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SURROGATE MATERNITY: A GENERAL SPECIFICATION

Nowadays, one of the most desperate problems is infertility. About 10-15% of the Ukrainian population is suffering because of this. So, it is not surprising that the theme of auxiliary reproductive technologies (ART) is gaining in popularity, in particular, surrogate maternity.

The purpose of this research is to analyse all the problematic issues related to the phenomenon of surrogate maternity, to reduce the number of contradictions in the legislation of Ukraine.

In Ukraine, it has been used for more than 10 years, and at that time, the attitude of the society both to the couples who decided to use this method and to surrogate mothers certainly changed. Particularly this process was influenced by the development of medicine, which gave more opportunities

to make this procedure more qualitative and easier. But despite this, in our country still there is a pressing issue that such a phenomenon as surrogate maternity is not sufficiently legally consolidated and requires a thorough revision.

First, we would like to note that despite the fact that surrogate maternity is perceived today as a fairly new phenomenon, in some other form it existed in even Ancient Rome, where men gave their wives on "hire" for married couples, where the wife was infertile.

So, one of the main questions is: what is surrogate maternity? Since the Ukrainian legislation does not have a clearly determined definition, one must rely on the opinion of various scholars, who obviously differ in terms of how to interpret this phenomenon. Not only in Ukraine, but there is also such a problem, spreading various interpretations in different countries, especially in the United States of America, wherein almost every state has another understanding of this. It should be added that despite this, California itself is the world centre of surrogate maternity.

After analyzing all possible interpretations, it can be pointed out that surrogate maternity is an agreement between individuals who want to become parents and a woman (surrogate mother), who agrees on the transfer of the human embryo to her body under the conditions of an accredited health care institution, to give a birth to a child with the subsequent transfer to the other party, for remuneration or without it.

In Ukraine, surrogate maternity is allowed on a commercial basis, although in the world the attitude towards legalization of this is indeed different. For example, it is forbidden by law in Austria, Norway, Sweden, France, some states of America, Italy, Switzerland, and Germany, where punishments are very strict. In Belgium, Ireland, Finland, surrogate motherhood is not regulated by law, although it takes place. In Australia, the United Kingdom, Denmark, Italy, Israel, Spain, Canada, the Netherlands, some states of America are allowed only non-commercial maternity. Because of all of this, there are many contradictions when citizens of other states, where such a phenomenon is forbidden, come to use such services to us.

For some time in 2012, interesting advertising was spread in the Netherlands, so that women should not let their husbands go to Ukraine, where cheap prostitution exists. Many people are afraid that a similar

situation may arise with the fact that another bad reputation can emerge in our country as a country with legalized and fairly cheap services of surrogate maternity.

Legal regulation is a serious problem because not only there is no specific law on surrogate maternity, but also the Family Code of Ukraine does not pay enough attention to this issue. At the moment, the legal regulation of surrogate motherhood is limited to several normative and legal acts, namely: the Family Code of Ukraine, the Law of Ukraine "On organ transplantation and other human anatomical materials" dated July 16, 1999, the Order of the Ministry of Health "On Approval of the Instruction on the Procedure for the Application of Assisted Reproductive Technologies" dated December 23, 2008 No. 744, the Order of the Ministry of Health "On Approval of the Procedure for Application of Artificial Insemination and Implantation of Embryos and Methods of their Implementation" dated November 4, 1992, No. 24.

There are three legal subjects related to surrogate maternity, namely: spouses (the genetic parents of a child, born in the course of surrogate maternity, can only be married couple (this is another important aspect that means that single woman, man or homosexual couples can not use surrogate maternity services that essentially restrict their right to be parents, durable in Articles of the Constitution of Ukraine), surrogate mother (she can only be an adult legally capable woman without medical contraindications, must have own healthy baby and give written consent (the spouse may also put additional terms), medical institution (ART methods can be used only by specialists in accredited health care institutions)

Regarding the registration of a child born by the method of surrogate maternity, it is carried out in accordance with the procedure established by law. In Part 2 of Art. 123 of the Family Code of Ukraine states that in the case of implantation in an organism of another woman a human embryo, the parents of a child are genetic parents. Thus, a surrogate mother has no right to claim a child and should realize it before the beginning of relations between subjects. There may also be many conflicts because of this, so it is important to make up an agreement that will provide proper legal protection for the child both before and after birth.

Due to the fact that between subjects of the program of surrogate maternity often arise not only non-property but also property relations, it is

expedient to consider this issue not only as family law but also civil. In the contract, the parties establish the rights and responsibilities that arise in connection with the implementation of the program of surrogate maternity. The conditions that need to be mentioned in such agreements remain essential, although they stay to be non-regulated by law. Here is a list of some following conditions: scope of the contract, conditions, and procedure of performance of the contract, the order of settlements between the parties, rights, and duties, contract term, responsibilities of the parties, insurance, confidentiality.

In our opinion, one of the most important problems is different views on whether such a phenomenon as surrogacy should exist in general. There are fears that children in this way can turn into goods. It is believed that such a practice, when women take money for bearing children means a certain way of using the body because of using the heavy reproductive labor of a woman and her body for money, which makes surrogate maternity close to prostitution and human trafficking. A surrogate mother may have psychological trauma due to the fact that she will need to give back a child who has become her like an own in the course of her pregnancy. There may be violations in the growth of the child caused by the fact that they were worn by one person, and at an early age was transferred to other people for bringing up. There is widespread fraud in the sphere of surrogate maternity, which causes concern in the international community. Of course, if you look at the religious side, you can see a lot of negative visions, which consist of the fact that surrogate maternity distributes an immoral tendency and undermines the sanctity of marriage and family.

Summing up all the above, one can conclude that, despite the fact that there are so many controversial views on the surrogate maternity since today in Ukraine it is legalized and actively used, legislation should be thoroughly supplemented. This phenomenon should be regulated at a sufficient level so that fewer disputes and fraud do not occur and that this in no way worsens our relations with foreign countries.

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An integral part of a democratic, legal state is the implementation of constitutional justice, the task of which is to ensure the rule of law and constitution, the protection of constitutional human and civil rights and freedoms, verification of the constitutionality of acts of law, the official interpretation of the constitution.

The sole body of constitutional jurisdiction in Ukraine is the Constitutional Court of Ukraine (further – the CCU). After the renewal of independence of Ukraine, adoption of the Constitution and the law «On the Constitutional Court of Ukraine» this body launched its practical activity.