Maintenance Duties for a Gestational Surrogate Following Non-Recognition – An Unreported Spanish Judgment

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Facts of the case

An unreported judgment of the Family, Childhood and Capacity Section of the Tribunal de Instancia de Alicante (No. 3), dated 29 April 2026, has attracted attention for ordering a Mexican gestational surrogate to pay child maintenance to the Spanish father for whom she carried a child, despite having no custody, no exercise of parental authority, and no contact rights (here and here).

A Spanish man, described in some reports as resident in Alicante province and in others as working in Switzerland, had a child through gestational surrogacy in Mexico using his own sperm and a donor egg; the surrogate has no genetic link to the child. The child was born on 24 April 2024 and travelled to Spain in January 2025, since when he has lived with the father. A separate, earlier 2024 judgment of the same Alicante court had already determined the father's biological paternity and registered the child, under ordinary Spanish civil-registry rules, with the father's and the surrogate's surnames. In the April 2026 judgment, at the Prosecutor's request and applying Arts. 154 and 158 of the Spanish Civil Code (CC), the court declined to strip the surrogate mother of parental responsibility (*patria potestad*) but suspended its exercise, gave the father sole custody, denied the mother contact and, because she remains the child's legal mother, ordered her to pay €150/month plus half of extraordinary expenses.

Recent Spanish case law and practice on surrogacy

The Alicante case follows a line the Spanish Supreme Court has been building with similar facts. In STS 496/2025, of 25 March 2025 (ROJ: STS 1262/2025), the Court dealt with a case originating from a surrogacy arrangement in Tabasco,

Mexico. The surrogate contributed no genetic material, and the contract expressly stated she was not the legal, biological or genetic mother and renounced *patria potestad* and custody in the father's favour. The children were registered in Tabasco with the father's two surnames, but the Spanish consular registration ultimately recorded the gestational carrier as mother. Years later the father sued in Spain to have her maternal filiation struck entirely and the surrogate mother herself supported his claim. The Spanish Court of Appeal (*Audiencia Provincial*) granted it; the Public Prosecutor appealed in cassation, and the Spanish Supreme Court reversed, reinstating her as legal mother. The Supreme Court applied Art. 10.2, Ley 14/2006 which expressly provides that the maternal filiation of children born through gestation by substitution is determined by childbirth. The Supreme Court treated this as a mandatory rule that could not be circumvented by agreement or by an action challenging the maternal filiation (Arts. 131, 139 CC). The court also rejected a request to refer the question to the CJEU because it considered that nothing in Arts. 19 and 20 TFEU was offended by it. The Court also cited its own earlier judgment, STS 1626/2024 of 4 December 2024, for the related but distinct proposition that a foreign judgment attributing parentage to intended parents cannot be recognised in Spain (*exequatur*) on the same public-policy grounds.

The current administrative framework is set out in the guidelines of the Spanish Ministry of Justice (DGSJFP Instruction of 28 April 2025). The Instruction expressly leaves without effect the earlier Instructions of 2010 and 2019. It provides that a foreign civil-status certificate, a declaration accompanied by medical evidence of birth, or even a foreign judicial decision determining parentage is not, by itself, a sufficient title for registration of a child born through surrogacy. Instead, filiation is to be established through the ordinary mechanisms recognised by Spanish law, including biological filiation and, where appropriate, subsequent adoption.

This doctrine is not merely a registration technicality; it holds even where both the father and the surrogate want the registration undone, which is a stronger statement than a case about recognition of a foreign judgment. Second, the Alicante court's own earlier 2024 filiation ruling, and its 2026 refusal to go further than suspending (rather than terminating) parental responsibility, both sit squarely within this line: once the gestational carrier was treated as the child's legal mother, the ordinary legal consequences of parenthood, including the duty

to contribute to the child's maintenance, followed. The Alicante court did not deprive her of parental responsibility; instead, it suspended its exercise, while assigning custody exclusively to the father and excluding contact.

