

## 1 Creation of identity

### Birth registration:

- In Spain, legislation on birth registration and access to nationality must be interpreted in accordance with Article 7 of the CRC, as it is part of the legal system and therefore directly applicable.<sup>1</sup>
- Sometimes, children are born in the course of their mothers' migratory journey to Spain, without a birth certificate or registration in any registry, which subsequently prevents them from having access to an identity and a nationality, thus incurring in a situation of statelessness.<sup>2</sup> Article 17.1 of the [Civil Code](#) establishes that 'Spaniards by origin are: [...] c) those born in Spain of foreign parents, if both lack nationality or if the legislation of neither of them attributes a nationality to the child; d) Those born in Spain whose parentage is not determined. For these purposes, children whose first known place of stay is Spanish territory shall be presumed to have been born on Spanish territory'. The Directorate General for Registries and Notaries (DGRN) has developed a doctrine, which extends the cases for which this article was initially introduced to cases in which the legislation of the parents' country requires them to carry out an 'act subsequent to birth' for the acquisition of nationality by the child.<sup>3</sup>

### Resort to anonymous gamete donation:

- Under Spanish law, gamete donation is anonymous (see *Preservation of identity and access to origins* below). Furthermore, 'since 2008, the volume of Assisted Reproductive Technologies (ART) in Spain has increased by nearly 50%, reaching 149,337 In-Vitro Fertilization (IVF) and 34,100 Intrauterine Insemination (IUI) cycles in 2018. Spain is the largest European ART provider and fourth globally'.<sup>4</sup>
- The maximum number of children born with gametes from the same donor shall not exceed six (Article 5, Law 14/2006, of 26 May, on assisted human reproduction techniques). In order to comply with this limit, donors must declare in each donation whether they have made previous donations, as well as the conditions of these, indicating the time and the centre where the donation was made (Article 5, Law 14/2006, of 26 May).
- Gamete donation cannot be of a lucrative or commercial nature (Article 5, Law 14/2006, of 26 May). Spanish law allows for restitutive financial compensation, as long as it does not constitute an incentive, the expenses are strictly limited and the health of the donors is preserved. According to the law, compensable expenses are physical discomfort, travel expenses, work expenses (Article 5, [Law 14/2006, of 26 May](#)), expenses and inconveniences derived from obtaining per diems, restitution of lost income or similar ([RD-Law 9/2014](#)). According to the Ministry of Health (2022), this amount should be a maximum of approximately €980 for egg donation and approximately €45 for sperm donation.<sup>5</sup> In practice, egg donors receive between €800 and €1200 and sperm donors between €30 and €50 per sample.<sup>6</sup> In the case of egg donors, taking into account the minimum wage, this compensation amounts to 3.5 weeks of work.<sup>7</sup>

### Surrogacy:

- All types of surrogacy arrangements are illegal in Spain and parentage is determined by childbirth (Article 10(1) [Law 14/2006, of 26 May, on assisted human reproduction techniques](#)). The Spanish Supreme Court ruled that commercial surrogacy is contrary to Article 10 of the above-mentioned law, as it seriously violates the fundamental rights of women and children recognised in the Constitution and in international human rights instruments.<sup>8</sup> However, the court upheld the possibility of the adoption of the child by the intending parents, with whom they live and with whom they form a *de facto* family.<sup>9</sup> News is frequently published about public personalities, who announce that they have brought a 'child' to Spain as a result of surrogacy arrangements, without the competent child protection authorities taking any initiative to make this protection effective.<sup>10</sup>
- Children born through surrogacy can be registered at the civil registry if: (a) together with the application for registration of the birth of the child, a court decision issued by a competent court determining the parentage of the child is submitted, and (b) the requirements established in the [Instruction of 5 October 2010 of the Directorate General of Registries and Notaries on the registration regime of parentage of children born through surrogacy](#) for foreign court decisions are met.<sup>11</sup> Foreign registration certificates or simple declarations accompanied by a medical certificate concerning the birth of the child in which the identity of the pregnant mother is not stated are not accepted as a certificate of birth and filiation of the child.<sup>12</sup> The [Report of the Bioethics Committee](#) highlights the incoherence between the law and the fact that in practice there are no obstacles to recognising the result of commercial international surrogacy arrangements in which some of the most fundamental rights of the surrogate mother and the child may have been violated.
- Despite the fact that Article 3.1 of the [General Law on Advertising](#) considers unlawful 'advertising that violates the dignity of the person or violates the values and rights recognised in the Spanish Constitution', agencies that intermediate in surrogacy advertise their activity.<sup>13</sup> These agencies have organised surrogacy 'fairs' in Spain, where they advertise and promote their 'services'.

