European Courts of Human Rights

Bonzano v. Italy

(nº 10810/20)

WRITTEN OBSERVATIONS

by

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Introduction

Ordo Iuris Institute is a Polish non-governmental legal association founded in 2013 with its registered office at Zielna 39, Warsaw, Poland. Bringing together academics and legal practitioners on various projects, our organisation is dedicated to the protection and defence of a legal culture based on the respect for human dignity, rights and freedoms.

The application in *Bonzano v. Italy* concerns the refusal of the Italian authorities to transcribe in the Italian civil registers the American and Ukrainian birth certificates of children legally conceived in the United States and in Ukraine by surrogacy and whose commissioning parents (three homosexual couples and one heterosexual couple) are Italian, on the grounds that surrogacy is contrary to Italian law. The applicants – the parents and the children – allege a violation of Article 8, taken alone and in conjunction with Article 14 of the Convention.

I. Basic definitions

1. Surrogate motherhood is a contract under which a woman undertakes to get pregnant by *in vitro* fertilization, give birth to a child and transfer it to her principals, who are usually infertile couples, in exchange for remuneration (**commercial surrogacy**) or just refund (**altruistic surrogacy**). *In vitro* fertilization can be carried out using an egg cell of a surrogate mother and a sperm cell from a male client (**traditional surrogacy**), by using only gametes of clients or gametes of third parties unrelated to clients nor to surrogate mother (**gestational surrogacy**). In the last two cases, embryo, which is implanted into surrogate mother's uterus, has no genetic link to her. In such a case a child actually may have two or even three mothers: a woman who gave birth to it (biological mother), a woman from whom the egg was taken (genetic mother) and a woman who is going to take care of it (social mother). Couples who enter into surrogacy agreements are referred to as «intended parents» or «commissioning parents» and surrogate mother is often referred to as «rent mother» (*Mietmutter*) or even «womb for rent» (*utero in affito*).[1] Surrogacy is usually considered as an alternative for adoption, which gives couples or single persons the opportunity to fulfil their dream to have an own, genetically related child.[2]

[1] Ch. Mak, *Fundamental Rights in European Contract Law: A Comparison of the Impact of Fundamental Rights on Contractual Relationships in Germany*, *the Netherlands*, *Italy and England*, Wolters Kluwer International 2008, p. 258; L. Brunet, J. Carruthers, K. Davaki, D. King, C. Marzo, J.McCandless *A Comparative Study on the Regime of Surrogacy in EU Member States*, European Union 2013 [prepared at the request of the European Parliament's Committee on Legal Affairs], p. 23, 27, 275, http://www.europarl.europa.eu/RegData/etudes/STUD/2013/474403/IPOL-JURI_ET(2013)474403_EN.pdf (23.6.2022).

[2] Cf. N. Taub, *Sorting Through The Alternatives*, "Berkeley's Women's Law Journal", no. 4/1989, p. 285-299.

II. Surrogacy agreements in light of European and international law

2. In light of numerous soft law documents, surrogacy agreements contravene **European law** (the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, the European Convention on the Legal Status of Children Born out of Wedlock) and **international law** (the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption).

3. In 1989 Ad Hoc Committee of Experts on Progress in the Biomedical Sciences of the Council of Europe in its Human Artificial Procreation report condemned all kinds of surrogacy and declared that *[n]o physician or establishment may use the techniques of artificial procreation for the conception of a child carried by a surrogate mother* (principle 15.1). Moreover, it recommended that *[a]ny contract or agreement between surrogate mother and the person or couple for whom she carried the child shall be unenforceable* (principle 15.2).[3]

4. From the perspective of the European law, it must be noted, that Oviedo Convention clearly prohibits acts of commercialisation of woman's body such as surrogacy – it results from Article 21: *[t]he human body and its parts shall not, as such, give rise to financial gain*. In turn, Article 2 of the European Convention on the Legal Status of Children Born out of Wedlock, maternal affiliation of a child *shall be based solely on the fact of the birth of the child*. The latter provision seems to oppose not only the commercial, but also the so-called 'altruistic' surrogacy – in both cases the arrangement is claimed to diminish biological motherhood of a surrogate mother and put 'social' motherhood of a commissioning parent instead.

