.³⁶³ However, the reimbursement of costs to a surrogate mother due to pregnancy and childbirth that were agreed in the surrogacy contract cannot be considered remuneration as set by provision § 169 of the Criminal Code³⁶⁴. Intermediaries in commercial surrogacy are also criminally liable intermediaries³⁶⁵

Relevance of Surrogacy in the context of human trafficking

Forcing a woman to be a surrogate mother could be considered human trafficking (according to § 168 CC.) If a woman is not forced into surrogacy, the ordering couple could be criminally liable as participants in the crime in the form of instructions, which seems very likely, as the surrogate mother is forced to commit a criminal offense (Entrusting a child to another)³⁶⁶. In line with this opinion and the provision of the Article 168 of the Criminal code³⁶⁷, surrogacy shall be deemed human trafficking only after the fulfilment of the relevant 3 elements, i.e. where a surrogate mother is induced and/or coerced to give up her child in favour of the requesting couple through the use of coercion.

³⁵⁹ Republic of Czech, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://rm.coe.int/inf-2016-4-addendum-update-june-2021-e/1680a3229f> (see page 45)

³⁶⁰ Ministerstvo spravedlnosti ČR. (2024). Analýza institutu náhradního mateřství. https://eudeska.justice.cz/Lists/EUD/Attachments/5335/MSP-734_2024-OSV-OSV-příloha.pdf

³⁶¹ Ibid, executive summary

³⁶² Ibid

³⁶³ HONZOVÁ, Ivana, and Roman SVATOŠ. "Surrogacy—a comparison of criminal law in the Czech Republic and the Slovak Republic." (2021), link: https://kbr.vsbm.sk/2021/n2/honzova_svatos.pdf (p. 4) (accessed on 30 September 2025).

³⁶⁴ HONZOVÁ, Ivana, and Roman SVATOŠ. "Surrogacy—a comparison of criminal law in the Czech Republic and the Slovak Republic." (2021), link: https://kbr.vsbm.sk/2021/n2/honzova_svatos.pdf (p. 4) (accessed on 30 September 2025) see also Republic of Czech, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://rm.coe.int/inf-2016-4-addendum-update-june-2021-e/1680a3229f> (see page 27)

³⁶⁵ HONZOVÁ, Ivana, and Roman SVATOŠ. "Surrogacy—a comparison of criminal law in the Czech Republic and the Slovak Republic." (2021), link: https://kbr.vsbm.sk/2021/n2/honzova_svatos.pdf (p. 7) (accessed on 30 September 2025).

³⁶⁶ HONZOVÁ, Ivana, and Roman SVATOŠ. "Surrogacy—a comparison of criminal law in the Czech Republic and the Slovak Republic." (2021), link: https://kbr.vsbm.sk/2021/n2/honzova_svatos.pdf (p. 4) (accessed on 30 September 2025).

³⁶⁷ see here: <http://zakony.centrum.cz/trestni-zakonik/cast-2-hlava-2-dil-1-paragraf-168>

Civil court practice on surrogacy

Apart from cases where foreign birth registry excerpts are registered in the country as of 2018³⁶⁸, there is no new case law.³⁶⁹ The Constitutional Court allowed recognition of surrogacy registered parenthood abroad in 2017³⁷⁰. Then in 2021, the Constitutional court took a stance to not recognize foreign decisions regarding adoptions done by same-sex couples³⁷¹. Lastly as of 14 January 2025, the Supreme Court reached a decision which (re)recognizes the parental rights of parents that had a child through surrogacy in the US. Since this decision is quoting the decision of the Constitutional court from 2017 again (the one stating that the foreign decision regarding parental rights of the same sex couples must be recognised where the family life has already been constituted) it is implied that the Supreme Court has (re)established an avenue to recognize the parental rights of same sex couples³⁷². Seeing how adoption is one of the ways of recognition of parentage in cases of surrogacy, all of these decisions will have implications in the area of surrogacy as well, and it remains to be seen exactly which.

Criminal Court practice on surrogacy

As outlined in the civil court jurisprudence, there is no new case law. However, the state indicated that for several years, the Czech Republic has been a country where Ukrainian surrogate mothers go to give birth and hand over their children to foreign clients, usually single men. However, giving birth and registering a child when both parents agree is not in itself a criminal offense. The State indicates that *the procedure is cleverly planned by the actors into successive steps in different countries, where each partial step is legal*. According to this excerpt, the Czech police have been monitoring these practices for a long time in cooperation with other countries. However, the state adds, international surrogacy obviously cannot be solved without common international legislation.³⁷³

³⁶⁸ Republic of Czech, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://rm.coe.int/inf-2016-4-addendum-update-june-2021-e/1680a3229f> (see page 54)

³⁶⁹ Republic of Czech, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://rm.coe.int/inf-2016-4-addendum-update-june-2021-e/1680a3229f> (see page 13) and search of official court case law databases available here: <https://justice.cz/web/msp/rozhodnuti-soudu-judikatura->

³⁷⁰ see para. 55 of the decision here: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/Decisions/pdf/1-3226-16.pdf

³⁷¹ see report here: <https://ohrh.law.ox.ac.uk/czech-constitutional-court-no-recognition-of-foreign-adoption-by-same-sex-couples/>

³⁷² The decision of the Czech Supreme Court is available here: <https://www.zakonyprolidi.cz/judikat/nscr/20-ncu-168-2024>

³⁷³ Republic of Czech, 2021, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857172#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857172#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]}) (see applicable law)

Estonia

General legal provisions

Albeit surrogacy is explicitly illegal in Estonia³⁷⁴, and the fact that it will not allow any form of direct recognition of parenthood³⁷⁵ the State allows the intended parents the avenue of adoption.³⁷⁶

General Criminal law provisions on surrogacy

Surrogacy is prohibited under Article 132 of the Criminal code.³⁷⁷

Relevance of Surrogacy in the context of human trafficking

The THB is defined using the 3 elements from the Palermo Protocol³⁷⁸, hence surrogacy is considered THB only if those are fulfilled.

Civil court practice on surrogacy

No court practice found on the domestic portal.³⁷⁹

Criminal Court practice on surrogacy

No court practice found on the domestic portal.³⁸⁰

³⁷⁴ Horobets, Nadiia, and Yuliia Yakushchenko. "Different legal approaches to the regulation of surrogacy in Ukraine and Baltic states." *J. Int'l Legal Commc'n* 4 (2022): 55, link: https://www.researchgate.net/publication/361449450_DIFFERENT_LEGAL_APPROACHES_TO_THE_REGULATION_OF_SURROGACY_IN_UKRAINE_AND_BALTIC_STATES (p.8.) (accessed)

³⁷⁵ Riigikogu Kantselei. (2021). Asendusemaduse regulatsiooni võimalikud mudelid ja rahvusvaheline kogemus [Possible models for surrogacy regulation and international experience]. Tallinn: Eesti Riigikogu. Retrieved from <https://digikogu.taltech.ee/et/Download/4906f561-09cd-4930-832c-0ca32075afdb> (pp. 9, 12).

³⁷⁶ Council of Europe: European Court for Human Rights, Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, Requested by the French Court of Cassation, April 2019, link: <https://hudoc.echr.coe.int/eng?i=003-6380464-8364383> (para. 24) (accessed on 30 September 2025)

³⁷⁷ Republic of Estonia, 2024, The Criminal Code link: <https://www.riigiteataja.ee/akt/110072020018?leiaKehtiv#para132> (article 132) (accessed on 30 September 2025)

³⁷⁸ Republic of Estonia, 2024, The Criminal Code link: <https://www.riigiteataja.ee/akt/110072020018?leiaKehtiv#para132> (article 133) (accessed on 30 September 2025)

³⁷⁹ Republic of Estonia, database on case law available here: https://www.riigiteataja.ee/kohtulahendid/koik_menetlused.html and here: <https://www.riigikohus.ee/>

³⁸⁰ Republic of Estonia, database on case law available here: https://www.riigiteataja.ee/kohtulahendid/koik_menetlused.html and here: <https://www.riigikohus.ee/>

Finland

General legal provisions

Between the beginning of the 1990's and 2007 there was a legal vacuum in Finland during which surrogacy was practiced until it was banned under 2007 Act on fertility treatments.³⁸¹ Albeit this ban is still in force, the 2023 Government's report³⁸² and 2024 coalition agreement³⁸³ indicate that the discourse is moving towards legalization of non-commercial surrogacy. With respect to international surrogacy arrangements, the same report states that international surrogacy arrangements must include a **genetic link between at least one of the intended parents and the child**³⁸⁴. This is aligned with international guidelines and intended to minimize the psychological and legal complexities surrounding parentage and the surrogate's bond with the child.

General Criminal law provisions on surrogacy

In line with the current regulations, there is no direct criminalization of surrogacy. However, it is criminalized indirectly as the surrogate mother, or the intended parents can both be found guilty of unlawful arrangement of adoption and the intended parents can also be found guilty for prohibited payments for usage of gametes or embryos. The later criminalization also applies to whoever facilitates such arrangements.³⁸⁵

Relevance of Surrogacy in the context of human trafficking

The 2023 government report sporadically mentions the risks of THB connected with surrogacy arrangements where intended parents are much wealthier than the surrogate³⁸⁶ or where various intermediaries are involved³⁸⁷. In that vein, and as the Finish criminal code does not mention surrogacy-

³⁸¹ Moring, Anna. "Altruism and Built-In Nationalism: The Surrogacy Debate in Finland 2013–2019." (2023): 171-202.(p.4)

³⁸² Republic of Finland, Ministry of Justice, 2023, A report on allowing non-commercial surrogacy arrangements in Finland, link: https://api.hankeikkuna.fi/asiakirjat/a9e94d5f-52f5-468b-aded-e0e01df5af66/21ad0914-c584-4ce5-9434-c7164cee9adc/JULKAISU_20230404071236.pdf (p. 6) (accessed on 30 September 2025)

³⁸³ Republic of Finland, agreements from coalition government parties, 2024, link: <https://www.kokoomus.fi/wp-content/uploads/2024/05/VALMIS-2024-aloitteet-ja-vastaukset.pdf> (point 149) (accessed on 30 September 2025)

³⁸⁴ Republic of Finland, Ministry of Justice, 2023, A report on allowing non-commercial surrogacy arrangements in Finland, link: https://api.hankeikkuna.fi/asiakirjat/a9e94d5f-52f5-468b-aded-e0e01df5af66/21ad0914-c584-4ce5-9434-c7164cee9adc/JULKAISU_20230404071236.pdf (p. 69) (accessed on 30 September 2025)

³⁸⁵ Republic of Finland, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857163#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857163#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (see applicable law)

³⁸⁶ Republic of Finland, Ministry of Justice, 2023, A report on allowing non-commercial surrogacy arrangements in Finland, link: https://api.hankeikkuna.fi/asiakirjat/a9e94d5f-52f5-468b-aded-e0e01df5af66/21ad0914-c584-4ce5-9434-c7164cee9adc/JULKAISU_20230404071236.pdf (p. 12) (accessed on 30 September 2025)

³⁸⁷ Republic of Finland, Ministry of Justice, 2023, A report on allowing non-commercial surrogacy arrangements in Finland, link: https://api.hankeikkuna.fi/asiakirjat/a9e94d5f-52f5-468b-aded-e0e01df5af66/21ad0914-c584-4ce5-9434-c7164cee9adc/JULKAISU_20230404071236.pdf (p. 73) (accessed on 30 September 2025)

specifically in its definition of THB³⁸⁸, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

In accordance with the 2023 Government report, the court practice in Finland has been lenient in recognizing parenthood of foreign based surrogacy agreements, using the best interest of the child argument for approval of the vast majority of requests³⁸⁹. Same case law cited herein, clarified the ban on remunerations in cases of adoption by excluding the reimbursement of costs from the notion of consideration payment.³⁹⁰

Criminal Court practice on surrogacy

In the mentioned Government report, the analysis of the court practice showed only 1 criminal case where intended parents informed Finish authorities that both of them are genetically linked to the child born out of surrogacy abroad, albeit only the father was in reality. The intended mother was allowed to adopt and the criminal sentence was not imposed because the court considered the offence to be minor.³⁹¹

France

General legal provisions

Surrogacy is prohibited in France and can be subjected to criminal prosecution of all involved under various grounds³⁹² (see next subheading). However, bearing in mind the limited reach of criminal jurisdiction, French courts have allowed recognition of foreign birth certificates indicating intended parents as the parents of the child. Current undisputed stance is that in this case the intended father will be recognised as the father if he is genetically connected to the child, while the intended mother will have recourse to adoption.³⁹³ Regardless of this, as recently as in October 2024 and November 2024 the

³⁸⁸ Republic of Finland, 2021, Criminal code, link: <https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf> (p. 157) (accessed on 30 September 2025)

³⁸⁹ Republic of Finland, Ministry of Justice, 2023, A report on allowing non-commercial surrogacy arrangements in Finland, link: https://api.hankeikkuna.fi/asiakirjat/a9e94d5f-52f5-468b-aded-e0e01df5af66/21ad0914-c584-4ce5-9434-c7164cee9adc/JULKAISU_20230404071236.pdf (p. 20) (accessed on 30 September 2025)

³⁹⁰ Republic of Finland, Ministry of Justice, 2023, A report on allowing non-commercial surrogacy arrangements in Finland, link: https://api.hankeikkuna.fi/asiakirjat/a9e94d5f-52f5-468b-aded-e0e01df5af66/21ad0914-c584-4ce5-9434-c7164cee9adc/JULKAISU_20230404071236.pdf (p. 18) (accessed on 30 September 2025)

³⁹¹ Republic of Finland, Ministry of Justice, 2023, A report on allowing non-commercial surrogacy arrangements in Finland, link: https://api.hankeikkuna.fi/asiakirjat/a9e94d5f-52f5-468b-aded-e0e01df5af66/21ad0914-c584-4ce5-9434-c7164cee9adc/JULKAISU_20230404071236.pdf (p. 22) (accessed on 30 September 2025)

³⁹² Republic of France, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]})) (see applicable law)

³⁹³ Republic of France, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]})) (see parentage)

French court of cassation handed down three new decisions which change the said system. In accordance with these decisions, it is now possible to establish parentage in France between intended parents without any genetical connection to the child born out of surrogacy, provided that: 1) surrogacy abroad is established under a decision of a court in that country, 2) a French judge verifies that certain safeguards were put in place, in particular the absence of fraud and the consent of the parties to the agreement on surrogacy³⁹⁴.

General Criminal law provisions on surrogacy

Surrogacy can be prosecuted under several grounds³⁹⁵:

1. the surrogate mother can be prosecuted on grounds of voluntary substitution, simulation or dissimulation resulting in an infringement of the civil status of a child (Article 227-13 of the criminal code).
2. Intended parents can be prosecuted under Article 227-12, paragraph 1 of the criminal code
3. intermediaries can also be punished

Relevance of Surrogacy in the context of human trafficking

As the French criminal code does not mention surrogacy-specifically in its definition of THB³⁹⁶, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

The case law of the Court of Cassation actually enabled the transcription of foreign birth certificates where intended parents are inscribed as legal parents by invoking the best interest of the child argument. Apparently, it was also too liberal in the view of the legislator as it regulated the matter after some of the more liberal rulings of the court in 2019.³⁹⁷ In yet another twist, the Court of Cassation now rendered several new decisions, notably establishing a possibility for intended parents who are not genetically related to the child to have their parenthood recognised in France.

³⁹⁴ Catherine Berlaud, 2024, Exequatur of a foreign decision: GPA without biological link with the intended parent, link: <https://www.actu-juridique.fr/breves/personnes-famille/exequatur-dune-decision-etrangere-gpa-sans-lien-biologique-avec-le-parent-dintention/> (accessed on 30 September 2025 on 11.1.2025)

³⁹⁵ Republic of France, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]}})) (see applicable law)

³⁹⁶ Republic of France, 2024, Criminal code, link: https://www.equalrightstrust.org/ertdocumentbank/french_penal_code_33.pdf (p. 50-41) (accessed on 30 September 2025)

³⁹⁷ Republic of France, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]}})) (see parentage)

Criminal Court practice on surrogacy

With respect to criminal case law, the official database³⁹⁸ showed several decisions with respect to transcription of foreign birth certificates. Additionally, it yielded a decision of the Cassation court on finding a website provider not guilty on accusation of being intermediary in surrogacy arrangements for not taking down information on surrogate mothers from Spain from being available in France. The reason is because it is based in Spain where surrogacy is lawful and hence cannot be considered manifestly unlawful so as to prompt the takedown duty³⁹⁹. Other sources offer the following cases:

- 1) of Bordeaux (the "Tribunal Correctionnel") on 1/07/2015 sentenced a couple of men to a conditional fine amounting to 7500 euros for the offense of incitement to abandon a child. Usually, if judges would have applied the criminal code strictly, the sentence would have been six months of incarceration and a fine of 7500 euros; therefore, we see judges considering the authentic will of intended parents to have children⁴⁰⁰
- 2) a case where a French couple did undertake a surrogacy abroad where it is not forbidden and they could not be prosecuted for that⁴⁰¹.

