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DONOR ASSISTED REPRODUCTION AND SURROGACY IN BELGIUM: EQUAL ACCESS TO PARENTHOOD AND POLICY COHERENCE

Abstract: During the last few years, Belgium has demonstrated an ongoing concern for equal access of homosexual couples to parenthood. As far as lesbian couples are concerned, equality seems now to be achieved. The 2007 law on medically assisted reproduction allows fertility centers to define their own policies as to the access to artificial insemination and in vitro fertilization and lesbian partners may easily find a center agreeing to perform these techniques in view of realizing their parental project. When it comes to parenthood, the Belgium legislature recently allowed to establish a legal tie between the non-biological mother and the child directly by presumption (when the lesbian couple is married) or by recognition or judicial establishment (for unmarried couples). Things remain different for gay couples, in the absence of any legal regulation of surrogacy. Nevertheless, since surrogacy is not forbidden, at least two Belgian fertility centers accept to perform surrogacy for gay couples. Moreover, Belgian courts now generally accept to grant applications tending to establish parenthood through adoption. This contribution suggests that, for the sake of equality and coherence, the legislature should clearly affirm the principle that contractual commitment is the fundamental cornerstone of legal parenthood in the ART context for heterosexual couples as well as for (all) homosexual couples and for insemination and in vitro fertilization as well as for surrogacy.

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1. — *Introduction*[1].

Same sex families based on donor assisted reproduction or surrogacy open the door to huge challenges for family law as they tend to weaken the traditional conception of legal parenthood based on biology and tend to support the idea that legal ties between adults and children should be based on intention or responsibility rather than on biology.

In 2003, Belgium was the second country to legalise same-sex marriage after the Netherlands in 2001. Over the last ten years, Belgium has demonstrated an ongoing concern for equal access to parenthood for homosexual couples.

The first important step was the Same-sex Adoption Act 2006 permitting the joint adoption of a child by a homosexual couple as well as the adoption by the partner of the other partner's child. Same-sex spouses are thus allowed to adopt as well as same-sex registered partners and same-sex de facto partners. However, as demonstrated by official statistics, it is not easy for homosexual partners to become adoptive parents. The number of adoptions by same-sex couples is slowly growing, but the rate remains globally low. So, naturally these couples tend to turn to assisted reproductive technology (hereinafter ART).

The Assisted Reproduction Act 2007[2] regulates the use of artificial insemination and *in vitro* fertilisation[3] in a highly liberal way and allows lesbian women to become parents through ART with donated sperm. Furthermore,

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[1] The authors want to thank Gwendoline Motte for her careful rereading of the draft version of this contribution.

[2] Loi du 6 juillet 2007 relative à la procréation médicalement assistée et à la destination des embryons surnuméraires et des gamètes, in *Moniteur belge*, 17 juillet 2007, p. 38575. All legal texts cited in this chapter are available on the website of the Belgian Ministry of Justice (*http://www.ejustice.just.fgov.be/loi/loi.htm*).

[3] The law defines ART as «all terms and conditions of the application of new medical technologies that aid reproduction in which one of the following are performed: 1° artificial insemination, or 2° an in-vitro fertilization technique, that is to say a technique in which, at some point during the procedure, access is given to the egg and/or the embryo».

since the adoption of the Comaternity Act 2014[4], it has become much easier for women couples to have legal parenthood established with regard to the child as they no longer have to go through the adoption process.

Because of its controversial nature, surrogacy was excluded from the scope of the 2007 legislation and remains currently unregulated in Belgium. However, some fertility clinics already accept to implement surrogacy as the practice is neither authorised nor prohibited and Belgian judges are now inclined to use the ordinary rules of legal parenthood and adoption to create a legal link between the intended parents and the child.

This contribution describes how heterosexual and homosexual couples can fulfil their desire to have a child through ART (I) or surrogacy (II) and be designated as this child's legal parents and puts forward a few thoughts on how further legislation should be adopted in order to achieve a truly equal and consistent legal framework.

