

Improving the System of Issuing Surrogacy Permits and its Legal Framework

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Abstract: For humanity, the issue of family and especially childbirth is considered sacred at any time and in any space. There is also a specific history of surrogacy, one of the methods considered as a solution to the problem of infertility in the current developed period. The author develops his own author's definition in this regard, with a comparative analysis of the experience of the United States and France in this matter, as well as various definitions of surrogacy.

Keywords: infertility, family, reproductive health, assisted reproductive technologies, surrogacy, genetic (biological) parent.

Speaking about the family, any Uzbek first of all thinks about the child. It is difficult to imagine an Uzbek family and household without the cheerful laughter of children. In addition to the greatness bestowed by the creator on the child, it is also a kind of bond that ensures the strength of the family.

According to the Constitution of the Republic of Uzbekistan, adopted by universal suffrage at the referendum of the Republic of Uzbekistan held on April 30, 2023 and entered into force on May 1 of this year, the family is the main branch of society and is protected by society and the state. Marriage is based on the traditional family values of the people of Uzbekistan, voluntary consent and equal rights of those entering into marriage. The state creates social, economic, legal and other conditions for the full development of the family [1].

With the lack of the opportunity to have children and, thus, to continue the race, that is, with the problem of infertility, people faced in ancient times. The idea of surrogate motherhood appeared as a manifestation of the solution to this problem. Early references to the first surrogate motherhood in the history of mankind are contained in the Christian Bible. He was told that the wife of the prophet Abraham could not get pregnant, so her maid Hagar acted as a surrogate mother. In the course of subsequent historical progress, the use of slaves and servants as surrogate mothers played an important role in solving problems related to infertility [2].

To this end, a number of articles of our Constitution, which are being updated, speak about the family, motherhood, childhood. Within the framework of the updated chapter "Family, children and youth", the Constitution strengthens the family as the main link of society and the fact that it is protected by society and the state, that marriage is based on the traditional family values of the people of Uzbekistan, voluntary consent and equal rights of married people, which the state creates in social, economic, Legal Article 78 of the draft also establishes that motherhood, fatherhood and childhood are protected by the State, that the state and society take care of the formation of children and youth loyalty to national and universal values, pride in their country

and the rich cultural heritage of the people, feelings of patriotism and love for the motherland [3].

According to statistics, 932.2 children were born in our country in 2022, and the population in 2022 increased by 753.6 thousand people. According to the Statistics Agency under the President of the Republic of Uzbekistan, as of January 1, 2023, the permanent population of our republic. The population is 36,024,946. The Republic of Uzbekistan ranks third in the CIS in terms of permanent population and first in terms of fertility. The Republic of Uzbekistan ranks 41st among the countries of the world in terms of population [4].

In the next ranking of states by the level of happiness (World Happiness Report), published on the International Day of Happiness, that is, on March 20, 2023, our country took 53rd place out of 146 states by the end of 2022 [5].

Over the past five years, more than ten normative legal acts related to the protection of the reproductive health of the population have been adopted, among the most important of which is the Law of the Republic of Uzbekistan "On the preservation of the reproductive health of citizens", adopted on March 11, 2019. According to this law, the reproductive health of citizens is the state of a person's health physically, mentally and socially, a state that will be associated with the reproductive system, the functions of this system, vital processes that determine his ability to give birth to a child [6].

Article 10 of this law defines the use of assisted reproductive technologies among the basic reproductive rights of citizens, and assisted reproductive technologies consist of medical technologies, treatment methods and therapeutic procedures aimed at achieving pregnancy, in which some or all stages of fertilization are carried out outside the woman's body. The procedure for the use of assisted reproductive technologies is regulated by the regulation on the procedure for the use of assisted reproductive technologies, approved by Order of the Minister of Health of the Republic of Uzbekistan No. 106 dated January 14, 2020 and registered with the Ministry of Justice No. 3217 dated February 6, 2020 [7].

However, no regulatory document can answer the question of how to behave if the methods mentioned above do not allow a family to have children. In our opinion, in this situation, reproductive technologies that are widely used all over the world, that is, surrogate motherhood, should come to the rescue. There is no official ban or permission for surrogacy in the Republic of Uzbekistan. In the Family Code, this concept is mentioned only in one article. In part six of Article 207 of this Code, it is noted that persons who have been married and have given written consent to the transfer of an embryo to another woman for the purpose of fetal development may be registered as parents of a child only with the consent of a woman who has given written consent to the transfer of an embryo to another woman for the purpose of fetal development. the birth of a child (in this norm, the concept of a blood mother was used in the sense of a surrogate mother.

Surrogacy is a controversial but widely used reproductive technology. With surrogate motherhood, a woman consciously becomes pregnant and gives birth to a child in advance by prior agreement with the future (biological) parent, after giving birth, she gives it to them on the basis of an agreement, and this deprives her of the right to motherhood and other rights to the child.

In the last quarter of the last century, the rapid development of medical technologies has led to the emergence of new methods of infertility treatment. However, surrogacy in the modern sense required the improvement of technologies such as artificial and in vitro fertilization. The first successful experiment on the use of surrogacy was recorded in the United States. In the period from 1976 to 1987, about 600 children were born to surrogate mothers in the United States, while in the period from 1987 to 1992, about 5,000 children were born as a result of the use of such assisted reproductive technology [8]. But, nevertheless, the widespread use of this method

has caused intense debate, both in the academic environment and among practicing physicians, because of the religious, moral, medical and legal points of view associated with it.