Cases in front of the ECtHR

***Mennesson v. France* - [65192/11](#), Judgment 26.6.2014, and *Labassee v. France*, [65941/11](#), 26 June 2014 legal summary⁴⁰²:**

French couples Mr. and Mrs. Mennesson and Mr. and Mrs. Labassee had children via surrogacy in the U.S., using the biological fathers' sperm. U.S. courts recognised them as parents, but French authorities refused to register the children's birth certificates, citing surrogacy's illegality in France. This left the children without legal recognition of their parentage in France, impacting their identity, nationality, and inheritance rights.

The European Court found no violation of the families' right to respect for family life under Article 8. The applicants lived as families in France without insurmountable obstacles, and the French courts had considered their situation. However, the Court ruled that denying legal recognition of the children's relationship with their biological fathers violated the children's right to private life, significantly affecting their identity and best interests.

France was found to have overstepped its margin of appreciation, breaching Article 8. Outcome: No violation for family life; violation for private life. Compensation: €5,000 to each child.

³⁹⁸ French court cases database is available here:

[https://www.legifrance.gouv.fr/search/all?tab_selection=all&query=%7B\(%40ALL%5Be%22maternit%C3%A9%20de%20substitution%22%5D\)%7D&&isAdvancedResult=true&pageSize=10&typeRecherche=date&init=true&page=1](https://www.legifrance.gouv.fr/search/all?tab_selection=all&query=%7B(%40ALL%5Be%22maternit%C3%A9%20de%20substitution%22%5D)%7D&&isAdvancedResult=true&pageSize=10&typeRecherche=date&init=true&page=1)

³⁹⁹ see judgement here:

https://www.legifrance.gouv.fr/juri/id/JURITEXT000046652017?init=true&isAdvancedResult=true&page=1&pageSize=10&query=%7B%28%40ALL%5Be%22maternit%C3%A9+de+substitution%22%5D%29%7D&tab_selection=all&typeRecherche=date

⁴⁰⁰ Bonnet, Yannis. "Surrogacy in France: A summary of the situation." *Bioethica* 7, no. 1 (2021): 64-70. (p. 6) (accessed on 30 September 2025)

⁴⁰¹ European Parliament, Directorate-General for Internal Policies of the Union, King, D., McCandless, J., Carruthers, J. et al., A comparative study on the regime of surrogacy in EU Member States, Publications Office, 2013, <https://data.europa.eu/doi/10.2861/2624> (p. 108)

⁴⁰² What follows is copied from this publication: ECtHR, 2014, <https://hudoc.echr.coe.int/?i=002-9781>

Foulon and Bouvet v. France (nos. 9063/14 and 10410/14)⁴⁰³

The applicants in the first case are Mr Didier Foulon, who was born in 1971 and is a French national, and Ms Emilie Sanja Lauriane Foulon, who was born in Bombay, India, on 31 July 2009 and is Mr Foulon's daughter. The applicants in the second case are Mr Philippe Bouvet, who was born in 1965 and is a French national, and Adrien and Romain Bouvet, who were born in Bombay, India, on 26 April 2010. In both cases the applicants have been unable to obtain recognition under French law of their biological affiliation as established in India. The French authorities, suspecting recourse to unlawful gestational surrogacy agreements ("GPA"), are refusing to transcribe the birth certificates, which were issued in India. Further to the request submitted by Mr Foulon, Ms Foulon's biological father, to transcribe the birth certificate issued in India to the French registers and following the refusal by the Nantes Public Prosecutor to grant that request on account of the suspicion of recourse to a GPA, which is prohibited under Article 16-7 of the Civil Code, Mr Foulon and Ms Foulon's mother applied to the Nantes Regional Court to obtain the transcription of the birth certificate to the civil status registers. On 10 June 2010 the Nantes Regional Court ("TGI") granted that application.

The Public Prosecutor's Office applied, successfully, to the Rennes Court of Appeal to set aside the TGI's judgment. Mr Foulon and Ms Foulon's mother lodged an appeal on points of law, which was dismissed by the Court of Cassation. The third applicant, Mr Philippe Bouvet, the father of Adrien and Romain Bouvet, applied to the Consulate General of France in Bombay for the transcription of his sons' birth certificates to the French civil status registers. The Nantes Public Prosecutor, suspecting that the biological father had had recourse to a GPA, also refused to enter the twins' birth certificates in the French registers, and instructed the French consular authorities in India to suspend the transcription of the children's birth certificates. Mr Bouvet applied, successfully, to the Nantes TGI for the registration of the Bouvet twins' birth certificates. The Rennes Court of Appeal upheld the TGI's judgment, noting that the certificates met the requirements of Article 47 of the Civil Code, and that there were no grounds for advancing or prioritising such public-order considerations as the best interests of the child or the inalienability of the human body.

The Public Prosecutor with the Rennes Court of Appeal appealed on points of law. On 13 September 2013 the French Court of Cassation delivered the two separate judgments providing reasons for the refusal to transcribe the civil-status documents of the Foulon and Bouvet children, the main reason being the *fraude à la loi* (evasion of the law) involving the conclusion of a GPA agreement, which is contrary to French law. Relying on Article 8 (right to respect for private and family life), the applicants alleged a breach of their right to respect for their private and family life as a result of the refusal to transcribe the Indian birth certificates of Ms Foulon and of Adrien and Romain Bouvet into the French civil-status registers on the grounds that Mr Didier Foulon and Mr Philippe Bouvet had had recourse to a surrogacy agreement. No violation of Article 8 – as concerns the applicants' right to respect for their family life. Violation of Article 8 – as concerns the right to respect for private life of Emilie Sanja Lauriane Foulon and Adrien and Romain Bouvet. Just satisfaction: EUR 5,000 each to Emilie Sanja Lauriane Foulon and Adrien and Romain Bouvet in respect of non-pecuniary damage, and EUR 15,000 jointly to Didier and Emilie Sanja Lauriane Foulon and EUR 15,000 jointly to Philippe, Adrien and Romain Bouvet in respect of costs and expenses.

⁴⁰³ Copied from: ECtHR, 2016, link: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5444584-6823729&filename=Judgments%20and%20decisions%20of%2021.07.16.pdf>

C and E v. France (applications nos. 1462/18 and 17348/18), press release⁴⁰⁴:

Two cases involve French couples (Mr. and Mrs. C, Mr. and Mrs. E) who had children abroad via gestational surrogacy, using the fathers' gametes and third-party donors. The children were born in the U.S. (2010) and Ghana (2014), with birth certificates naming the respective couples as parents. French authorities refused to register these certificates, citing France's prohibition of surrogacy under Article 16-7 of the Civil Code. The couples pursued legal action to establish parental recognition, achieving partial success: legal fatherhood was acknowledged, but mother-child relationships were denied recognition due to the surrogacy arrangements.

The European Court referred to its 2019 advisory opinion on children born abroad via surrogacy, emphasizing the need for mechanisms to establish parent-child relationships where practical realities demonstrate such bonds. French law allows intended mothers to adopt the children, which provides a pathway for recognition. While this option became certain only after 2017 (when the children were 3-7 years old), the Court found it reasonable to expect applicants to pursue adoption, given the short waiting times (4-5 months). The refusal to directly register the intended mother-child relationship was not deemed disproportionate. Thus, this aspect of the complaint was dismissed as manifestly ill-founded.

The Court acknowledged a difference in treatment between children born abroad via surrogacy and other children born abroad. However, this distinction, requiring court-supervised adoption, ensures alignment with the best interests of the child. States have discretion in how parent-child relationships are legally recognised, and Article 8 does not mandate immediate recognition of intended mothers. The Court ruled that the differentiation was objectively and reasonably justified, dismissing this claim as well.

Conclusion: Both claims under Articles 8 and 14 were deemed manifestly ill-founded, with the Court supporting the French approach to balancing domestic law and child welfare.

D v. France - 11288/18 , Judgment 16.7.2020, legal summary⁴⁰⁵:

The European Court of Human Rights ruled unanimously that requiring adoption to establish a legal mother-child relationship for a child born through surrogacy does not violate the European Convention on Human Rights. The case involved a French couple whose daughter was born in Ukraine via a gestational surrogacy arrangement in 2012. While the Ukrainian birth certificate listed both intended parents as the child's mother and father, the French authorities only recognised the legal father-child relationship, requiring the intended mother to pursue adoption.

Key Findings:

Private Life under Article 8: The Court acknowledged interference with the child's right to private life but found it lawful and justified. French law does not permit surrogacy, but domestic provisions allowed the recognition of a legal relationship with both intended parents through adoption or other means. The

⁴⁰⁴ ECtHR, 2017, link: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6589814-8731890&filename=Decision%20C%20and%20E%20v.%20France%20-%20children%20born%20through%20a%20gestational%20surrogacy%20arrangement.pdf>

⁴⁰⁵ ECtHR, 2020, link: <https://hudoc.echr.coe.int/eng?i=002-12910>

intended mother, though the genetic parent, could adopt her spouse's child, ensuring a legal mother-child relationship.

Adoption Mechanism: Adoption was deemed an effective, sufficiently speedy mechanism to establish the legal parent-child relationship. The requirement for adoption did not impose an excessive burden on the child. Although adoption became clearly accessible only in 2017, prior to the final domestic decision, the process could have been completed before the child turned six.

Discrimination under Article 14 in Conjunction with Article 8: The applicants claimed discrimination based on the child's birth and the difference in treatment between biological mothers and fathers in such cases. The Court ruled that the difference in treatment had an objective and reasonable justification. The requirement for courts to assess the best interests of the child before recognizing the legal relationship aimed to mitigate risks associated with surrogacy arrangements in a country where it is prohibited.

Conclusion: The Court held that requiring adoption for the recognition of the mother-child relationship does not violate the Convention, as it ensures the child's rights and best interests while respecting France's margin of appreciation. There was no violation of Articles 8 or 14.

A. L. v. France (application no. 13344/20)⁴⁰⁶

In the case of *A.L. v. France* (application no. 13344/20), the European Court of Human Rights unanimously found a violation of Article 8 of the European Convention on Human Rights due to the State's failure to exercise exceptional diligence. The case involved the refusal of French courts to legally establish the applicant's paternity over his biological son, born through a gestational surrogacy arrangement, after the surrogate mother entrusted the child to another couple.

The Court acknowledged that domestic courts had prioritized the child's best interests and provided sufficient grounds under Article 8 § 2 to justify their decision. However, the proceedings lasted over six years, which was deemed excessively long given the case's sensitivity. This delay risked determining the outcome based on a *fait accompli*, undermining the applicant's right to private life. The Court emphasized that this finding did not challenge the assessment of the child's best interests by the French courts.

Germany

General legal provisions

Surrogacy is illegal in Germany. This is made explicit by the Law on adoption and prohibition of surrogacy⁴⁰⁷. There are several criminal law provisions strengthening the prohibition. Much like many other EU jurisdictions, Germany does recognize foreign executed surrogacies, at least from 2014, but

⁴⁰⁶ ECtHR, 2022, link: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7305366-9961797&filename=Judgment%20A.L.%20v.%20France%20-%20Child%E2%80%99s%20best%20interests%20respected%2C%20but%20the%20domestic%20courts%20failed%20in%20their%20duty%20of%20diligence%20in%20the%20proceedings.pdf>

⁴⁰⁷ available here https://www.gesetze-im-internet.de/englisch_advermig/englisch_advermig.html

only if these are made in foreign “judgments”⁴⁰⁸. This firstly led the courts to recognize such foreign decisions and registry excerpts where one of the intended parents is genetically related to the child and the surrogacy mother is not. The new trend is now that genetic link between one of the intended parents and the child has been declared of lesser relevance than the free and informed decision of the surrogate mother to accept the transfer of parenthood to the intended parents as well as the child’s best interests’ assessment.⁴⁰⁹ An expert commission was established recently to examine whether or not at least altruistic surrogacy should be established. The commission recommended that due to ethical, practical and legal considerations, altruistic surrogacy should remain prohibited or only be permitted under very strict conditions (e.g. close family or friendship between intended parents and surrogate mother).⁴¹⁰

General Criminal law provisions on surrogacy

Surrogacy is prohibited Pursuant to section 1 subsection (1), no. 7, of the Act on the Protection of Embryos [Embryonenschutzgesetz, ESchG]. In accordance with this provision person who undertakes to perform an artificial insemination on a woman who is prepared to give up her child permanently after birth to third parties (surrogate mother) or to transfer a human embryo to her is liable to imprisonment of up to three years or a fine. In such case neither the surrogate mother nor the person who wishes to permanently take care of the child is liable to punishment. Also, Pursuant to section 13c of the Adoption Placement Act [Adoptionsvermittlungsgesetz, AdVermiG], the procurement of surrogate mothers is prohibited by law in Germany.⁴¹¹

Relevance of Surrogacy in the context of human trafficking

Under German law, child trafficking is prohibited under Section 236 of the Criminal Code. This provision refers to three acts: it is prohibited to hand over one's own underage child - or, as a guardian, a ward - to third parties for a fee (see Section 11 Paragraph 1 No. 8 of the Criminal Code) or with the intention of enrichment (Section 236 Paragraph 1 Sentence 1 of the Criminal Code) or to take in a child under such circumstances (Section 236 Paragraph 1 Sentence 2 of the Criminal Code). In both cases, the handing over of the child must represent a "gross neglect of the duty of care or upbringing". The unauthorized placement of a child for adoption is also prohibited (Section 235 Paragraph 2 of the Criminal Code). The legislature has not commented on whether surrogacy constitutes a criminal case of child trafficking. The specific prohibitions in Section 1 Paragraph 1 No. 7 ESchG (medical preparation for surrogacy) and Section 13a AdVermiG (prohibition of surrogate mother placement), which expressly exclude criminal liability for the surrogate mother and the intended parents, systematically speak against the application

⁴⁰⁸ Republic of Germany, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]})) (see parentage)

⁴⁰⁹ Republic of Germany, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]})) (see Legal regulation)

⁴¹⁰ Republic of Germany, 2024, recommendations of the commission to examine legalization of surrogacy, link: <https://www.bundesgesundheitsministerium.de/presse/pressemitteilungen/kommissionsbericht-reproduktive-selbstbestimmung-pm-15-04-24> (accessed on 30 September 2025)

⁴¹¹ Republic of Germany, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[2\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[2]})) (see Legal regulation)

of the criminal offense. In any case, in cases in which the child is genetically related to one or both intended parents, case law and legal literature therefore largely exclude criminal liability for child trafficking.