2. — *ART with sperm, egg or embryo donation.*

2.1. – *Access to ART.*

The Assisted Reproduction Act 2007 was mainly designed to legalise the practices already implemented by the approved fertility centres[5] which varied – and still vary – depending on the particular ethical, religious, or philosophical sensibilities of the medical centres and the guidelines established by their local ethics committee.

Accordingly, the law defines the author(s) of a parental project very widely as «any person who has made the decision to become a parent

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[4] Loi du 5 mai 2014 portant établissement de la filiation de la coparenté, in *Moniteur belge*, 5 mai 2014, p. 51703.

[5] The organisation and funding of these centres is regulated by a royal decree (Arrêté royal du 15 février 1999 fixant les normes auxquelles les programmes de soins «médecine de la reproduction» doivent répondre pour être agréés, in *Moniteur belge*, 25 mars 1999, p. 9556).

through an assisted reproductive procedure, regardless of whether the technique was performed with his or her own gametes or embryos»[6].

The law nevertheless provides some age-based medical restrictions. Applications for gametes insemination or embryo implantation are only open to adult women aged 45 or under and they must be maximum 47 years old at the time of insemination or implantation. Egg retrieval cannot be performed on a woman after she has reached the age of 45[7].

The law also provides a few fundamental ethical limits. For instance, eugenics and sex selection are expressly prohibited[8] unlike post-mortem insemination or implantation which are authorised if it has been provided for in the ART agreement and if it is performed between six months and two years after the death[9].

Beyond these fundamental medical and ethical rules, the Assisted Reproduction Act does not contain any restriction as to who may apply for ART treatment. Accordingly, anyone, irrespective of his or her couple status, sexual orientation or nationality[10] may contact an approved fertility centre in view of starting a parental project.

However, notwithstanding the limited conditions relating to age or ethics which are outlined in the law, the fertility centres are free to decide which ART treatments they perform and for whose benefit[11]. Accordingly, if a fertility centre does not want to offer its medical services to homosexual couples, it can rely on a "conscience clause" specifically provided by article 5 of the Belgian law.

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[6] Article 2, f), of the Law of 6 July 2007.

[7] Article 4 of the Law of 6 July 2007.

[8] Articles 23 and 52 of the Law of 6 July 2007.

[9] Articles 15, 16, 44 and 45 of the Law of 6 July 2007.

[10] The law does not require the applicants to be Belgian nationals or Belgian residents in order to access ART in Belgium and this has generated many ART applications initiated by people from abroad, notably from France.

[11] See notably M.N. Derese, G. Willems, *La loi du 6 juillet relative à la procréation médicalement assistée et à la destination des embryons surnuméraires et des gametes*, in *Rev. trim. dr. fam.*, 2008, 2, p. 283 s.

Each centre must be consistent and transparent about the types of parental projects it agrees to support. When a centre refuses an application, it must do so in writing and it must provide the contact details of another centre more likely to implement the parental project. If the application is accepted, accurate information and counselling is then provided to the intended parents as well as a contract covering all aspects of the project (including the fate of potential supernumerary embryos) [12].

This profoundly liberal legal framework applicable to ART is a remarkable example of the tendency of Belgian law to recognise and protect pluralism and to heavily rely on the medical profession to deal with controversial bioethical issues.

2.2. – *Parenthood after ART.*

Unfortunately, the Assisted Reproduction Act 2007 exclusively deals with access to ART, without properly addressing the issue of the legal parenthood of the child. This flaw generates significant negative consequences for intended parents using donated gametes or embryos [13].

Articles 27 and 56 of the law only provide that donors cannot claim legal parenthood nor any of its financial consequences and that, in reverse, no claim can be brought against them by the intended parents. This means that the sperm, egg or embryo donors may under no circumstance be regarded as the child's legal parents.