Potential enforcement in Mexico

Whether Mexican law would recognise the same maternal relationship the Spanish courts are drawing consequences from is doubtful. STS 496/2025 illustrates the potential divergence particularly clearly: the contract stated that the gestational carrier was not the legal, juridical or biological mother, and the children were registered in Tabasco with the father's two surnames, whereas the Spanish courts ultimately treated the gestational carrier as the legal mother under Spanish law. Mexican rules on surrogacy and parentage are state-specific, making it necessary to identify the law applicable to the particular arrangement before drawing conclusions about the status that Mexican law would attribute to the gestational carrier. On that view, the child in the Alicante case could be, simultaneously, solely his father's child under Mexican law and jointly his and the surrogate's under Spanish law. That divergence matters practically: a Mexican court asked to enforce the Spanish maintenance order might see the underlying "motherhood" it rests on as itself inconsistent with Mexican public policy, not merely as a foreign court applying stricter substantive rules.

Filiation is governed by Art. 9.4 CC, pointing primarily to the law of the child's habitual residence at the time when filiation is established, with nationality only a fallback. Maintenance is governed, per Spain's own conflicts rule (Art. 9.7 CC), by the 2007 Hague Protocol, whose Art. 3(1) points primarily to the creditor's habitual residence and which, per its Art. 2, applies even where the resulting law is that of a non-Contracting State. The press record is unclear on the relevant facts: the father is described both as Alicante-based and as working in Switzerland, and the child reportedly holds a Swiss passport. A passport evidences nationality, not habitual residence, and nationality isn't the operative factor for either rule, but if the family's actual centre of life was split between Spain and Switzerland, that bears on which law governed the 2024 filiation ruling in particular, made before the child's reported move to Spain.

If pursued in Mexico, recovery of the Spanish maintenance order would fall under the 1956 UN Convention on the Recovery Abroad of Maintenance (Mexico: party since 1992; Spain: since 1966), since the 2007 Hague Child Support Convention

doesn't bind Mexico and the 1989 Spain-Mexico bilateral convention expressly excludes maintenance from its scope. The Mexican authorities or courts would still have to apply the applicable Mexican rules governing recognition and enforcement, including any applicable public-policy limitations. However, the father has reportedly said he won't pursue enforcement of the order. The EU proposal on parenthood recognition does not solve this problem either. The proposal is designed to govern recognition of parenthood established in one Member State by another Member State; it expressly leaves recognition of parenthood established in a third State to national law. Negotiations on the proposal remain ongoing. Thus, even if adopted in its present basic structure, it would not govern recognition in Spain or elsewhere of a parent-child relationship established in Mexico.

The human rights angle

The case sits at an angle to the ECtHR's surrogacy jurisprudence. *Mennesson v. France* found a violation of Article 8 in respect of the children's right to respect for private life because of the failure to recognise their legal relationship with their biological father, while finding no violation as to the parents' own family-life claim; *Paradiso and Campanelli v. Italy*, on referral to the Grand Chamber, found no violation where the intended parents had no biological link to the child at all; *Valdís Fjölnisdóttir and Others v. Iceland* likewise found no violation in the non-recognition of a same-sex couple's intended parenthood, given the practical continuity secured through foster care. All three cases concern the position of intended or genetic parents seeking recognition, not, as in the Alicante case, the position of a gestational carrier who is treated as a legal parent for purposes of imposing parental obligations while her exercise of parental responsibility and contact with the child have been suspended or excluded

The ECtHR's 2019 Advisory Opinion concerning France (P16-2018-001]) further clarified that Article 8 does not require a State to register the details of a foreign birth certificate in order to recognise the legal relationship between a child born through gestational surrogacy and the intended mother. The Court held that another means of recognition, such as adoption, may satisfy the requirements of Article 8, provided that the procedure available under domestic law can be implemented promptly and effectively and in accordance with the child's best interests. The Advisory Opinion therefore leaves States a choice as to the legal mechanism through which the relationship with the intended mother is

recognised, rather than imposing direct registration as the only permissible solution.

The Alicante case raises a different question. Its human-rights significance lies not primarily in the refusal to recognise intended parenthood, but in the consequences of attributing legal motherhood to the gestational carrier. The Strasbourg case law does not appear to have addressed the precise question raised here: whether the attribution of legal motherhood to a gestational carrier may subsequently generate parental obligations, including maintenance, despite the absence of an intended parental relationship between that woman and the child.