

Children's right to identity in Ukraine

Fact sheet to be submitted the UN Committee on the Rights of the Child
89 Session (17 Jan 2022 - 04 Feb 2022)/State periodic report CRC/C/UKR/5-6

1 Creation of identity

- Birth registration in Ukraine is regulated by article 49 Civil Code of Ukraine, and the law on state registration of acts of civil status.

- While there is almost universal birth registration since at least 2012¹, only 45% of children born in Donetsk and Luhansk (Non-controlled Government areas, NCGA) and around 12% born in Crimea have obtained a birth certificate issued by the Ukrainian Government². All children born in NCGA get birth certificates by de facto authorities but these are not recognised by the Ukrainian Government. While procedures exist that allow children from the NCGA to obtain birth certificates, the steps are cumbersome, expensive and not fully implemented³. For example, significant expenses occur for parents to get certificates approved by the courts related to travel/overnight stay in the GCA.

- Baby boxes allowing for anonymous abandonment exist in Ukraine, which prevents the children from knowing their family origins, despite article 155-3 of the Family Code stating that abandonment is 'unlawful'.

- According to article 123 Family Code, intending parents are registered as legal parents at birth in surrogacy arrangements. Neither the surrogate mother nor the (potential) gamete donors are recorded on birth certificates. The child may only ever know their gestational origins if they access records kept with the Civil Registry and Vital Statistics Office which has records with a column and an entry "the mother according to the medical certificate of birth" (the full name of a surrogate⁴). Recording of genetic origins, in case of (anonymous) gamete use, does not exist and therefore will be even more challenging.

Potential consideration(s)

- How is the State planning to uphold the child's identity rights in assisted reproductive technology, notably in surrogacy arrangements, by ensuring all relevant genetic and gestational information is recorded?
- What efforts are planned by the State to accelerate and simplify procedures to ensure children born in NCGA are registered at birth and have appropriate documentation?

2 Modification of identity

- Lack of family support continues to lead to unnecessary family separation, which results in (informal) modifications to the child's identity. For example, there continues to be a high number of children deprived of their families and placed in residential care contrary to their best interests⁵. As stated by a coalition of NGOs, "in some cases, the simple existence of the institutions drives family separation⁶."

- According to Hope and Homes for children "the institutional care system in Ukraine does not view a child's return to a family environment as one of its priorities⁷." This means the preservation of the child's identity in family relations is at risk of not being respected.

- According to Art 252 Code of Civil Procedure, adoptive parent(s) may request to change the name, date, and place of birth of the child, which unduly modifies fundamental elements of the child's identity.

- The use of internet-based listing of adoptable children by the Minister of Social Policy can lead to contraventions to the child's right to privacy and identity as pictures, names as well as locations of the children are made public.

Potential consideration(s)

- How is the State planning to improve family support and reintegration programs to promote the maintenance of family relations – a component of the child's identity?

1 UNICEF, Data Warehouse, https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GL_OBAL_DATAFLOW&ver=1.0&dq=UKR.PT_CHLD_YOT4_REG.&startPeriod=1970&endPeriod=2020.

2 United Nations (January 2020). *Briefing Note on birth registration, Ukraine*. Retrieved from: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2020/03/Briefing-Note-Birth-registration_2020.pdf.

3 Ibid

4 Surrogacy in Ukraine, <https://www.ukrainiansurrogates.com/legal/registration-of-birth>.

5 "92% of children who are brought up in orphanages, children's homes and other types of residential institutions in Ukraine actually have parents". Extract from: Coalition of NGOs (2020, November). *Call to action. Building a rights-based child protection system in Ukraine, free from institutions*. Retrieved from: https://bettercarenetwork.org/sites/default/files/2020-12/Ukraine%20Call%20to%20Action_Final.pdf.

6 Ibid.

7 Hope and Homes for Children (2015). *The illusion of protection – An analytical Report Based on the Findings of a Comprehensive Study of the Child Protection System in Ukraine*. Retrieved from: https://www.hopeandhomes.org/wp-content/uploads/2016/12/The-illusion-of-protection_eng.pdf.