Articles 27 and 56 also state that in case of gametes or embryo donation, «the rules on legal parenthood contained in the Civil Code shall be

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[12] See the Law of 6 July 2007, notably articles 6 ss.

[13] Gametes and embryo donation is free and – in most cases – anonymous. A non-anonymous gametes donation (though not an embryo donation) is possible in the case of an agreement between the donor and the recipient(s) (articles 22 and 57 of the Law of 6 July 2007). For more details concerning the question of anonymity in Belgian law, see notably G. Mathieu, *Le secret des origines en droit de la filiation*, Waterloo, 2014; G. Schamps, M.N. Derese, *L'anonymat et la procréation médicalement assistée en droit belge. Des pratiques à la loi du 6 juillet 2007*, in B. Feuillet (dir.), *Procréation assistée et anonymat – Panorama international*, Bruxelles, 2008, pp. 125-152.

interpreted in favour of the author(s) of the parental project». Hence, legal parenthood must be established according to the traditional rules of the Civil Code interpreted in the most favourable way for the intended parents.

However, the traditional provisions of the Civil Code are based on biology and – obviously – are very inappropriate for ART with gamete or embryo donation. This could lead to considerable problems for heterosexual couples as well as for lesbian couples.

2.3. – *Heterosexual couples.*

When a heterosexual couple receives donated gametes or embryos in view of a heterologous insemination or *in vitro* fertilisation, the child's legal parenthood is established according to the classical rules governing maternity and paternity.

Establishing the child's maternity will never present any particular difficulty since under the Belgian law, the legal mother is the woman who gives birth to the child (*mater semper certa est*). Indeed, in cases of ART with egg or embryo donation, the intended mother will still bear the child and will therefore automatically be considered as the legal parent even if she is not the genetic parent[14].

In most cases, the child's legal paternity will also easily be established even if the child results from sperm or embryo donation. If the intended parents are married, the husband will automatically become the legal father of the child on the basis of the presumption of paternity (*pater is est quem nuptiae demonstrant*)[15]. If they are not married, the intended father can acknowledge the child with the consent of the mother[16].

However, things can get more complicated if the intended parents separate during the gestation period and argue either because the mother does not want the man to be the father anymore or because the man does not

[14] Article 312 of the Belgian Civil Code.

[15] Article 315 of the Belgian Civil Code.

[16] Article 329 et seq. of the Belgian Civil Code.

want to be the father anymore. If they are married, the presumption of paternity still applies and cannot be challenged successfully even if the husband is not genetically related to the child (art. 318, § 4, CC). But if they are not married, neither the man nor the woman will be able to obtain judicial establishment of paternity because the decisive element is currently the existence or absence of a biological link.

Accordingly, in case of ART with sperm or embryo donation, there is a substantial risk that, if a conflict arises between unmarried intended parents, the mother's partner will not be designated as the father even if he has been a part of the parental project since the very beginning and had signed the ART contract with the mother and the fertility centre.

2.4. – *Lesbian couples.*

Before the adoption of the 2014 Comaternity Act, things were somewhat complicated for lesbian partners who used ART with sperm or embryo donation to become parents since their only option was to go through an adoption process.

Of course, the woman who bore the child was automatically considered as the legal mother, but the second woman had no other choice than to adopt the child. This implied several disadvantages as not only did the adopting woman have to follow the whole process of preparation to adoption, but on top of that, the adoption could only take place two months after the child's birth. Nevertheless, in the cases where, after the birth, the intended mothers were still a couple and/or still agreed on becoming the two legal mothers of the child, adoption could work out well for them and could therefore be considered as a rather satisfying solution. Nevertheless, it could be considered as a quite satisfying solution if, after the birth, the intended mothers were still a couple and/or still agreed on becoming the two legal mothers of the child.

However, substantial problems occurred when the relationship broke down before or shortly after the child's birth: if the biological and legal mother no longer wanted her ex-partner to become the child's adoptive

parent, she could simply refuse to consent to the adoption; if the ex-partner no longer wanted to become the child's adoptive parent, the mother had no possibility of forcing her to take responsibility for the child.

