

Switzerland

When Families Are Formed Differently: Surrogacy, Sperm and Egg Donation

Karin Hochl, Attorney - Presentation Committee Inheritance Law,
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About the Speaker

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Areas of Specialisation

- International surrogacy and assisted reproductive technology (ART)
- Recognition of foreign judgments, subsequent registration in Switzerland
- Adoption, stepchild adoption, parentage law
- Inheritance planning

Overview

1. Why are more families being formed through assisted reproductive technologies?
2. (New) forms of families
3. Key milestones in family law legislation
4. Which assisted reproductive procedures are permitted in Switzerland?
5. Legal parenthood in cases of sperm and egg donation
6. Legal parenthood in cases of surrogacy
7. Ongoing legislative revisions
8. Safeguards in the absence of legal parenthood

Why are more families being formed through assisted reproductive technologies?

- **Social changes:** pluralism, technological advancement, globalization
- **New family forms:** same-sex couples and single individuals wishing to become parents
- **Different-sex couples:** one in five couples in Switzerland is affected by infertility (source: USZ)
- **In Switzerland:** 6'500 IVF treatments per year under the RMA, resulting in 2'500 born children, of which (only) 67 were conceived using donated sperm (source: BFS, 2023)
- **Abroad:** many couples undergo assisted reproductive procedures outside Switzerland (surrogacy, sperm and egg donation)

Why are more families being formed through assisted reproductive technologies?

Infertility

WHO definition (2025):

- No pregnancy after 12 months of regular, unprotected sexual intercourse
- Historically heteronormative, limited to different-sex couples

Modern definition:

- Infertility exists where a person or a couple is unable to achieve pregnancy without the assistance of third parties
- Including same-sex couples and single individuals

(New) Forms of Families

- Traditional and non-traditional families
- Blended families
- Families formed through assisted reproductive technologies
- Rainbow families (LGBTQ+ families)
- Single-parent families by choice
- Social parenting (e.g. foster parents)
- Co-parenting
- Multi-parent families
- Childless couples and single individuals

Key Milestones in Family Law Legislation

- | | |
|------|---|
| 2001 | Reproductive Medicine Act (RMA) |
| 2007 | Same-Sex Partnership Act (SSPA) |
| 2018 | Stepchild adoption for same-sex couples |
| 2022 | „Marriage for All” <ul style="list-style-type: none">• Opening marriage to same-sex couples• Access to sperm donation for married female couples• Joint adoption for same-sex couples |

Assisted Reproductive Technologies and Legal Parenthood

Fragmentation of parenthood

- Genetic, biological, social and legal parenthood may diverge

Implications for inheritance law

- Statutory inheritance rights require a legally established parent-child relationship (Swiss Federal Supreme Court, BGE 150 III 160, para. 4.4)
- Swiss nationals: registration in the civil status register

Key questions

- Does legal parenthood for the intended parents exist at birth?
- If not, how and within what timeframe can legal parenthood be established?
- What safeguards can be implemented to protect the child and a non-legal parent?

Safeguards in the Absence of Legal Parenthood of the Second Parent

Protective measures

Child Custody Order:

- Safeguards in the event of the death or incapacity of the legal parent
- Designation of the non-legally recognized parent as „**trusted guardian**“ (art. 297 para. 2 in conjunction with art. 327c para. 2 and art. 401 CC)
- Designation of a substitute guardian in the event that the primary appointee is unable to act
- Granting custody and the right to determine the child's place of residence to the non-legal parent
- Consent to adoption (art. 265a CC)

Safeguards in the Absence of Legal Parenthood of the Second Parent

Protective measures

Will:

- Ensuring the intended succession
- Providing financial security for the child and, where applicable, the non-legal parent

General power of attorney:

- Authorization of the non-legal parent to represent the child before public authorities and private entities

Which assisted reproductive procedures are permitted in Switzerland?