With regard to the distinction from child trafficking, the following conditions are mentioned in German-language literature as the minimum requirement for a surrogacy agreement: The agreement must be concluded before conception in order to ensure who will take responsibility for the child after birth; the agreement must not make the handover of the child dependent on certain characteristics (e.g. gender, absence of a disability) and monetary compensation must be limited to the actual effort and burdens associated with the pregnancy so that the child does not become a commodity.⁴¹²

Civil court practice on surrogacy

Apart from the practice of recognizing foreign judgements, there is arguably not much case law.⁴¹³

Criminal Court practice on surrogacy

Apart from the practice of recognizing foreign judgements, there is arguably not much case law.⁴¹⁴

Hungary

General legal provisions

Surrogacy is prohibited in Hungary, albeit indirectly by virtue of the fact that the Act on Health § 166 sets a restrictive list of special procedures for reproduction. Surrogacy fails to be contained in the list. Consequently, surrogacy cannot be performed in Hungary. This act allowed surrogacy until 1999, when, after extensive debates, it was no longer there.⁴¹⁵ According to the Civil Code, the legal mother cannot be forced to agree to the intended adoption, and the legal decision on the adoption can be withdrawn if a commercial motivation of the adoption comes to light.⁴¹⁶ According to the current Hungarian rules, after the birth of a child, adoption can only take place with the permission of the guardianship office and

⁴¹² Republic of Germany, 2024, Report of the commission to examine legalization of surrogacy, link: <https://www.bmfsfj.de/resource/blob/238402/c47cae58b5cd2f68ffbd6e4e988f920d/bericht-kommission-zur-reproduktiven-selbstbestimmung-und-fortpflanzungsmedizin-data.pdf> (p. 422-423) (accessed on 30 September 2025)

⁴¹³ Republic of Germany, 2024, Report of the commission to examine legalization of surrogacy, link: <https://www.bmfsfj.de/resource/blob/238402/c47cae58b5cd2f68ffbd6e4e988f920d/bericht-kommission-zur-reproduktiven-selbstbestimmung-und-fortpflanzungsmedizin-data.pdf> (p. 351) (accessed on 30 September 2025)

⁴¹⁴ Republic of Germany, 2024, Report of the commission to examine legalization of surrogacy, link: <https://www.bmfsfj.de/resource/blob/238402/c47cae58b5cd2f68ffbd6e4e988f920d/bericht-kommission-zur-reproduktiven-selbstbestimmung-und-fortpflanzungsmedizin-data.pdf> (p. 351) (accessed on 30 September 2025)

⁴¹⁵ Republic of Hungary, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616170#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[5\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616170#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[5]})) (see Legal regulation)

⁴¹⁶ Republic of Hungary, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616170#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[5\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616170#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[5]})) (see Parentage)

the irrevocable consent of the mother⁴¹⁷. In addition, it is necessary to determine the suitability of the adoptive parents – this procedure is possible even before the birth of the child. After the birth, the genetic parents take care of the child for one month, after which the adoption can be permanently approved. Since in this case the genetic father is legally considered the father – he can make a full-fledged declaration of paternity – adoption is only necessary in relation to the genetic mother.⁴¹⁸

General Criminal law provisions on surrogacy

In line with Articles 175 and 213 of the Hungarian Criminal code, surrogate mothers, intended parents and facilitators could be criminally liable if they were to practice surrogacy.⁴¹⁹

Relevance of Surrogacy in the context of human trafficking

As the Hungarian criminal code does not mention surrogacy-specifically in its definition of THB⁴²⁰, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

No case law found in the official database.⁴²¹

Criminal Court practice on surrogacy

No case law found in the official database.⁴²²

Italy

General legal provisions

Italy prohibits both domestic and international surrogacy when committed by Italian citizens abroad⁴²³. This was essentially a product of a long process which also included several domestic court decisions.

⁴¹⁷ Illés, B. (2013, May 23). *Bérmegység* [Surrogacy]. *Jogászvilág*. Retrieved from <https://jogaszvilag.hu/eletmod/bermegasag/>

⁴¹⁸ Raffai, K. (2018). *Határokon átnyúló családi ügyek: Nemzetközi személyes-és családjogi kérdések a XXI. században*. retrieved from: https://publikacio.ppke.hu/id/eprint/1107/1/Hatarokon_atnyulo_csaladi_ugyek.pdf on 21 April 2025.

⁴¹⁹ Republic of Hungary, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616170#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:5}}) (see Applicable law)

⁴²⁰ Hungary: Criminal Code, Act C of 2012, 2012, <https://www.refworld.org/legal/legislation/natlegbod/2012/en/78046> [accessed on 30 September 2025] (Article 192)

⁴²¹ <https://eakta.birosag.hu/anonimizalt-hatarozatok>

⁴²² <https://eakta.birosag.hu/anonimizalt-hatarozatok>

⁴²³ Republic of Italy, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://www.coe.int/ru/web/bioethics/surrogacy->

The end result is that even foreign decisions establishing parenthood of the commissioning parents are not recognised⁴²⁴. There is only a limited road enabling the woman who has not given birth to be identified as the mother by using the adoption procedure through L.44/1983, art.44.⁴²⁵ However, it appears that even this will be followed by a criminal investigation as warned by the Italian consulate in Houston, USA⁴²⁶.

General Criminal law provisions on surrogacy

Article 12 (general prohibitions and penalties), section 6 of Law n°40/2004 on assisted reproduction techniques bans surrogacy (“Whoever, in any form, produces, arranges or advertises the sale of gametes or embryos or surrogate motherhood is punished with imprisonment from three months to two years and a fine ranging from 600,000 to one million euros”).⁴²⁷

Relevance of Surrogacy in the context of human trafficking

As the Italian criminal code does not mention surrogacy-specifically in its definition of THB⁴²⁸, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

Some case law, mostly related to recognition of foreign birth certificates or decisions establishing parenthood of commissioning parents was found. It appears that the current state of case law is strongly against surrogacy and even against recognizing foreign acts on establishing a legal bond between the commissioning parents and the child.⁴²⁹ This state of affairs is confirmed in the publicly available version of the official database of court decisions.⁴³⁰

[search?p_l_id=138808833&delta=30&Country=174857167#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[\]}}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857167#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[]}}) (see Current debate and specific situations)

⁴²⁴ Republic of Italy, Ministry of justice, 2024, information on surrogacy, link: <https://aldricus.giustizia.it/la-maternita-surrogata/> (accessed on 30 September 2025)

⁴²⁵ Republic of Italy, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857167#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[\]}}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857167#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[]}})) (see parentage)

⁴²⁶ Republic of Italy, 2024, Notice of the USA, Houston based consulate on surrogacy, link: <https://conshouston.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-italiano/stato-civile/nascita-derivata-da-maternita-surrogata/> (accessed on 30 September 2025)

⁴²⁷ Republic of Italy, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857167#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[\]}}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=174857167#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[]}})) (see legal regulation)

⁴²⁸ see here: <https://www.warnathgroup.com/wp-content/uploads/2015/03/italy-tip-law-2003.pdf>

⁴²⁹ Republic of Italy, 2024, Ministry of Justice, information on Surrogacy, link <https://aldricus.giustizia.it/la-maternita-surrogata/> (accessed on 30 September 2025)

⁴³⁰ Republic of Italy, 2024, database of court decisions, link: <https://www.italgiure.giustizia.it/sncass/> (accessed on 30 September 2025)

Criminal Court practice on surrogacy

In addition to the cases outline above, an article identified some 8 cases in front of Italian judicial authorities where criminal proceedings were undertaken against the intended parents suspected of «falsifying civil status» (Article 567 of the Italian Criminal Code), of «using falsified documents» (Article 489 of the Criminal Code), or «making a false statement as to identity» (Article 495 of the Criminal Code) and of the offence set out in section 72 of the Adoption Act, since they had brought the child to Italy in breach of the procedure provided for by its provisions on intercountry adoption. However, in light of the most recent case law, all couples were acquitted after invoking compliance of the birth certificates submitted to Italian authorities under the law of the country where the documents were issued (see Court of Cassation, Section V, judgment no. 13525 of 5 April 2016 and Court of Cassation, Section V, judgment no. 489696 of 17 November 2016).⁴³¹

Cases in front of the ECtHR

Paradiso and Campanelli v. Italy [GC] - [25358/12](#) Judgment 24.1.2017 [GC], legal summary⁴³²

A married couple sought parenthood through surrogacy in Russia after failed IVF attempts. In 2011, a child was born via surrogacy and registered as their son in Russia. Upon returning to Italy, they faced legal challenges for violating adoption laws, as the child had no biological link to them. Italian courts deemed the child in a "state of abandonment," removed him, and placed him for adoption, rejecting the couple's claim of parenthood.

The case raised ethical issues, including surrogacy, adoption, and reproductive technology. The European Court of Human Rights ruled no violation of Article 8, citing the illegality of the couple's actions and the courts' prioritization of public interests and the child's welfare. While recognizing the emotional impact on the couple, the Court concluded that the domestic authorities had acted within their wide margin of appreciation, balancing competing interests fairly. The child was ultimately adopted by another family.

C v. Italy - [47196/21](#) Judgment 31.8.2023 [Section I], legal summary⁴³³

In 2018, an Italian couple used gestational surrogacy in Ukraine, resulting in the birth of a child in 2019. The biological father and the intended mother were listed as parents on the Ukrainian birth certificate. However, Italian authorities rejected the couple's request to register the birth certificate, citing public policy against surrogacy. Appeals, including a request for partial registration, were denied.

Under Article 8 of the European Convention on Human Rights, the European Court of Human Rights found a violation of the child's right to private life regarding the relationship with the biological father. Italian courts failed to ensure prompt and effective recognition of parentage, leaving the child stateless and in legal uncertainty. However, regarding the intended mother, the Court found no violation, as adoption was available under Italian law to establish the legal relationship. Italy was ordered to pay €15,000 for non-pecuniary damages.

⁴³¹ Long, Joëlle. "Intercountry surrogacy: An Italian and Ukrainian issue." *Uridicnij visnik. Povitrane i kosmicne pravo* 42.1 (2017): 98-102. Link: <https://iris.unito.it/bitstream/2318/1632345/1/Ucraina2017pdf.pdf> (p. 2) (accessed on 30 September 2025)

⁴³² ECtHR, 2017, link: <https://hudoc.echr.coe.int/eng?i=002-11439>

⁴³³ ECtHR, 2023, link: <https://hudoc.echr.coe.int/eng?i=002-14171>

Latvia

General legal provisions

Surrogacy in the meaning of a health care service is not recognised or legally regulated in Latvia. There is no legislation recognizing surrogacy and hence there is no way to transfer parentage to the commissioning parent.⁴³⁴ However, surrogacy is prohibited implicitly, as the Sexual and Reproductive Health Act prohibits the use of donor gametes or embryos for commercial purposes (Section 15, paragraph 4). In the case of medical reproduction, the law prohibits requiring recognition of paternity of the gamete donor (Section 22), which implies that this law indirectly prohibits commercial surrogacy in Latvia.⁴³⁵ In line with the domestic law, a mother may not give her consent to the adoption of her child earlier than six weeks after birth nor can an adoption be limited by any conditions or terms whatsoever. This was interpreted as to mean that a surrogate mother cannot give her consent for the adoption for a concrete adopter⁴³⁶. Additionally, the parents and guardians of a child born via medical impregnation do not have the right to request recognition of paternity of the gamete donor⁴³⁷. While **Latvia does not formally require a genetic connection** (because surrogacy is not legally acknowledged at all), in **practice**, paternity may be established if the intended father is genetically related. The report to the OHCHR notes a rare case where a man acknowledged paternity for a child born abroad via surrogacy, and his wife adopted the child⁴³⁸.

General Criminal law provisions on surrogacy

The Latvian Criminal Law does not impose direct criminal liability for surrogacy arrangements, as the issue of surrogacy is not the object of regulation in the legislation of Latvia.⁴³⁹

⁴³⁴ Republic of Latvia , 2018, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Latvia.pdf> (accessed on 30 September 2025)

⁴³⁵ Horobets, Nadiia, and Yuliia Yakushchenko. "Different legal approaches to the regulation of surrogacy in Ukraine and Baltic states." *J. Int'l Legal Commc'n* 4 (2022): 55. link: https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jloitnllg4§ion=10&casa_token=W9LQr9nCcxEAAAAA:dDWNCP_CTsjbySc4OefqoDuTLJ4pGpUGx-tEkb0cOytWDuDoLgJ8J-gDOvdD1EPPBvP95tg1_g (p.8) (accessed on 30 September 2025)

⁴³⁶ Republic of Latvia , 2018, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Latvia.pdf> (accessed on 30 September 2025) (p.1)

⁴³⁷ Republic of Latvia , 2018, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Latvia.pdf> (accessed on 30 September 2025) (p.2)

⁴³⁸ Republic of Latvia , 2018, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Latvia.pdf> (accessed on 30 September 2025)

⁴³⁹ Horobets, Nadiia, and Yuliia Yakushchenko. "Different legal approaches to the regulation of surrogacy in Ukraine and Baltic states." *J. Int'l Legal Commc'n* 4 (2022): 55. link: <https://heinonline.org/hol-cgi->

Relevance of Surrogacy in the context of human trafficking

The Criminal Law does not provide direct criminal liability for violations of the rights of children born through surrogacy, because, seeing how the surrogacy is not directly regulated in Latvian legislation. At the same time, criminal liability for human trafficking as provided for in Section 154.1 of the Criminal Law Act may be considered in certain cases, depending on the actual circumstances of the case⁴⁴⁰. Therefore, 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 Law⁴⁴¹, which allows for a conclusion that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

Despite the limited options provided by adoption rules, 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 child⁴⁴². Similarly, 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.⁴⁴³

Criminal Court practice on surrogacy

No results in the official databases.⁴⁴⁴

[bin/get_pdf.cgi?handle=hein.journals/jloitnlg4§ion=10&casa_token=W9LQr9nCcxEAAAAA:dDWNCp_CTsibySc4OefqoDuTLJ4pGpUGx-tEkb0c0ytWDuDoLgJ8J-gDOvdD1EPPBvP95tg1_g](#) (p.8) (accessed on 30 September 2025)

⁴⁴⁰ Republic of Latvia , 2018, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Latvia.pdf> (accessed on 30 September 2025) (p.4)

⁴⁴¹ Republic of Latvia , 2018, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Latvia.pdf> (accessed on 30 September 2025) (p.5)

⁴⁴² Republic of Latvia , 2018, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Latvia.pdf> (accessed on 30 September 2025) (p.2)

⁴⁴³ Republic of Latvia , 2018, Inputs for 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 , link: <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Latvia.pdf> (accessed on 30 September 2025) (p.5)

⁴⁴⁴ Latvian court case law database is available here <https://manas.tiesas.lv/eTiesasMvc/nolemumi> and here <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs?nr=&date from=&date to=&case nr=&ekli nr=&dep=&ruling=&name=surog%C4%81tm%C4%81tes&only thesis=-1&only thesis=1&search phrase=-1&search phrase=1&search active=1>

Lithuania

General legal provisions

Any form of surrogacy is forbidden in Lithuania by the Law on Medically Assisted Procreation of the Republic of Lithuania (2016-09-14 No. XII-2608)⁴⁴⁵. What's more, the State confirmed that there is no legal avenue for recognition of foreign decisions nor for the transfer of parentage from the surrogate mother to the intended parent⁴⁴⁶. The fact that the State is nowhere near legalizing or allowing surrogacy is confirmed by a resolution of the parliament in 2020. This resolution condemned all forms of surrogacy and cross-border surrogacy.⁴⁴⁷ There

General Criminal law provisions on surrogacy

There are no specific provisions in the Lithuanian law regarding criminalization of surrogacy and there have been no legal surrogacy cases in Lithuania.⁴⁴⁸

Relevance of Surrogacy in the context of human trafficking

Albeit the national mechanism's report on THB contains no reference to surrogacy⁴⁴⁹ and despite the reply of the State to the CoE that there were no cases of surrogacy in Lithuania (see previous subheading), the 2020 Resolution of the parliament also contains a submission to the Secretary-General of the United Nations. This submission requires the amendment to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, whereby acquiring of the child through surrogacy is to be recognised as a form of child trafficking. Said resolution also contains an application for the revision of the United Nations Convention on the

⁴⁴⁵ Republic of Lithuania, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see legal regulation) (accessed on 30 September 2025)

⁴⁴⁶ Republic of Lithuania, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see parentage) (accessed on 30 September 2025)

⁴⁴⁷ Horobets, Nadiia, and Yuliia Yakushchenko. "Different legal approaches to the regulation of surrogacy in Ukraine and Baltic states." *J. Int'l Legal Commc'n* 4 (2022): 55. link: https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jloitnlg4§ion=10&casa_token=W9LQr9nCcxEAAAAA:dDWNCp_CTsbySc4OefqoDuTLJ4pGpUGx-tEkb0c0ytWDuDoLgJ8J-gDOvdD1EPPBvP95tg1_g (p.7) (accessed on 30 September 2025)

⁴⁴⁸ Republic of Lithuania, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616173#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see applicable law) (accessed on 30 September 2025)

⁴⁴⁹ see report here: <https://vrm.lrv.lt/media/viesa/saugykla/2024/5/P92qv6zxmPU.pdf>

Elimination of All Forms of Discrimination against Women to include the obligation to take all measures, including legislation, to prohibit any form of surrogacy⁴⁵⁰;

Civil court practice on surrogacy

The lack of cases was confirmed by review of the official case law database.⁴⁵¹

Criminal Court practice on surrogacy

The lack of cases was confirmed by review of the official case law database.⁴⁵²

Luxembourg

General legal provisions

Surrogacy is currently neither regulated nor punishable in Luxembourg.⁴⁵³ However, it is believed that surrogacy agreements are prohibited under the public policy clause in the civil law.⁴⁵⁴ As per a recent bill on amendments to the Civil Code, Luxembourg maintains a strict prohibition on all forms of surrogacy conducted within its territory, backed by criminal penalties for both intended parents and surrogate mothers⁴⁵⁵. However, when it comes to children born abroad via surrogacy, Luxembourgian authorities and courts increasingly allow for recognition of parentage in line with European Court of Human Rights (ECtHR) case law that emphasizes the child's best interests, particularly their right to identity and legal filiation⁴⁵⁶. A proposed "acte de parentalité" (certificate of parenthood) may permit recognition of intended parents if a valid medical surrogacy agreement from abroad is presented and the surrogate mother has formally renounced her parental rights⁴⁵⁷. Recognition is typically granted to the genetically related intended parent, and non-genetic parents must usually rely on adoption procedures⁴⁵⁸.

