

Another twist in surrogacy motherhood saga

Many thanks to Isabel Rodríguez-Uría Suárez

The 5th of October the Spanish Dirección General de los Registros y el Notariado (hereinafter DGRN) has issued an Instruction about the regulation of affiliation registration in cases of surrogate pregnancy in order to protect the best interests of the child and the interests of the women who give birth (see BOE, n. 243, 7.10.2010).

According to the Instruction, a prerequisite is required for the registration of births by surrogate motherhood: it is necessary to produce before the Spanish responsible of the Registro Civil a judicial resolution of the competent Court of the country in which the surrogate pregnancy occurred. The judicial resolution must determine the affiliation of the child. This requisite is demanded in order to control the legal requirements of the surrogate pregnancy contract and to ensure the protection of the best interests of the child and the interests of the pregnant mother.

The foreign court decision raises a question of recognition in Spain. The DGRN distinguishes between contentious and non-contentious proceedings: on the one hand, contentious foreign decisions must be recognized by *exequatur*; on the other hand, the DGRN gives a set of guidelines for the recognition of non-contentious decisions in affiliation matters. In short, the Spanish officer in charge of the Registro Civil must check: a) the formal validity of the foreign decision b) that the original court had based its international jurisdiction in conditions equivalent to those provided by Spanish law c) the due process respect d) that the interests of the child and the pregnant mother had been guaranteed e) that the foreign decision is a final decision and that the consents given in the contract are irrevocable.

Finally, the Spanish DGRN states that foreign registration certificates do not support affiliation registration in the Registro Civil.