Although the Council of Europe was unable to adopt uniform position on the surrogacy, the overwhelming majority always favoured prohibiting at least the commercial surrogacy.[4]

5. In 2011 the European Parliament asked Member States of the European Union to acknowledge the serious problem of surrogacy which constitutes *an exploitation of the female body and her reproductive organs* and emphasised that *women and children are subject to the same forms of exploitation and both can be regarded as commodities on the international reproductive market, and that these new reproductive arrangements, such as surrogacy, augment the trafficking of women and children and illegal adoption across national borders*.[5]

In 2015 the European Parliament again condemned the practice of surrogacy, because it *undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity*. The Parliament underlined, that the practice of gestational surrogacy

[3] *Report on Human Artificial Procreation Principles set out in the report of the Ad Hoc Committee of Experts on Progress in the Biomedical Sciences (CAHBI)*, 1989, https://rm.coe.int/16803113e4 (23.6.2022).
[4] See *An update on the work of the Hague Conference on Private International Law*, Mededelingen van de Koninklijke Nederlandse Vereniging voor Internationaal Recht 2017, No. 144, pp. 102–103 and footnotes 32–33.
[5] European Parliament resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women (para. 20-21), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0127+0+DOC+XML+V0//EN (23.6.2022).

which *involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments*.[6]

6. In accordance with Article 2(a) of the Optional Protocol to the Convention on the Rights of the Child sale of children means *any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration*. It applies not only to commercial surrogacy, in which a child is conceived and born in exchange for remuneration, but also to "altruistic" one, in which surrogate mother receives «other consideration» in form of refund of expenses related to pregnancy. Many United Nations bodies addressed commercial surrogacy as a problem of sale of children, which should be unequivocally condemned. For instance, in 2013 the UN Committee on the Rights of the Child expressed concern that American laws still tolerate or allow commercial surrogacy: *Ambiguous definitions and legal loopholes persist despite the new accreditation act, such as for example the fact that payments before birth and other expenses to birth mothers, including surrogate mothers, continue to be allowed, thus impeding effective elimination of the sale of children for adoption.*[7]

In 2018 the UN Special Rapporteur to the Human Rights Council pointed out that **California** and other jurisdictions in the United States are centres for commercial international surrogacy arrangements, as are Georgia, the Russian Federation and **Ukraine**, creating a different set of cross-border relationships. The most prohibitionist jurisdictions, such as France and Germany, ban all forms of surrogacy, including commercial and altruistic, and traditional and gestational. Most jurisdictions with laws governing surrogacy, including Australia, Greece, New Zealand, South Africa and the United Kingdom, prohibit "commercial", "for-profit" or "compensated" surrogacy, while explicitly or implicitly permitting "altruistic" surrogacy. Only a small minority of States explicitly permit commercial surrogacy for both national and foreign couples thereby choosing to become centres for both national and international commercial surrogacy. At the same time, Georgia, the Russian Federation and Ukraine, and some states in the United States, have for a sustained period of time chosen to remain centres for international surrogacy arrangements.[8]

However, although question of surrogacy agreement is a topic of discussion within the international community, there is – according to the Special Rapporteur - one principle that remains undisputable: all States are obligated to prohibit the sale of children, and to create safeguards to prevent it.. While the imperative to prohibit and prevent the sale of children

[6] European Parliament resolution of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter (point 115), http://www.europarl.europa.eu/doceo/document/TA-8-2015-0470_EN.html (23.6.2022).
[7] CRC, 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, adopted by the Committee at its sixty-second session, §29 (a), https://undocs.org/en/CRC/C/OPSC/USA/CO/2 (23.6.2022).
[8] Report of the UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, document no. A/HRC/37/60, §14-15, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/007/71/PDF/G1800771.pdf?OpenElement (23.6.2022).

