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A Practical Guide to Surrogacy In Greece

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— Greece is one of the very few jurisdictions which enforces surrogacy contracts and has adopted a progressive and tolerant legal framework on the regulation of surrogate motherhood. A recent legal reform has been effected through the introduction of Law 4272/2014 pursuant to which the prerequisite of permanent stay in Greece, as a criterion for the application of the law, has now been abolished. Prior to choosing Greece as your surrogacy destination, it is vital to fully comprehend the basic characteristics of the legal provisions governing this area and their respective implications for all parties involved in a surrogacy arrangement.

What kind of surrogacy is legal in Greece?

— Greece is a surrogate - friendly country and has introduced a complete and comprehensive regulatory framework for medically assisted human reproduction, with provisions for **altruistic gestational surrogacy** since 2002. Specifically, surrogacy is regulated by article 1458 of the Greek Civil Code (GCC), as it was introduced with article 8 of the Law 3089/2002 and articles 13 and 26 of the Law 3305/2005. Greece's legal framework has been described as one of the most progressive regimes in the modern legal world. Traditional and commercial surrogacy are explicitly prohibited by the Law.

Are surrogacy contracts valid and enforceable under greek law?

— Surrogacy contracts are valid and enforceable under article 1458 of the GCC. Following a surrogate "matching", a surrogacy contract between the intended parent(s) (IPs), surrogate, and her husband or her civil partner must be drafted. The agreement must be in writing, and must be made prior to the impregnation of the surrogate mother. Furthermore, in order for the terms of the arrangement to be enforced three other prerequisites must be fulfilled:

- the provisions of (informed) written consent by all those involved in the arrangement
- the pre - conception authorisation of the surrogacy agreement by the court
- the altruistic nature of the surrogacy agreement and evident (by the specific clauses of the contracts) lack of financial gain.

The contract does not need to follow any formality, although in common practice it is often requested to be notarised. Also, in case the male partner of the intended mother is not married to his female partner, he has to appear before a notary and provide his consent in writing as a proof of voluntary recognition of his parental obligations towards the child.

How much can a surrogate receive for her expenses?

— According to article 13 par. 4 of Law 3305/2005, an exception to the prohibition against payments to the surrogate is the coverage of her "reasonable expenses". As such, according to article 13 par. 4 of Law 3305/2005 are considered:

- the payment for any expenses necessary for the artificial insemination procedure, the pregnancy, the delivery and the childbed (namely any costs directly linked to the impregnation of the surrogate, the pregnancy and the childbirth costs, i.e. the medical care of the surrogate, her clothing, her transportation to and from the medical clinic, the costs of the childbirth and after - birth treatment, the legal costs of the application for the approval of the surrogacy agreement, the medical and psychological assessment of the surrogate)

— the restitution for any damages incurred and lost wages by the surrogate, because she left her work or she took an unpaid leave of absence during the periods (and because) of insemination, pregnancy, delivery and childbed. The amount of the expenses, as described above, is regulated by the National Independent Authority for Medically Assisted Reproduction and is currently set at 10.000,00 Euros. Hence, any other payments in relation to surrogacy are prohibited, including payments towards the donor, the clinic, any surrogacy agencies that brought the IPs into contact with the surrogate or any third parties involved.

What is the next step after the conclusion of a surrogacy agreement?

——— Greek legislation, in order to facilitate the transfer of parental authority to IPs, has adopted an “ex ante” model of surrogacy, from the moment that the surrogate and the IPs draft an agreement and before the surrogate’s impregnation. In this perspective, according to Greek Law, the agreement is subject to a judge’s approval in order to render it enforceable and effective, and make it possible for IPs to be registered as the legal parents immediately upon the birth of the child. As soon as the agreement has been approved by the judge in charge of the case, it is rendered valid and legally binding. This procedure is the upper guardian of the rights of the contracting parties and of the interests of the child.

What is examined by the court and how long does it take to have the agreement approved by the court?

