



IAFL Introduction to European Family Law Conference

23 & 24 October 2025

Thursday, 23rd October 2025: 14:30 – 16:00

Session 3: The connection between international family law and immigration law

Speaker profiles:

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Profile

In practice since November 1990, specialized in German and International Family Law, Law of International Adoption and Law of Inheritance. Certified Specialist in Family Law ("Fachanwältin für Familienrecht") since 2001. Memberships: President of the Family and Inheritance Law Committee of the German Federal Bar (BRAK, Berlin); Member of the European Law Committee of the German Federal Bar (BRAK, Brussels); Member of Family Law and Succession Law Committee of the CCBE; Member of German Association of Female Lawyers; Team Leader and EU Expert working in Russia (2011-2014) and Kosovo (since 2014); Lecturer and Trainer to educate Lawyers and Judges in national, International and European Family Law; several publications in International Family Law for practitioners; Member of the publishing team of a Family Law Journal in Germany.

Languages Spoken: German, English

Alice Meier-Bourdeau

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Alice Meier-Bourdeau is a member of the “Ordre des Avocats au Conseil d'Etat et à la Cour de Cassation” (Association of Lawyers at the Council of State and the Court of Cassation) who are the only lawyers who can represent parties before the French supreme courts. She is a partner of the law firm “Meier-Bourdeau Lécuyer et associés” since 2011.

Her fondness for private international law and family law (particularly as it relates to inheritance law and matrimonial property regimes) has led her to write numerous notes and contributions and to speak regularly at seminars and conferences. She also regularly provides training for lawyers, magistrates and notaries in these areas and in civil procedure. She is President-Elect of the European Chapter of the International Academy of Family Lawyers (IAFL), member of the Comité français de droit international privé, Droit et procédure, of the Société de législation compare and of UIA.

Fluent in German, French and English, Alice Meier-Bourdeau has the distinction of being the first judicial Officer to be a citizen of another European Union Member State: Germany.

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Profile

Konstantinos Rokas after his undergraduate studies in law at the University of Athens, he went on to obtain two LLM degrees from the University of Athens (in private international law and EU law) and the University Paris II-Panthéon Assas (in international commercial law and private international law), finishing second in his class. He has defended his PhD on "Medically assisted reproduction in comparative private international law" in the University Paris 1 Panthéon-Sorbonne. He is admitted to the Athens Bar Association since 2004 and to the Supreme Court of the Country. Konstantinos handles a wide range of international family law issues, focusing on matrimonial property, international successions, parentage in ART, surrogacy to the benefit of international clients. He is an assistant professor in Private International Law and law of international commercial transactions at the Aristotle University of Thessaloniki. He has a good level of German and he is learning Chinese.

Languages Spoken: English, French, German and Chinese

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Questions of descent as a prerequisite for a child's nationality

Descent and Migration Law from a German National and International Private Law (PIL) and International Procedure Law perspective



WHY ARE QUESTIONS OF NATIONALITY AND DESCENT/PARENTAGE SO IMPORTANT?

- Descent/parentage is not only a family law concept, but has major consequences in:
 - > **German Nationality law** (=StaatsangehörigkeitsG= StAG): regulates how German nationality is acquired
 - > **Migration law** (=Act of Residence=AufenthG): addresses family reunification, residence rights in Germany
- And has also consequences > inheritance law, maintenance obligations, custody (parental responsibility), identity



NATIONALITY BY DESCENT AS AN ENTRY POINT TO MIGRATION RIGHTS ACCORDING TO THE GERMAN NATIONALITY ACT

- Migration rights addresses right to reside in Germany and economic activities of foreigners in Germany
- Citizenship/Nationality = exemption from residence law:
Germans are not subject to the Residence Act and have freedom of movement > Descent decides



NATIONALITY BY DESCENT AS AN ENTRY POINT TO MIGRATION RIGHTS (1)

- Sec. 4 par. 1 StAG (= German Nationality Act): A child automatically acquires German citizenship by descent from a German parent > jus sanguinis > depends on legal parentage!
- Sec. 6 StAG: Adoption as a child by Germans > automatic citizenship > qual treatment with biological descent
 - > The place of birth is primarily irrelevant (jus sanguinis)
 - > Therefore: descent = central requirement for the acquisition of a German nationality
- Equal status of mother and father, but legal parenthood has to be established



NATIONALITY BY DESCENT AS AN ENTRY POINT TO MIGRATION RIGHTS (2)

- If a child is German > family reunification of parents (Sec. 28 Residence Act) > Parents of a minor German child receive right of residence, meaning the child's nationality by descent gives the parents rights to immigrate
- If parents are German, but the child is not German e.g., mother is German, but descent is not recognized (lack of acknowledgment of paternity, sperm donation) > Child might be considered as a foreigner > residence permit is required



LEGAL PARENTHOOD ACCORDING TO GERMAN LAW

- German substantive law:
 - > *Maternity: Mater semper certa est* (Sec. 1591 German Civil Code (=BGB))
 - > *Paternity: Marital birth* > presumption of paternity according to Sec.1592 No. 1 BGB or Acknowledgement of Paternity or judicial determination, Sec. 1592 No. 2, 3 BGB.



