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UN Special Rapporteur on violence against women and girls

## STATEMENT ON SURROGACY AND VIOLENCE AGAINST WOMEN AND GIRLS

Germany, April 2025

Dear Special Rapporteur Alsalem, the initiative "Lasst Frauen Sprechen!" make this statement in response to your ***Call for input to the thematic report of the Special Rapporteur on violence against women and girls to the General Assembly 80th session on surrogacy and violence against women and girls***. We respond to points 9, 11, 12, 13 and 14 of your call.

### LEGAL FRAMEWORKS, SAFEGUARDS, AND JURISPRUDENCE

#### ***"9. what are the legal, policy or regulatory frameworks governing surrogacy in your country?"***

Under German law, the surrogate mother is the mother of the child: "The mother of a child is the woman who gave birth to it." (German Civil Code, Section 1591 Maternity) <sup>1</sup>  
Surrogacy and egg donation have been banned in Germany since 1991. This is governed by the Embryo Protection Act (Embryonenschutzgesetz).<sup>2</sup> Brokering surrogacy arrangements is also a punishable offense (Adoption Agencies Act, Section 13).<sup>3</sup>

However, there have been efforts to legalize egg donation and surrogacy in Germany for a number of years. The last government, consisting of The Greens, The Free Democratic Party (FDP) and The Social Democratic Party of Germany (SPD), set up a "Commission on Reproductive Self-Determination and Reproductive Medicine". This commission was tasked

<sup>1</sup> [https://www.gesetze-im-internet.de/bgb/\\_1591.html](https://www.gesetze-im-internet.de/bgb/_1591.html)

<sup>2</sup> <https://www.gesetze-im-internet.de/eschg/BJNR027460990.html>

<sup>3</sup> [https://www.gesetze-im-internet.de/advermig\\_1976/\\_13.html](https://www.gesetze-im-internet.de/advermig_1976/_13.html)



with examining ways of regulating abortion outside of the Criminal Code as well as ways of legalizing egg donation and altruistic surrogacy. It should be emphasized that the legal status of abortion, surrogacy and egg donation were combined under one umbrella.

The conclusions of the commission's work on egg donation and surrogacy were:

- Egg donation could be made possible under certain conditions (such as protecting the right to know one's parentage and financially appropriate compensation for egg retrieval for the benefit of others)<sup>4</sup>
- Altruistic surrogacy should remain prohibited because it also entails the potential for circumvention and abuse. In some cases, however, it could be made possible, e.g. in the case of a close family relationship or friendship between the intended parents and the surrogate mother).<sup>5</sup>

**The legal position under existing law is clear in Germany: egg donation and surrogacy are prohibited.**

#### **THIS LEGAL POSITION IS NOT RESPECTED IN PRACTICE:**

Information events on the possibilities of surrogacy and egg donation are held regularly. Two regular fairs are particularly worth mentioning: The "Wish for a baby" fair (Berlin/Cologne) has been providing information twice a year since 2017 about the methods and offers of reproductive medicine, which are actually illegal in Germany.<sup>6</sup> The surrogacy fair "Men Having Babies" (Berlin) has been taking place since 2023 and is primarily targeted at gay men.<sup>7</sup>

The American CEO of "Men Having Babies", calls the fact that men cannot have children "situational infertility" and equates it with medical infertility. He says: "We are expected to be okay with not having children. That's the kind of discrimination we're trying to fight".<sup>8</sup>

Commercial fairs are thus being held in Germany to promote illegal activities and to show people how to evade the law. This occurs despite the fact that Sections 13c and 13d of the Prohibition of the Brokering of Surrogacy proscribe "seeking or offering surrogate mothers or commissioning parents through public statements [...]".<sup>9</sup>

<sup>4</sup> <https://www.bmfsfj.de/resource/blob/238402/c47cae58b5cd2f68ffbd6e4e988f920d/bericht-kommission-zur-reproduktiven-selbstbestimmung-und-fortpflanzungsmedizin-data.pdf> , P. 493

<sup>5</sup> <https://www.bmfsfj.de/resource/blob/238402/c47cae58b5cd2f68ffbd6e4e988f920d/bericht-kommission-zur-reproduktiven-selbstbestimmung-und-fortpflanzungsmedizin-data.pdf> , P. 494

