

Publications on International Surrogate Motherhood

A paper of Prof. Anna Quiñones Escámez (Pompeu Fabra University, Barcelona) has just been published in the Spanish electronic magazine InDret. The English abstract reads as follows:

The following pages focus on Private International Law issues raised by the Resolution of the Spanish “Dirección General de los Registros y del Notariado” (DGRN) of last February the 18th. Reversing the previous decision of the Consular Register, the Resolution agrees to register in the Spanish Office of foreign birth certificates the double paternity of twins born by means of surrogate motherhood in California. Once submitted the main issue settled by the DGRN, we will examine the pending questions and the resolution methods available at Private International Law (mandatory rules, conflict of laws and recognition of official certificates, judicial decisions and legal situations). At this point we will take into account the relationship (cause-effect) between the judicial decision and the birth certificate as a title (artículo 83 RRC). Later on, we will review the limits provided by some domestic laws in order to avoid creating “limping situations” valid in the country of origin but illegal abroad. We will follow remarking the aspects of fraud in the jurisdiction (forum shopping) and the “fraud in the conflict of qualifications”. Both aspects are relevant since the contract issue (surrogacy) is the one which attracts affiliation issues before the courts (and law) of the country where surrogacy is practised and where the children will be born. We will conclude with some remarks regarding the role of “the best interest of the Child clause” (supra-national rule of law) and the “best interest of the children” in this case.

The article itself can be downloaded (see here).