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The Official Guide to Greek Law

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Amoiridis Law Services

SURROGACY PROCEEDINGS IN GREECE
after the implementation of law 4272/2014

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Editor-in-chief:

Geena Papantonopoulou (geenap@nb.org)

Editor:

Marina Tsikouri (marinat@nb.org)

Business development managers:

Georgia Siakandari (georgias@nb.org)

Juliana Berberi (juliber@nb.org)

Art Director:

Theodoros Mastrogiannis (mastroth@nb.org)

Creative Director:

Andreas Menounos (andream@nb.org)

Desktop Publishing - Films:

Yannis Dedousis (yannisd@nb.org)

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23, Mavromichali Str., 106 80 Athens Greece
Tel.: +30 210 3678 800 • Fax: +30 210 3678 857
e-mail: info@nb.org http://www.nb.org



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■ ASPECTS OF GREEK CIVIL LAW



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Charalampos Amoirdidis, *Attorney at Law, LL.M. – PhD Can.*
Anastasia Akritidou, *Attorney at Law, LL.M.*
Amoirdidis Law Services

What is the main legal framework regarding surrogacy in Greece?

On 19 December 2002 the Greek parliament approved the Law 3089/2002 ‘Medical assistance in human reproduction’ as a part of a major reform of the Family law book of the Greek Civil Code which replaced the relevant articles (1455-1460). The basic principles of surrogacy proceedings in Greece are the following:

- Medically assisted human reproduction (artificial insemination) is permitted in Greece to deal with the inability of having children in the natural way or to avoid transmission to the child of a grave genetic disease. Such assistance is permitted up to the reproductive age of the medically assisted person (50 years old).
- Every medical act aiming at facilitating the human reproduction is carried out with the written consent of the persons wishing to have a child. If the medically assisted person is an unmarried woman, her consent, as well as the consent of the male she cohabits with, if this is the case, is granted by notarial deed.
- The most important thing is that the transfer to a woman’s body of fertilized ova other than her own and her ensuing pregnancy is permitted exclusively by court authorization issued by the competent court where the commissioning parents or the surrogate mother reside.
- In compliance with the international confidentiality principle, the identity of third parties who have offered the semen or fertilized ova is not made known to the persons wishing to have a child. The medical information regarding the third party donor is kept in a confidential archive without indication of the donor’s identity. Only the child may have access to this archive and only for health related purposes of his own person. The identity of the child as well as of his parents is not made known to third party donors of semen or fertilized ova.

How did the Law 3305/2005 (Application of Medically Assisted Reproduction) contributed to the surrogacy legislation in Greece?

This regulation, being complementary to the previous Law 3089/2002 (On Medically Assisted Human Reproduction - MAR), established the National Authority of Medically Assisted Reproduction that, amongst other things, should have responsibility for the accreditation, designation, authorization, licensing and keeping a registry of activity, according to the Directive of the European Parliament and of the Council of 31 March 2004 (2004/23/EC).

Pursuant to art. 13 of Law. 3305/2005, it was clarified that the surrogate woman is to be subjected to the medical tests for the detection of human immunodeficiency viruses (HIV1, HIV 2), Hepatitis B and C and syphilis, as well as to undergo thorough psychological evaluation. The medical tests for the detection of human immunodeficiency viruses (HIV1, HIV 2), Hepatitis B and C and syphilis are applicable for the commissioning parents as well.

By virtue of this regulation it was defined in detail that the surrogacy agreement which is to be concluded by and between the commissioning parents and the surrogate woman, must be with no financial benefit for the latter. The law clarified that the following do not constitute financial gain:

- a. the payment of expenses involved in the achievement of a pregnancy, the gestation, delivery and post partum period as well as
- b. any incidental loss of profit by the child-bearing woman because of absence from work, or the loss of remuneration for salaried employment which she has missed because of absence related to the purpose of pregnancy, gestation, labour or post partum period.

Why the recent Law 4272/2014 induced innovation for surrogacy in Greece?

Pursuant to the old regime (art. 8 of Law 3089/2002), one of the prerequisites for granting the judicial authorization for surrogacy was the fact that both the surrogate mother and the commissioning parents should be obligatorily Greek citizens or permanent residents of Greece.

The art. 17 of Law 4272/2014 (Residence) came to provide that *“Articles 1458 and 1464 of the Civil Code are applicable only in the case that the applicant or the woman who will bear the child is a permanent or temporary resident of Greece”*.

This offers a new possibility as the surrogacy is now allowed disjunctively to either applicants or surrogate mothers who have their permanent or temporary residence in Greece. As witnessed by the explanatory statement of this provision *“The possibility is now extending also to applicants or surrogate mothers who have their permanent residence outside Greece”*. Under this new regime, surrogacy in Greece is open for foreigners as well, while Greece becomes only one of the few countries worldwide to provide a comprehensive framework to regulate, facilitate and enforce surrogacy all by giving legal protection to intended parents even coming from abroad.

What is the court process that a commissioning mother must follow in order to be granted the judicial authorization for surrogacy?

The commissioning mother must file an application before the competent court, asking the permission to proceed with surrogacy in Greece. According to the latest amendment of art. 740 of the Greek Code of Civil Procedure (by the Law 4335/2015), from 01.01.2016 onwards the competent courts to hear such applications are the Multi Member First Instance Courts where the commissioning mother or the surrogate woman resides. The application must be served by bailiff to all involved parties: the husband of the commissioning mother (if any), the surrogate woman (and her husband, if any), the public prosecutor.