<sup>6</sup> <https://www.wishforababy.de/>

<sup>7</sup> <https://menhavingbabies.org/surrogacy-seminars/berlin/deutsch/>

<sup>8</sup> <https://www.emma.de/artikel/leihmutterschaft-men-having-babies-berlin-341035>

<sup>9</sup> [https://www.gesetze-im-internet.de/advermig\\_1976/BJNR017620976.html](https://www.gesetze-im-internet.de/advermig_1976/BJNR017620976.html)



Women's rights organizations regularly organize protests outside the fairs in Cologne and Berlin, which attract a great deal of media attention.

***“11. How is the child's right, wherever possible, to know and be cared for by his or her parents (Article 7.1 of the UN Convention on the Rights of the Child) taken into account in relevant laws, policies and regulations regarding surrogacy?”***

Although surrogacy is prohibited in Germany, in December 2023 a court of higher instance approved the adoption of a child born to a Ukrainian surrogate mother by the "intended mother", citing the best interests of the child:<sup>10</sup>

"The factual and ethically highly problematic circumstances of surrogacy that came to light in the proceedings are significant in terms of legal policy, but are not decisive for the individual question of a solution based on the best interests of the child" <sup>11</sup>

The "intended father" had acknowledged paternity. The "intended mother" must also be the legal mother so that the child can grow up with the "intended mother" in the event of a possible separation of the couple if it has a closer relationship with her than with the father. It is therefore in the child's best interests to have a legal mother-child relationship with the "intended mother" and to be brought up in the household of the social parents / intended parents. It should also be taken into account that the surrogate mother did not want to raise the child.<sup>12</sup>

The right to know one's own parentage, on the other hand, has been extended in recent years: Children conceived through sperm donation have a right to know the name of the sperm donor, wherefore anonymous sperm donations are no longer permitted.<sup>13</sup> It has also been ruled that a child has a right to active investigation by the biological mother as to who the biological father might be.<sup>14</sup> The commission of the last government described in point 9 also stipulated that the right to know the parentage must be granted with regard to the legalization of egg donation.<sup>15</sup>

<sup>10</sup> <https://www.rv.hessenrecht.hessen.de/bshe/document/LARE240000026>

<sup>11</sup> <https://ordentliche-gerichtsbarkeit.hessen.de/presse/stiefkindadoption-trotz-leihmutterschaft-moeglich>

<sup>12</sup> <https://www.rv.hessenrecht.hessen.de/bshe/document/LARE240000026>

<sup>13</sup> Judgment: [https://nrwe.justiz.nrw.de/olgs/hamm/j2013/I\\_14\\_U\\_7\\_12\\_Urteil\\_20130206.html](https://nrwe.justiz.nrw.de/olgs/hamm/j2013/I_14_U_7_12_Urteil_20130206.html), resulting law: <https://www.bundesgesundheitsministerium.de/service/begriffe-von-a-z/s/samenspenderegister/faqs-samenspenderegistergesetz.html>

<sup>14</sup> <https://www.lto.de/recht/nachrichten/n/bgh-xiizb18321-adoption-auskunftsanspruch-gegen-leibliche-mutter-informationen-leiblicher-vater>, court ruling: <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&az=XII%20ZB%20183/21&nr=127110>



***“12. In countries where surrogacy is permitted or otherwise tolerated, what safeguards exist to prevent violence against surrogate mothers and children born through surrogacy?”***

### **Violence against surrogate mothers:**

Questions have been raised about the extent to which women are informed about their rights and able to give informed consent.