### Potential considerations:

- **What is Spain doing to promote the application of Article 17.1.d) of the Civil Code concerning the right to Spanish nationality in relation to children who are not granted the nationality of their parents?**
- **What steps are being taken to move towards legislation that does not allow the anonymity of gamete donors to prevent anonymous donations and preserve the identity of the child?**
- **What measures is the State taking with regards to intending parents who are complicit in surrogacy arrangements?**
- **What measures is the State enforcing with regards to intermediaries in surrogacy arrangements?**
- **What is the State doing to preserve information concerning the identity of the surrogate and to record the child's full identity (genetic, gestational and biological)?**



## 2 Modification of identity

### Migration:

- High numbers of migrant children reach every year, including many separated and unaccompanied. The Canary Islands, Andalusia, Catalonia and Valencia were the autonomous communities which received over 1,000 children each during the year 2023, with the Canary Islands far ahead with over 3,000 foreign unaccompanied children.<sup>14</sup> These numbers could be even higher in 2024.<sup>15</sup>
- In addition, a recent study reflects the high numbers of children without any form of documentation; many out of their parents' fear of deportation or separation.<sup>16</sup>
- A number of programmes are in place, implemented by regional governments and civil society, to protect these children and young people. However, in terms of birth registration, the challenges for the registration of children born in Spain or during transit to Spain has been reflected in a 2021 case, which finally required that the Spanish State register a child born during migration in a third country in line with international child rights standards, despite a lack of evidence of such birth, and also granted her Spanish nationality in order to avoid statelessness.<sup>17</sup>

### Potential considerations:

- *What is the country undertaking to ensure that all children on its territory, irrespective of their place of birth or nationality, are duly registered?*
- *What additional measures are being implemented to avoid child statelessness?*

## 3 Falsification of identity

### Forced disappearance:

- The forced disappearance of children took on contemporary relevance with the Civil War and the political repression of Franco's regime, when it began as a systematic and widespread practice in women's prisons, hospital, maternity homes, and welfare centres run by religious congregations without adequate state supervision.<sup>18</sup> In some cases, it is suspected that they may have been abducted in Spain to be handed over to families across Spain, but also in Latin American countries, such as Mexico or Chile.<sup>19</sup>

### Potential considerations:

- *What actions are being taken by the State to restore the identity of the victims of forced disappearance (see also 'Restoration of identity' below)?*

## 4 Preservation of identity and access to origins

### Resort to anonymous gamete donation:

- Under Spanish law, gamete donation is anonymous. Both the recipients of gametes and the offspring have the right to obtain general information about the donors, as long as it does not reveal their identity.<sup>20</sup> The National Donor Register hosted on the Assisted Human Reproduction Information System (SIRHA) platform guarantees the confidentiality of donors' identity data.<sup>21</sup> Only exceptionally, in extraordinary circumstances involving a certain danger to the life or health of the child or when appropriate under the laws of criminal procedure, may the identity of the donors be disclosed, provided that such disclosure is indispensable to avoid the danger or to achieve the intended lawful purpose. Such disclosure shall be restricted in nature and shall in no case imply publicity of the identity of the donors.<sup>22</sup>

### Adoption:

- The Supreme Court ruling of 21 September 1999 established the existence, in the Spanish legal system, of a constitutional and unlimited right of adopted persons to know their biological origin: 'it is possible to speak of the right of persons to know their genetic inheritance'.<sup>23</sup> In the same judgment, the Supreme Court added that 'the rules allowing the concealment of the mother's identity transgressed article 39.2 of the Spanish Constitution, in the sense that they made it impossible to know the mother's filiation and caused the adoptee to completely lose the link that would allow them, in due course, to know the true filiation, due to a voluntary act of the mother', referring to art. 180.5 of the Spanish Civil Code, which determined that the disclosure of the identity of the parents had to be authorised by them or by the biological family.<sup>24</sup> In Catalonia, one of the autonomous communities in Spain, this right is expressly contemplated in the [Civil Code](#), in its art. 235-49.2, and also in article 30.2 of [Law 14/2010, of 27 May, on the rights and opportunities in childhood and adolescence \(LDOIA\)](#) which states: 'Children and adolescents have the right to know their genetic origin, biological fathers and mothers and biological relatives'.