How long does the commissioning mother have to wait until her application will be heard?

Once the application is filed the commissioning mother knows the exact hearing date. Depending on the workload of the courts, the hearing may be set approximately for one or two months after the filing of the application. If there are urgent reasons (i.e. health problems or other emergencies), the commissioning mother is entitled to request, through her attorney at law, a sooner hearing. In this case, the hearing could be set within 2-3 weeks following the filing date.

How long does this court procedure last?

Although the law sets specific timeframes for a court decision to be issued, in practice this always lies on the judge's discretion. Usually the judgment is issued from 20 to 40 days after the hearing date. Once issued, the decision must be served (such as the application) to all the involved parties: the husband of the commissioning mother (if any), the surrogate woman (and her husband, if any), the public prosecutor. Any of these persons is entitled to challenge the court decision within 30 days after its service. If no one will do so within this deadline, the court decision is rendered irrevocable and only then the involved parties are allowed to proceed with the insemination (the transfer of oocytes in the surrogate's uterus).

Which are the specific terms under which the court authorization to surrogacy is granted?

The court will issue the authorization to surrogacy under the following conditions:

- (a) The commissioning mother should prove that she is unable to carry the child to term.
- (b) The commissioning mother should not exceed the age of fifty (50).
- (c) The surrogate mother should prove to the court that she is medically and mentally fit and that she is able to conceive.
- (d) The parties should submit their written agreement to the court.
- (e) The agreement could allow for compensation of expenses. The payment for services and any kind of financial benefit is strictly prohibited.
- (f) In case that the surrogate mother is married, her husband should also consent in writing by signing the written agreement.
- (g) The fertilized ova should not belong to the surrogate mother.

When is the crucial point until which the applicant must have concluded her 50 years old?

It is true that the Greek legislation (L. 3305/2005 art. 4 par. 1 and Civil Code art. 1455 par. 1) sets the 50th year of life as the deadline to apply for surrogacy because according to the medical science this is considered to be normally the limit of the woman's fertility.

However, the law does not explicitly provide in which specific moment the applicant shall not exceed the 50 years old (i.e. will it be the date of the application filing or the date of the decision issuance?).

The jurisprudence comes to fill this gap of the law by forming 2 major approaches:

The first one (which finds the less support) is that the applicant shall not exceed the 50 years old at any time during the procedure of surrogacy, namely from the very first stage until the very last one (transfer of oocytes in the surrogate's uterus).

The second approach that tends to prevail in theory and in practice (see Thessaloniki First Instance Court's judgment No. 29288/2010), says that the crucial time to examine whether the applicant does meet the criteria set by the law regarding the potentially fertile age of 50-year old, is only the date of the court hearing when the judge will actually have in practice the potential to examine whether the said application is in compliance or not with the prerequisites set by the law.

How the commissioning parents establish their legal kinship with their child?

According to art. 1464 of the Greek Civil Code, "*in case of artificial insemination where there is a surrogate mother, provided that the conditions of art. 1458 have been met, as mother of the child is presumed the commissioning mother who obtained the court's authorization*". If the commissioning mother is married, then parents of the child are presumed the commissioning mother and her husband.

The obstetric hospital follows the typical procedure for issuing the birth certificate (recording of course that this is a case of surrogacy) and the social parents should submit the certificate to the civil registrar and declare the birth of "their" child in ten days (as any other couple). They should also submit to the registrar office a copy of the judicial decision that gave to the commissioning mother the license to have a child with the help of the surrogate mother.

Is there any penalty for violating the surrogacy law in Greece?

The law 3305/2005, as amended by 4272/2014, does provide in detail (under Chapter F), the criminal and administrative sanctions that are applicable in case any of the above mentioned terms and conditions is breached. Indicatively:

Whoever proceeds to the application of surrogacy without the written consent of the persons involved, is punished with a prison sentence of up to one (1) year. Whoever takes part in the procedure of procreation through surrogacy, without complying with the conditions of articles 1458 of the Civil Law, article 8 of Law 3089/ 2002 and article 13 of the present law, is punished with a prison sentence of at least two (2) years and with a pecuniary penalty of at least 1.500, 00 euros. The same penalty is applicable to whomever publicly or through the circulation of documents, pictures or images announces, promotes or advertises, even covertly, the procreation of a child through a third-party woman or whoever by profession renders intermediary services for any financial gain or offers in the same way services of his own or another party for the achievement of the above purpose. Whoever reveals in any

way the identity of the donors and recipients of genetic material and fertilised eggs, in violation of articles 1460 of the Civil Code and of article 8, sections 6 and 20, section 2- case c and d of the L. 3305/2005 is punished with a prison sentence of at least two (2) years, unless a heavier penalty is provided by another law. The administrative sanctions that may be also imposed to the breaching MAR Center or Cryopreservation Bank vary from a temporary or permanent revocation of license to operate to fines ranging from 1.500, 00 to 100.000, 00 depending the violation.

AMOIRIDIS LAW SERVICES

**1 PLATEIA DIMOKRATIAS STREET
54629 THESSALONIKI**

Tel.: +30 2310 512000

Fax.: +30 2310 501275

E-mail: inquire@law-services.gr

Url: www.law-services.gr

Languages

English, French, German

Number of lawyers: 5

Contact

Charalampos Amoiridis

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