LEGAL PARENTHOOD ACCORDING TO GERMAN LAW (2)

- till now: no analogous application of Section 1592 No. 1 BGB to the woman who is married to the mother (Federal Court of Justice, decision of October 10, 2018 – XII ZB 231/18 -)
- 6 (!) cases (of two married mothers) pending at the German Federal Constitutional Court, because the mother married to the birth mother still has to adopt the child born in the marriage
- Instead of deciding these cases:

In its ruling of April 9, 2024 (Ref. 1 BvR 2017/21, NJW 2024, 1732) regarding the law of descent, the Federal Constitutional Court strengthened the rights of biological fathers and instructed the legislature to revise (only) the law on contesting paternity by June 30, 2025



GERMAN INTERNATIONAL PIL RULES ON PARENTAGE AS INDIRECT NATIONALITY/MIGRATION RULES

- Who is descended from whom, if
 - Child does not live in Germany
 - Child does not have a German Nationality
 - Parents or one parent does not have a German Nationality

> Which law is applicable (statute of parentage)?

> Are foreign parentage decisions to be recognized in Germany? > Question of International Procedure Law rules



LEGAL PARENTHOOD ACCORDING TO GERMAN PIL – ART. 19, 20 INTRODUCTORY ACT TO THE CIVIL CODE (= EGBGB)

- Applicable law = law of the child's habitual residence at the time of birth
or in relation to each parent the descent can also be determined by the law of the State of this parent's (mother or father) nationality
or if the mother is married, the descent can also be determined by the law that governs the general effects of the marriage under Article 14 paragraph 1 at the time of the birth of the child > (favor filii principle)
- Alternative connecting factors with the goal to make acknowledgment as easy and valid as possible
- Formal validity: Art. 11 EGBGB
- Contesting parenthood (including motherhood), Art. 20 EGBGB, but not in the case of loss of parenthood through adoption



LEGAL PARENTHOOD IN EUROPE

Commission proposal for a COUNCIL REGULATION on jurisdiction, applicable law, recognition of decisions and acceptance of public documents in matters of parentage, and establishing a European Parentage Certificate dated December 7, 2022; COM(2022) 695 final.

Is still in progress



LEGAL PARENTHOOD – PROBLEMS IN INTERNATIONAL PIL AND INTERNATIONAL PROCEDURE LAW

- anonymous birth
- surrogacy (abroad)
- foreign birth certificates
- Adoption
- Unclear paternity > refusal of recognition
- Without legal parenthood > no acquisition of German nationality
- Child may be stateless > residence problems, registration difficult etc.



SURROGACY

- Germany: Surrogacy is prohibited.
 - Permitted abroad > Who is the mother?
- Federal Court of Justice (2014 ff.): Foreign decisions can be recognized (ordre public only to a limited extent)
- Consequence: Child might receive German citizenship > automatic right of entry and residence



SURROGACY BASED ON GERMAN INTERNATIONAL PROCEDURAL LAW IN THE CONTEXT OF THE RECOGNITION OF FOREIGN JUDGMENTS

- Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (=FamFG), here Sec. 108, 109
- Impediments to Recognition, Sec. 109 No. 4: violation of public policy due to: violations of human dignity, threats, exploitation of a predicament, etc.
- This concerns exclusively the recognition of surrogacy carried out abroad, in particular in the US, Mexico, Ukraine, Canada, and also the UK



SURROGACY BASED ON GERMAN DECISIONS IN THE CONTEXT OF THE RECOGNITION OF FOREIGN JUDGMENTS BY THE GERMAN FEDERAL COURT OF JUSTICE (BGH)

- Principle: genetic parenthood must exist > then no violation of public policy, foreign decision (!) is recognizable, cf. BGH NJW 2015, 479 > Consequences: Registration of the German intended parents in the civil register
- Pre-birth registration based on a foreign decision: US immediately in the civil register, cf. BGH, NJW 2022, 2273
- Postnatal decisions on parentage: Ukraine > the problem here is, whether the decision has retroactive effect to the birth of the child or ex nunc (at the time of the decision) > BGH left this question open
- Review of surrogacy after birth, then correction of the birth certificate and issuance to intended parents > Mexico, UK, states in the USA --> also controversial



QUINTESSENCE

- In Germany, descent is not only the basis for nationality/citizenship, but also a central gateway to apply migration law or not.
- For those who are German by descent migration law does not apply.
- Those who are not German by descent must migrate as foreigners.
- The descent of the child can generate migration rights for parents.
- Foreign decisions on parentage may or not may be recognized in Germany.



LINK BETWEEN IMMIGRATION LAW AND FAMILY LAW

- **I - The impact of immigration law on the return of illegally displaced children**
- A. The impact on the unlawfulness of the removal
- UK Supreme Court in *G v. G* on 19 March 2021.
- Court of Justice of the European Union 2 August 2021 (CJEU, 2 August 2021, C-262/21)



- B. The impact on the child's integration into their environment
- Cass. Civ. 1^{ère}, 13 July 2017, No. 17-11. 927).

II - The impact of immigration law on the exercise of visiting and accommodation rights


