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Presumed violation of the European Convention on the Legal Status of Children born out of Wedlock

Reply to Written question¹: Written question No. 750 (Doc. 15110)
Committee of Ministers

1. The Committee of Ministers notes that international surrogacy presents a very specific contemporary challenge as in such cases it may be difficult for the child's legal parentage to be established or recognised. The particular context of Covid-19 appears to have exacerbated such situations in some countries, with the risk of leaving children stateless, without the recognition or protection of any State and at risk of human rights violations.

2. The 1975 European Convention on the Legal Status of Children born out of Wedlock's primary objective is to improve the situation of children born out of wedlock in State Parties by establishing common rules concerning their legal status. However, its provisions do not directly cover surrogacy arrangements, which at the time of the Convention's elaboration were not contemplated by the drafters. The Committee further notes that the 1975 Convention does not include a monitoring mechanism which would enable a review of its implementation in a State Party.

3. The Committee of Ministers observes that work has been initiated and is ongoing in other fora for multilateral regulation and harmonisation of private international law on surrogacy.² With regard to preventing and addressing cases of statelessness, there are clear obligations for Parties, including Ukraine, under the 1954 UN Convention relating to the status of stateless persons and 1961 UN Convention on the reduction of statelessness.

4. However, given the potentially serious consequences for children and families related to the issues raised by the Honourable Parliamentarian, the Committee of Ministers calls upon States, which are considering the adoption of new legislative or policy measures or responding to individual cases, to make efforts to address the challenges presented by international surrogacy, taking into account also the additional challenges posed by Covid-19, by making the best interests of the child a primary consideration and to leave no child stateless.

1. Adopted at the 1397th meeting of the Ministers' Deputies (3 March 2021).

2. Work is underway by the Hague Conference on private international law (re private international law issues surrounding the status of children, notably in cross-border surrogacy cases) and the International Social Service (re principles on the protection of the rights of the child in the context of surrogacy). The Hague Conference works on potential provisions for inclusion in both a possible future general private international law instrument on legal parentage (a Convention) and a separate possible future protocol with private international law rules on legal parentage established as a result of an international surrogacy arrangement (a Protocol).