3 Falsification of identity

- Ukraine allows for commercial surrogacy arrangements as regulated by Arts 123 and 139 Family Code. While different efforts are underway to improve legislative frameworks, currently they do not include mechanisms to protect the child's identity rights or to prevent the sale of children. These gaps were exemplified during the COVID-19 pandemic in 2020 as noted by the two cases below.
- Ukrainian authorities were under significant pressure to allow for intending parents to have legal parentage and parental responsibility of hundreds of new-born babies, stranded in hospitals and hotels, without proper safeguards in place to ensure the children's other rights were upheld⁸.
- It seems that Ukrainian surrogate mothers are being moved to other jurisdictions where for example, in February and March 2020, 14 Ukrainian mothers, fearful of being stranded by virus travel bans, left Northern Cyprus after giving birth. Their departure occurred prior to completing the transfer of legal parentage to the genetic parents, resulting in limping parentage⁹.

Potential consideration(s)

- What is the State doing to uphold all children's rights in surrogacy, in particular their rights to identity (see Verona Principles)?

4 Preservation of identity and access to origins

- Roma children in Ukraine are facing difficulties to access identity documentation, exposing them to risks of being placed in boarding school with little hope of being reunited with their family because of the impossibility to confirm their identity¹⁰.
- Despite Art. 226(3) Family Code stating that "an adopted person has the right to obtain information on his/her adoption after he/she has attained the age of 14", Art. 227(1) Family Code states "an adopter has the right not to disclose the adoption to his/her adopted child and demand that persons who are aware of such information keep it confidential both before and after the child has attained adulthood". As secrecy in adoption is lawful with some exceptions in Ukraine¹¹, such provisions prevent children accessing information about their origins.

Potential consideration(s)

- What measures is the State planning to respond to the difficulties Roma children are facing in accessing their identity documents?
- How does the State propose to uphold children's identity rights in adoption, given the existence of secrecy provisions?

5 Restoration of identity

- According to Art. 8 CRC, States have the obligation to restore speedily the identity of a child when he or she has been deprived of some or all the elements. Therefore, in cases such as illegal adoptions and surrogacy arrangements, where children are deprived of information about their gestational and genetic origins, States should have an obligation to introduce measures to restore the child's identity.

Potential consideration(s)

- What is the State doing to restore children's identities, in cases of illicit adoption practices¹² and in surrogacy arrangements?

8. Górný, G. (2020, May 11). Over 500 surrogate babies left in limbo in Ukraine after parents barred from entering country over coronavirus, *Remix*. Retrieved from: https://rmx.news/article/commentary/video-over-500-surrogate-babies-left-in-limbo-in-ukraine-after-parents-barred-from-entering-country-over-coronavirus?fbclid=IwAR2zauKGy1xwo47w8in7L_TzoKSih7M_OCbu4pte5qdNZ1ymHy4KfhcFOps.

9. Varenikova, M. (2020, August 15). Mothers, Babies Stranded in Ukraine Surrogacy Industry, *New York Times*. Retrieved from: <https://www.nytimes.com/2020/08/15/world/europe/ukraine-baby-surrogate.html>.

10. Pirchak, A. (NGO "NEEKA") and Andrievska, V. (UNHCR) (2019, April 8). "With documents, my children have a future"- The International Roma Day draws attention to issues faced by many Roma people in Ukraine. Retrieved from: <https://www.unhcr.org/ua/en/14967-with-documents-my-children-have-a-future.html>.

11. Ministry of Social Policy, <https://www.msp.gov.ua/en/content/usinoviennya.html>.

12. UNICEF, OSCE, USAID, British Council (2005). *Trafficking in Ukraine - An assessment of the current responses*. Retrieved from: <https://www.legislationline.org/download/id/1326/file/04934af7cfa640b333d3df729fd0.pdf>.