As the following source points out, foreign surrogate mothers are not properly informed about their options under German law when they give birth to a child by a German father:

"The child becomes a German citizen through the German father and (usually) has a center of life in Germany. Under German law, the surrogate mother, as the biological mother, would be entitled to withdraw from the contract and not surrender the child. She would be entitled to custody or, if applicable, rights of access to the German child, from which a right of residence and subsequent maintenance obligations of the child towards the mother would be derived. As the biological mother, she would also be entitled to inherit under German law. Various other legal entitlements would also be relevant. Usually, the foreign surrogate mother has no knowledge of the legal position in Germany."<sup>15</sup>

### **Relevance of paternal rights**

The conditions under which a surrogate mother's child can be taken to Germany are set out on the website of the Foreign Office. Since the woman who gave birth to the child (i.e. the surrogate mother) is the mother of the child in German law, the child can only be brought to Germany if proof of paternity is provided or if paternity is acknowledged with the consent of the surrogate mother. This emphasizes the father's right:

"If there is legally valid descent from a German parent, German citizenship has unequivocally been transferred to the child, who is therefore entitled to a German passport"<sup>16</sup>

For example, children of surrogate mothers are allowed to enter Germany due to their descent from a German father. The Foreign Office also emphasizes on this page that the "intended parents" would not commit an offence in arranging surrogacy.

<sup>15</sup> <https://www.bmfsfj.de/resource/blob/238402/c47cae58b5cd2f68ffbd6e4e988f920d/bericht-kommission-zur-reproduktiven-selbstbestimmung-und-fortpflanzungsmedizin-data.pdf> , P. 493

<sup>16</sup> <https://www.herder.de/hk/hefte/spezial/kinder-kinder-ethische-konflikte-am-lebensanfang/keine-kapitulation-vor-den-verhaeltnissen-das-verbot-der-leihmutterschaft-ist-richtig>

<sup>17</sup> <https://www.auswaertiges-amt.de/de/service/fragenkatalog-node/06-leihmutterschaft-606160>



***“13. How effective have legislative, policy and regulatory frameworks been in preventing and responding to violence against women and children in the context of surrogacy?”***

### **No protection for purchased children**

The following two examples show that purchased children do not enjoy any special protection:

1. a single man had a child carried by a surrogate mother, brought it from Cyprus to Germany and was arrested for abusing his son and producing child pornography. The man was sentenced to 5 years in prison and lost custody, the son was placed in a foster family.<sup>18</sup>

2. a case study by Prof. Anika König (Berlin): "The case describes a homosexual man who has a child with the help of a surrogate mother from the USA, but shortly after arriving in Germany with the new baby he experiences a crisis and gives the child up for adoption... It was not the carrying or giving up of the child that was stressful for the surrogate mother in the case presented, but the fact that the intended father then gave up the child again and dealt with the crisis situation in a non-transparent manner towards her..."<sup>19</sup>

***“14. What legal precedents, rulings, or judicial interpretations have influenced States' approach to surrogacy and its impact on women's and children's rights?”***

### **1. judgment of February 28, 2019**

Frankfurt Higher Regional Court ruled that the adoption of the child by the "intended mother", who is married to the biological father, is in the best interests of the child. The surrogate mother is registered as the mother on the birth certificate. The creation of a parent-child relationship between the child and the "intended mother" was to be expected. It was ruled that the arrangement of the surrogacy and the transfer of the child to Germany were not illegal, only the surrogacy itself.<sup>20</sup> With regard to the adoption, the Higher Regional Court - "contrary to the opinion of the Local Court - did not apply the stricter standard of Section 1741 (1) (2) of the Civil Code, according to which the adoption is only permissible if it is also necessary for the welfare of the child. According to the Senate, this part of the provision only applies to illegal or immoral adoptions in which the parents were involved. However,

<sup>18</sup> <https://www.bz-berlin.de/tatort/menschen-vor-gericht/baby-nur-fuer-missbrauch-gezeugt-war-immer-mein-ziel-einen-jungen-haben-zu-koennen> ,  
<https://www.rnd.de/panorama/von-leihmutter-ausgetragenen-sohn-missbraucht-funf-jahre-haft-fur-vater-ZC2OKOCX3WA2ZIFXDPZSLHFJXE.html>

<sup>19</sup> <https://www.eaBerlin.de/aktuelles/2025/leihmutterschaft-im-diskurs/>

<sup>20</sup> <https://www.rv.hessenrecht.hessen.de/bshe/document/LARE190019855>



neither arranging surrogacy in Ukraine nor entering Germany with the child violated German law.<sup>21</sup>

## 2. judgment of August 10, 2023

A gay couple took legal action claiming the right to deduct the cost of buying a child through surrogacy in the US from their taxes, arguing this was an extraordinary burden of medical expenses due to involuntary childlessness because men cannot have children. The court ruling is an example of respect for the women and children who are exploited and objectified in the surrogacy industry. The ruling emphasizes that children and mothers are not medical devices to alleviate the plaintiffs' mental suffering. Such a view violates the human dignity of the child and the surrogate mother. Furthermore, the childlessness of the gay couple is not an illness, but is based on the biological limits of reproduction.<sup>22</sup>

## 3. overview of further judgments on surrogacy

<https://www.kostenlose-urteile.de/topten.leihmutterschaft.htm>

We provide a summary of the court rulings at the end of our statement.