Legal basis: Reproductive Medicine Act (RMA)

Permitted procedures:

- In vitro fertilisation (IVF) = fertilisation outside the human body
- Sperm donation by a third-party donor (heterologous procedure)
- Access limited to married couples – since 2022, also available to married female couples (Marriage for All)

Prohibited procedures:

- Egg donation
- Embryo donation
- Surrogacy

Legal Parenthood in Cases of Sperm Donation

Sperm Donation under the RMA

- Currently permitted only for married couples
- Legal parenthood: husband or wife of the birth mother (art. 23 RMA)

Sperm donation abroad or private sperm donation

Different-sex couples:

- Married: presumption of paternity in favour of the husband of the birth mother
- Unmarried: acknowledgement of paternity despite the absence of a genetic link (?)

Female couples:

- No legal parenthood of the partner or wife of the birth mother
- Presumption of motherhood applies only where sperm donation is carried out under the RMA (art. 255a CC)
- No acknowledgment of parentage possible → stepchild adoption required

Legal Parenthood in Cases of Egg Donation

In Switzerland

- Prohibited under current law, authorization planned

Abroad

- More than 400 children are born in Switzerland through egg donation abroad, most commonly in Spain
- Actual figures are likely higher (source: EZS Schweiz)
- Legal mother: birth mother (art. 252 CC)

Conclusion Sperm and Egg Donation

Different-sex couples

- Legal parenthood is generally established at birth for both intended parents, irrespective of the procedures in Switzerland or abroad
- Paternity: presumption of paternity in favour of the husband (art. 255 CC), alternatively, acknowledgement of paternity (art. 160 CC)
- Motherhood: *mater semper certa est* (art. 252 CC)

Same-sex couples (female couples)

- Sperm donation under RMA: presumption of motherhood in favour of the wife (art. 255a CC)
- Sperm donation abroad or private sperm donation:
 - The second mother is not a legal parent at birth
 - Legal parenthood of the second mother can be established only through adoption

Surrogacy

- A method of reproduction in which a woman (surrogate mother) carries a child for other persons (intended parents) and hands the child over to them after birth
- **Prohibited under Swiss law** (art. 119 para. 2 lit. d Cst., art. 4 RMA)
Rationale: protection of the child's best interests and of the woman giving birth (Explanatory Report to the RMA, 1996)
- **Reality:** increasing recourse to surrogacy abroad by involuntarily childless couples and single individuals
- **Recognition of legal parenthood:** restrictive Swiss practice
→ complex and time-consuming procedures

Surrogacy

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TROTZ VERBOT

Zahl der von Leihmüttern ausgetragenen Kinder explodiert

Das Kind von einer anderen Frau austragen zu lassen, ist ein Tabu – und in der Schweiz verboten. Nun zeigen erstmals Zahlen: Die Nachfrage steigt dennoch stark.