does not provide answers to all policy debates over surrogacy, it does narrow the scope of permissible approaches. The Special Rapporteur highlights that *[s]urrogacy, in particular commercial surrogacy, often involves abusive practices. Furthermore, it involves direct challenges to the legitimacy of human rights norms, as some of the existing legal regimes for surrogacy purport to legalise practices that violate the international prohibition on sale of children, as well as other human rights norms. Moreover, many of the arguments provided in support of these legal regimes for commercial surrogacy could, if accepted, legitimate practices in other fields, such as adoption, that are considered illicit. Thus, if this type of governing legal regime becomes accepted, whether as international or national law, or through recognition principles, it would undermine established human rights norms and standards.*[9]

7. By virtue of Hague Adoption Convention, States are obliged to ensure that adoption shall take place, if the consent of a mother has not been induced by payment or compensation of any kind (Art. 4-c-3) and that it has been given only after the birth of the child (Art. 4-c-4). It opposes most of surrogacy agreements, which are usually concluded before the conception of a child.

Practice in other countries

Italy

8. In 2019 the Court of Cassation in Italy ruled that the man who was not the biological father of the child could not be registered in Italy as the parent, even though he had been recognised as such in the state where the child had been born. It stated the ruling "protects the pregnant woman and the institution of adoption". The Court of Cassation added, however, that the non-biological father could eventually become the child's parent through a "special adoption" procedure.[10]

Germany

9. In 2017 the Supreme Court in Germany indicated that entering the biological mother of a child into a birth certificate as a father would violate the rights of the child, in particular the right to know his identity, the right to determine paternity in the future and the right to keep information about his or her parents' transsexualism in secret.[11]

Switzerland

10. In 2015 the Federal Court in Switzerland ruled that the registered male partner of the genetic father of the child born from surrogacy in California may not be registered as a parent

[9] *Ibidem*, §24.
[10] Judgment of the Italian Court of Cassation of 8 May 2019, Ref. No. 12193.
[11] Judgments of the Federal Supreme Court (*Bundesgerichtshof*) of 6 September 2017, XII ZB 660/14 and of 29 November 2017, XII ZB 459/16.

in the Swiss civil registry. The recognition of the US court's judgment establishing fictional paternity of the genetic father's partner would be incompatible with the Swiss public policy.[12]

France

11. In 2017 the Court of Cassation in France refused to request that French authorities automatically recognised the two parents listed in the foreign birth certificate. The non-biological parent must adopt the child to become his or her legal parent, which applies also to heterosexual couples. An "intended mother" or "intended father" cannot be automatically recognised as the mother of the child.[13]

ECtHR case-law in surrogacy cases

12. The Court recognises that there is no consensus in Europe on the lawfulness of surrogacy arrangements or the legal recognition of the relationship between commissioning parents and children conceived abroad. According to the Court, this lack of consensus confirms that the States must in principle be afforded a margin of appreciation regarding the decision not only whether or not to authorise this method of assisted reproduction, but also whether or not to recognise a legal parent-child relationship between children legally conceived as the result of a surrogacy arrangement abroad and the commissioning parents.[14]

The Court acknowledges that national ban on surrogacy protects: 1) the interests of women who might be pressured into surrogacy, 2) the rights of children to know their natural parents[15] and sometimes also 3) prevention of disorder and crime, especially if national law attaches criminal liability for violating ban on surrogacy[16].

13. Existence of genetic connection between a child and a commissioning parent seems to be a significant criterion to establish a right to legal recognition of relationship between them. In *Paradiso and Campanelli*, the Court stated that short relationship without any biological tie between the child and the commissioning parents, does not constitute «family life» within the meaning of the Article 8 of ECHR.[17] Such relationship can fall within the ambit of right to respect for private life, but the State may refuse to recognise it.[18] In *Mennesson v. France* the Court ruled that the refusal to enter a foreign birth certificate into the civil registry because of the fact that two children (twins) were conceived as part of a surrogate agreement, which was considered void by domestic law, violates their right to respect for private life. The Court took into consideration special dimension that one of the commissioning parents was also the twins' biological father. Moreover, the Court stressed that not only was the relationship between the twins and their biological father not recognised when registration of the details