## Conclusion:

Germany is a country in which the sex-based rights of women and girls are repeatedly disregarded:

- With the Self-Determination Act, the German state reduces being a woman to a speech act, thereby undermining the basis of the sex-based rights of women and girls.
- Germany is a country in which the sex-based exploitation of women and girls through prostitution is legal.
- Family courts accept expert opinions based on the made-up Parental Alienation Syndrome (PAS) in order to disenfranchise mothers.

Against this backdrop, the risk of further sex-based exploitation of women through surrogacy is extremely high. The **previous government** (until Feb. 2025) took steps towards legalizing surrogacy and egg donation. For example, the then Minister of Justice wanted to expand the

<sup>21</sup> <https://www.lto.de/recht/nachrichten/n/olg-frankfurt-am-main-1uf7118-leihmutterschaft-kind-adoption#:~:text=Ein%20von%20einer%20Leihmutter%20ausgetragenes,28.02.2019%2C%20Az.>

<sup>22</sup> <https://www.bundesfinanzhof.de/de/entscheidung/entscheidungen-online/detail/STRE202310188/>



term "mother" from the current definition ("woman who gave birth to the child") to "legal mother" in his proposed reform of parentage law:

"It should also be possible to become a legal mother by recognizing maternity - just as a man can recognize paternity for a child."<sup>23</sup>

The change of definition was introduced with the purported objective of improving the situation of lesbian marriages with children. Unfortunately, the definition of "lesbian" was also extended to men by the Self-Determination Act, which came into force in Germany on November 1, 2024. Under these provisions, a man can also be declared a mother, although the proposed reform was not implemented due to the end of the term of government.

Decriminalizing abortion was discussed alongside weakening the ban on surrogacy and egg donation. Ostensibly concerned with strengthening women's rights, this is perhaps better understood as the removal of statutory obstacles to the exploitation of women by the surrogacy industry.

Even though the ban on surrogacy and egg donation remains, the **procurement of surrogate mothers** is not only tolerated in Germany by allowing surrogacy fairs such as "Men Having Babies" and "Wish for a Baby" to take place. Government agencies also provide information on how the ban can be circumvented. **The decisions of the courts** also clearly show that decisions were made in favor of the intended parents when it came to the adoption of the purchased children by the "intended mother", justified with the child's best interests.

The issue of surrogacy is not explicitly addressed in the coalition agreement of the **incoming federal government**. However, the incoming federal government has announced that it will review the legal framework for starting a family and reproductive rights:

"We will design medical prevention, treatment and research in a gender- and diversity-sensitive way (including queer people), taking into account the special needs of all genders at every stage of life."<sup>24</sup>

German child buyers are an important target group for surrogacy agencies worldwide. Some agencies have translated their websites into German in order to acquire German buyers and advertise with inhumane criteria, such as the choice of "race" of the egg donor/child.<sup>25</sup> This shows that this industry, which despises women and children, has a great interest in German customers. This industry would be delighted if surrogacy were legalized and Germany were thus legally connected to the child trade. We must not allow this to happen!

<sup>23</sup> [https://www.bmj.de/SharedDocs/Pressemitteilungen/DE/2024/0116\\_Reform\\_Abstammung\\_Kindschaft.html](https://www.bmj.de/SharedDocs/Pressemitteilungen/DE/2024/0116_Reform_Abstammung_Kindschaft.html)

<sup>24</sup> [https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag2025\\_bf.pdf](https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag2025_bf.pdf)

<sup>25</sup> <https://leihmutterchaft-zentrum.de/verschiedene-rassen-der-eizellspenderinnen.html>