When a surrogate mother legally evaluates motherhood, it is a contractual relationship. In world practice, double surrogacy is a common phenomenon. In "traditional surrogacy", the surrogate mother becomes pregnant with the help of her ovary. In turn, with "gestational surrogacy", the fertilized ovary is transplanted to the surrogate mother. In addition, there are manifestations of a surrogate mother, such as altruistic (only expenses are covered, and the goal is to help a childless family) or commercial (the surrogate mother receives remuneration for her services), depending on the funding. In a number of developed countries, only altruistic surrogacy is allowed, while commercial surrogacy is prohibited.

What is the experience of foreign countries in the issue of surrogacy? Surrogacy is officially allowed in the Russian Federation - a woman who is 20-35 years old can become a surrogate mother, only gestational surrogate mothers are allowed to motherhood and if there are serious reasons (absence of the uterus or part of it, diseases that prevent pregnancy). At the same time, the ban on the use of surrogate mother services by foreign citizens has become an innovation in Russian legislation. On December 19, 2022, the Family Code of the Russian Federation was supplemented with the requirement of citizenship of biological parents, that is, at least one of them must be a citizen of Russia at the time of signing the contract.

In Ukraine, on the contrary, commercial surrogacy is allowed, but there are some restrictions, in particular, it is necessary that the customer has a family consisting of a woman and a man.

In European countries, there are three different approaches related to surrogacy. In countries such as Bulgaria, France, Germany, Italy, Switzerland, Portugal, Croatia, Malta, surrogacy is officially prohibited by national legislation. In Germany and France, criminal liability has also been established for some issues related to surrogacy [9].

In countries such as Austria, Belgium, Hungary, Denmark, Spain, Cyprus, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Romania, Slovakia, Slovenia, Finland, Sweden, Czech Republic, Estonia, surrogacy is not regulated by law, but is allowed in practice. In the Netherlands, commercial gestational surrogacy is allowed in accordance with the "In Vitro Fertilization Law", and this process must be carried out in accordance with special rules (guidelines of the Dutch Society of Obstetrics and Gynecology) approved by the Society of Obstetrics and Gynecology. In addition, Dutch legislation also defines the issue of citizenship of genetic (biological) parents, in particular, that genetic parents can only be citizens of the Netherlands [10].

In European countries, such as the UK and Greece, surrogacy is allowed at the legislative level. In particular, according to UK law, both traditional and gestational surrogacy is allowed [11]. In this matter, regulated after the fact (experiment), the age of the surrogate mother, aspects related to marital status are not regulated by law. The Law on Human Fertilization and Embryology (Human Fertilization and Embryology Act), adopted in 2008, also did not reflect issues related to surrogacy at all. But the Code of Conduct of Medical Professionals establishes the rules concerning surrogacy [12].

In some foreign countries, due to the requirements of new conditions and new technologies, necessary amendments are being made to legislative acts on reproductive health of the population or they are being adopted repeatedly. In particular, within the framework of the Eropa Union, transformation in the field of human rights and biomedicine is acceptable, and this document is the initial legal document aimed at protecting a person from abuse associated with the use of new biological and medical methods. At the same time, the issues of the use of artificial insemination methods in Europe are also regulated by a number of directives in question, which were developed on the basis of three recommendations of the Parliamentary

Assembly of the Council of Europe in this area, adopted by decisions of the European Parliament and the Commission on Human Rights on March 16, 1969.

The concept of "surrogate motherhood" is a novelty for national understanding, and the development of its legal definition is important for law enforcement practice. A surrogate mother is a woman who, according to a surrogacy contract, agrees to move an embryo into her womb, develop it as a fetus in her own body, give birth to a child and hand it over to a customer parent.

Now in practice, when there is a need for surrogacy services, the relations of the parties are regulated by the contract. But the fact that a surrogate mother has a privileged right to take over a born child casts doubt on the validity of such contracts.

Surrogacy is legally permitted in most states of Canada and the United States. The legislation of Armenia, Georgia, Kazakhstan, Kyrgyzstan also allows surrogacy. In Belarus, surrogacy can only be used by women who, for medical reasons, cannot get pregnant on their own.

Australia and the Republic of South Africa can provide free assistance only to the biological parents of a surrogate mother.

In India, only altruistic surrogacy is allowed, while Chinese, Nepalese, Thai surrogacy is prohibited by law, but citizens of these countries widely use surrogacy services in other foreign countries.

In the conditions of Uzbekistan, the surrogacy contract itself is considered invalid in accordance with article 116 of the Civil Code, as an agreement whose purpose is obviously contrary to the grounds of law and order or morality. Due to the lack of such services in medical institutions, citizens of our country travel and use surrogacy services to foreign countries where such activities are allowed. However, with cross-border surrogacy, deception on the part of the surrogate mother, the unstable political situation associated with the registration of clients as parents, related to the citizenship of the born child, causes a number of problems associated with the entry of the child into the territory of Uzbekistan. In addition, surrogacy services are not cheap.

In conclusion, it should be noted that in order to maintain the reproductive health of the population, strengthen the family, and reduce the risk of cross-border surrogacy for citizens of the Republic of Uzbekistan, it is necessary to legislatively allow surrogacy as existing assisted reproductive technologies.

It should also be noted instead of concluding that the consolidation of the legal definition of surrogacy in the legislation, the establishment of the most important requirements and conditions concerning contractual relations with respect to surrogacy, the rights and obligations of the surrogate mother and biological (approximate) parents at the legislative level, serves to prevent most disputes related to surrogacy.

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