——— The judge in charge verifies that the agreement complies with domestic law before the surrogate’s impregnation. Basically, he/she must confirm:

- that all the parties concerned have consented freely to the procedure, after having been informed of the risks involved, as well as of their respective rights and duties (especially the surrogate’s decision to terminate the pregnancy)
- that the recourse to surrogacy is a response to medical necessity (since the choice of surrogacy for social reasons is not acceptable by law)
- that the parties have entered into the agreement in “good faith” and only for altruistic reasons
- that all the parties (IPs and surrogate) have been assessed as suitable to execute the terms of the surrogacy agreement
- that the intended mother does not exceed the age of fifty (50) (no requirement is in existence with regard to the age of surrogate mother)

In general, the judge limits himself/herself to a fairly procedural, administrative review of the various documents in the file submitted to him. Documents that are usually submitted to the court include:

- a recent medical examination of IPs and the surrogate mother to exclude infectious diseases (HIV I/II; Hep B/C; VDRL) as well as a psychological evaluation to ensure the surrogate is mentally fit,
- the surrogacy agreement,
- a medical report for the intended mother, stating the medical reason why she cannot conceive. Similarly, the surrogate is required to provide a medical opinion on her suitability as a gestational carrier,
- proof that either the IPs or the surrogate are permanent or temporarily residing in Greece (i.e. short term lease contracts, gym subscription, proof of expenses occurred in Greece etc.)

The hearing of the case is set approximately within one (1) month of the filing of the application before the court of residency of either the IPs or the surrogate. Both the surrogate mother and IPs have to appear before the court on the hearing with their lawyer, whilst the ruling is usually issued within two (2) weeks of the court hearing date.

Whose name appears on the baby’s birth certificate?

——— According to articles 1458 and 1464 GCC, the child that is born after the drafting and the confirmation by the court of a surrogacy arrangement is considered as the child of the IPs from his/her birth and no adoption or other court proceedings is needed. The obstetric hospital follows the typical procedure for issuing the birth certificate and the IPs should submit the certificate, along with the court decision, to the Civil Registry and declare the birth of the child within ten (10) days. In the Birth Certificate only the name of the IPs are mentioned. The procedure is entirely administrative in its nature and form.

Can the surrogate change her mind and keep the child or become the legal mother of the child?

——— No. In such a case, the surrogacy contract, as approved by the court, can operate as a safety net and the IPs can apply to the court and compel her to adhere to the terms of the agreement. The only exception allowing the surrogate to become the legal mother of the child is when (despite the provisions of the law) the child is genetically related to her (traditional surrogacy). In such a case, within six (6) months after the birth of the child, the surrogate or even the intended mother can challenge the establishment of legal parentage. After the final, irrevocable court decision the surrogate becomes the legal mother of the child. With regards to the paternity rights, the law provides that the father of the child will be the husband of the legal mother and he cannot refuse his status as the legal father if he consented to the surrogate’s fertilisation.

Will the child acquire greek citizenship automatically at birth?

——— Under Greek Law, the citizenship of a child is determined by the citizenship of its parents. Hence, children born

through surrogacy in Greece will not acquire Greek citizenship on the grounds that they were born in Greek territory, unless either of the IPs is a Greek citizen or has a strong link with the Greek legal order. In essence, the child is born stateless until the IPs have undergone the appropriate home citizenship process with their respective embassy. In case that the IPs fail to obtain citizenship, then the Greek law has several provisions that could help the child to obtain Greek citizenship.

Must the surrogate or intended parents live in Greece?

———— After the legal reform recently effected (article 17 of Law 4272/2014), in order to draft a surrogacy agreement in Greece it is sufficient if either of the two contracting parties (IPs or surrogate) resides, either permanently or temporarily in Greece.

Does greek law allow single intended parents or same-sex couples to create their family through surrogacy?

———— According to the letter of the law, the IPs can be a married heterosexual couple or an heterosexual couple living in a civil partnership, as well as a single woman, while there is no provision for the single man. However, two recent legal cases defined this provision of law as unconstitutional and discriminatory towards single men, who do not have a female partner and are unable for medical reasons to have a child and in both cases the judge authorized the surrogacy agreements. In one of the aforementioned cases though, the court decision was challenged by the Prosecutor. Nevertheless, the possibility of a contrasting future court decision cannot be excluded, since the Greek judge, is not obliged to follow the judgement of another court.

As far as same the sex couples are concerned, a legally authorised surrogacy arrangement is currently not available. However, the latest legal reform (of December 2015) grants same-sex couples the option of having civil partnerships, which offers them full marriage rights but not yet the right to adopt children or enter into surrogacy agreements. Due to this legal reform, many academics believe that surrogacy law will be soon opened up to same sex couples.

Is a genetic link with IPs necessary?

———— Greek law does not require a genetic relationship between the child and the IPs. In case gametes of another person are used, the identity of the donor will remain undisclosed, thus guaranteeing the anonymity of the donor and only access to donor's medical files is allowed.

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