⁴⁵⁰ Republic of Lithuania, 2020, Resolution on condemning all forms of surrogacy, link <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f9d49860d70111ea8f4ce1816a470b26?jfwid=-1819or94w2> (see point 7) (accessed on 30 September 2025)

⁴⁵¹ available here: <https://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx>

⁴⁵² available here: <https://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx>

⁴⁵³Republic of Luxembourg, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: https://www.coe.int/en/web/human-rights-and-biomedicine/surrogacy-search?q=&delta=4&Country=242616174#%7B%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:%5B1%7D%7D) (see legal regulation)

⁴⁵⁴ Hance, Olivier P., and Alexandra Becheikh. "Gestational Surrogacy in the Grand Duchy of." Handbook of Gestational Surrogacy: International Clinical Practice and Policy Issues (2016): 189. link: https://books.google.de/books?hl=en&lr=&id=96cODQAAQBAJ&oi=fnd&pg=PA189&dq=surrogacy+luxembourg&ots=TYm6b1f5PU&sig=s9cB6cSDKbcnIehYscMLvqW93Ek&redir_esc=y#v=onepage&q=surrogacy%20luxembourg&f=false (page. 4) (accessed on 30 September 2025)

⁴⁵⁵ Chambre des Députés Luxembourg, Dossier consolidé Projet de loi 6568A, 2021, link: https://wdocs-pub.chd.lu/docs/compilation/docpa/pdf/6568A_Dossier_Complet.pdf (p. 76-78) (accessed on 30 September 2025)

456 Ibid

457 Ibid

458 Ibid

Recent court decisions confirm that paternity can be directly recognised in Luxembourg if the intended father is genetically related to the child⁴⁵⁹. In contrast, intended mothers or second parents without a biological link face limited routes to recognition, usually via adoption⁴⁶⁰. The courts apply a case-by-case analysis when recognizing foreign judgments, focusing on public policy, the legality of the surrogacy arrangement abroad, and safeguards against child trafficking⁴⁶¹. While Luxembourg has not yet adopted a fully codified regime for recognizing international surrogacy arrangements, the trend shows a cautious willingness to acknowledge them where they comply with foreign law, include a genetic link to at least one parent, no genetic connection with the surrogate mother and align with the child's best interests⁴⁶². In such procedures, Luxembourg courts scrutinize foreign surrogacy rulings for:

- Compliance with international public order;
- Absence of commercial elements amounting to child trafficking;
- A valid jurisdictional link to the foreign court, and
- Respect for the child's rights and biological reality⁴⁶³.

General Criminal law provisions on surrogacy

No direct criminalization at this point, but there is a bill which envisages penal sanctions for all parties involved except the surrogate mother⁴⁶⁴. An indirect criminalization includes the crime of passing a child as the offspring of the woman who did not give birth to the child.⁴⁶⁵

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB⁴⁶⁶, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

⁴⁵⁹ see rulings: (1) N°109/24- I of the Luxembourg Court of Appeal, 2024, link:

[https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/01_Chambre/2024/20240515_CAL-2022-01098_pseudonymis%C3%A9%20\(1\)-accessible.pdf](https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/01_Chambre/2024/20240515_CAL-2022-01098_pseudonymis%C3%A9%20(1)-accessible.pdf) (see p. 3 and p. 18), N°58/22 of the Luxembourg Court of Appeal, 2022, link:

https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/01_Chambre/2022/20220316_CAL-2018-00957_58.a-accessible.pdf (see p. 2 and p. 9) and (3) ruling 2022TALCH01 / 00006 of the Luxembourg Court of Appeal, 2022, link:

https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20civil/01_Chambre/2022/20220111-TAL-2021-00059_anonymis%C3%A9-accessible.pdf (see p. 3 and p. 19)

⁴⁶⁰ Ibid

⁴⁶¹ Ibid

⁴⁶² Ibid

⁴⁶³ Ibid

⁴⁶⁴ Chambre des Députés Luxembourg, Dossier consolidé Projet de loi 6568A, 2021, link: https://wdocs-pub.chd.lu/docs/compilation/docpa/pdf/6568A_Dossier_Complet.pdf (see footnote 60) (accessed on 30 September 2025)

⁴⁶⁵ Hance, Olivier P., and Alexandra Becheikh. "Gestational Surrogacy in the Grand Duchy of." Handbook of Gestational Surrogacy: International Clinical Practice and Policy Issues (2016): 189. link: https://books.google.de/books?hl=en&lr=&id=96cODQAAQBAJ&oi=fnd&pg=PA189&dq=surrogacy+luxembourg&ots=TYm6b1f5PU&sig=s9cB6cSDKbcnlehYscMLvqW93Ek&redir_esc=y#v=onepage&q=surrogacy%20luxembourg&f=false (page. 4) (accessed on 30 September 2025)

⁴⁶⁶ See here: <https://mj.gouvernement.lu/fr/dossiers/2020/lutte-traite-humains.html>

Civil court practice on surrogacy

Available cases mostly deal with recognition of foreign executed surrogacies. In that vein, the Court of Appeal recently confirmed a first instance court decision allowing an in full inscription of intended parents as legal parents in Luxembourg in line with the surrogacy conducted in the USA.⁴⁶⁷ On the other hand, in one case in 2022, the same court did not allow the inscription of the intended mother⁴⁶⁸ whereas it did so in another one.⁴⁶⁹

Criminal Court practice on surrogacy

The results from the official database did not yield any criminal cases.⁴⁷⁰

Malta

General legal provisions

Surrogacy is currently a criminal offense in Malta⁴⁷¹. However, there are currently attempts being made to amend the said act and criminalize only commercial surrogacy in line with the current bill on changes.⁴⁷² Albeit being prohibited, official information from the government states that it is possible for persons who access surrogacy in another country where this is legal, to then register the child in Malta.⁴⁷³

General Criminal law provisions on surrogacy

See previous subheading.

⁴⁶⁷ see ruling N°109/24- I of the Luxembourg Court of Appeal, 2024, link: [https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/01_Chambre/2024/20240515_CH01_CAL-2022-01098_pseudonymis%C3%A9%20\(1\)-accessible.pdf](https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/01_Chambre/2024/20240515_CH01_CAL-2022-01098_pseudonymis%C3%A9%20(1)-accessible.pdf) (see p. 3 and p. 18)

⁴⁶⁸ see ruling N°58/22 of the Luxembourg Court of Appeal, 2022, link: https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/01_Chambre/2022/20220316_CAL-2018-00957_58.a-accessible.pdf (see p. 2 and p. 9)

⁴⁶⁹ see ruling 2022TALCH01 / 00006 of the Luxembourg Court of Appeal, 2022, link: https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20civil/01_Chambre/2022/20220111-TAL-2021-00059_anonymis%C3%A9-accessible.pdf (see p. 3 and p. 19)

⁴⁷⁰ see results here: <https://justice.public.lu/fr/jurisprudence/juridictions-judiciaires.html?q=%22gestation+pour+autrui%22>

⁴⁷¹ Republic of Malta, 2018, Embryo protection act, link: <https://legislation.mt/eli/cap/524/20220729/eng> (see page 7) (accessed on 30 September 2025).

⁴⁷² Group of Universities in Malta, 2018, Embryo Protection (Amendment) Bill No. 38 (2018), Matters of concern link: <https://parlament.mt/media/94231/01594.pdf> (see pages 9-10) (accessed on 30 September 2025)

⁴⁷³ Republic of Malta, Human Rights Directorate, 2024, Family life, link: <https://humanrights.gov.mt/en/Pages/LGBTIQ%20Equality/Legal%20Provisions/Family-Life.aspx> (see under Surrogacy)

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB⁴⁷⁴, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

No significant case law found in official database.⁴⁷⁵

Criminal Court practice on surrogacy

No significant case law found in the official database.⁴⁷⁶

Moldova

General legal provisions

Surrogacy is not explicitly regulated in Moldova. There is a certain form of prohibition established as of 2013 under Article 165 of the Criminal code which defines the crime of “Trafficking in Human Beings” and stipulates that surrogacy is as a one of the types of trafficking in human beings where the use of a woman as a surrogate mother is committed through the use of violence, fraud, abuse of a position of vulnerability or abuse of power or through the use of other illegal means of influencing a woman⁴⁷⁷. While a textual interpretation of this Article indicates that it only criminalizes the illegal actions of person/trafficker, some authors have also held the view that it also criminalizes the actions of the surrogate mother, should she extract financial benefits.⁴⁷⁸

Lastly, as established by the ECtHR’s survey, Moldova’s system allows registration of the foreign birth certificate establishing commissioning parents as legal guardians of the child as surrogacy is tolerated in Moldova when at least one intended parent has a genetic connection to the child.⁴⁷⁹

⁴⁷⁴ see here: <https://mj.gouvernement.lu/fr/dossiers/2020/lutte-traite-humains.html>

⁴⁷⁵ available here: <https://ecourts.gov.mt/online services/Judgements/Search>

⁴⁷⁶ available here: <https://ecourts.gov.mt/online services/Judgements/Search>

⁴⁷⁷ State of Moldova: “Criminal code”, link: https://www.legis.md/cautare/getResults?doc_id=121991&lang=ro (accessed on 30 September 2025) and Arseni, Igor, and Serghei Zaharia. "Legal aspects of surrogate motherhood in the Republic of Moldova." In Sănătatea, medicina și bioetica în societatea contemporană, pp. 222-230. 2023. Link: https://repository.usmf.md/bitstream/20.500.12710/26262/1/Legal_aspects_of_surrogate_motherhood_in_the_Republic_of_Moldova.pdf (p.3) (accessed on 30 September 2025)

⁴⁷⁸ Arseni, Igor, and Serghei Zaharia. "Legal aspects of surrogate motherhood in the Republic of Moldova." In Sănătatea, medicina și bioetica în societatea contemporană, pp. 222-230. 2023. Link: https://ibn.idsi.md/vizualizare_articol/196460 (p.3) (accessed on 30 September 2025)

⁴⁷⁹ Council of Europe: European Court for Human Rights, Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, Requested by the French Court of Cassation

, April 2019, link: <https://hudoc.echr.coe.int/eng?i=003-6380464-8364383> (para. 24) (accessed on 30 September 2025)

General Criminal law provisions on surrogacy

See previous section.

Relevance of Surrogacy in the context of human trafficking

The criminal code mentions using of woman as a surrogate mother, specifically in its definition of THB⁴⁸⁰, so it is clear that using surrogacy would be categorised as THB only if it fulfils the required 3 elements of the Palermo protocol in a given case. This is confirmed further with opinions found on tolerating and allowing the effectuation of altruistic surrogacy arrangements and the recognition of foreign executed surrogacy arrangements. It should also be noted that criminal cases of THB for the purpose of using a woman as a surrogate mother are registered by the police in the Republic of Moldova extremely rarely. Thus, to, the National committee for combating trafficking in human beings reported 1 case in 2023, where 1 victim was exploited for use as a surrogate mother out of the total of 169 victims of criminal cases of human trafficking⁴⁸¹. As per available information, this was the only such case registered by police in the last 10 years.

Civil court practice on surrogacy

No court practice found on the publicly available portal.⁴⁸²

Criminal Court practice on surrogacy

See previous section.

Montenegro

General legal provisions

Surrogacy in Montenegro is explicitly forbidden, with a provision in the Article 37 of the law on medically assisted fertilization⁴⁸³. However, similar to the solution in Serbia, this act does not provide any sanction to commissioning parents and surrogate mothers in its Article 37 nor in its penal provisions⁴⁸⁴. What is more, the act does not seem to provide any penal provisions on disrespect of its

⁴⁸⁰ Arseni, Igor, and Serghei Zaharia. "Legal aspects of surrogate motherhood in the Republic of Moldova." In Sănătatea, medicina și bioetica în societatea contemporană, pp. 222-230. 2023. Link: https://ibn.idsi.md/vizualizare_articol/196460 (p.3) (accessed on 30 September 2025)

⁴⁸¹ Republic of Moldova, National Committee for combating trafficking in human beings, 2024, National report on the implementation of the policy to prevent and combat human trafficking for 2023, link: https://www.antitrafic.gov.md/public/files/Raportul_naional_antitrafic_2024_FINAL_eng.pdf (p. 11 and 12) (accessed on 30 September 2025)

⁴⁸² Moldavian court case law Portals used: 1) <https://instante.justice.md/ro/incheierile-instantei> , <https://www.constcourt.md/search.php?l=ro> , 2) <https://jurisprudenta.csj.md/> , 3) <https://www.constcourt.md/search.php?l=ro> ,

⁴⁸³ Republic of Montenegro, 2021, Law on medically assisted fertilization, link: <file:///C:/Users/dopo310g/Downloads/predlog-zakona-o-medicinski-potpomognutoj-oplodnji.pdf> (accessed on 30 September 2025)

⁴⁸⁴ Republic of Montenegro, 2021, Law on medically assisted fertilization, link: <file:///C:/Users/dopo310g/Downloads/predlog-zakona-o-medicinski-potpomognutoj-oplodnji.pdf> (accessed on 30 September 2025)

Article 37, which may indicate that the *only* sanction for the breach of this provision is that of civil law invalidity of any contract related to surrogacy.

This can indeed lead to a conclusion that the Montenegrin competent authorities might allow the recognition of both the intended father and mother depending on judicial interpretation and best interests of the child⁴⁸⁵. Additionally, adoption procedures to be used by commissioning mother to have her parentage recognised, especially in light of the ECtHR's practice.⁴⁸⁶ However, as none of this is not tested in practice, significant risks do remain.

General Criminal law provisions on surrogacy

See previous section.

