

Surrogate Motherhood: In the Legislative Analysis of Foreign Countries

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Abstract: The article discusses the emergence of surrogate motherhood and its legal consequences, the analysis of the legislation of European countries, the Republic of Uzbekistan and the CIS. Proposals for a unified international convention were also made. At the same time, the national and private legal relations of the Surrogate Motherhood Institute were studied.

Key words: family, Family Codes, surrogate motherhood, embryo transfer, implantation of an embryo, genetic mother and genetic father.

Surrogacy is a relatively new method of reproductive technologies, the aim of which is to overcome infertility.

World Health Organization provides statistics Infertility affects millions of people of reproductive age worldwide and affects their sexes and communities. It is estimated that the problem of infertility is falling from 48 million to 186 million worldwide.

At the moment, about 1,500 children from surrogate mothers are born in the world (according to some sources, up to 250 thousand). The world's first child from a "surrogate" mother was born in 1989 in the UK. Doctors took an egg from an infertile woman, fertilized it outside the body, and transferred the embryo into another woman's uterus. After nine months, the woman, unable to bear the child on her own, was able to take the baby in her arms, which was a part of herself. In 1995, the "surrogate motherhood" program began to be applied in the CIS. [1.]

Statistical data indicate a steady increase in the number of men and women with various diseases and dysfunctional conditions, which excludes the possibility of exercising reproductive rights in a natural way.

The emergence of surrogate motherhood and its legal consequences is one of the most pressing issues today. The institution of surrogate motherhood regulation in family law is one of the most complex legal processes. First of all, there is no official legal definition of the term surrogate mother in national and international law. It is also not adopted as a separate law in the national legislation of most countries. At the same time, there is no single type of contract that combines the rights and obligations of surrogate motherhood. The institute of surrogate motherhood is the object of study of national and private legal relations.

Currently, there is no single, normative legal act in the law. For example, a law, a convention, a regulation, a Directive allowing or prohibiting surrogacy, the attitude of the national legislation of all countries to the institution in question is very ambiguous.

According to Article 207 of the Family Code of the Republic of Uzbekistan, if a child is born as a result of the use of these methods in a married person who has given written consent to the creation of an artificial fetus or embryo transfer, they are recorded in the birth register as the child's parents. Persons who are in a mutual marriage and who have given written consent to the transfer of an embryo to another woman for the purpose of developing a fetus may be registered as the child's parents with the consent of the woman who gave birth to the child (blood mother). [2.]

This means that citizens of the Republic of Uzbekistan who are married to each other can have an artificial fetus or develop a fetus with his consent.

The Family Code of Ukraine protects the interests of persons entering into an agreement with a surrogate mother (hereinafter referred to as authorized parents). It also contains a rule according to which in the case of implantation of an embryo conceived by spouses into the body of another woman, these spouses are the parents of the child. In addition to the Law of Ukraine "On organ and tissue transplantation," it is clearly stated that the spouses who have agreed to carry out reproductive techniques have full parental rights and obligations in relation to children who were born as a result of these techniques. [3.]

The Code of the Republic of Belarus on Marriage and Family No. 278-3 of July 9, 1999 contains several articles devoted to surrogate motherhood. Article 53 enshrines the definition of surrogate motherhood, which means the

implantation of an embryo based on a contract, bearing and giving birth by a woman (surrogate mother) of a child conceived from an egg taken from the body of another woman (genetic mother), if bearing and giving birth to a child by a genetic mother is physiologically impossible or are associated with a risk to the life of the genetic mother and / or child. After the birth of a child conceived by in vitro fertilization, the rights of the mother belong to his genetic mother and genetic father. [4.]

Russian legislation establishes a different procedure for determining parental rights in relation to a child born of a surrogate mother. The Family Code of the Russian Federation enshrines the right of persons who have given consent to the use of the method of artificial insemination or implantation of an embryo, to be registered as the child's parents only with the consent of the woman who gave birth to the child (paragraph 4 of article 51). With this provision, the legislator seeks to protect the interests of the surrogate mother. [5.]