[12] Judgment of the Swiss Federal Court of 21 May 2015, Ref. No. 5A_748/2014.
[13] Judgment of the French Court of Cassation of 5 July 2017, Ref. No. 16-16.901. See also judgment of 29 November 2017, Ref. No. 16-50.061.
[14] However, the Court avoids to acknowledge that these margin of appreciation is **wide.** See judgments of: 26 January 2014, *Mennesson v. France*, §78-79; 18 May 2021, *Valdís Fjölnisdóttir and Others v. Iceland*, §69-80; 24 March 2022, *A.M. v. Norway*, §131.
[15] *Valdís Fjölnisdóttir and Others v. Iceland*, §65.
[16] *A.M. v. Norway*, §124.
[17] Judgment of 24 January 2017, *Paradiso and Campanelli v. Italy* (Grand Chamber), §157-158.
[18] *Paradiso and Campanelli v. Italy*, §175-178.

of the birth certificates was requested, but formal recognition by means of a declaration of paternity or adoption or through the effect of de facto enjoyment of civil status would fall foul of the prohibition established by the Court of Cassation in its case-law in that regard.[19] The Court also stated that the refusal to enter a foreign birth certificate into the civil registry on these grounds does not violate the right to respect for the family life of the commissioning parents, of which only one is a biological (in genetic sense) parent. The Court took into consideration that the applicants had been able to settle in France shortly after the birth of the third and fourth applicants, that they were in a position to live there together in conditions broadly comparable to those of other families, and that there was nothing to suggest that they were at risk of being separated by the authorities on account of their situation under French law.[20]

In *A.M. v. Norway* the Court accepted the view of Norwegian High Court that the former partner of the biological father of the child born in result of illegal surrogacy agreement has no legal right to be recognised by the state as legal mother, in the same way as if she had been his biological mother. According to the High Court, the Convention does not give intended parents an independent basis for establishing parentage or family life. The Court's judgments pronounced on 26 June 2014 in the case of *Mennesson* had concerned a different situation than the one brought before the High Court. In the case of *Mennesson*, the Court had concluded that there had been no violation of the right to family life or the intended parents' right to private life. The only right violated had been the child's right to respect for private life. The intended parents in that case had been married when the surrogacy agreement was entered into and when the US court decision that recognised them as parents was pronounced. They were still married when the Court pronounced judgment in the case – 14 years later. Therefore, the rule provided for in domestic law that a child may be adopted only with the consent of the parent does not infringe Art. 8 of the Convention[21].

14. The Court also takes into account whether refusal of recognition interrupts actual enjoyment of the family life between commissioning parents and a child. If not, there is no violation of the Article 8 of the Convention[22].

15. In its advisory opinion no. P16-2018-001, the Court observed that surrogacy arrangements are permitted in 9 of 43 States covered by a comparative-law survey, that they appear to be tolerated in a further 10 and that they are explicitly or implicitly prohibited in the remaining 24 States. Furthermore, in 31 of the States concerned, including 12 in which surrogacy arrangements are prohibited, it is possible for a commissioning father who is the biological father to establish paternity in respect of a child born through surrogacy. In 19 of the 43 States (Albania, Andorra, Armenia, Azerbaijan, Belgium, the Czech Republic, Finland, Georgia, Germany, Greece, Luxembourg, the Netherlands, Norway, Russia, Slovenia, Spain, Sweden, Ukraine and the United Kingdom), including 7 which prohibit surrogacy arrangements

[19] *Mennesson v. France*, §100-101.
[20] *Mennesson v. France*, §92.
[21] Judgment of 24 March 2022, *A.M. v. Norway*, §76 and §126-135.
[22] *Fjölnisdóttir v. Iceland*, §71.

