



Definition and characteristic features of surrogacy

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ABSTRACT

Surrogate motherhood is the process of carrying and giving birth to a child by a woman, that is, a surrogate mother for the further transfer of the child to potential parents. In many cases, the genetic material of a man and a woman for the formation of an embryo is provided by a person carrying a child. In some cases, a surrogate mother can also be a genetic mother (negotiated individually). Surrogacy is resorted to when pregnancy and childbirth are undesirable or impossible from a medical point of view, when the risks of pregnancy are too dangerous for the mother, or when a single man wants to have a child.

Keywords:

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Surrogacy is one of the reproductive technologies by which a woman who does not have negative indications for carrying a surrogate child, on the basis of an agreement (in

this case, a contract) after artificial insemination carries and gives birth to a child for another family. Conception should take place in a specialized medical institution (without the use of sexual intercourse), for which purpose the eggs and spermatozoa of an infertile married couple or donors can be used. Other scientists, such as T.V. Sorokina, adhere to a similar interpretation of surrogate motherhood, she quite justifiably understands the process of implantation, gestation and birth of a child by a performer (a woman who is a surrogate mother) conceived using the genetic material of the customer/(s), the donor, or the surrogate mother herself, on the basis of a surrogate contract. motherhood between a surrogate mother and customers (potential parents) on a reimbursable or gratuitous basis, as well as E.S. Mitryakova. formulates the following definition of surrogate motherhood – a legal relationship between a surrogate (carrying) mother and spouses (customers) arising from the

implantation of a genetically alien embryo into the body of a surrogate mother for its gestation, the birth of a child and its subsequent transfer to customers.

Surrogacy is a process whereby a woman intentionally carries a child, which she must give birth to and pass on to potential parents. She carries a child for the intended parents, more often because the parents for medical reasons cannot carry it out without the intervention of a surrogate mother. In traditional surrogacy, the surrogate mother contributes her own egg, which is artificially inseminated by the donor's sperm.

Surrogacy can be altruistic, when the surrogate mother is not paid for her work, or commercial, when she receives remuneration for the service provided, determined by the contract.

Medicine has made great strides in the field of reproductive technologies so that people who are desperate to have a child on their own will find hope to achieve the desired goal. But, unfortunately, the development of science is ahead of the legal support of its latest achievements. One of the main issues that concerns surrogacy is its regulation from a legal point of view.

The use of medical technologies must be legally regulated. The medical technology of in vitro fertilization that emerged in the mid-eighties, as a reaction to infertility of women, assumes, along with other reproductive technologies, such a method of treatment as surrogate motherhood, namely surrogate motherhood is not regulated in any way in regulatory legal documents, but on the use of assisted reproductive technologies in Article 15 of the Law of the Republic of Uzbekistan "On the protection of reproductive health of citizens" the following is described: "Assisted reproductive technologies are medical technologies, methods of treatment and procedures aimed at achieving pregnancy, in which some or all stages of conception are carried out outside the woman's body. " Although the Law does not give the concept of surrogate motherhood, but defines and names assisted reproductive technologies, nevertheless, they can be used, including when

applying the surrogate motherhood procedure. Although this by-law does not contain a separate definition of "surrogate motherhood". Therefore, a legitimate question arises as to whether surrogacy can also be attributed to assisted reproductive technologies.

More and more attention is being paid to cross-border IVF and ART (assisted reproductive technologies); due to the ambiguity of the legislative approach in Uzbekistan to relevant issues, people are forced to cross borders in order to receive reproductive services, surrogacy services – in those countries where it is legally permitted and citizens are protected from the standpoint of law. Increasingly, there are issues of globalization of legal regulation of reproductive technologies for the full protection of men and women involved in the relationship, and especially newly born children. Surrogacy has become a global phenomenon in recent years. Thus, it is possible to raise the question of international regulation of public relations in this area.

Strictly speaking, surrogate motherhood refers to IVF indirectly, since its subject is not fertilization (conception), but the bearing and birth of an already conceived child; according to Russian legislation, the use of germ cells of persons other than potential parents for the purpose of surrogate motherhood is prohibited, as is the use of a surrogate mother's egg for these purposes. The legal regime of surrogate motherhood applies only and exclusively to relationships that are not related to the basic ART program for in vitro fertilization, even if a hypothetical possibility arises for this.

Surrogacy from a legal point of view has increased complexity and due to the fact that we are talking about the conclusion of a civil contract, the interests of the parties to which may change significantly in the course of its execution by the parties, and its very content affects, in addition to material or other interests, a number of human values that are difficult to comply with legal regulation. In addition, a legal contract concluded between a surrogate mother and a married couple or a single woman can serve as a means of intervention in the rights and legitimate interests of other persons who

are not parties to the contract, including an unborn child. Finally, the legal regulation of surrogacy is inextricably linked with the legal regime for the implementation of assisted reproductive technologies in general.