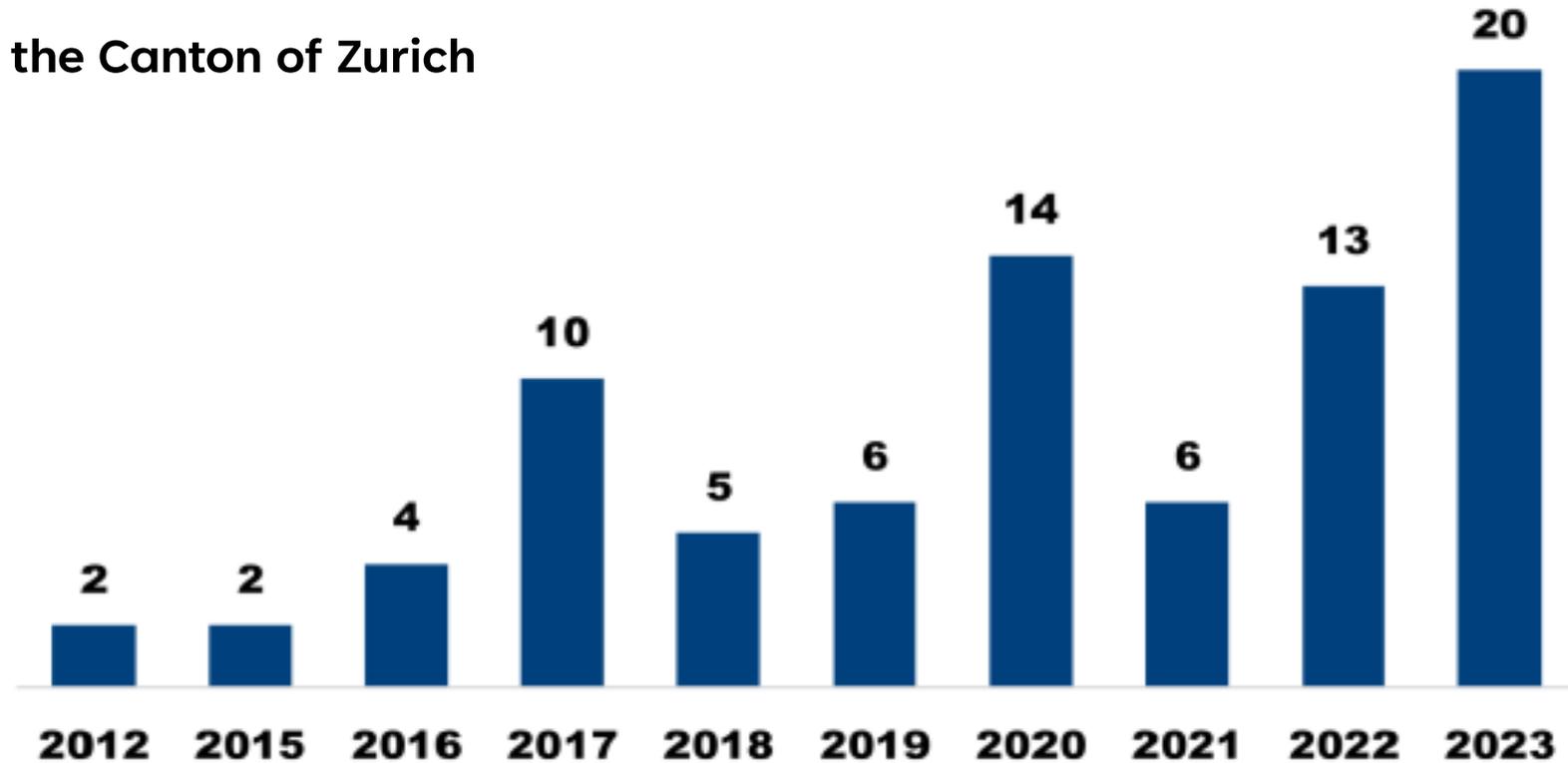


von
[Noah Knüsel](#), [Celia Nogler](#)

Source: 20 Minuten (15 November 2025)

Surrogacy

Number of cases in the Canton of Zurich



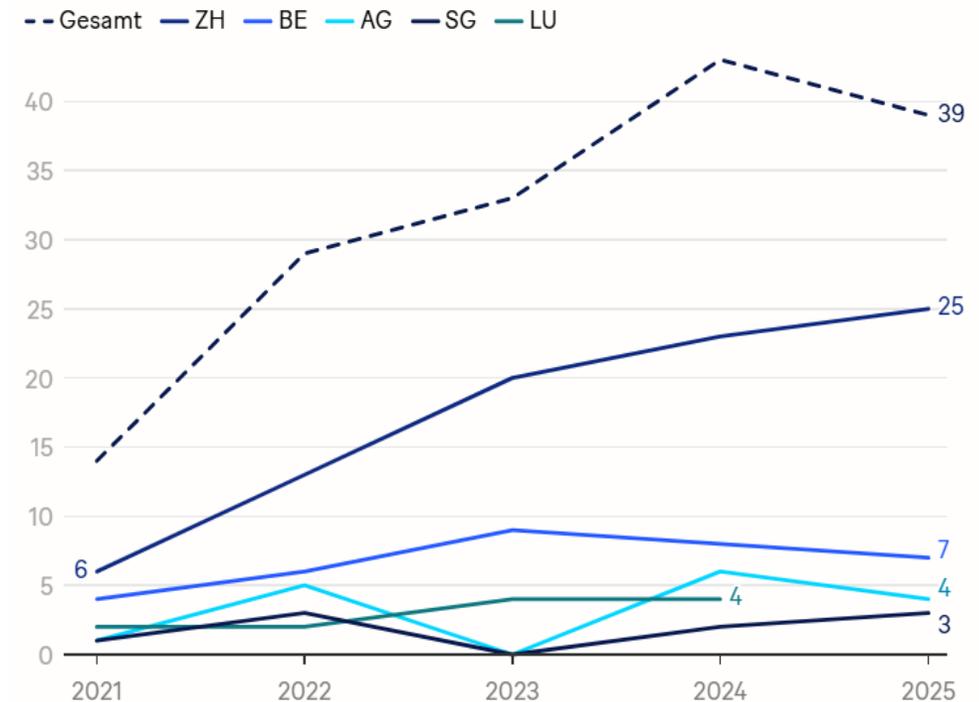
Source: Annual Report 2023 Cantonal Civil Registry Office Zurich

