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LEGAL REGULATION OF SURROGATE MATERNITY

Recently, considerable attention has been paid to assisted reproductive technologies, namely the surrogate motherhood method. Every year, the number of people who have problems with reproductive health is growing rapidly. The desire to have a child prompts millions of married couples to use such a procedure.

Surrogacy is the only way to have a genetically own child for women without a uterus or serious diseases. In the process of this treatment method, the embryo, which has been received after the fertilization of the genetic mother's oocyte by the genetic father's spermatozoon, is transferred into the organism of a surrogate mother. For 9 months, the surrogate mother bears a child with whom she does not have any genetic relationship. The newborn is genetically and legally considered a child of the married couple whose embryo has been transferred to the surrogate mother's uterus [8].

An important regulator of current legislation is Article 123 of the Family Code of Ukraine, which defines the origin of a child born as a result of the use of assisted reproductive technologies [4]. Part 7 of Article 291 of the Civil Code gives a person the right to perform assisted reproductive technologies [5]. Article 48 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" stipulates that the use of artificial insemination and implantation of an embryo is carried out according to the medical indications of an adult woman with whom such an action is performed, provided that there is a written consent of the spouses, ensuring the anonymity of the donor and preservation of medical confidentiality [2]. The Order of the Ministry of Health "On approval of the Procedure for the use of assisted reproductive technologies in Ukraine" describes in detail the permitted procedure for the implementation of surrogate motherhood and its legal aspects. Mandatory conditions under which surrogate motherhood relations may arise are the genetic connection of the spouse or

one of the spouses with the child, the absence of the child's genetic connection with the surrogate mother [3].

Since the current normative acts introduced in Ukraine regarding surrogate motherhood are rather superficial and do not touch on important points that significantly affect the mechanism of implementation of such a procedure, in practice they create a large number of problems. The use of foreign experience in this matter is appropriate, because it can serve as a step towards improving national legislation in the field of surrogate motherhood.

In the USA, surrogate motherhood is quite widespread and the legislation in this area is very advanced. Therefore, it will be appropriate to study the US experience for comparison and implementation of legal norms. By the way, surrogate motherhood was legalized in New York state only in 2020 [1].

In 1985, a case called "Child M" occurred in the USA. This case is a precedent and is the beginning of gestational surrogacy, in which the surrogate mother has no genetic connection with the child. At birth, the child inherits only the genetic makeup of the spouse, or at least one of them [7]. The absolute majority of countries in the world, including Ukraine, currently use exclusively gestational surrogacy and adhere to the rules of donor anonymity. This allows you to protect the rights of all participants in the surrogate motherhood program and minimizes the risk of the child not being returned by the surrogate mother.

Commercial surrogacy is legal in some US states, while other states allow only altruistic surrogacy and some disallow surrogacy altogether. Certain states that allow commercial surrogacy, like California, have some of the most well-defined surrogacy laws in the world. California surrogacy laws require that both parties in a surrogacy agreement have their own legal representation when drafting a surrogacy agreement or contract. By law, a surrogacy contract in California must contain: the date it was executed, the source of the egg, sperm or embryo (if applicable), the identity of the intended parent(s), the process for any necessary pre-birth or parentage orders, the attorneys will work together to negotiate an agreement that addresses at least the following: risks and responsibilities of each party, surrogate compensation, agreement on sensitive issues like selective reduction and termination, expectations on contact and

who will be present at important appointments and during birth. Surrogate contracts must be notarized before any medication in connection with the embryo transfer procedure. Once the contract has been finalized and signed by both parties, the medical process of surrogacy can begin [6].

In Ukraine, which is one of the world leaders in surrogacy services, there is no single legislative regulation of this new institute of medical law. The legal regulation of the surrogacy procedure is defined by only a few references in general civil, medical or family law. The national legislation of Ukraine does not contain a special law on the protection of human reproductive rights, and general legal regulations cannot resolve all issues related to surrogate motherhood. Therefore, the question arises of the need to adopt such a law in which these issues would be resolved in accordance with existing international standards and international experience.

Literature

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