In 2014, the Belgian legislature decided that it was inappropriately burdensome for the second mother to be obliged to establish her legal parenthood through adoption and created a brand new model for lesbian parenthood which allows the child to have, from its birth, two legal mothers (or – more precisely – a mother and a "co-mother").

The biological mother will still automatically be considered as the legal mother by application of the maternity presumption. If she is married, her same-sex spouse will automatically be considered as the legal co-mother of the child on the basis of a new co-maternity presumption[17]. If the mother is not married, her registered partner or *de facto* partner will only have to acknowledge the child before the civil registrar with the mother's consent[18].

Of course, in case of relationship breakdown, conflicts may still arise between the two women. However, if a dispute arises, the family court will, in most cases, decide that co-maternity must be maintained (in case of a married couple) or established (in case of an unmarried couple). Indeed, co-maternity is based on consent: if two women contractually agreed to engage together in an ART process and if there is no doubt that the birth of the child is the consequence of this process, both women must be considered as the child's legal parents.

3. — *Surrogacy.*

3.1. – *Access to surrogacy.*

There is currently no regulation of surrogacy in Belgium. Therefore, surrogacy is neither authorised nor prohibited and, in such a legal vacuum, a limited number of fertility centres accept to implement surrogacy agreements.

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[17] Art. 325/2 of the Civil Code.

[18] Art. 325/4 of the Civil Code.

The implementation of a surrogacy agreement in a fertility centre requires an artificial insemination or an *in vitro* fertilisation. As a consequence, the medical and ethical principles laid down by the Assisted Reproduction Act 2007 must be respected.

A surrogacy process carried out in a fertility centre is necessarily altruistic by nature because commercial surrogacy is prohibited in Belgium pursuant to the civil and criminal law principle prohibiting the commercialisation of the human body.

Fertility centres that perform surrogacy obviously remain free to define the conditions under which they accept to implement a surrogacy agreement according to their own ethical approach and values[19]. Such conditions may for instance concern: the expected profile of the intended parents (single woman, single man, heterosexual couples, homosexual couples); the expected profile of the surrogate (whether she should be a relative or a friend of the intended parents); the requirement that the intended parents are able to provide all or at least some of the genetic material (eggs, sperm, both); the requirement that the surrogate has previously built her own family; residence or nationality requirements[20].

In 2014, the Belgian Parliament commissioned the Senate to elaborate a report on the opportunity of establishing a legal framework for surrogacy. The report was issued in December 2015[21]. It contains nearly three hundred pages and contains an in-depth analysis of the legal and ethical issues related to surrogacy. About twenty five experts were heard and all political groups were asked to express their position on the subject.

Most political groups agree that only commercial surrogacy should be

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[19] See also M.N. Derese, *L'accès à la gestation pour autrui*, in G. Schamps, J. Sosson (dir.), *La gestation pour autrui: vers un encadrement?*, Bruxelles, 2013, pp. 293-323.

[20] See notably C. Autin, *Gestation pour autrui: expérience d'un centre belge de procréation médicalement assistée*, in G. Schamps, J. Sosson (dir.), *La gestation pour autrui: vers un encadrement?*, cit., pp. 9-21.

[21] Rapport d'information concernant l'examen des possibilités de créer un régime légal de coparentalité fait au nom de la Commissions des affaires institutionnelles par M. Mahoux et consorts, *Documents parlementaires*, session ordinaire 2015-2016, n. 6-98/2 (the report is available on the Senate website (*http://www.senate.be*).

prohibited, while non-commercial surrogacy should be allowed and regulated [22].

Moreover, there is a strong political agreement on the idea that surrogacy should be open both to heterosexual couples and homosexual couples. A vast majority of the political groups also agree on the idea that surrogacy agreements should be approved by the family court before their implementation. Similarly, all political groups consider that at least one of the intentional parents should provide his or her own gametes. However, divergences remain as to whether partial surrogacy as well as full surrogacy should be authorised.