In the UK, surrogacy is possible only on a non-commercial basis (although it is allowed to pay the current expenses of a surrogate mother), advertising of surrogacy is prohibited in the Netherlands, the offer of surrogate mothers services and their selection, in Germany and France this method of reproductive technologies is prohibited.

However, now France is already considering the issue of legalizing surrogacy. In Greece, there is no legal regulation of the institution in question at all. [6.]

Based on the above analysis, countries can be grouped.

The first group contains legalized permission for the use of surrogate motherland (Ukraine, Kazakhstan, Kyrgyz Republic, Moldova, South Africa, the USSR).

The second group either completely prohibits surrogacy (Norway, Sweden, Austria, states of America: New Jersey, Michigan, Arizona) or only commercial surrogacy (Denmark, Israel, Netherlands, Canada, UK).

The third group of countries does not contain legal regulation of this type of relationship (Latin America, Finland, Belgium, Ireland, Greece, India).

Also, the legal fact required to determine the content of foreign family law in the Republic of Uzbekistan, ie registration of birth, marriage or divorce, registration of death, arises outside the territory of the Republic of Uzbekistan and must be duly formalized by the competent authorities . It is in marriages complicated by the foreign element that the problem of infertility arises, and the right to use surrogate motherhood arises. [7.]

In medicine, surrogate motherhood is one of the auxiliary reproductive technologies in which three people are involved in pregnancy and childbirth: a genetic (biological) father - a person who gives his sperm for fertilization and agrees to take on paternity after childbirth; genetic (biological) mother - a person who gave his egg for fertilization and agreed to assume the responsibility of motherhood after the birth of a child; a surrogate mother is a woman of childbearing age who agrees to give birth to a child (embryo) from a genetic parent for free or for a fee, and also does not claim motherhood for that child. Once a child is born, the genetic (biological) parent is registered as the legal parent.

Surrogate mothers are required to have a healthy child, a satisfactory level of physical, mental and reproductive health, confirmed by a medical report. In addition, a notarized written consent of the spouse and a notarized written consent of the surrogate mother to carry the fetus at the notary must be concluded. In our opinion, it is this agreement that leads to the construction of family law "sui generis". In some countries it is called a contract for artificial insemination or embryo transfer, while in other countries the transfer of an embryo is called a surrogate motherhood contract. In particular, within the CIS countries, a written agreement on embryo transfer will be signed in the Russian Federation, Uzbekistan, Azerbaijan and Georgia. Notarized contracts are issued in Ukraine, Armenia, Belarus, Kazakhstan and Kyrgyzstan.

According to the above analysis, the medical and legal culture of a woman who agrees to surrogate motherhood must be fully formed. The birth of a healthy child from a surrogate mother depends on her physical and mental health.

The opposite situation may also arise if the genetic parents refuse to accept the child, and the surrogate mother disputes her motherhood, proving that there is no genetic similarity between herself and the child. This happens, for example, if a child is born with physical or mental disabilities. A situation is also possible when a child is born with certain pathologies due to the fault of a surrogate mother.

The law guarantees the rights of the child and the mother if the surrogate mother is rejected by her biological parents for the birth of a mentally and physically disabled child. Problems arise in the legal destiny of the child, such as the registration of the birth of a child, the determination of paternity. It is necessary to address the issues of ensuring the personal and social rights of the surrogate mother.

In our opinion, the legislator is obliged:

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Firstly, in the future, take into account this possibility, specifying the responsibility of the woman carrying the child, and the consequences of such a situation. For example, the possibility of imposing financial liability on a surrogate mother and child in the form of monetary compensation to potential parents.

Second, to develop a formal legal definition of the term surrogate mother in national and international law.

Thirdly, it is necessary to develop a single contract model so that the family-legal “sui generis” construction does not occur in the contract for artificial insemination or embryo transfer.

Fourth, it is desirable to develop a single international convention on surrogation, which is universal for all countries.

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