(Finland, Germany, Luxembourg, Norway, Slovenia, Spain and Sweden), it is possible for the commissioning mother to establish maternity of a child born through a surrogacy arrangement to whom she is not genetically related.[23]

16. Bearing in mind lack of consensus among Member States and minimal standards of the Convention, the Court delivered an opinion, according to which when a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the commissioning father and a third-party donor, and where the legal parent-child relationship with the commissioning father has been recognised in domestic law:

- "the child's right to respect for private life within the meaning of Article 8 of the Convention requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the «legal mother»;" and
- "the child's right to respect for private life within the meaning of Article 8 of the Convention does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used provided that the procedure laid down by domestic law ensures that it can be implemented promptly and effectively, in accordance with the child's best interests."[24]

17. However, in the context of surrogacy arrangements, the child's best interests do not merely involve respect for these aspects of his or her right to private life. They include other fundamental components that do not necessarily weigh in favour of recognition of a legal parent-child relationship with the spouse/partner of the biological parent, such as protection against the risks of abuse which surrogacy arrangements entail.[25] Consequently, the Court **opposes only the general and absolute impossibility of obtaining recognition** of the relationship between a child born through a surrogacy arrangement entered into abroad and the spouse/partner of the biological parent.[26] This statement is consistent with the earlier line of jurisprudence, according to which Article 8 of the Convention does not guarantee « the right to adopt» or « the right to found a family».[27]

Main conclusions of ECtHR position

18. Four conclusions can be drawn from the cited case-law:

19. Firstly, the legalization or outlawing of surrogates falls within the margin of appreciation of the Member States. In other words, the Convention does not guarantee «the right to surrogacy». The Member States can either allow or ban surrogacy.

[23] 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 (request no. P16-2018-001), §23.
[24] Points 1-2 of the opinion (ending part).
[25] §41 of the opinion.
[26] §42 of the opinion.
[27] Judgments of: 26 February 2002, *Fretté v. France*, §32; 22 January 2008, *E.B. v. France* (Grand Chamber), §41; 27 April of 2010, *Moretti and Beneditti v. Italy*, §47.

20. Secondly, the basis for recognition of the relationship between a child and a parent in the broad sense is the existence of a genetic, legal or emotional bond between them. The state is under no obligation to recognize relationships in which this kind of bond has not arisen. The biological parents are in the strongest position. The state must in principle recognize a genetic relationship, even if a child was conceived under a foreign surrogate agreement in breach of domestic law. In a situation where it is known that a surrogate mother who resides abroad has waived her parental rights to a child, a child should not be punished for breaking the law by its parents in the broad sense.

21. Thirdly, people caring for a child, but not related to it, are in a weaker position. There is a *sui generis* presumption that the parental rights of unrelated persons are subordinated to the rights of biological parents, unless the best interest of the child in the specific circumstances of the case justifies a different solution. In the absence of a genetic link, recognition of the child-parent relationship in the broad sense depends on the conditions provided for by national law, in particular the consent of the biological parent to adoption.

22. Fourthly, Article 8 of the Convention does not impose requirements on the Member States as to the very form of legal recognition of the child-parent relationship in the broad sense. The relationship between the child and the unrelated partner of the biological parent may be recognized through adoption, an appropriate entry in the birth certificate or any other equivalent method provided for in national law.

Ordo Iuris comments

23. First of all, the most fundamental question the Court must give answer to is: if the Convention does not guarantee the «right to surrogacy» (because States are free to authorise or to prohibit it), is it logical to assume that the same Convention confers the «right to recognise effects of surrogacy»? In the opinion of the Ordo Iuris Institute, positive answer would contradict the rule that qualifies surrogacy as controversial matter, falling within margin of appreciation of the States. Therefore if national authorities are entitled to ban surrogacy to prevent public disorder and protect rights and freedoms of children and women, who are used as “surrogates for rent”, the State should be also authorised to do «less than that»: to refuse to recognise legal effects of foreign surrogacy agreements (*argumentum a maiori ad minus*).

24. If the Court does not share this view the Ordo Iuris Institute will respectably ask to at least take into consideration that the right to respect for private and family life encompasses the right to legal recognition of biological, genetic or emotional connection that exists between a child and another person, e.g. their relative, parent or guardian. A recognition of potential relationship (a desire to establish a family), which may possibly arise in the future, falls outside the scope of application of Article 8 of the Convention.