### Potential consideration:

- *What services are provided to adopted children and children born through surrogacy searching for their origins?*



# 5

## Restoration of identity

### Forced disappearances:

- Between 2011 and 2019, thousands of reports of forced disappearances of children in the period between the end of the civil war and the mid-1990s were filed in Spain. In Catalonia, [Law 16/2020, of 22 December, on the forced disappearance of children in Catalonia](#) aims to provide the necessary regulatory instruments and resources for the recognition and effectiveness of the right to truth, justice, reparation and guarantees of non-repetition for victims in cases of forced disappearance of minors or appropriation of minors, with the consequent substitution of identity, as well as to facilitate the necessary investigative tasks, with the regulation of the necessary administrative procedures. This includes a DNA database of affected people (Articles 9 and 10 of Law 16/2020). However, centralised and coordinated efforts at the state level have been inadequate and insufficient, leading to the majority of reports being closed with little or no investigation.<sup>25</sup> In 2014, a UN Working Group suggested looking at possible connections between the thousands of reported cases in judicial investigations.<sup>26</sup> In May 2024, the third draft bill on this issue, promoted by the [Coordinadora Estatal de Apoyo a la Querrela Argentina \(CEAQUA\)](#), reached the Congress.<sup>27</sup>

### Potential considerations:

- *In relation to forced disappearances of children, what measures has Spain taken to:*
  - a) *Stopping limitation periods for these cases?*
  - b) *Establishing a mechanism for the coordination and channelling of search processes?*
  - c) *Establishing a centralised database at state level, which integrates all cases that have been reported and of all victims and family members who wish to be included (including DNA samples)?*
  - d) *Providing comprehensive assistance to victims, including legal advice and psychosocial services at all stages of the search process?*

### Sources:

- <sup>1</sup> Ratification of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, <https://www.boe.es/buscar/doc.php?id=BOE-A-1990-31312>.
- <sup>2</sup> Navarro Manich, J. A.; Lozano García, L. (2021). El derecho de los “niños invisibles” a su inscripción después del nacimiento y a adquirir una nacionalidad. La obligación de evitar la apatridia infantil. *Actualidad Jurídica Uría Menéndez*, 57, pp. 23-32 (ISSN: 1578-956X). <https://www.uria.com/documentos/publicaciones/7845/documento/art01.pdf?id=12770&forceDownload=true>
- <sup>3</sup> *Ibid.*
- <sup>4</sup> Alon, I. and Pinilla, J. (2021). Assisted reproduction in Spain, outcome and socioeconomic determinants of Access. In *Int J Equity Health*. 2021; 20: 156. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8259134/>.
- <sup>5</sup> Ministerio de Sanidad, Spain. 2022. <https://www.documentcloud.org/documents/21271816-informe-sanidad-compensacion-economica-donaciones-ovulos-semen>

