

International Surrogacy and Recognition of Legal Parentage (summary)

Manabu IWAMOTO

Professor, Faculty of Law, Nanzan University

The development of assisted reproductive technologies has forced countries to question whether surrogacy is legal or not. In some countries, surrogacy is accepted and the contract to ask a surrogate mother to give birth is recognized, whereas in other countries, this is considered illegal. This difference is the cause of so-called surrogacy tourism. The problem becomes apparent when the children who are born through surrogacy in a foreign country that allows surrogacy is brought back to the country where the intended parents have their habitual residence. If the country of habitual residence prohibits surrogacy, what should be done about the legal status of the child? Many countries must deal with this issue.

Japan does not recognize surrogacy locally. Furthermore, in 2008, the Supreme Court ruled that it does not recognize the parentage based on surrogacy recognized in foreign countries. In contrast, from a comparative perspective, it is noteworthy that Austria and Germany have recently expressed their position that they recognize the legal status of children who are born through surrogacy abroad since 2011. Since 2014, European Court of Human Rights has ruled several decisions on this issue. In addition, Hague Conference Private International Law and International Social Service have launched a project to stabilize the legal status of the children in each country considering the reality that surrogacy is taking place. Subsequently, proposals have been made based on the results of these discussions.

This study presents the relevant decisions of the European Court of Human Rights, the current status of domestic laws and cases in each country, and an overview of the two projects and examines what conditions are considered appropriate for the recognition of children who are born through surrogacy in countries that do not allow surrogacy under their own laws.

After reviewing the Supreme Court decision in 2008, this paper clarifies that there is sufficient room in Japan to recognize the legal parentage between children who are born through surrogacy abroad and the intended parent through the scheme of recognition of foreign decisions, points out the need to reconsider the requirements for recognition, and

discusses the issue considering the legal considerations found in comparative considerations.

Finally, while noting that the establishment of a cooperative system among countries is necessary to provide greater protection to the children, this study also stated that it is necessary to continue to respect those who hold the view that surrogacy itself should be prohibited.