25. In the case of a gestational surrogacy, in which the gamete of one of the commissioning parents was used, there is a genetic link between the child and that parent, which may give rise to demand of its legal protection, if it is in the best interest of the child, e.g. in the form of

entering the genetic parent into a birth certificate. At the same time, the child in such situation is not in any way (neither genetic nor emotional) related to the partner of the genetic parent – an emotional relationship may possibly arise in the future, when the child become older and aware of his/her feelings to the spouse/partner of his/her parent. In the case of gestational surrogacy, in which the child was conceived using both gametes from anonymous donors, there is no genetic relationship between the child and the commissioning parents, and the emotional bond does not yet exist, but it may only develop in the future.

26. In short, there is no legal basis to argue that the best interest of the child automatically requires a State to grant adoption to the spouse/partner of child's parent.

27. Secondly, in light of the ECtHR case-law Article 8 of the Convention – as a general rule - obliges Member States to legally recognise the existing relationship between the child and his or her (biological or non-biological) parent, but the form of this recognition is determined through domestic law under which a given Member State enjoys a margin of appreciation.

28. Member State may recognise the legal relationship between a child and a biological parent's partner:

(a) through an entry in the birth registry;

(b) in the form of an adoption concluded through e.g. a court decision, which is not recorded in the birth certificate;

(c) in the form of an adoption concluded through e.g. a court decision, which is recorded in the birth certificate; in such a case, the annotation on the birth certificate may refer to the adoptive parent as "father" or "mother", but also as "parent";

(d) in a different manner provided for by domestic law.

29. However, the best interest of the child has priority over the interests of parents (be they biological, genetic or adoptive). The best interest of the child does not necessarily require that it will remain under care of commissioning parents – sometimes it will be in its best interest to be adopted by foster family.

Conclusions

30. In view of the above, the following conclusions should be made:

a) In light of the international soft law documents commercial surrogacy leads to undermining of the human dignity of the woman since her body and its reproductive functions are used as a commodity. Moreover, the fact that payments before birth and other expenses are given by commissioning parents to surrogate mothers attests that commercial surrogacy constitutes sale of children withing the meaning of the Optional Protocol to the Convention on the Rights of the Child. Although the Council of Europe was unable to adopt uniform position on the surrogacy as such, the overwhelming majority always favoured prohibiting at least **commercial** surrogacy.

b) The case-law of European courts shows opposition against granting parental rights to the person who is not biologically related to child, on the sole basis that he/she was party to the surrogacy agreement conducted abroad.
c) In light of the ECtHR case-law the basis for recognition of the relationship between a child and a parent in the broad sense is the existence of a genetic, legal or emotional bond between them. The state is under no obligation to recognize relationships in which this kind of bond has not arisen. The biological parents are in the strongest position.
d) People caring for a child, but not related to it, are in a weaker legal stand. There is a *sui generis* presumption that the parental rights of unrelated persons are subordinated to the rights of biological parents, unless the best interest of the child in the specific circumstances of the case justifies a different solution. In the absence of a genetic link, recognition of the child-parent relationship in the broad sense depends on the conditions provided for by national law, in particular the consent of the biological parent to adoption.
e) Article 8 of the Convention does not impose requirements on the Member States as to the very form of legal recognition of the child-parent relationship in the broad sense. The relationship between the child and the unrelated partner of the biological parent may be recognized through adoption, an appropriate entry in the birth certificate or any other equivalent method provided for in national law.
f) The ECtHR opposes only the general and absolute impossibility of obtaining recognition of the relationship between a child born through a surrogacy arrangement entered into abroad and the spouse/companion of the biological parent. Therefore, the States must in principle be afforded a wide margin of appreciation, regarding the decision whether or not to recognise a legal parent-child relationship between children legally conceived as the result of a surrogacy arrangement abroad and the commissioning parents.
g) The best interest of a child does not necessarily require that it will remain under care of commissioning parents – sometimes it will be in its best interest to be adopted by foster family.