- <sup>6</sup> Reproducción Asistida ORG, Egg donation, [https://www.reproduccionasistida.org/compensacion-de-la-donacion-de-ovulos/#:~:text=Actualmente%2C%20en%20Espa%C3%B1a%2C%20la%20compensaci%C3%B3n,es%20de%20800%2D1000%E2%82%AC](https://www.reproduccionasistida.org/compensacion-de-la-donacion-de-ovulos/#:~:text=Actualmente%2C%20en%20Espa%C3%B1a%2C%20la%20compensaci%C3%B3n,es%20de%20800%2D1000%E2%82%AC;);
- Reproducción Asistida ORG, Sperm donation: requirements to be a donor, price and treatments, [https://www.reproduccionasistida.org/donacion-de-semen/#:~:text=inseminaci%C3%B3n%20artificial%20casera,\\_%2BFCu%C3%A1nto%20te%20pagan%20por%20donar%20esperma%20en%20Espa%C3%B1a%3F,50%E2%82%AC%20por%20muestra%20donada](https://www.reproduccionasistida.org/donacion-de-semen/#:~:text=inseminaci%C3%B3n%20artificial%20casera,_%2BFCu%C3%A1nto%20te%20pagan%20por%20donar%20esperma%20en%20Espa%C3%B1a%3F,50%E2%82%AC%20por%20muestra%20donada).
- <sup>7</sup> CIVIO. (2022). Las donantes de óvulos en España reciben más dinero que en Dinamarca, Reino Unido o Finlandia. <https://civio.es/medicamentalia/2022/03/07/donar-ovulos-esperma-compensacion-economica/>
- <sup>8</sup> Tribunal Supremo, Sala Primera, de lo Civil, Sección Pleno, Sentencia 277/2022 de 31 Mar. 2022, Rec. 907/2021. [https://diariolaley.laleynext.es/content/Documento.aspx?params=H4sIAAAAEAMtMSbH1CjUwMDA3MgMCC7WY1KLizPw827LM9NS8klQQPzOtOU\\_OaSyINU2LTGnOFUtMak4P6e0JDW0KNM2pKg0FOAKVMHuROAAAA=WKE](https://diariolaley.laleynext.es/content/Documento.aspx?params=H4sIAAAAEAMtMSbH1CjUwMDA3MgMCC7WY1KLizPw827LM9NS8klQQPzOtOU_OaSyINU2LTGnOFUtMak4P6e0JDW0KNM2pKg0FOAKVMHuROAAAA=WKE).
- <sup>9</sup> *Ibid.*
- <sup>10</sup> *Ibid.*
- <sup>11</sup> Gobierno de España, Gestión por sustitución. [https://administracion.gob.es/pag\\_Home/Tu-espacio-europeo/derechos-obligaciones/ciudadanos/familia/menores/gestacion-sustitucion.html](https://administracion.gob.es/pag_Home/Tu-espacio-europeo/derechos-obligaciones/ciudadanos/familia/menores/gestacion-sustitucion.html)
- <sup>12</sup> *Ibid.*
- <sup>13</sup> *Supra* 7.
- <sup>14</sup> Menores migrantes inscritos en el Registro de Menores Extranjeros no Acompañados (MENA) de España en 2023, por comunidad autónoma. *Statista*. Dec. 2023. <https://es.statista.com/estadisticas/1095213/numero-de-mena-bajo-tutela-o-acogimiento-por-comunidad-autonoma-en-espana/>
- <sup>15</sup> Más de 1.500 menores migrantes llegaron a España en el primer cuatrimestre de 2024, según Save the Children. *EuropaPress*. 14 May 2024. <https://www.europapress.es/epsocial/migracion/noticia-mas-1500-menores-migrantes-llegaron-espana-primer-cuatrimstre-2024-save-the-children-20240514113433.html>
- <sup>16</sup> Fanjul, G., Galvez, I. and Zuppiroli, J. (2021). Crecer sin papeles en España. *Save the Children*. <https://bienestaryproteccioninfantil.es/crecer-sin-papeles-en-espana/>
- <sup>17</sup> Juzgado de Primera Instancia e Instrucción n.º 2 de Montilla, de 15 de octubre de 2021. In: Navarro Manich, J. A.; Lozano García, L. (2021). *Supra* 1. See also: Ana, la niña apátrida que nació en plena ruta migratoria ya es española gracias a una sentencia pionera. *RTVE*. 8 June 2022. <https://www.rtve.es/noticias/20220608/justicia-da-nacionalidad-espanola-nina-apatrida/2369722.shtml>
- <sup>18</sup> Amnistía Internacional. (2021). Sustracciones ilegales de Bebés en España. <https://www.es.amnesty.org/en-que-estamos/reportajes/sustracciones-ilegales-de-bebes-en-espana-durante-franquismo-y-democracia/>
- <sup>19</sup> *Ibid.*
- <sup>20</sup> Comisión Nacional de Reproducción Humana Asistida. Aspectos legales y éticos de la donación. <https://cnrha.sanidad.gob.es/registros/donantes/aspectosLegales/home.htm#:~:text=El%20n%C3%BAmero%20m%C3%A1ximo%20autorizado%20de, podr%C3%A1%20ser%20superior%20a%20seis>
- <sup>21</sup> *Ibid.*
- <sup>22</sup> *Ibid.*
- <sup>23</sup> STS 776/1999, 21 de Septiembre de 1999, <https://vlex.es/vid/17746236>.
- <sup>24</sup> *Ibid.*
- <sup>25</sup> Amnistía Internacional. (2021). *Supra* 17.
- <sup>26</sup> *Ibid.*
- <sup>27</sup> Boletín Oficial de las Cortes Generales. Congreso de los Diputados, Proposición de Ley sobre “bebés robados” en el Estado español : desaparición forzada de menores (2024). [https://www.congreso.es/public\\_oficiales/L15/CONG/BOCG/B/BOCG-15-B-127-1.PDF](https://www.congreso.es/public_oficiales/L15/CONG/BOCG/B/BOCG-15-B-127-1.PDF)