Referring to the norms of the Family Code of the Republic of Uzbekistan, in part 6 of Article 207 "Entry of the child's parents in the birth record book, the term "surrogate motherhood" is mentioned, it is determined that: "Persons married to each other and who have given their consent in writing to the implantation of an embryo to another woman for the purpose of carrying it, may be recorded by the child's parents only with the consent of the woman who gave birth to the child (surrogate mother)."

This part regulates the process of recording the child's parents in the birth record book, namely, potential parents have the right to be recorded as the child's parents only if the consent of the woman who carried and gave birth to the child. This is a good indication of the absolute right of the surrogate mother, to indicate the parents of the child born by her, but only according to her desire.

It is worth noting that, for example, in Ukraine, a surrogate mother does not have such a right, moreover, she is prohibited by law from claiming a child born to her, the second, in our opinion, is appropriate.

And since there is only one article in the national legislation, namely in the Family Code, related to the concept of "surrogate motherhood", there is a question of the need for a full-fledged settlement of this legal relationship in our country.

In the Republic of Uzbekistan, there is a Law "On the protection of citizens' health", which also does not regulate the process of surrogacy. It would be appropriate to introduce into this law provisions regulating the process of surrogacy.

We are witnessing attempts to introduce into the legislation of the Republic of Uzbekistan a document regulating the procedure of surrogacy. In particular, in the legislation of the Republic of Uzbekistan there is a Law "On the protection of reproductive health of citizens", which regulates certain aspects of reproductive health of citizens, and it would be appropriate to

add to this law provisions that would regulate the implementation of surrogate motherhood on the territory of the Republic, but in this law currently there is no concept as surrogate motherhood, and also, everything that can be associated with this concept.

The Institute of Problems of Legislation and Parliamentary Research in 2018 proposed for discussion to introduce the following into the Law "On the protection of reproductive health of citizens", namely regarding the settlement of surrogate motherhood: surrogate motherhood – a type of assisted reproductive technologies based on in vitro fertilization and subsequent transfer of a fertilized egg into a woman's uterus for carrying and giving birth to a child not genetically related to her, for persons (persons) entitled to use the surrogacy program who are genetic parents, and it was also proposed to add that a man and a woman who are in they have the right to use assisted reproductive technologies in the presence of mutual informed voluntary consent to medical intervention. The discussion of this proposal was also completed in 2018, during the discussion it was decided that the consolidation in the bill of certain modern types of assisted reproductive technologies, such as surrogacy, embryo donation is premature.

And, as we are now observing in the Law "On the protection of reproductive health of citizens", these articles were not included in the adopted document, which, in our opinion, negatively affects the development of surrogacy in our Republic, since due to the inadmissibility of the law of surrogacy, women are forced to travel and carry out this in clinics in such countries like Turkey, Russia, Israel and so on. We believe that women in Uzbekistan also need to be allowed to carry out this type of medical services at the legislative level, for the reason that some women who have married suffer from primary infertility.

As indicated in the recent report of the Permanent Bureau of the Hague Conference on Private International Law, commercial surrogacy is prohibited in many national States, as well as in the Republic of Uzbekistan.

It would be useful for us to apply the experience of foreign countries, for example, the

experience of the Russian Federation. There are a number of regulatory legal acts regulating surrogacy in Russian legislation. So, for example, in paragraph 9 of Article 55 of the Federal Law "On the Basics of protecting the health of citizens in the Russian Federation, the method is defined: "surrogate motherhood is the bearing and birth of a child (including premature birth) under a contract concluded between a surrogate mother (a woman carrying a fetus after the transfer of a donor embryo) and potential parents whose germ cells were used for fertilization, or by a single woman for whom carrying and giving birth to a child is impossible for medical reasons." In paragraph 10 of the same article, it is said that "a surrogate mother can be a woman aged twenty to thirty-five years who has at least one healthy child of her own, who has received a medical report on a satisfactory state of health, who has given written informed voluntary consent to medical intervention. A woman who is married, registered in accordance with the procedure established by the legislation of the Russian Federation, can be a surrogate mother only with the written consent of her spouse. A surrogate mother cannot be an egg donor at the same time."

Summing up the above, we can conclude that surrogate motherhood is the process of bearing and giving birth to a child under a contract with a woman who agrees to give birth and then transfer the child to potential parents. There are two types of child transfer: the first is altruistic, that is, without remuneration, the second is commercial, when a woman eventually receives a reward for carrying and giving birth to a child for potential parents (the amount of remuneration is negotiated individually).

On the territory of the Republic of Uzbekistan, unlike neighboring countries, such as Russia, this process is not regulated by legislation. Which creates inconveniences for those wishing to perform this procedure on the territory of Uzbekistan.

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