

MULTIPLE AND TRANSGENDER PARENTAGE IN CROSS-BORDER FAMILIES

The Dawn of a «Copernican» Revolution in Family Law?

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Parentage: cutting edge ART science vs Law

- From a **biological** point of view
 - *2 mothers (genetic mother, gestational mother) and 1 father*
 - *2 mothers (mother supplying both womb and the egg nucleus, mother supplying healthy mitochondria) and 1 father*
- From a **legal** point of view
 - *1 mother, 1 father ...*
 - or*
 - *... parent 1, parent 2*



Spread of procreative tourism

- No international rules on filiation
- Divergence of States as to the subjects who can access ART, and as to the legitimacy of surrogacy
- Procreative tourism
 - *Recognition of the status acquired abroad?*
 - *Right to the continuity of personal status vs respect of the fundamental principles of the legal system*



Towards a European Certificate of parenthood?

- EU proposal for a “regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of parenthood”
- European Parliament’s proposal to insert a recital (n. 21) according to which Member States should recognize “parenthood established in another Member State of a child with same-sex parents, of a child with *a transgender parent*, of a child ... with *multiparents*”



Multi-parentage

- Again, from a **biological** point of view
 - *Vide supra*
- Again, from a **legal** point of view
 - *Vide supra (the principle of double parentage remains firm)*
- From a **social** point of view
 - *One or more social parents can be added to legal parents*



Multi-parentage

- Case law in transnational families: triple-maternity (biological, adoptive and social)
 - *E.g., Tribunale di Milano, July 6th 2023*



Trans-parentage

- Case-law in national families: relevance of sex of origin
 - *Bundesgerichtshof, September 6th 2017 (M → F) father*
 - *Bundesgerichtshof, November 29th 2017 (F → M) mother*



Trans-parentage

- Case-law in national families: relevance of sex of origin
 - *R (McConnell and YY) v Registrar General*, [2019] EWHC 2384 (Fam), [2020] EWCA Civ 559 (F → M) mother



Trans-parentage

- Case-law in national families: relevance of sex of origin
 - *Cour d'appel de Toulouse, February 9th 2022 (F → M) mother*



Trans-parentage

■ Council of Europe

- *Parliamentary Assembly Resolution 2239 (2018), “Private and family life: achieving equality regardless of sexual orientation”:* provide for transgender parents’ gender identity to be correctly recorded on their children’s birth certificates, and ensure that persons who use legal gender markers other than male or female are able to have their partnerships and their relationships with their children recognised without discrimination



Trans-parentage

■ Regulation in Belgian law

- *Loi réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets (2017)*
- *Circulaire relative à la modification de l'enregistrement du sexe - Aperçu du régime de la filiation*
 - F → M in terms of filiation *mother* and on the birth certificate *mother*
 - M → F in terms of filiation *father* but on birth certificate *co-parent*
 - In other cases, the new sex is also indicated in the birth certificate



Trans-parentage

■ Regulation in Spanish law

- *Ley 4/2023 para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI*
 - F → M mother (intended as gestational parent)
 - M → F father (intended as non-gestational parent)



Trans-parentage

■ Regulation in German law

- *Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen – Transsexuellengesetz (1980)*
 - F → M mother (sex of origin)
 - M → F father (sex of origin)



Trans-parentage

- Regulation in German law - Self Determination Act 2024
 - *In the civil register, sex can be indicated in various ways (male, female, different) or not indicated at all*
 - *In birth certificates, only the father and mother can be indicated as parents*
 - *The criteria for parenthood designation will be defined by the forthcoming reform of filiation*



Trans-parentage

- Regulation in German law - Self Determination Act 2024
 - *Transitional regulation: upon request of the interested party, in the birth certificate of the child born to a transgender person, the designation of "father" (Vater) or "mother" (Mutter) can be replaced by the generic designation of "parent" (Elternteil)*



Continuity of the extended parental status across borders?

- The **national** perspective (respect of national fundamental principles)
- The **international** perspective (in compliance with art. 8 ECHR on Respect for private and family life, as extensively interpreted by the ECHR)



Continuity of the extended parental status across borders?

- The **european** perspective (in compliance with art. 21(1) TFEU and art. 7 of the EU Charter of Fundamental Rights on Respect for private and family life)
 - CJ [GC] October 4th 2024, case C-4/23, *Mirin*
“EU law precludes legislation that does not permit recognition, and entry in the birth certificate of a citizen, of a change of name and gender identity lawfully acquired in another Member State ... in line with the case law relating to the recognition of the status of spouse/child/parent acquired in another Member State by virtue of institutions (same-sex marriage and parenthood) unknown to the Member State concerned”



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Continuity of the extended parental status across borders?

- A point in favour of the 2023 European Parliament's proposal to recognise “parenthood established in another Member State of a child with same-sex parents, of a child with *a transgender parent*, of a child ... with *multiparents*”?