This report now provides the basis for a discussion in the House of Representatives [23] but because the current legislature is coming to an end it is impossible to say if and when such a discussion will be held.

3.2. – *Legal parenthood.*

From a civil law perspective surrogacy contracts are generally considered to be void which means that they cannot be enforced. This means that the surrogate mother can never be obliged to hand over the child to the intended parents and that the intended parents cannot be obliged to welcome the child into their home [24]. However, if both parties maintain their original intentions, Belgian judge now generally accept to use the traditional rules relating to legal parenthood and adoption to integrate the child in his intended family.

In any case, the name of the woman who carried the child must ap-

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[22] The only party which considered that surrogacy should not be legally regulated was the CDH ("Centre Démocrate Humaniste") which referred to the precautionary principle and advocated the blanket prohibition of surrogacy in Belgium (see notably the above-mentioned Senate report, p. 339).

[23] At least one draft bill is currently pending (for a summary of all the bills that have been formally introduced before, see the above-mentioned Senate report, p. 291 s.).

[24] See notably N. GALLUS, *La validité de la convention de gestation pour autrui en droit belge actuel*, in G. SCHAMPS, J. SOSSON (dir.), *La gestation pour autrui: vers un encadrement?*, cit., p. 181 s.

pear on the birth certificate and this automatically establishes legal parenthood[25]. The surrogate is thus automatically designated as the legal mother of the child regardless of whether she is solely the gestational mother or also the genetic mother.

In case where surrogacy is performed for the benefit of a heterosexual couple, the intended father can legally acknowledge the child[26] and the intended mother can adopt the child. The intended parents may also adopt the child jointly. Acknowledgment and adoption will always require the consent of the surrogate mother.

The same applies to homosexual intended parents. Irrespective of their gender, they will be able to become legal parents through acknowledgment and adoption or through joint adoption. However, in Belgium, only two fertility centres currently accept to implement surrogacy for homosexual couples, while most of the time lesbian partners do not need surrogacy to fulfil their desire to be parents.

After some initial reluctance (especially in cases where the surrogate was the genetic mother of the child[27]), most Belgian courts[28] now consider that there is no reason to refuse to pronounce the adoption of a child born through domestic and altruistic surrogacy cases[29]. As a consequence,

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[25] Articles 57 and 312 of the Belgian Civil Code. Some French couples come to enter into a surrogacy agreement with a French surrogate mother. Back in France, they use the possibility offered by French law to give birth anonymously, which is not possible in Belgium.

[26] Article 329-*bis* of the Civil Code.

[27] Ghent Court of Appeal (15th chamber), 16 January 1989, *Tijdschrift voor Gentse Rechtspraak*, 1989, p. 52.

[28] See notably, in chronological order: Brussels Youth Court, 4 June 1996, *Jurisprudence de Mons, Liège et Bruxelles*, 1996, p. 1182; Turnhout Youth Court, 4 October 2000, *Rechtkundig Weekblad*, 2001-2002, p. 206, note F. Swennen; Antwerp Court of Appeals, 14 January 2008 (reforming Antwerp Youth Court, 11 October 2007), *Rechtkundig Weekblad*, 2007-2008, p. 1774, note F. Swennen; Brussels Youth Court, 6 May 2009, *Jurisprudence de Mons, Liège et Bruxelles*, 2009, p. 1083 et *Revue trimestrielle de droit familial*, 2011, p. 172, note J. Sosson; Huy Youth Court, 22 December 2011, *Revue trimestrielle de droit familial*, 2012, p. 403. See also G. Verschelden, L. Pluym, *Chronique de jurisprudence belge concernant la gestation pour autrui (droit interne)*, in G. Schamps, J. Sosson (dir.), *La gestation pour autrui: vers un encadrement?*, cit., p. 201 s.