Surrogacy

From 2021 to October 2025:

Canton of Zurich
Canton of Bern
Canton of Aargau
Canton of Lucerne

Anzahl Kinder durch Leihmutterschaft



Daten von 2025 bis Ende Oktober
Grafik: 20min
Quelle: Kantone

Source: 20 Minuten (15 November 2025)
With reference to the cantons

Surrogacy

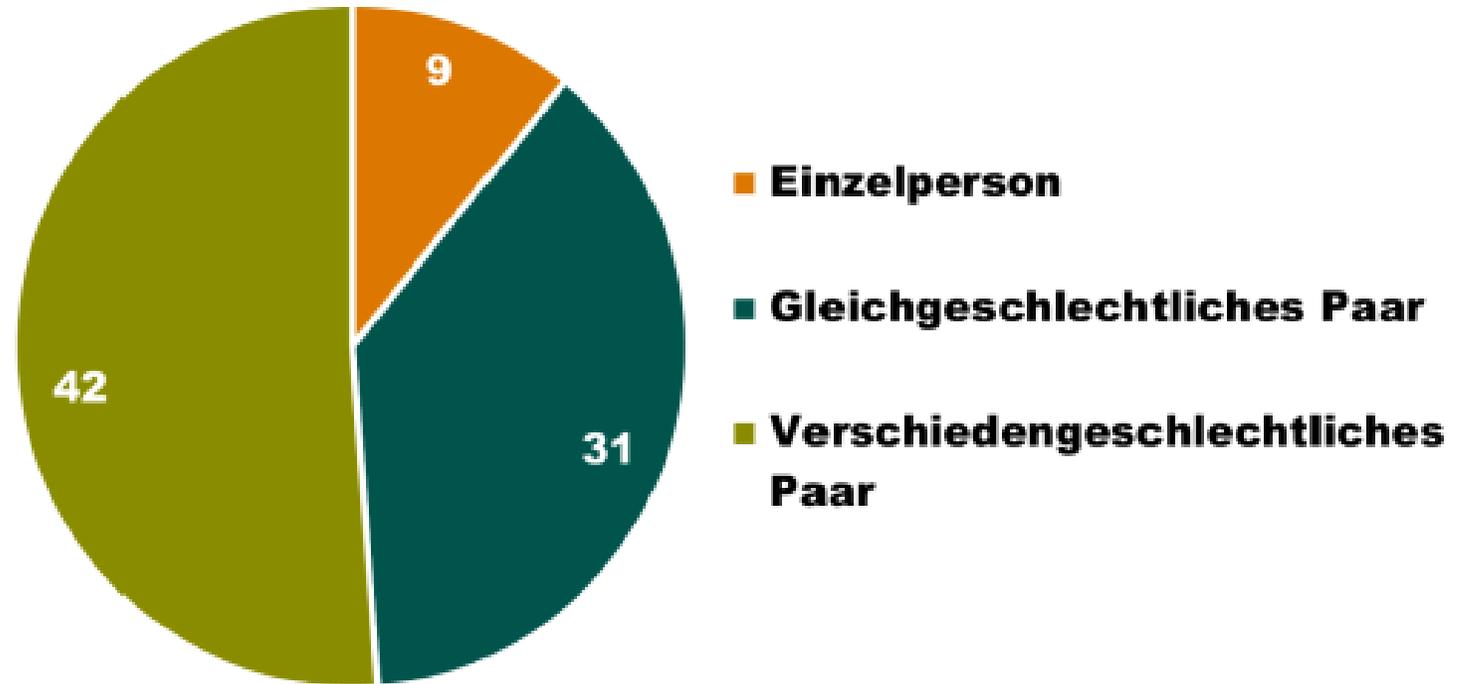
Consultations 2011 – 2025: Numbers and Constellations