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB⁴⁸⁷, it can be assumed that surrogacy would be categorised as THB only if it fulfils the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

No court practice found⁴⁸⁸

Criminal Court practice on surrogacy

No court practice found⁴⁸⁹

Netherlands

General legal provisions

Surrogacy is not prohibited in the Netherlands, as long as it is not commercial⁴⁹⁰. Intended parents can look for a surrogate mother within their own circle of family and friends. Promotion of (commercial)

⁴⁸⁵ Đukanović, Anđela, and Jelena Đurišić. "Komercijalno surogatstvo, reproduktivni turizam i trgovina maloletnim licima radi usvojenja." *Studia Luridica Montenegrina* 2 (2021). Link: [https://studiaiuridica.me/wp-content/uploads/arhiva/godina3-broj2/2-2021\(4\).pdf](https://studiaiuridica.me/wp-content/uploads/arhiva/godina3-broj2/2-2021(4).pdf) (p. 13-15) (accessed on 30 September 2025)

⁴⁸⁶ Đukanović, Anđela, and Jelena Đurišić. "Komercijalno surogatstvo, reproduktivni turizam i trgovina maloletnim licima radi usvojenja." *Studia Luridica Montenegrina* 2 (2021). Link: [https://studiaiuridica.me/wp-content/uploads/arhiva/godina3-broj2/2-2021\(4\).pdf](https://studiaiuridica.me/wp-content/uploads/arhiva/godina3-broj2/2-2021(4).pdf) (p. 15) (accessed on 30 September 2025)

⁴⁸⁷ Republic of Montenegro, 2023, Criminal Code, link: <https://www.gov.me/dokumenta/c4dcee51-ee88-430f-a8db-de91f38eadc4> (article 444)

⁴⁸⁸ Official court practice of Montenegro website checked for this purposes: <https://sudovi.me/sdvi/odluke> and <https://www.ustavnisud.me/ustavnisud/arhiva.php>

⁴⁸⁹ Official court practice of Montenegro website checked for this purposes: <https://sudovi.me/sdvi/odluke> and <https://www.ustavnisud.me/ustavnisud/arhiva.php>

⁴⁹⁰ Republic of Netherlands, 2024, information on Surrogacy, link: <https://www.rijksoverheid.nl/onderwerpen/draagmoeder#:~:text=De%20draagmoeder%20staat%20het%20kind,k euzes%20maken%20tijdens%20het%20draagmoederschapstraject>. (accessed on 30 September 2025 on 09 09 2024)

surrogacy, for example through a website providing a platform for surrogate mothers and prospective parents is prohibited in the Netherlands. Prospective parents are also not allowed to make public - for example via social media - that they are looking for a surrogate mother. Or the other way around: a surrogate mother may not make it public that she is looking to prospective parents.⁴⁹¹

With respect to parentage recognition rules: if the surrogate mother agrees after birth, the intended parents can adopt the child into their family. This is possible without further permission as long as one of the intended parents is the legal parent or if the child and the intended parents are related up to and including the third degree. In other cases, the Child Protection Council must first give written permission. In that case, the Child Protection Council investigates whether it is in the child's interest that he or she is included in the family of the prospective parents. In order to transfer parenthood to the intended parents, those involved in surrogacy must, under current law, initiate various procedures after birth. Depending on the situation, various general doctrines are used (such as recognition, denial, and judicial determination of paternity, adoption). These procedures can take a long time and bring uncertainty.⁴⁹²

Depending on various circumstances, parenthood originated abroad may or may not be recognised. One or more legal proceedings in the Netherlands are often necessary to allow the intended parents to become legally parents. In many cases the Child Protection Council will conduct an investigation and DNA testing will be conducted (again). During these procedures, uncertainty remains about the legal parentage of the child, with all the consequences that entails.⁴⁹³

General Criminal law provisions on surrogacy

Acting professionally or commercially as an intermediary in surrogacy or the transfer of parenthood over a child is already punishable (Article 151b and 151c of the Criminal Code)⁴⁹⁴. These provisions concern the actions of intermediaries in the Netherlands. However, in current practice, if it cannot be proven that an intermediary is acting professionally or commercially, this means that this intermediary cannot be prosecuted.⁴⁹⁵

⁴⁹¹ Republic of Netherlands, 2023, Bill to amend legislation to regulate surrogacy, link: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2023/06/30/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming.pdf> (p.4) (accessed on 30 September 2025)

⁴⁹² Republic of Netherlands, 2023, Bill to amend legislation to regulate surrogacy, link: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2023/06/30/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming.pdf> (p.5) (accessed on 30 September 2025)

⁴⁹³ Republic of Netherlands, 2023, Bill to amend legislation to regulate surrogacy, link: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2023/06/30/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming.pdf> (p.6) (accessed on 30 September 2025)

⁴⁹⁴ Republic of Netherlands, 2023, Bill to amend legislation to regulate surrogacy, link: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2023/06/30/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming.pdf> (p.21) (accessed on 30 September 2025)

⁴⁹⁵ Republic of Netherlands, 2023, Bill to amend legislation to regulate surrogacy, link: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2023/06/30/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming.pdf> (p.22) (accessed on 30 September 2025)

Relevance of Surrogacy in the context of human trafficking

In very exceptional circumstances, if the intention is to exploit the child, child trafficking could occur as a form of human trafficking in the context of surrogacy, despite surrogacy not being mentioned in the current relevant provision of the Criminal code (Article 273f first paragraph, part 2^o, Criminal Code). However, in almost all cases, the intended parents intend to take good care of the child. The (former) National Rapporteur on Human Trafficking and Sexual Violence against Children has noted that cases may arise where a surrogate mother has been put under pressure or, in poverty, has been offered a large sum of money to be a surrogate mother. This may result in forced services that exploit the surrogate mother. Such a situation may fall within the scope of human trafficking within the meaning of Article 273f of the Criminal Code. Where appropriate, the intended parents will generally not be directly involved in the exploitation of a surrogate mother. As a rule, they will not have any intention of exploitation either. Hence, criminal action against prospective parents due to human trafficking is generally not possible, even in the case of forced surrogacy.⁴⁹⁶ This assessment does not seem likely to change even if the Dutch Senate decides to approve the bill 'Modernization and Expansion of the Criminalization of Human Trafficking', already approved by the Dutch House of Representatives⁴⁹⁷. This is because said bill only performs the transposition required by the EU Directive to add the exploitation of forced marriage, surrogacy and illegal adoption to the legal definition⁴⁹⁸

In addition, the (former) Dutch National Rapporteur on Trafficking in Human Beings conducted a study on connections between THB and commercial surrogacy in 2012. The report concludes that it can be argued that, under certain circumstances, surrogacy could constitute THB exploitation. An important indication of THB exploitation would be if the financial and health risks are entirely or largely borne by the surrogate mother.⁴⁹⁹ However, the report notes that the prospective parents are the only connection with the Netherlands. As they cannot be regarded as offenders for the purposes of human trafficking, then, generally speaking, the Netherlands will have no jurisdiction to prosecute.⁵⁰⁰

⁴⁹⁶ Republic of Netherlands, 2023, Bill to amend legislation to regulate surrogacy, link: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2023/06/30/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming.pdf> (p.21) (accessed on 30 September 2025)

⁴⁹⁷ Eerste Kamer der Staten-Generaal. (2025). Wet modernisering en uitbreiding strafbaarstelling mensenhandel (36.547). Retrieved October 10, 2025, from https://www.eerstekamer.nl/wetsvoorstel/36547_wet_modernisering_en

⁴⁹⁸ Ibid.

⁴⁹⁹ National Rapporteur on Trafficking in Human Beings (2012). Human trafficking for the purpose of the removal of organs and forced commercial surrogacy. The Hague: BNRM, link: https://www.dutchrapporteur.nl/binaries/dutchrapporteur/documenten/reports/2012/12/04/trafficking-in-human-beings-for-the-purpose-of-the-removal-of-organs-and-forced-commercial-surrogacy/human-trafficking-for-the-purpose-of-the-removal-of-organs-and-forced-commercial-surrogacy_tcm24-35360.pdf (p.22) (accessed on 30 September 2025)

⁵⁰⁰ National Rapporteur on Trafficking in Human Beings (2012). Human trafficking for the purpose of the removal of organs and forced commercial surrogacy. The Hague: BNRM, link: https://www.dutchrapporteur.nl/binaries/dutchrapporteur/documenten/reports/2012/12/04/trafficking-in-human-beings-for-the-purpose-of-the-removal-of-organs-and-forced-commercial-surrogacy/human-trafficking-for-the-purpose-of-the-removal-of-organs-and-forced-commercial-surrogacy_tcm24-35360.pdf (p.23) (accessed on 30 September 2025)

Civil court practice on surrogacy

The District Court of The Hague has issued preliminary rulings in two cases of international surrogacy questions asked to the Supreme Court. The court has indicated that it needs more clarity within the current regulations about the assessment framework to be used. However, the Supreme Court has confirmed in this decision that the court can apply the current rules contained in Book 10 of the Dutch Civil Code regarding foreign instruments and foreign judicial decisions to determine in a specific case whether the filiation of the child thus established is to be recognised in the Netherlands⁵⁰¹.

However, it appears that the bill proposal is a bit vague in this regard, as the search of the official case law database yielded numerous results from 2024 where there was recognition of both intended parents based on foreign decisions or foreign register excerpts (mostly Canadian and those from the US)⁵⁰²

Criminal Court practice on surrogacy

The only case that the search of the official database on case law yielded is a case where in 2011 a court convicts the man and woman who bought a baby (baby J.) in Belgium in 2008 for forgery and illegal adoption. The court imposes a suspended prison sentence of eight months, a community service order of 240 hours and a suspended fine of €1,000, with a probation period of two years.⁵⁰³

Poland

General legal provisions

Even though Polish legislation contains no provisions directly regulating the issue of surrogacy⁵⁰⁴, representatives of legal doctrine agree that surrogacy contracts should be considered void⁵⁰⁵. On the other hand, the Polish law allows an adoption with indication, under which the parents of the child (surrogate under Article 61 of the Family law) can nominate an adopter who can only be a relative of the child's parents with his/her consent, which was given to the court, or the spouse of one of the

⁵⁰¹ Republic of Netherlands, 2023, Bill to amend legislation to regulate surrogacy, link: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2023/06/30/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming/tk-wetsvoorstel-kind-draagmoederschap-en-afstamming.pdf> (p.6) (accessed on 30 September 2025)

⁵⁰² see results of the search using the term: "draagmoederschap" and ordered chronologically here: <https://uitspraken.rechtspraak.nl/resultaat?zoekterm=draagmoederschap&inhoudsindicatie=zt0&sort=PublicatieDatumDesc&publicatiestatus=ps1>

⁵⁰³ see results of the search using the term: "draagmoederschap" ,ordered chronologically and filtered only to criminal jurisdiction here: <https://uitspraken.rechtspraak.nl/resultaat?zoekterm=draagmoederschap&inhoudsindicatie=zt0&sort=PublicatieDatumDesc&publicatiestatus=ps1>

⁵⁰⁴ Republic of Poland, reply to interpelation No. 32966, link: <https://www.sejm.gov.pl/sejm9.nsf/InterpelacjaTresc.xsp?key=CFNHJR> (p.1) (accessed on 30 September 2025)

⁵⁰⁵ Sarnacka, Emilia, and Ivan Demchenko. "Legal Regulation of Surrogacy in Poland and Ukraine—a Comparative Analysis." *Review of European and Comparative Law* 57, no. 2 (2024): 223-248. (link: <https://czasopisma.kul.pl/index.php/recl/article/download/17247/15256>) (p. 13) (accessed on 30 September 2025)

parents.⁵⁰⁶ As the Polish law only requires a declaration of fatherhood from the father of the child born out of marriage⁵⁰⁷, this option could theoretically be used in international surrogacy cases. Nevertheless, **genetic parents have no direct path to legal parenthood** except through adoption⁵⁰⁸. The practice remains **legally risky and unprotected** for both intended parents and surrogates, although in practice, cases of surrogacy do occur, often informally and without legal guarantees⁵⁰⁹. Due to the absence of regulation and **harsh criminal sanctions** against commercialized arrangements, **any financial gain** related to surrogacy—including matching parents and surrogates—is criminalized⁵¹⁰. Courts are likely to favor the birth mother in disputes, and no private agreement between the parties would be upheld⁵¹¹.

Lastly, it has been argued that due to a rather technical transcription procedure done by Civil status registrars in Poland, foreign certificates of birth where intended Polish parents are inscribed as parents would in cases where they are of different sexes usually be inscribed in the Polish registry.⁵¹² However, should the Registrar have information that this foreign certificate was superseded by surrogacy agreement, he/she will have to refuse the inscription against which the applicants can appeal.⁵¹³

General Criminal law provisions on surrogacy

The Penal Code and other acts regulating criminal law issues do not currently contain provisions directly introducing criminalization of surrogacy. In the event of disclosure of surrogacy, the following provisions of criminal law could indirectly apply to the behavior of the persons involved in it (the woman who gave

⁵⁰⁶ Sarnacka, Emilia, and Ivan Demchenko. "Legal Regulation of Surrogacy in Poland and Ukraine—a Comparative Analysis." *Review of European and Comparative Law* 57, no. 2 (2024): 223-248. (link: <https://czasopisma.kul.pl/index.php/recl/article/download/17247/15256>) (p. 17-18) (accessed on 30 September 2025)

⁵⁰⁷ Sarnacka, Emilia, and Ivan Demchenko. "Legal Regulation of Surrogacy in Poland and Ukraine—a Comparative Analysis." *Review of European and Comparative Law* 57, no. 2 (2024): 223-248. (link: <https://czasopisma.kul.pl/index.php/recl/article/download/17247/15256>) (p. 16-17) (accessed on 30 September 2025)

⁵⁰⁸ Soja, D., & Kapałka, N. (2023). *Macierzyństwo zastępcze—handel dziećmi czy światowy fenomen w planowaniu rodziny?* (pages 14-16), retrieved from: <https://repozytorium.ur.edu.pl/items/6cd2e34e-2b02-4ead-be30-e4054f6bc660> on 21 April 2025

⁵⁰⁹ Ibid

⁵¹⁰ Ibid

⁵¹¹ Ibid

⁵¹² Wojewoda, Michael. "Surrogate motherhood and the civil status registration in Poland." *Fundamental and legal issues of surrogate motherhood. Global perspective*, ed. by Piotr Mostowik (2019): 829-854. (link: https://www.researchgate.net/profile/Piotr-Mostowik/publication/339416084_Fundamental_legal_problems_of_surrogate_motherhood_Global_perspective/links/5e504560299bf1cdb93cceff/Fundamental-legal-problems-of-surrogate-motherhood-Global-perspective.pdf#page=831) (p. 845-846)

⁵¹³ Wojewoda, Michael. "Surrogate motherhood and the civil status registration in Poland." *Fundamental and legal issues of surrogate motherhood. Global perspective*, ed. by Piotr Mostowik (2019): 829-854. (link: https://www.researchgate.net/profile/Piotr-Mostowik/publication/339416084_Fundamental_legal_problems_of_surrogate_motherhood_Global_perspective/links/5e504560299bf1cdb93cceff/Fundamental-legal-problems-of-surrogate-motherhood-Global-perspective.pdf#page=831) (p. 846-847)

birth to the child, the person/persons for whom the woman is to give birth to the child and other persons involved in the procedure):

1. art. 189a of the Penal Code, which penalizes human trafficking,
2. art. 211a of the Penal Code, which concerns organizing adoption contrary to the provisions of the Act,
3. art. 271 Penal Code, Art. 272 CC, art. 273 Penal Code regarding crimes against the credibility of documents, which would apply in the event of taking actions aimed at regulating the filial status of a child born as a result of concluding a surrogacy agreement,
4. provisions of the Act on infertility treatment of 25 June 2015 (consolidated text: Journal of Laws of 2020, item 442).⁵¹⁴

Relevance of Surrogacy in the context of human trafficking

See previous subheading.

Civil court practice on surrogacy

The Supreme Administrative Court of Poland seems to have a uniformed practice in upholding decisions of lower courts to refuse transcription of foreign birth certificates where surrogacy executed abroad is established.⁵¹⁵ However, this does not prevent the same court from also upholding decisions of lower courts which overturned rejections of administrative bodies to grant citizenship to a child born out of surrogacy abroad, as long as one of the parents is a Polish citizen.⁵¹⁶

Criminal Court practice on surrogacy

No cases found in the official databases⁵¹⁷

Cases in front of the ECtHR

S.-H. v. Poland (dec.) - [56846/15](#) and [56849/15](#) Decision 16.11.2021 [Section I], legal summary⁵¹⁸

Twin brothers born via surrogacy in the U.S. in 2010, with Israeli and U.S. citizenship, applied for Polish citizenship by descent through their biological father, a Polish citizen. Polish authorities denied the request, citing surrogacy's illegality in Poland and the birth certificates listing two fathers, which conflicted with Polish legal principles. The European Court of Human Rights examined whether this refusal violated the twins' rights under Article 8 of the European Convention on Human Rights.

⁵¹⁴ Republic of Poland, reply to interpellation No. 32966, link: <https://www.sejm.gov.pl/sejm9.nsf/InterpelacjaTresc.xsp?key=CFNHJR> (p.6) (accessed on 30 September 2025)

⁵¹⁵ Republic of Poland, court cases database <https://orzeczenia.nsa.gov.pl> See for instance the decision: II OSK 641/21 which invokes some other cases as well (link: <https://orzeczenia.nsa.gov.pl/doc/84121DA2A8>), and this one: <https://orzeczenia.nsa.gov.pl/doc/E510A7C33F>

⁵¹⁶ see decision II OSK 1163/22 (link: <https://orzeczenia.nsa.gov.pl/doc/925D13D185>) as well as this one: <https://orzeczenia.nsa.gov.pl/doc/7072AF4CD1>

⁵¹⁷ found here: https://e-justice.europa.eu/13/EN/national_case_law?POLAND&clang=en&idSubpage=&mtContentRequested=1

⁵¹⁸ ECtHR, 2021, link: <https://hudoc.echr.coe.int/eng?i=002-13512>

The Court found no serious negative consequences on the applicants' private or family life. They resided in Israel, where their parent-child relationship was legally recognised, and had dual citizenship. The decision did not render them stateless or cause significant practical obstacles. While the refusal impacted their personal identity and denied them Polish citizenship's benefits, it did not meet the threshold of seriousness for an Article 8 violation. The Court declared the application inadmissible as Article 8 was not applicable.

Romania

General legal provisions

Surrogacy is not regulated in Romania, but it is not considered illegal⁵¹⁹ because of the application of the principle of what is not forbidden is considered allowed in the country's civil law.⁵²⁰ In fact, there are reports of notarial agreements being made between surrogates and commissioning parents inside Romania⁵²¹ for surrogacy procedures inside the country⁵²². In line with the information provided by the State, the intended parents can adopt the child born out of surrogacy⁵²³.