[29] However, in 2012, the Ghent Court of Appeal refused to grant the full adoption

if all the parties involved stick to their commitment, it is rather easy to transfer legal parenthood from the surrogate to the intended parents.

However, if the surrogate changes her mind and finally refuses to consent to the acknowledgment or the adoption of the child, intended parents can find themselves facing serious obstacles. An intended father who provided sperm will be entitled to a judicial authorisation to acknowledge the child despite the surrogate refusal to consent. But all other intended parents will have no possibility of being legally recognised as the child's legal parent.

The 2015 Senate report[30] reveals that opinions are all the more divided on the question of how parenthood should be established after a surrogacy arrangement. Four political groups consider that paternity, maternity, copaternity or comaternity after surrogacy should be established directly, immediately and automatically in application of the judicially approved surrogacy agreement. Accordingly, the surrogate would never be considered as the child's mother and would not be able to refuse to hand over the child to his or her intentional and legal parents. Three other political parties, however, consider – with slight variations – that parenthood should not be established automatically as a necessary and irreversible consequence of the surrogacy contract. According to this second approach, the surrogate should be recognised the right to change her mind and to decide to remain or to become the child's mother[31].

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requested because it appeared that the adoption dissimulated the buying and selling of a child (the surrogate had received 1.600,00 euros per month during the pregnancy, which exceeds, according the Court, the normal costs of a surrogacy) and considered that for-profit surrogacy is contrary to human dignity. As a result, the Court ruled that the adoption was not based on "fair motives", and that the *de facto* relationship established between the child and the adoption candidate did not thwart this analysis (Ghent Youth Court, 13 June 2012, *Tijdschrift Jeugd- en Kinderrechten*, 2012/3, p. 261, note L. Pluym, *Weigering volle adoptie na commercieel laagtchnologish draagmoederschap*).

[30] See above.

[31] Even if we have now a comprehensive view of the political positions on surrogacy, the fact remains that there is currently only one law proposal under review and it was tabled in October 2014 by Flemish socialists. According to this proposal, heterosexual and homosexual couples should have access to surrogacy. Only full surrogacy would be accepted and at least one of the intentional parents should also be a genetic parent. Interestingly,

4. — *Remaining discriminations and the need for further reforms.*

To achieve a truly equal and consistent legal framework, further legislation is needed because, as the law stands, the regulation of ART and the lack of regulation of surrogacy involve clear-cut discrimination and uncertainty.

4.1. – *Insemination and* in vitro *fertilisation.*

The Assisted Reproduction Act 2007 undoubtedly set up a satisfying legal framework for the access to artificial insemination and *in vitro* fertilisation. Moreover, the Comaternity Act 2014 ensures that both lesbian women who participate in the ART agreement will ultimately be designated as the child (co-)mothers. However, as we pointed out, some avoidable uncertainty remains when ART with sperm donation is performed in favour of a heterosexual couple.

To a certain extent, this can be seen as "reverse discrimination" against heterosexual couples. In our opinion, the law should guarantee that where two intended parents entered an ART agreement with a fertility clinic, they should become the legal parents of the conceived child irrespective of the origin of the genetic material and of any dispute arising after the birth. This can be accomplished through a new reform that would enshrine the simple principle that, in cases of ART, the ultimate foundation of legal parenthood is a contractual commitment.

4.2. – *Surrogacy.*

Surrogacy has been practiced for twenty years in Belgium and most judges accept to use the traditional rules relating to parenthood and adoption to integrate the child in the family of the intended parents. It is now time for the Belgian legislature to express a clear authorisation and establish a suitable legal framework.

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the proposal provides that no judicial control is necessary before implementation of the surrogacy agreement. At birth, the child would be automatically and definitively considered as the intentional parents' legal child.

The first reason is that the current state of law creates a discrimination between female and male homosexual couples because male partners need not only an insemination or an *in vitro* fertilisation but also surrogacy to become parents through ART. As surrogacy has been tolerated for years in Belgium, the legislature should legalise it and hereby recognise the right for all couples to become parents through an expressly authorised assisted reproductive technology.