Year	Man/Woman	Man/Man	Woman/Woman	Single Man	Single Woman	Total
2011		3				3
2012		4				4
2013	3	5		1		9
2014	11	12		1		24
2015	8	7		1		16
2016	17	4		0		21
2017	19	9		0	3	31
2018	22	3		1	1	27
2019	21	8		2	1	32
2020	22	6		1	1	30
2021	25	7		3	2	37
2022	30	11		4	0	45
2023	31	13			1	45
2024	23	12	1	2	1	39
2025	21	14		5	0	40
Total	253	118	1	21	10	403

As of 31 December 2025

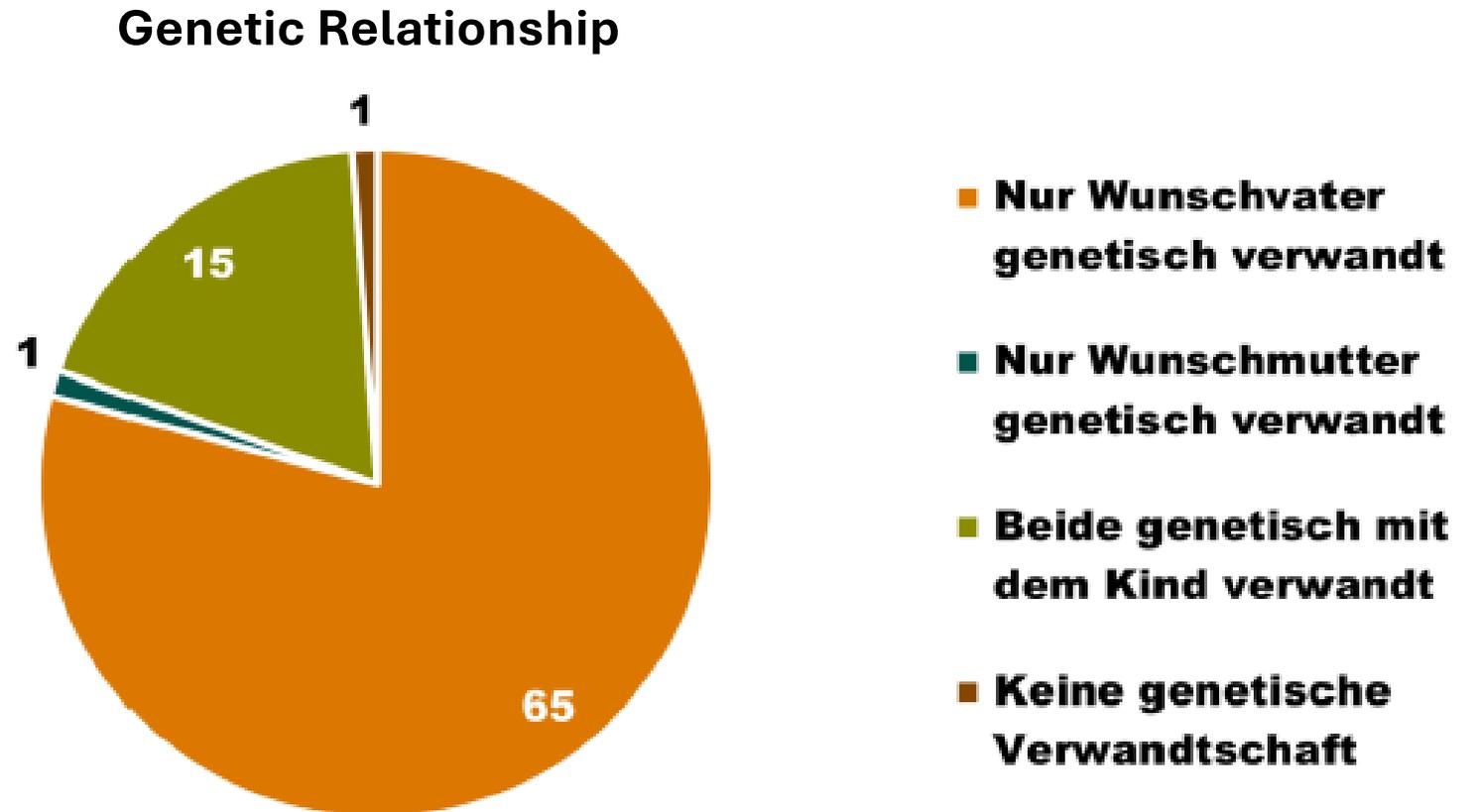