General Criminal law provisions on surrogacy

In line with the information provided by the State⁵²⁴ as well as the provisions of Art. 107(1) of Act No 273/4004 regarding adoption procedures, according to which: "the act by a parent or legal guardian of

⁵¹⁹ Sztranyiczki, Szilard. "Is the Legal Regulation of the Surrogate Maternity Procedure Required in Romania?." *Rev. Drept. Fam.* (2020): 267. link: https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/rvdfli2020§ion=45&casa_token=oIK_LoU5II0AAAAA:j8TPNpvzd6iO0O0hxLFH8zGBkx-WollquZ9WXYn3XLjLJ9TupcXa8h6RzAUaaen19knHeSwihMg (p. 7) (accessed on 30 September 2025)

⁵²⁰ as confirmed by one of the authorities of case law in this area in Romania, the Civil Decision no 1196/26.09.2013 of the Timisoara court of appeal, summary available at Sztranyiczki, Szilard. "Is the Legal Regulation of the Surrogate Maternity Procedure Required in Romania?." *Rev. Drept. Fam.* (2020): 267. link: https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/rvdfli2020§ion=45&casa_token=oIK_LoU5II0AAAAA:j8TPNpvzd6iO0O0hxLFH8zGBkx-WollquZ9WXYn3XLjLJ9TupcXa8h6RzAUaaen19knHeSwihMg (p. 9) (accessed on 30 September 2025)

⁵²¹ Republic of Romania, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616181#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616181#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (see legal regulation)

⁵²² Visky, S. Béla. "SURROGACY IN ROMANIA." 2018, link: https://www.academia.edu/download/96871978/Beranyasag_utoIso2_EN.pdf (p.9) (accessed on 30 September 2025)

⁵²³ Republic of Romania, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616181#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616181#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (see parentage)

⁵²⁴ Republic of Romania, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: <https://www.coe.int/ru/web/bioethics/surrogacy->

the child consisting of asking for or receiving money or other material benefits in exchange for giving up a child for adoption is punishable between 2 to 7 years of imprisonment and the termination of parental rights, regardless whether the money or other benefit served the interest of the perpetrator or of other persons"⁵²⁵ leads to a conclusion that commercial surrogacy can be deemed to be criminalized.

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB⁵²⁶, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

One of the landmark decisions is that of the Timisoara court of appeal, where it concluded that if it did not recognize the genetic parents as legal parents, it would unjustifiably disregard the children's best interest and their right to know their real genetic identity the Court showed, there was no reason to deny this right to children: surrogacy could not be thought as immoral as it had an altruistic character (the surrogate was the sister of the genetic mother) and the genetic parents had all "the moral and material means for raising, taking care of and educating the children"⁵²⁷. However, there were also some divergent decisions, albeit before this one.⁵²⁸

Criminal Court practice on surrogacy

None found in the official databases⁵²⁹

[search?p_l_id=138808833&delta=30&Country=242616181#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[6\]}} \(see legal aspects\)](#)

⁵²⁵ Sztranyiczki, Szilard. "Is the Legal Regulation of the Surrogate Maternity Procedure Required in Romania?." *Rev. Drept. Fam.* (2020): 267. link: https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/rvdfli2020§ion=45&casa_token=oIK_LoU5II0AAAAA:j8TPNpvzd6iO0OhxLfH8zGBkx-WollquZ9WXYn3XLjLJ9TupcXa8h6RzAUaaen19knHeSwihMg (p. 9) (accessed on 30 September 2025)

⁵²⁶ see here: https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/romania_en#institutional-legal-and-policy-framework-to-address-trafficking-in-human-beings

⁵²⁷ as summarized by: Brodeală Elena. "The Legal Status of Assisted Human Reproduction in Romania. A Brief Discussion on Surrogacy". *Revista Română de Drept Comparat* 01:56-74. link: https://www.researchgate.net/profile/Elena-Brodeală-2/publication/321777373_The_Legal_Status_of_Assisted_Human_Reproduction_in_Romania_A_Brief_Discussion_on_Surrogacy/links/5f8f3e35a6fdccfd7b71d53f/The-Legal-Status-of-Assisted-Human-Reproduction-in-Romania-A-Brief-Discussion-on-Surrogacy.pdf (p.18) (accessed on 30 September 2025)

⁵²⁸ Hostiuc, Sorin, Cristian Bogdan Iancu, Valentina Năstăşel, Maria Aluăş, and Irina Renţea. "Maternal filiation in surrogacy. Legal consequences in Romanian context and the role of the genetic report for establishing kinship." *Romanian Journal of Legal Medicine* 24, no. 1 (2016): 47-51. link: <https://www.academia.edu/download/54096334/47-51.pdf> (p.2) (accessed on 30 September 2025)

⁵²⁹ as indicated here: https://e-justice.europa.eu/16/RO/national_justice_systems?ROMANIA&member=1

Serbia

General legal provisions

Surrogacy in Serbia is explicitly prohibited with a criminal law sanction⁵³⁰. However, the said prohibition does not lay down criminal liability of the parties involved (commissioning parents and the surrogate mother)⁵³¹. There are no other provisions in the applicable law. In the future, there might be a regulation of surrogacy with it being allowed in certain cases⁵³². In that regard the current regulations also do not directly tackle the issue of recognition of surrogacies performed abroad nor is there any court practice on this matter⁵³³. However, bearing in mind that in Serbia the procedure to acknowledge documents issued by foreign official bodies does not usually entail a scrutiny beyond establishing whether it is issued by a competent body⁵³⁴, foreign official documents recognizing the parenthood of commissioning parents will in practice be inscribed in Serbian registries as they stand. On the other hand, if the registrar would to obtain information on the fact that the inscription asked is based on surrogacy, it is not clear whether or not such inscription would be allowed. Same situation applies in cases where the basis of inscription is a foreign decision (e.g. the decision of the Greek court on allowing surrogacy). In that case, the Law on resolving conflict of laws with regulations of other countries stipulates in its Art. 91 that a given foreign decision will not be recognised if it is contrary to the foundations of the social system established by the Constitution of the Federal Republic of Yugoslavia⁵³⁵. This provision is similar to many provisions in the systems of the previously examined countries in the EU, and albeit there is no court practice found, it can be argued that, at least to the extent that a foreign decision establishes a non-commercial and gestational surrogacy, there would be no grounds to decline its recognition in Serbia. This can primarily be inferred from the fact that the applicable law does not criminalize the acts of commissioning parents and the surrogate mother in a surrogacy arrangement.

Furthermore, under the constitution of Serbia, provisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions that supervise their implementation⁵³⁶. Seeing how the ECtHR is indeed one of the institutions that

⁵³⁰ Barać, Ivana. "Surrogacy—A Biomedical Mechanism in the Fight against Infertility." *Анали Правног факултета у Београду* 71, no. 2 (2023): 259-289. Link: https://anali.rs/xml/202-/2023c/2023-2c/Anali_sveska_2023-2c-lat.pdf (p. 44)

⁵³¹ Samardžić, Stefan. "Krivičnopravni aspekti asistiranje reprodukcije u Srbiji." *Zbornik radova Pravnog fakulteta, Novi Sad* 47, no. 3 (2013): 493-512. <https://doi.org/10.5937/zrpfns47-5221>. (p. 15)

⁵³² Barać, Ivana. "Surrogacy—A Biomedical Mechanism in the Fight against Infertility." *Анали Правног факултета у Београду* 71, no. 2 (2023): 259-289. Link: https://anali.rs/xml/202-/2023c/2023-2c/Anali_sveska_2023-2c-lat.pdf (p. 51)

⁵³³ Official court practice website checked for this purposes: <https://sudskapraksa.sud.rs/sudska-praksa>, <https://www.vrh.sud.rs/sr-lat/sudska-praksa>, <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse>, <https://ustavni.sud.rs/sudska-praksa/bilteni-suda>

⁵³⁴ Bernadet Bordaš, Ph.D, 2016, SURROGATE MOTHERHOOD IN SERBIA – ASPECTS OF PRIVATE INTERNATIONAL LAW, link: https://www.arbitrationassociation.org/wp-content/uploads/2017/07/101_121.pdf (p. 17) (accessed on 30 September 2025)

⁵³⁵ English translation of the Serbian law available here: https://arhiva.mpravde.gov.rs/images/Law%20on%20resolving%20conflict%20of%20law_180411.pdf. The law is old, but applies to Serbia still as it is considered the legal decessor of former Yugoslavia

⁵³⁶ Article 18 of the Constitution of Serbia, english translation available here: <https://www.paragraf.rs/propisi/constitution-of-the-republic-of-serbia.html>

supervises the implementation of human rights and that it has established an opinion according to which ECHR State Parties (Serbia included) should establish systems of recognition of surrogacy arrangements performed abroad (as long as such surrogacy is non-commercial and gestational), it appears that recognition of such surrogacy arrangements is all the more likely. Additional evidence to that effect can be found in the analysis of the decisions of the Constitutional Court of Serbia which often aligns its practice with that of the ECtHR.⁵³⁷ However, as this is not tested in practice, significant risks do remain.

General Criminal law provisions on surrogacy

See previous section.

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB⁵³⁸, it can be assumed that surrogacy would be categorised as THB only if it fulfils the required 3 elements of the Palermo protocol in a given case. Neither was there any specific mention of surrogacy in the latest national documents on human trafficking⁵³⁹

Civil court practice on surrogacy

No court practice found⁵⁴⁰

Criminal Court practice on surrogacy

See previous section.

Slovakia

General legal provisions

In contrast to Czech law, Slovak law prohibits all arrangements on the subject of motherhood⁵⁴¹ surrogacy thus being also prohibited.⁵⁴² However, following the practice of the ECtHR, Slovakian courts use the child's best interest argument to recognize foreign executed surrogacy

⁵³⁷ Nataša Plavšić, 2023, The jurisdiction of the European Court of Human Rights in the constitutional complaint proceedings before the Constitutional Court, link: https://www.fcjp.ba/analize/Natasa_Plavsic-Primena_prakse_Evropskog_suda_za_ljudska_prava_od_strane_Ustavnog_suda_u_postupcima_po_ustavnim_zalbama.pdf (p. 20), accessed on 30 September 2025 .

⁵³⁸ Republic of Serbia, 2019, Criminal Code, link: https://www.mpravde.gov.rs/files/Criminal%20%20Code_2019.pdf (article 388)

⁵³⁹ The list of such documents can be found here: <https://astra.rs/en/trafficking-in-serbia/> under legislation

⁵⁴⁰ Official court practice website checked for this purposes: <https://sudskapraksa.sud.rs/sudska-praksa> , <https://www.vrh.sud.rs/sr-lat/sudska-praksa> , <https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse> , <https://ustavni.sud.rs/sudska-praksa/bilteni-suda>

⁵⁴¹ Republic of Slovakia, 2005, Family Relations law, link: <https://www.zakonypreludi.sk/zz/2005-36> (article 82) (accessed on 30 September 2025)

⁵⁴² HONZOVÁ, Ivana, and Roman SVATOŠ. "Surrogacy—a comparison of criminal law in the Czech Republic and the Slovak Republic." (2021), link: https://kbr.vsbm.sk/2021/n2/honzova_svatos.pdf (p. 4) (accessed on 30 September 2025).

agreements so as to register parenthood of Slovakian commissioning parents, as long as at least one of them is genetically connected, with another option used in surrogacy cases being adoption.⁵⁴³

General Criminal law provisions on surrogacy

Similarly, to the Czech Republic, both the surrogate mother and the intended parents can be criminally liable for surrogacy arrangements. But here, in light of the noted article 82 of the Family relations act, it would be sufficient for a surrogate agreement to be concluded between the ordering party and the surrogate mother for the future transfer of the child to another (this would, of course, be invalid). On the other hand, as the criminal offense of Entrusting a child to another is not mentioned in § 3 of Act No. 91/2016 Coll. of ACLLE, a legal entity cannot be held liable for it in the Slovak Republic. However, this does not mean that a person acting on behalf of a legal entity cannot be held liable for it. They could commit the said crime as a participant in the form of an assistant or organizer⁵⁴⁴ (footnote related to whole paragraph).

Relevance of Surrogacy in the context of human trafficking

The definition of THB is in line with the Palermo protocol and hence makes no specific reference to surrogacy.⁵⁴⁵ However, the active stance of the Parliament shows that there is a possibility of surrogacy falling under this crime.⁵⁴⁶

Civil court practice on surrogacy

No court practice found on the official website of case law⁵⁴⁷.

Criminal Court practice on surrogacy

No court practice found on the official website of case law⁵⁴⁸.

Cases in front of the ECtHR

***Hájovský v. Slovakia* - [7796/16](#) Judgment 1.7.2021 [Section I] legal summary⁵⁴⁹**

The applicant, after placing an ad seeking a surrogate mother, was covertly recorded by a journalist posing as a potential surrogate. This led to a TV report and a newspaper article revealing private details and publishing photos without consent. Domestic courts dismissed his claim against the newspaper, citing public interest.

⁵⁴³ Daniela Jezova, Surrogacy in Slovakia, 2023, link: <https://www.jezova.sk/en/nahradne-materstvo.html> (accessed)

⁵⁴⁴ HONZOVÁ, Ivana, and Roman SVATOŠ. "Surrogacy—a comparison of criminal law in the Czech Republic and the Slovak Republic." (2021), link: https://kbr.vsbm.sk/2021/n2/honzova_svatos.pdf (p. 10) (accessed on 30 September 2025).

⁵⁴⁵ Republic of Slovakia, 2005, Criminal code, link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/300/> (article 179)

⁵⁴⁶ Republic of Slovakia, The National Parliament, 2022, Legal regulation of surrogacy, link: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=511039#8_0 (p.9)

⁵⁴⁷ Database of Slovakian case law available here: <https://www.slov-lex.sk/judikaty>

⁵⁴⁸ Database of Slovakian case law available here: <https://www.slov-lex.sk/judikaty>

⁵⁴⁹ ECtHR, 2021, link: <https://hudoc.echr.coe.int/?i=002-13325>

The European Court found this assessment flawed, noting the applicant was not a public figure and did not consent to the exposure. While the article addressed a public-interest topic, the unblurred photos added no value and violated his privacy. The covertly obtained material was used unlawfully, and the domestic courts failed to properly balance privacy and freedom of expression. The Court ruled the State violated Article 8 by not fulfilling its positive obligations to protect the applicant's privacy. Outcome: Violation of Article 8; finding of violation deemed sufficient for non-pecuniary damages.

Slovenia

General legal provisions

In Slovenia, surrogacy is illegal, as its Article 7 of the Infertility Treatment and Procedures of Bio Medically-assisted Procreation Act bars access to these procedures to a women who intends to leave her child to a third party with or without payment after birth (surrogate motherhood)⁵⁵⁰. Article 43 and 44 of the same act penalize behavior running counter to the prohibition. Traditional surrogacy, where the surrogate mother provides her own egg, is also prohibited, as Slovenian law requires a genetic link between the child and at least one of the intended parents, even in the context of international surrogacy⁵⁵¹ (Page 41).

Despite the prohibition, Slovenian courts have recognised the parenthood of intended parents who have entered into surrogacy arrangements abroad, particularly in cases where the intended mother is the genetic mother or the intended father is the genetic father. This recognition is based on the best interests of the child and the need to provide legal certainty for the family. The process highlights the ethical and legal dilemmas associated with surrogacy, including the commodification of women's bodies and the potential THB exploitation of surrogates. Public opinion in Slovenia reflects a mix of support and resistance, with a significant portion of the population supporting the legalization of gestational surrogacy, while older generations and those with traditional family values express ethical concerns⁵⁵².

