

The Legal Aspects Of Surrogacy In Georgia

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BRIEF LEGAL OVERVIEW /SURROGACYIN GEORGIA

In Georgia there is no specific separate law/statute regulating only assisted reproductive technologies (the “ART”) or either of its method including surrogacy. The following normative acts (several articles of these acts) refer to the issues of surrogacy in general:

- Law of Georgia on Health Care, adopted on 10.12.1997 (Articles 141, 143 and 144)¹;
- Law of Georgia on Civil Acts, adopted on 20.12.2011 (Article 30)²;
- Law of Georgia on the Legal Status of Aliens and Stateless persons, adopted on March 05, 2014, in force from September 01, 2014 (Article 49)³;
- Order of the Minister of Justice on the Establishment of the Rule on Registration of Civil Acts, adopted on January 01, 2012 (Article 16 and Article 19)⁴;
- Joint Order of the Minister of Justice of Georgia and of the Minister of Internal Affairs of Georgia on the Establishment of Rule on the exit from Georgia of the Child born in Georgia as a result of In Vitro Fertilization (Surrogacy), adopted on April 11, 2016⁵.

In Georgia surrogacy arrangement is enforced through the administrative procedure after the birth of a child where Intended Parents automatically acquire the legal parentage over a child born in Georgia through such arrangement provided that the documents required under the laws of Georgia are filed to the Birth Registration Authority – the Civil Registry of the Public Service Development Agency of the Ministry of Justice of Georgia (the “Civil Registry”) and the Civil Registry has issued the child’s birth certificate listing Intended Parents as the parents of the child. There is no pre parentage court order or a special committee approval or after birth parentage or any other court order required to be obtained for recognition of Intended Parents as legal parents of a child and for listing Intended Parents as parents on the child’s birth certificate. Civil Registry records Intended Parents as legal parents of the child born as a result of surrogacy arrangement if the documents required under the law meet the law requirements and are filed in the Civil Registry within

¹ English translation of the Law is published on Legislative Herald of Georgia, the official publication of the laws of Georgia. <https://matsne.gov.ge/ka/document/view/29980?impose=translateEn&publication=37..>

² English translation of the Law is published on Legislative Herald of Georgia, the official publication of the laws of Georgia. <https://matsne.gov.ge/ka/document/view/1541247?impose=translateEn&publication=21>.

³ English translation of the Law is published on Legislative Herald of Georgia, the official publication of the laws of Georgia. <https://matsne.gov.ge/ka/document/view/2278806?impose=translateEn&publication=12>.

⁴ The English translation of the Act is not updated on Legislative Herald of Georgia, the official publication of the laws of Georgia. The Georgian text of the Act may be found at: <https://matsne.gov.ge/ka/document/view/1572063?publication=14>

⁵ The English translation of the Act is not published on Legislative Herald of Georgia, the official publication of the laws of Georgia. The Georgian text of the Act can be found at: <https://matsne.gov.ge/ka/document/view/3245541?publication=0>

the specific timeframe determined under the law. The court may be involved in this process only if the Civil Registry refuses to record Intended Parents as legal parents of the child where the Civil Registry decides that the documents filed for the birth registration are not in compliance with the law. Most importantly, the result of listing Intended Parents on the child's birth certificate is that Intended Parents are automatically provided with the full parental rights over a child, without the need to obtain any parental, custody, or any other type of court order. Moreover, the law explicitly states that *"If a child is born, the couple shall be deemed as parents, with the responsibilities and authorities proceeding from this fact; the Donor or the Surrogate Mother shall not have the right to be recognized as a parent of the born child⁶".*

In order for Intended Parents to be recorded as legal parents of the child born in Georgia as a result of surrogacy arrangement, the following requirements should be met:

1. In vitro fertilization (IVF – the process during which Intended Mother's or female Donor's egg cell(s) is being fertilized with Intended Father's or Male Donor's sperm in the laboratory conditions for the purposes of formation of embryo(s)) may be performed either in an IVF Clinic in Georgia (the "Georgian Clinic") or an IVF Clinic in any other country where such procedures are legal (the "Foreign Clinic"); however, embryo transfer to a Surrogate Mother's uterus shall be performed only in a Georgian Clinic and the document(s) issued by each of these clinics shall certify the performance of relevant procedures provided that the Georgian Clinic issues the Report on In Vitro Fertilization (the "Report") with its electronic signature. Report is a special form determined under the Order of the Minister of Justice, containing the information on Intended Parents, a Surrogate Mother, Donor(s) (if applicable), the embryos created, the date and place of embryo creation and freezing. The Report must be filled out by the Georgian Clinic performing the embryo transfer procedure immediately after the implantation of the embryo, but no later than the next working day and has to be signed electronically as established under the law. If the embryos were created and frozen in a Foreign Clinic and then shipped to the Georgian Clinic for their transfer to a Surrogate Mother's uterus, the Georgian Clinic should be provided with the document(s) on the IVF and embryo freezing medical procedures conducted by the Foreign Clinic.
2. IVF may be performed either with the use of:
 - (a) Intended Parents' gametes (*Intended Mother's egg cells and Intended Father's sperm*), or
 - (b) Intended Parent's gamete (*Intended Mother's egg cell(s) or Intended Father's sperm*) and Donor's gamete (*female Donor's egg cell(s) or male Donor's sperm*), or
 - (c) Gametes of male and female Donors.