Surrogacy

Constellation of the Intended Parents



Source: Annual Report 2023 Cantonal Civil Registry Office Zurich

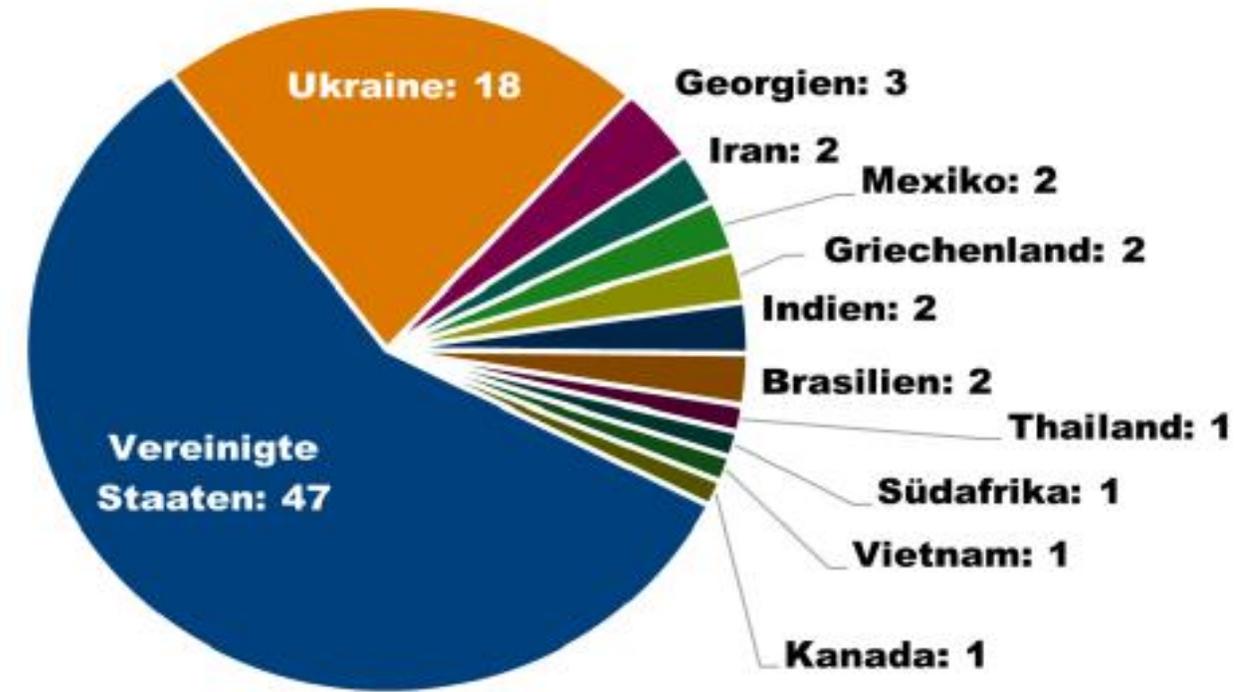
Surrogacy



Source: Annual Report 2023 Cantonal Civil Registry Office Zurich

Surrogacy

Countries of Birth of the Children



Source: Annual Report 2023 Cantonal Civil Registry Office Zurich

Surrogacy

Key considerations for Intended Parents in planning:

1. Entry into Switzerland with the child
2. Recognition as legal parents in Switzerland

Surrogacy – Entry into Switzerland

Swiss administrative practice regarding entry

- **Entry authorization** is granted only once the parent-child relationship has been entered in the civil status register
- Prior to such registration, **no travel document or emergency passport can be issued** (Directive EAZW, 2021)
- Registration procedures take several months and, in some cases, even years
- Risk: prolonged waiting periods in the country of birth

Alternatives

- Multiple nationality of the intended parents: the child may obtain a passport of another state (e.g. Germany)
- Passport of the country of birth: e.g. the United States (birthright citizenship), Colombia (through descent from the surrogate mother)

Surrogacy – Recognition in Switzerland

Recognition of Legal Parenthood

Criteria for the recognition of a parent-child relationship in Switzerland:

- Is there a court judgment from the state of birth, or only a birth certificate?
- Where a court judgment exists: is recognition in Switzerland possible?
- Genetic relatedness of the intended parents may influence recognition

Surrogacy – Recognition in Switzerland

Court Judgment from the United States or Canada

Leading decision from Swiss Federal Supreme Court **BGE 141 III 312** (2015) – still the governing practice to date:

- Recognition of the judgment with regard to the genetic intended parents and the non-parentage of the surrogate mother
- Refusal of recognition with regard to non-genetic intended parents (violation of ordre public, art. 27 para. 1 PILA)
- Non-genetic intended parents must establish legal parenthood through adoption
- Consequence: legal single parenthood until the adoption is complete

Surrogacy – Recognition in Switzerland

Court judgment from other states (e.g. Greece, Ukraine)

- To date, no higher-court case law is available
- Civil status supervisory authorities refuse recognition of such judgments

Rationale:

- Lack of indirect jurisdiction within the meaning of art. 70 PILA
- Ukraine, Greece: absence of ius soli / birthright citizenship
→ no connecting factor based on the child's nationality
- Possible connecting factor based on the nationality or residence of the surrogate mother (?)
- Pending proceedings

Surrogacy – Recognition in Switzerland

Birth certificate only / no recognizable court judgment

e.g. Ukraine, Georgia, Greece, Mexico

Case law: Swiss Federal Supreme Court BGE 148 III 245 and BGE 148 III 384 (2022)

- No recognition of a foreign birth certificate listing the intended parents as the child's parents
- Application of Swiss law (art. 68 PILA)
- Registration in the civil status register: surrogate mother as the legal mother
- Subsequently: acknowledgment of paternity by the genetic intended father
 - Requirement: the surrogate mother must not be married
- Intended mother (including the genetic mother):
legal parenthood can be established only through adoption

Conclusion: Surrogacy – Legal Parenthood

Constitutional and international law issues:

- Compatibility with the child's right to respect for private life (art. 8 ECHR)?
- Compatibility with the child's best interests (art. 3 UN CRC)?
- Compatibility with the prohibition of discrimination between men and women (art. 8 para. 3 Cst.)?
- A recognition practice that hinges on whether a court judgment or a birth certificate exists is unsatisfactory (Federal Council, Statement of 20 August 2025, Interpellation Sidney Kamerzin, No. 25.3674)
- Clarification expected only through the planned revision of parentage law?

Ongoing Legislative Revisions

Revision Stepchild Adoption

- Abolition of the one-year foster care requirement
- The three-year period of a shared household remains a requirement

Revision RMA

- Authorization of egg donation
- Access to egg and sperm donation also for unmarried couples
- Surrogacy remains prohibited

Revision Parentage Law

- Objective: a modern parentage law that accommodates diverse family forms, takes account of developments in assisted reproductive technologies, and strengthens the child's right to know their origins

Sources

- Swiss Federal Supreme Court decision on statutory inheritance rights:
BGE 150 III 160
- Swiss Federal Supreme Court decisions on surrogacy:
BGE 141 III 312, BGE 141 III 328, BGE 148 III 245, BGE 148 III 384
- Report and recommendations of the expert group on the need for reform of parentage law (21 June 2021)
- Report of the Federal Council in fulfilment of Postulate No. 18.3714 on the need for reform of parentage law (17 December 2021)

Thank you for your
attention!

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