Also as far as international surrogacy agreements are concerned, the law allows recognition of parenthood through adoption.⁵⁵³

⁵⁵⁰ Republic of Slovenia, 2017 Infertility Treatment and Procedures of Biomedically-assisted Procreation Act, link: <https://pisrs.si/pregledPredpisa?id=ZAKO2518> (article 7)

⁵⁵¹ ZADRAVEC, Ines, 2023, *Reproduktivne tehnologije - pravno urejanje in vpliv na družinska razmerja : magistrsko delo* [na spletu]. Magistrsko delo. Maribor : I. Zdravec. [Dostopano 2 julij 2024]. Pridobljeno s: <https://dk.um.si/IzpisGradiva.php?lang=slv&id=85208> (p.41)

⁵⁵² ZADRAVEC, Ines, 2023, *Reproduktivne tehnologije - pravno urejanje in vpliv na družinska razmerja : magistrsko delo* [na spletu]. Magistrsko delo. Maribor : I. Zdravec. [Dostopano 2 julij 2024]. Pridobljeno s: <https://dk.um.si/IzpisGradiva.php?lang=slv&id=85208> (p.43)

⁵⁵³ Council of Europe: European Court for Human Rights, Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, Requested by the French Court of Cassation, April 2019, link: <https://hudoc.echr.coe.int/eng?i=003-6380464-8364383> (para. 24) (accessed on 30 September 2025)

General Criminal law provisions on surrogacy

In addition to the aforementioned provisions, Article 121 (4) of the Slovenian Criminal code also prescribes that: “*whoever unlawfully carries out the procedure of fertilization with biomedical assistance due to surrogacy shall be punished*” with a prison sentence of up to three years.⁵⁵⁴

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB⁵⁵⁵, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case. Additionally, the national mechanism issued a warning that international adoptions are increasing and that particular attention needs to be paid to adoptions from countries where surrogacy is permitted⁵⁵⁶

Civil court practice on surrogacy

Review of the official database⁵⁵⁷ showed several results, but unfortunately most of them are not publicly available. However, judging from several relatively recent master thesis, there was one prominent case where the Supreme court refused recognition of a foreign decision establishing legal parenthood of commissioning parents who were in a same-sex relationship⁵⁵⁸ Said decision is available in Slovenian⁵⁵⁹:

Criminal Court practice on surrogacy

No case law found in sources mentioned in the previous subheading.

Spain

General legal provisions

Surrogacy is not allowed in Spain, although it is recognised as an assisted reproductive technology in the Law 14/2006 on Assisted Human Reproduction Technologies (LTRHA) approved in 2006. This Law declares null and void any contract agreement of surrogate motherhood conducted by a woman who refuses the filiation in favour of the contracting part or of a third-party beneficiary, no matter it is with

⁵⁵⁴ Republic of Slovenia, 2023, Criminal Code, link: <https://pisrs.si/pregledPredpisa?id=ZAKO5050> (article 121)

⁵⁵⁵ Republic of Slovenia, 2023, Criminal Code, link: <https://pisrs.si/pregledPredpisa?id=ZAKO5050> (article 113)

⁵⁵⁶ see here: <https://www.gov.si/en/registries/projects/combating-trafficking-in-human-beings/trgovina-z-ljudmi/>

⁵⁵⁷ See the results from the Slovenian court cases database here:
[https://www.sodnapraksa.si/?q=nadomestno%20materinstvo&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&database\[UPRS\]=UPRS&database\[SEU\]=SEU&database\[NEGM\]=NEGM&database\[SOSC\]=SOSC&database\[SOPM\]=SOPM&submit=i%C5%A1%C4%8Di&rowsPerPage=20&order=date&direction=desc](https://www.sodnapraksa.si/?q=nadomestno%20materinstvo&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&database[SEU]=SEU&database[NEGM]=NEGM&database[SOSC]=SOSC&database[SOPM]=SOPM&submit=i%C5%A1%C4%8Di&rowsPerPage=20&order=date&direction=desc)

⁵⁵⁸ see ZADRAVEC, Ines, 2023, *Reproduktivne tehnologije - pravno urejanje in vpliv na družinska razmerja : magistrsko delo* [na spletu]. Magistrsko delo. Maribor : I. Zadavec. [Dostopano 2 julij 2024]. Pridobljeno s: <https://dk.um.si/lzpisGradiva.php?lang=slv&id=85208> and PLESNIK, Urša, 2022, *Pravica do osebne identitete in določitve lastnega izvora pri otrocih spočetih z biomedicinsko pomočjo : magistrsko delo* [na spletu]. Magistrsko delo. Maribor. [Dostopano 2 julij 2024]. Pridobljeno s: <https://dk.um.si/lzpisGradiva.php?lang=slv&id=81195>

⁵⁵⁹ See the results from the Slovenian court cases database here::
[https://www.sodnapraksa.si/?q=id:65433&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&database\[UPRS\]=UPRS&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=65433](https://www.sodnapraksa.si/?q=id:65433&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=65433)

or without remuneration. It also lays down that filiation of children born by surrogate motherhood is determined by birth and that the fatherhood claim of the biological father remains possible.⁵⁶⁰ The provisions of this law were then further clarified by the provisions of Articles 32 and 33 of Law 01/2023 amending Organic Law 2/2010, of 3 March, on sexual and reproductive health and the voluntary termination of pregnancy⁵⁶¹. The amendments introduced an obligation on behalf of the authorities to spread information on the illegality of these conducts and expressly prohibited commercial promotion of surrogacy⁵⁶². Lastly, said law is important in portraying the relationship of Spanish authorities towards surrogacy as the preamble of the law states that surrogacy itself is one form of violence against women, one against which state authorities must take appropriate action⁵⁶³.

This law does not establish any additional obstacles to registering children conceived abroad. Here, the state issued in 2010 a direction of the General Directorate of Registries and Notaries establishing that those children born by means of surrogate motherhood could be registered with Spanish citizenship in the Civil Registry. Conditions outlined include that such registration is possible if children who are being registered were born in a country where this technique is regulated, if one of the parents had Spanish citizenship and if there were a judicial sentence warranting the legality of the process and establishing the filiation of the child.⁵⁶⁴ Additionally, technical conditions are detailed on the dedicated website.⁵⁶⁵ However, in latest developments following a late 2024 Supreme Court judgements, all recognitions of international surrogacy arrangements are now banned.

Namely, On 4 December 2024, the Spanish Supreme Court ruled that recognizing a U.S. judgment establishing parentage via surrogacy violates Spanish public policy⁵⁶⁶. The case involved a Spanish couple who entered into a surrogacy agreement in Texas, where a court validated the arrangement and declared the commissioning parents as the legal parents of the children born⁵⁶⁷. Upon returning to Spain, the couple sought recognition of the U.S. judgment, but Spanish courts at all levels rejected the request.

The Supreme Court held that surrogacy contracts inherently violate the dignity of both the surrogate and the child, treating them as objects and commodifying gestation and filiation. It emphasized that

⁵⁶⁰ Republic of Spain, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (see legal regulation)

⁵⁶¹ See the law here: <https://www.boe.es/buscar/doc.php?id=BOE-A-2023-5364>

⁵⁶² See Articles 32 and 33 of the law here: <https://www.boe.es/buscar/doc.php?id=BOE-A-2023-5364>

⁵⁶³ See paragraph II of the preamble to the law here: <https://www.boe.es/buscar/doc.php?id=BOE-A-2023-5364>

⁵⁶⁴ Republic of Spain, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (see parentage)

⁵⁶⁵ see here: https://administracion.gob.es/pag_Home/en/Tu-espacio-europeo/derechos-obligaciones/ciudadanos/familia/menores/gestacion-sustitucion.html#-ad423719bbbd

⁵⁶⁶ Cazzola, O. (2025, January 27). *The Spanish Supreme Court on surrogacy contract and public policy*. EAPIL. <https://eapil.org/2025/01/27/the-spanish-supreme-court-on-surrogacy-contract-and-public-policy/>

⁵⁶⁷ Ibid

surrogacy is considered a form of violence against women under Spanish law and cited the European Parliament's condemnation of surrogacy as exploitative, particularly for vulnerable women⁵⁶⁸. The Court also clarified that there is no "right to be a parent" under Spanish law and that the best interests of the child must be balanced with the protection of fundamental rights, including those of surrogates and children in general. The Court concluded that Spanish law adequately protects the child's best interests through biological filiation or adoption, and that recognizing foreign surrogacy judgments would undermine these protections and facilitate illegal practices⁵⁶⁹.

Following this decision, in April 2025, the Dirección General de Seguridad Jurídica y Fe Pública issued a new instruction banning the registration of births via surrogacy based on foreign certificates, declarations, or judgments⁵⁷⁰. Instead, parentage must be established in Spain through biological filiation or adoption, ensuring the child's integration into a stable family unit. Pending registration applications under the old rules were dismissed⁵⁷¹.

General Criminal law provisions on surrogacy

The conduct of those, who by means of economic compensation, put a child, a descendent or a minor in charge of a person with no filiation or familiar relationship, eluding the legal proceedings for custody, guardianship or adoption, with the purpose of establishing a relation similar to the filiation, is classified as a criminal activity by the Criminal Code art. 221. This crime is punishable by two to five years imprisonment and by four to ten years disqualification to exercise the right of parental authority, curatorship, custody or guardianship. According to the same article 221.2, the person who receives the minor and the intermediary are also punished, even though the delivery had taken place in a foreign country⁵⁷².

Relevance of Surrogacy in the context of human trafficking

As the official database indicated no cases of surrogacy in the context of THB. In that vein, and as the criminal code does not mention surrogacy-specifically in its definition of THB⁵⁷³, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

A sentence of the Supreme Court in February 2014 laid down that registering child born by means of surrogate motherhood in the name of both parents results in evading the 2006 Law that doesn't allow this technique in Spain, so that all registrations in consulates came to a halt or were even refused since

⁵⁶⁸ Ibid

⁵⁶⁹ Ibid

⁵⁷⁰ Requejo Isidro, M. (2025, May 19). *New rules on the registration in Spain of births by surrogacy*. EAPIL. <https://eapil.org/2025/05/19/new-rules-on-the-registration-in-spain-of-births-by-surrogacy/>

⁵⁷¹ Ibid

⁵⁷² Republic of Spain, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (applicable law)

⁵⁷³ Republic of Spain, Criminal code, link: https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf (accessed on 30 September 2025)

then. However, after the decision of the European Court for Human Rights in Strasbourg (65192/11 (Mennesson c/ France) and 65941/11 (Labassee c/ France) Spanish Ministry of Justice has ordered the consulates to allow again the registration of these children in the General Register Office, as it had been done until 2010.⁵⁷⁴ Additionally, the official database of court case law in Spain yielded many results which is in line with the State's input on increased interest in international surrogacy agreements⁵⁷⁵

out of which the following are most relevant:

1. Decision where application to recognize foreign executed surrogacy was not allowed because such surrogacy was not confirmed by a foreign decision⁵⁷⁶
2. Decision granting an appeal against a procedural order which purported to close a path towards forming a parenthood relation, in contrast to ECtHR case law⁵⁷⁷
3. Decision where an request of the commissioning mother for recognition of her motherhood after divorce from the commissioning father (whose genetic link to the child led to the establishment of his parenthood) was rejected. The grounds cited include the lack of regulation and will to not make it possible for international surrogacy agreements to be *de facto* automatically registered in Spain, without intermediary companies determining the fitness of the intending parents to be parents.⁵⁷⁸ (*note of Author: this decision implies that the court did not want to go outside the established case law which it interpreted that it only allows commissioning mothers parenthood if they go through an adoption procedure as legal wife's of commissioning fathers).
4. Another similar decision of the same court, where it denied any visitation rights to a divorcee commissioning mother⁵⁷⁹
5. Third decision in same issue and with same result as the previous two⁵⁸⁰
6. A decision granting adoption to a commissioning mother still in marriage with the commissioning father⁵⁸¹

⁵⁷⁴ Republic of Spain, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l=id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l=id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (see parentage)

⁵⁷⁵ Republic of Spain, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l=id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l=id=138808833&delta=30&Country=242616186#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (see Current debate and specific situations)

⁵⁷⁶ see decision here:
<https://www.poderjudicial.es/search/AN/openDocument/c4de4ff4873865c4a0a8778d75e36f0d/20230308>

⁵⁷⁷ see decision here:
<https://www.poderjudicial.es/search/AN/openDocument/6088cc662602f080a0a8778d75e36f0d/20240125>

⁵⁷⁸ see decision here:
<https://www.poderjudicial.es/search/AN/openDocument/4a0595c71ddac644a0a8778d75e36f0d/20240409>

⁵⁷⁹ see decision here:
<https://www.poderjudicial.es/search/AN/openDocument/9c6c938ce361013ba0a8778d75e36f0d/20240411>

⁵⁸⁰ see decision here:
<https://www.poderjudicial.es/search/AN/openDocument/a8e880d7a560b313a0a8778d75e36f0d/20231114>

⁵⁸¹ see decision here:
<https://www.poderjudicial.es/search/AN/openDocument/f645fc37bcac0470a0a8778d75e36f0d/20231114>

7. A decision granting parenthood to the genetically linked intending father⁵⁸²:

Criminal Court practice on surrogacy

The official database also yielded two decisions where an appeal to dismiss a criminal case was rejected in a case involving paid surrogacy to be done abroad⁵⁸³. Additionally, a police report from 2023 specified that in Don Benito, Spain, a 28-year-old woman gave birth and was detained by police along with a 42-year-old man and a 43-year-old woman. The trio was arrested for an alleged surrogacy arrangement where the couple paid €2,000 in Romania to keep the child. Hospital staff alerted authorities due to discrepancies in the mother's registration documents and clinical history. Upon investigation, the man admitted to buying the newborn, revealing that the woman was not his wife. All three will appear in court.⁵⁸⁴

Lastly, the state's public attorney's office published a somewhat vague report of a case involving potential "reproductive exploitation" or "surrogacy" investigated by the Spanish Civil Guard. The perpetrators contacted a Peruvian victim through a Facebook group to arrange a surrogate pregnancy. Initially, the agreement was for a single sexual encounter to achieve pregnancy, but the victim was coerced into repeated acts until she managed to escape. The legal reference is to Article 177 Bis 1, e) (1) DSTSH 13/22 JI 27 Madrid, related to forced marriages involving human beings⁵⁸⁵.

Sweden

General legal provisions

In Sweden, there are no rules regarding surrogate arrangements and it is not permitted to assist in a surrogacy arrangement in the Swedish health and medical care system.⁵⁸⁶ Until the adoption of new regulations in 2022⁵⁸⁷ Swedish law allowed intended fathers with genetic links to children born out of surrogacy agreements abroad to be recognised as legal fathers in Sweden, while requiring intended

⁵⁸² see decision here:

<https://www.poderjudicial.es/search/AN/openDocument/5b88ce66ad8388c8a0a8778d75e36f0d/20231114>

⁵⁸³ page 2 of the decision here:

<https://www.poderjudicial.es/search/AN/openDocument/f285b4b9807ff26c/20190322> and page 2 of the decision here: <https://www.poderjudicial.es/search/AN/openDocument/24774f63562eac13/20211213>

⁵⁸⁴ See the police report here: <https://www.interior.gob.es/opencms/ca/detalle/articulo/La-Policia-Nacional-detiene-en-Badajoz-a-tres-personas-implicadas-en-el-intento-de-venta-de-un-recien-nacido/>

⁵⁸⁵ See page 9 of this report: <https://www.fiscal.es/documents/20142/73a68a80-a73b-f01a-e991-a32705b045d8>

⁵⁸⁶ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 22) (accessed on 30 September 2025)

⁵⁸⁷ Kingdom of Sweden, Parliament decision approving Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2022, link: <https://data.riksdagen.se/fil/A214A743-2878-44BC-A1AB-FOA06B8002F7> (accessed on 30 September 2025)

mothers to go through an adoption procedure.⁵⁸⁸ After the passage of these new rules, several systems were created:

- 1) **first set of rules** allowed the woman who has not given birth to the child and was not married to or cohabiting with the person who gave birth to the child, to have her maternity recognised in Sweden in certain specific situations mostly where a parent-child relationship has been established abroad and where, in many cases, adoption per se would be possible in Sweden. Furthermore, this regime of recognition is limited to women who, in connection with the birth of the child, have had their main connection to a country other than Sweden.⁵⁸⁹ As elaborated further, main conditions are that: a) is a genetic link between such women and no genetic link between the child and the surrogate mother⁵⁹⁰ and b) that the intended mother had domicile and was resident without interruption for at least one year in connection with the birth of the child in the country where the birth occurred⁵⁹¹
- 2) **second set of rules** allows corresponding rules to apply to paternity following a surrogate arrangement in respect of the man who is not genetically related to the child and who was not married to or cohabiting with the birth mother⁵⁹², provided that no genetic link between the child and the surrogate mother⁵⁹³ and b) that the intended father had domicile and was resident without interruption for at least one year in connection with the birth of the child in the country where the birth occurred⁵⁹⁴
- 3) **third set of rules**, and arguably the most elaborate one applies to intended parents of a child born out of surrogacy abroad where such commissioning parents are Swedish residents, and regardless of the fact that they have a specific genetic link to the child born out of surrogacy or not⁵⁹⁵. As