However, in terms of surrogacy arrangement, the Donor may not be anonymous. Donor should be the party to the Surrogacy and Donation Agreement and sign the Agreement in the presence of a Georgian notary either personally or through the Donor's proxy acting on the basis of a respective power of attorney.
3. Only gestational surrogacy is allowed (*where the Surrogate Mother is only a gestational carrier and does not provide her own egg cell(s) for fertilization*) and traditional surrogacy is prohibited (where the Surrogate Mother has a genetic link to the child).
4. Surrogacy cannot be used by a single Intended Parent or same-sex couple. Intended Parents must be heterosexual couple diagnosed with infertility and being in the registered marriage for at least a year or having lived together for at least a year.

⁶ Paragraph 2, Article 143 of the Law on Health Care.

5. There are no requirements established for the Surrogate Mother to be eligible for the application of surrogacy (e.g. age, Surrogate Mother's marital status, consent of Surrogate Mother's husband, etc).
6. Surrogacy Agreement has to be entered between Intended Parents and a Surrogate Mother. If the Donor's gamete has been or shall be used in the IVF procedure, Surrogacy and Donation Agreement must be concluded between Intended Parents, a Surrogate Mother and Donor(s)⁷. It is a mandatory requirement that either the Surrogacy Agreement or the Surrogacy and Donation Agreement should be notarized by the Georgian notary with a public notarial act⁸. If the embryos created as a result of IVF shall be transferred to the Surrogate Mother's uterus without freezing the embryos (so called "Fresh Transfer Procedure"), the Agreement should be notarized prior to the embryo creation (*embryo production in the laboratory by merging biological material – meaning prior to IVF*). However, if the IVF is already performed, the resulted embryos are frozen and these embryo(s) should be transferred to a Surrogate Mother's uterus, the Agreement should be notarized prior to embryo transfer⁹.

Since the laws of Georgia require the notarization of Surrogacy Agreement or the Surrogacy and Donation Agreement, it means that the identity of every party to the Agreement shall be revealed and cannot be anonymous. The parties to the Agreement have to either appear at the notary and sign the Agreement in the presence of the notary, or the parties (either of them) excluding a Surrogate Mother, may be represented by a proxy on the basis of respective power of attorney.

7. No proof of the DNA test is required for the purposes of filing it in the Civil Registry; the document(s) issued by the Clinic(s) certifying the performance of the respective medical procedure is sufficient.
8. The application to register Intended Parents as the parents of the child born as a result of surrogacy arrangement in Georgia should be filed in the Civil Registry by both Intended Parents within the specific timeframe established under the law¹⁰.
9. If the Civil Registry is provided with all the required documents within the timeframe established under the law, Civil Registry will issue the birth certificate of a child listing Intended Parents in the birth certificate within 5 working days after the documents are filed¹¹.
10. If the law requirements are not met and the Civil Registry refuses to register Intended Parents as the legal parents of the child born as a result of surrogacy (*for example, if the Surrogacy Agreement has not been notarized, the Donor is anonymous and has not been a party to the notarized agreement, etc.*), Civil Registry provides the relevant information to the Social Service and the latter shall determine the name and surname of the Child. In such case the child's birth certificate is issued without indicating the parents of the child¹² and the child is granted with the Georgian citizenship. The full custody of the child legally is granted to the Social Service and Social Service may take the decision to grant the

⁷ Note: The laws of Georgia do not determine the specific title of the agreement to be concluded either between Intended Parents and a Surrogate Mother or between Intended Parents, Surrogate Mother and Donor(s). The titles of such agreements may vary but the context should refer to the surrogacy and donation (if applicable) services and the respective terms agreed between the parties.

⁸ Note: the meaning of public notarial act is that the notary not only verifies the identities of the signatory persons but verifies the correspondence of the agreement with the laws of Georgia. Therefore, it is interpreted that only the Georgian notary may notarize such agreement(s).

⁹ Note: The period from creation of embryo(s) until the embryo transfer shall not exceed 10 years.

¹⁰ Note: The law determines exceptional specific circumstances where it allows only one Intended Parent to file an application.

¹¹ Note: The Civil Registry is authorized to extend this term in the cases specified under the law.

¹² Rule of Registration of Civil Acts, Article 16.

temporary custody to Intended Parents while the dispute concerning the recognition of Intended Parents as legal parents of the child is finally settled (if Intended Parents apply to the Georgian Court¹³). It should be underlined that the laws of Georgia prohibits any indication of a Surrogate Mother or/and the Donor in the child's birth certificate even in case of refusal to register Intended Parents as legal parents of the child. Moreover, the law directly determines that Surrogate Mother and the Donor are not entitled to claim parental rights over a child.

11. The child born as a result of surrogacy arrangement in Georgia cannot be departed from Georgia if the child's birth certificate does not determine both legal parents of the child even if the child has a foreign passport¹⁴.

Sincerely,

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¹³ In the cases of Civil Registry's refusal, Intended Parents may apply to the Georgian court claiming for their parentage to be recognized. No preliminary guarantee may be issued on the possible outcomes of the legal proceedings at court; however, the case law significantly suggests that in the cases where the court has been provided with the sufficient evidence proving the fulfillment of the surrogacy medical procedures, the free will and intent of the parties involved in the procedure and the existence of the conditions to raise a child in a family environment, the claims have been granted. However, in these cases, it is recommended for Intended Parents to get more detailed legal advice on the matter in their specific case.

¹⁴ Article 49¹ of the Law of Georgia on the Legal Status of Aliens and Stateless Persons; Joint Order of the Minister of Justice of Georgia and of the Minister of Internal Affairs of Georgia on the Establishment of Rule of the exit from Georgia of the Child born in Georgia as a result of In Vitro Fertilization (Surrogacy), adopted on April 11, 2016.