The second reason is that the current state of law leaves way to much uncertainty as to legal parenthood. Either for same sex or different sex couples, there are currently no guarantees that the child's legal parenthood will be established in accordance with the surrogacy agreement. Such uncertainty is detrimental for the intended parents as well as for the surrogate. Here again, the law should lay down the principle that, in case of ART, legal parenthood is based on contractual commitment.

5. — *Conclusion.*

In the wake of the establishment of parenthood for female partners on the basis of the ART convention signed by the mother and the "co-mother", Belgium has moved towards a new approach of parenthood based on contractual commitment.

For the sake of equality and coherence, the legislature should now carry this logic to its conclusion by establishing the principle that contractual commitment is the fundamental cornerstone of legal parenthood in the ART context for heterosexual couples as well as for homosexual couple and for insemination and *in vitro* fertilisation as well as for surrogacy. Legal certainty is crucial when legal parenthood is at stake and where a baby is conceived through ART there should be no doubt as to who is entitled or obliged to be his or her legal parents.

It is interesting to note that such evolution is not imposed by supranational standards established by the ECtHR which remains particularly (overly?) cautious as soon as ART and surrogacy are concerned. In *Gas and*

Dubois v France[32] and *Boeckel and Gessner-Boeckel v Germany*[33], the Court did not appear excessively concerned by lesbian partners' comaternity claims. With respect to surrogacy, the Court only dealt with international cases and decided, in *Mennesson v. France* and *Paradiso and Campanelli v Italy*[34], that only biological links must be recognised and protected to comply with the right to respect of private and family life enshrined in article 8 of the ECHR.

However, inspiration for reforms may be found in legislation relating to ART and surrogacy adopted in other European and non-European countries. Argentina[35] and Québec[36] are good examples of jurisdictions where parenthood following ART is regulated by a set of specific legal provisions and expressly rooted in contractual commitment. Closer to Belgium, Greece has developed a legal framework for surrogacy whereby the judicial authorisation of the agreement results in automatic acquisition of legal parenthood by the intended parents[37].

It should be emphasised that designating contractual commitment as the indisputable foundation of legal parenthood in ART and surrogacy cases does not necessarily imply, as such, any reconfiguration of legal parenthood in the natural procreation context. Accordingly, the legal parenthood of naturally procreated children should, in our view, at least for now, remain

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[32] The Court decided that there had been no breach of the Convention in a situation where a woman was prevented from adopting the child to whom her partner had given birth through an artificial insemination performed in Belgium (ECtHR, *Gas and Dubois v France*, 15 March 2012).

[33] The Court decided that there had been no breach of the Convention in a situation where a woman claimed that her name should be mentioned on the birth certificate of the new-born child of her same-sex registered partner (ECtHR (decision), *Boeckel and Gessner-Boeckel v Germany*, 7 May 2013).

[34] ECtHR (GC), *Mennesson v France*, 26 June 2014 and ECtHR (GC), *Paradiso and Campanelli v Italy*, 24 June 2017.

[35] See articles 560 s. of the Argentinian Civil Code (*http://servicios.infoleg.gob.ar*).

[36] See articles 538 s. of the Quebec Civil Code (*http://legisquebec.gouv.qc.ca*).

[37] See K. Trimmings, P. Beaumont, *Parentage and surrogacy in a European perspective*, in J. Scherpe (dir.), *European Family Law*, III, *Family Law in a European Perspective*, Cheltenham-Northampton, 2016, p. 257 s.

established through a subtle – and sometimes heartbreakingly complex – balancing of biological and socio-affective links. However, it cannot be excluded that the increased role of will in the ART and surrogacy contexts may lead, in the long run, to a consecration of intention and/or responsibility as the decisive criterions to establish legal parenthood even for naturally conceived children.