⁵⁸⁸ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 23) (accessed on 30 September 2025)

⁵⁸⁹ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 24) (accessed on 30 September 2025)

⁵⁹⁰ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 200) (accessed on 30 September 2025)

⁵⁹¹ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 207) (accessed on 30 September 2025)

⁵⁹² Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 25) (accessed on 30 September 2025)

⁵⁹³ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 202-203) (accessed on 30 September 2025)

⁵⁹⁴ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 210-211) (accessed on 30 September 2025)

⁵⁹⁵ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 243) (accessed on 30 September 2025)

summarized, the essence of these rules is to allow one of the intended parents who is not considered a legal guardian (usually the commissioning mother) easier access to adoption as they prescribe exemptions to a general rule according to which commissioning mother may adopt the child born out of surrogacy only through adoption and while still being married to the commissioning father⁵⁹⁶. Said rules require of the Swedish courts to take into consideration the special reasons applicable in such cases and move past said requirements in the best interest of the child, but still run the usual procedure of checking suitability in cases of adoption.⁵⁹⁷

General Criminal law provisions on surrogacy

As it currently stands, Swedish law does not criminalize surrogate mothers and commissioning parents, but only medicinal practitioners who would conduct surrogacy in Sweden.⁵⁹⁸

Relevance of Surrogacy in the context of human trafficking

The official database indicated no cases of surrogacy in the context of THB. In that vein, and as the criminal code does not mention surrogacy-specifically in its definition of THB⁵⁹⁹, it can be assumed that surrogacy would be categorised as THB only if it fulfills the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

As stated in several places in the regulation of recognition of international surrogacy, cited in the first column, said regulation was actually an attempt to regulate matters dealt with extensively by courts. In that vein, some of the cases found can be summarized in the following fashion:

The Court of Appeal allowed a genetic mother to adopt twins conceived by surrogacy abroad (Svea Hovrätt, ÖÅ 945-16). On 20 January 2015 The Court of Appeal concluded that an American court decision declaring two men as the legal parents of a child born after a surrogacy arrangement in the United States should be accepted in Sweden. One of the men was the genetic father of the child (Svea Hovrätt Ö9822-14), (The Court of Appeal gave a similar ruling on 7 October 2014 in Svea Hovrätt Ö6952-14.) In an early case in the Supreme Court on 7 July 2006 the genetic mother was denied adoption because the genetic father and the surrogate mother (who was the sister of the genetic father) withdrew their consents after the couple had separated⁶⁰⁰. Official case law database yielded results of decisions practically exclusively related to the matters of recognition of foreign decisions related to

⁵⁹⁶ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 243) (accessed on 30 September 2025)

⁵⁹⁷ Kingdom of Sweden, Government bill on amending certain acts to enable foreign parentage and adoption in certain cases, 2021, link: <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/06/sou-202156/> (p. 263-265) (accessed on 30 September 2025)

⁵⁹⁸ Arvidsson, Anna. "Challenges of transnational parenthood: Exploring different perspectives of surrogacy in Sweden and India." PhD diss., Acta Universitatis Upsaliensis, 2019. link: <https://uu.diva-portal.org/smash/record.jsf?pid=diva2%3A1327767&dsid=8038> (p.25)

⁵⁹⁹ See Swedish NPM Webpage here: <https://nspm.jamstalldhetsmyndigheten.se/prostitution-och-manniskohandel/manniskohandel/>

⁶⁰⁰ Kingdom of Sweden, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_id=138808833&delta=30&Country=174857170#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[0\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_id=138808833&delta=30&Country=174857170#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[0]})) (see legal regulations)

surrogacy abroad.⁶⁰¹ As these decisions relay the principles outlined, they were not analyzed in greater detail.

Criminal Court practice on surrogacy

Official case law database yielded no results of such decisions⁶⁰²

Switzerland

General legal provisions

Surrogacy in Switzerland is expressly prohibited via articles 119 para 2 lit d of the Swiss Constitution⁶⁰³ and Art. 4 of the Swiss Reproductive Medicine Act⁶⁰⁴. The Swiss Reproductive Medicine Act criminalizes only the acts of the facilitator and an intermediary, but not of the parties involved.⁶⁰⁵ Although being prohibited in Switzerland, Swiss courts have been recognizing foreign based surrogacies in the past, provided that these were established in foreign judgements.⁶⁰⁶

In line with this practice, the intended mother is recognised as the legal mother of the child born through surrogate motherhood if she is an egg donor and if there is a foreign surrogacy judgment, recognisable in Switzerland, which establishes the legal parent-child relationship between the genetic intended mother and the child born through surrogate motherhood.⁶⁰⁷ Similarly, the intended father is recognised as the legal father of the child born as a result of surrogate motherhood if he is a sperm donor and if there is a foreign surrogacy judgment, recognisable in Switzerland, establishing the legal

⁶⁰¹ Swedish official case law databases are available here: <https://www.domstol.se/domar-och-beslut/publicerade-domar-och-avgoranden/>

⁶⁰² Swedish official case law databases are available here: <https://www.domstol.se/domar-och-beslut/publicerade-domar-och-avgoranden/>

⁶⁰³ Swiss Constitution, 2024, link: <https://www.fedlex.admin.ch/eli/cc/1999/404/en> (accessed on 30 September 2025)

⁶⁰⁴ Swiss Reproductive Medicine Act, 2023, link: <https://www.fedlex.admin.ch/eli/cc/2000/554/en#fn-d6e1592> (accessed on 30 September 2025)

⁶⁰⁵ Republic of Switzerland, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see applicable law)

⁶⁰⁶ Republic of Switzerland, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see Parentage)

⁶⁰⁷ Republic of Switzerland, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see Parentage)

parent-child relationship between the genetic father of intent and the child born as a result of surrogate motherhood.⁶⁰⁸

If these conditions are not met, there is a way of adoption available for the intended parents as the Swiss authorities may not recognize a foreign birth certificate which states that the intended mother is the parent.⁶⁰⁹ In that case, no genetic relationship between the intended parents and the child born of surrogate motherhood is required for adoption⁶¹⁰.

However, as recognised by the Canton of Zurich, there are probably many cases of registration of foreign executed surrogacies through the procedures of recognition of foreign birth certificates containing consequences of a surrogacy agreement executed abroad.⁶¹¹ In this report, the Canton of Zurich stated that legislation ought to be changed as the current state of it requires registration of the surrogate mother even though she did not want to be inscribed as the mother, emphasizing also that the Federal Court also expressed such exclamation with the current state of legislation.⁶¹²

General Criminal law provisions on surrogacy

See previous section.

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB⁶¹³, it can be assumed that surrogacy would be categorised as THB only if it fulfils the required 3 elements of the Palermo protocol in a given case.

⁶⁰⁸ Republic of Switzerland, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see Parentage)

⁶⁰⁹ Republic of Switzerland, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see Parentage)

⁶¹⁰ Republic of Switzerland, 2024, Inputs of the State to the CoE specialized portal for Human Rights and Biomedicine (link: [https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:\[3\]}](https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30&Country=242616187#{%22com_liferay_portal_search_web_search_results_portlet_SearchResultsPortlet_INSTANCE_EC46gmdHivxo%22:[3]})) (see Parentage)

⁶¹¹ Republic of Switzerland, Canton of Zurich, 2023, Surrogacy: Authorities in a dilemma, link: <https://www.zh.ch/de/direktion-der-justiz-und-des-innern/gemeindeamt/jahresbericht-gemeindeamt-2023/leihmutterchaften--behoerden-im-dilemma.html#:~:text=In%20der%20Schweiz%20ist%20die,Kantonen%20Z%C3%BCrich%20und%20Schwyz%20nahe> (accessed on 30 September 2025).

⁶¹² Republic of Switzerland, Canton of Zurich, 2023, Surrogacy: Authorities in a dilemma, link: <https://www.zh.ch/de/direktion-der-justiz-und-des-innern/gemeindeamt/jahresbericht-gemeindeamt-2023/leihmutterchaften--behoerden-im-dilemma.html#:~:text=In%20der%20Schweiz%20ist%20die,Kantonen%20Z%C3%BCrich%20und%20Schwyz%20nahe> (accessed on 30 September 2025).

⁶¹³ Swiss Criminal code, 2023, link: https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en (Art. 182) (accessed on 30 September 2025)

Court practice on surrogacy

The search of the publicly available databases showed several of the decisions of the Swiss Federal Supreme Court which established the practice outlined above. These include the following decisions:

- 1) Decision 5A_748/2014 of 21 May 2015⁶¹⁴
- 2) Decision 5A_32/2021 of 1 July 2022⁶¹⁵
- 3) Decision 5A_545/2020 of 7 February 2022⁶¹⁶
- 4) Decision 5A_534/2020 of 7 October 2020⁶¹⁷, where a request of the commissioning father for alimony from an unrecognised commissioning mother after their divorce and for the benefit of surrogate twins was finally denied
- 5) Decision 5A_324/2016 of 1 December 2016⁶¹⁸

Cases in front of the ECtHR

***D.B. and Others v. Switzerland* - [58252/15](#) and [58817/15](#), Judgment 22.11.2022 [Section III] legal summary⁶¹⁹:**

The case involved two same-sex partners, registered since 2011, who entered a surrogacy contract in the U.S. in 2010, with one partner as the genetic donor. A U.S. court declared them legal parents of the child born in 2011, issuing a corresponding birth certificate. They sought recognition of this parentage in Switzerland, but Swiss authorities refused, citing surrogacy's prohibition. In 2015, the Swiss Federal Court recognised the genetic father's parentage but not the intended parent's, leaving the family in legal limbo. A 2018 Civil Code amendment legalised adoption for registered partners, allowing them to formalize the parent-child relationship. The ECtHR found a violation of the child's Article 8 rights due to the lack of timely legislative provisions, which created prolonged legal uncertainty. However, no

⁶¹⁴ See decision here:

https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?lang=de&type=highlight_simple_query&page=1&from_date=&to_date=&sort=relevance&insertion_date=&top_subcollection_aza=all&query_words=Leihmutterschaft&rank=1&azaclir=aza&highlight_docid=aza%3A%2F%2F21-05-2015-5A_748-2014&number_of_ranks=12

⁶¹⁵ See decision here:

https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?lang=de&type=highlight_simple_query&page=1&from_date=&to_date=&sort=relevance&insertion_date=&top_subcollection_aza=all&query_words=Leihmutterschaft&rank=5&azaclir=aza&highlight_docid=aza%3A%2F%2F01-07-2022-5A_32-2021&number_of_ranks=12

⁶¹⁶ See decision here:

https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?lang=de&type=highlight_simple_query&page=1&from_date=&to_date=&sort=relevance&insertion_date=&top_subcollection_aza=all&query_words=Leihmutterschaft&rank=6&azaclir=aza&highlight_docid=aza%3A%2F%2F07-02-2022-5A_545-2020&number_of_ranks=12

⁶¹⁷ See decision here:

https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?lang=de&type=highlight_simple_query&page=1&from_date=&to_date=&sort=relevance&insertion_date=&top_subcollection_aza=all&query_words=Leihmutterschaft&rank=8&azaclir=aza&highlight_docid=aza%3A%2F%2F07-10-2020-5A_534-2020&number_of_ranks=12

⁶¹⁸ Decision available here:

https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?lang=de&type=highlight_simple_query&page=1&from_date=&to_date=&sort=relevance&insertion_date=&top_subcollection_aza=all&query_words=Leihmutterschaft&rank=10&azaclir=aza&highlight_docid=aza%3A%2F%2F01-12-2016-5A_324-2016&number_of_ranks=12

⁶¹⁹ ECtHR, 2022, link: <https://hudoc.echr.coe.int/eng?i=002-13896>

violation was found concerning the intended parents' family life, as they were acknowledged as a family unit. The Court awarded EUR 15,000 for non-pecuniary damages to the child.

Turkey

General legal provisions

Surrogacy is prohibited in Turkey, under the changes of the law on the Harvesting, Storage, Grafting, and Transplantation of Organs and Tissues from 2018, surrogacy become criminalized⁶²⁰. In accordance with this law, all actors involved except for the surrogate mothers are criminally liable if engaged in surrogacy arrangements.⁶²¹ Although some claim that even engaging in surrogacy agreement abroad is prohibited⁶²², others think that Turkish citizens can engage in such arrangements and request recognition of therein recognised parenthood⁶²³. In that vein, some authors also argue that there is space for application of rules related to parenthood recognition similar to many countries described above, as long as the genetic material belongs to the commissioning parents. In that vein, provided that the commissioning father is the genetical father, he can recognize the child and his wife can be recognised as well through adoption procedure⁶²⁴.

General Criminal law provisions on surrogacy

See previous section.

⁶²⁰ Parlak Börü, Şafak,. 2019. "A Difficult Turning Point in Family Law: The Current Developments on Surrogate Motherhood with a Comparative Law Perspective." Public and Private International Law Bulletin 39, no. 1: 63-110. <https://cdn.istanbul.edu.tr/file/JTA6CLJ8T5/6E7B2EC754FC49C59DAD2A9538A07B15> (p. 3) (accessed on 30 September 2025)

⁶²¹ Kıbrıs, Ezgi Şiir, and Sertaç Şahin Atabay. "Multiple Perspectives on Surrogacy and In-Vitro Fertilization in Turkey." Türkiye Biyoetik Dergisi 9, no. 1 (2022): 13-20. Link: <https://dergipark.org.tr/tr/download/article-file/2983965> (p.6) (accessed on 30 September 2025)

⁶²² Işintan, Pelin. "Is what is illegal also unethical? An analysis of Turkish law regarding assisted reproduction and genetic engineering." In International Scientific Conference: "Transformative Technologiess: Legal and Ethical Challenges of the 21st Century". Faculty of Law, University of Banja Luka, 2020. Link: https://assets-global.website-files.com/65819ad9706c8462e6b185cc/65874aebb72df6ee0f6bfbfc_Pelin%20Isintan%20IS%20WHAT%20IS%20ILL%20EGAL%20ALSO%20UNETHICAL%20AN%20ANALYSIS%20OF%20TURKISH%20LAW%20REGARD.pdf (accessed on 30 September 2025)

⁶²³ Gölcüklü, İ. (2021). Recognition and enforcement of decisions regarding international surrogacy. Galatasaray University Faculty of Law Journal, 0(1), 835 - 865. Link: <https://openaccess.altinbas.edu.tr/xmlui/handle/20.500.12939/2925> (p. 27-29) (accessed on 30 September 2025)

⁶²⁴ Parlak Börü, Şafak,. 2019. "A Difficult Turning Point in Family Law: The Current Developments on Surrogate Motherhood with a Comparative Law Perspective." Public and Private International Law Bulletin 39, no. 1: 63-110. <https://cdn.istanbul.edu.tr/file/JTA6CLJ8T5/6E7B2EC754FC49C59DAD2A9538A07B15> (p. 41, footnote 181) (accessed on 30 September 2025)

Relevance of Surrogacy in the context of human trafficking

As the criminal code does not mention surrogacy-specifically in its definition of THB⁶²⁵, it can be assumed that surrogacy would be categorised as THB only if it fulfils the required 3 elements of the Palermo protocol in a given case.

Civil court practice on surrogacy

Apart from one relatively new decision on recognition of parentage of the commissioning mother, no other relevant court practice found on publicly available sources⁶²⁶. The said decision was dated in 2022 and the Turkish Supreme Court appears to be ready to allow space for adoption by the commissioning mother. This is based on the fact that it did not grant a request to overturn an inscription of the commissioning mother for the surrogacy done in Georgia whereby it noted that lineage can be established through adoption as well. However, the decision is mostly of formal nature as it returns the case back to the first instance court based on procedural flaws in the first instance procedure.⁶²⁷

Criminal Court practice on surrogacy

See previous section.

⁶²⁵ Turkey: Criminal Code, Law No. 5237 link:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e) [accessed on 30 September 2025] (article 80)

⁶²⁶ Primarily this database was used: <https://legalbank.net/arama/mahkeme-kararlari>

⁶²⁷ See the decision of the Turkish Supreme Court Yargıtay 2. Hukuk Dairesi E. 2021/6068 K. 2022/3333 T. 06.04.2022, available here: <https://karararama.yargitay.gov.tr/#>

[ANNEX 1: THB-RELATED CASES](#)

[ANNEX 2: NON-THB-RELATED CASES](#)

[ANNEX 3: COUNTRY PROFILES](#)

[ANNEX 4: GENERAL OVERVIEW OF ALL STATES OBSERVED](#)

[ANNEX 5: DATABASE OF UKRAINIAN SURROGACY-RELATED CASES](#)