

The private-legal nature of the application of the methods of assisted reproductive technologies in Ukraine

Viktoriia V. Nadon, Arsen N. Isaiev, Olena O. Ruban, Tetiana I. Brovchenko

YAROSLAV MUDRYI NATIONAL LAW UNIVERSITY, KHARKIV, UKRAINE

ABSTRACT

Aim: Analyze the legislation, judicial practice of Ukraine and EU countries, scientific views on surrogacy, as well as the procedure for legal regulation and registration of the procedure of surrogacy.

Materials and Methods: The following materials were used to write the scientific work: the practice of a number of countries was analyzed; scientific works have been studied; some methods of assisted reproductive technologies are described; the practice of the European Court of Human Rights is analyzed. When conducting the research, a methodology was used that embodies an interdisciplinary approach, which allows for a systematic analysis of theoretical and practical aspects of legal relations arising from the provision of medical services.

Conclusions: At the legislative level, the provision of medical services (surrogate motherhood services) is partially regulated, therefore the basis of the legal relationship between the performers (surrogate mother) and the customers (genetic parents) is the contract concluded and signed by the parties on the provision of surrogate motherhood services. A contract in defined legal relations is a source of law. This contract is bilateral, paid and consensual.

KEY WORDS: embryo, gestational carrier, oocytes, surrogate mother, contract, legal relationship

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INTRODUCTION

In connection with the deterioration of reproductive health (women and men) or for other reasons not related to the health of the married couple, with the emergence of new methods of overcoming infertility, experts increasingly talk about the prospect of the formation of the fourth generation of human rights, related to the preservation of the nation's reproductive health. One of the types of assisted reproductive technologies is surrogate motherhood. Today, this type is very popular. Statistics show that, as a rule, foreign citizens (married couples) turn to this method in countries where surrogacy is either completely prohibited, or this method is expensive, or in order to hide the gestation and birth of their child by another woman.

Surrogate motherhood is prohibited in Germany [1] and a number of other countries such as Switzerland [2], Austria [3], France [4-6], Norway [7], and Italy [8]. Thus, the German Embryo Protection Act aims to prevent split motherhood for the benefit of the child. One argument is that it can harm psychological development and identity during puberty. Advertising and mediation of surrogate mothers is strictly prohibited in this country. In Germany, a woman who has given birth to a child is considered a mother by law. Instead,

in Ukraine, a woman can transfer maternity rights to a heterosexual spouse, provided that the child is genetically related to at least one of the ordering parents. A child conceived in this way has three mothers: the egg donor is the genetic mother, the surrogate mother who carries the child and gives birth to it, and after birth the child grows and is raised with the adoptive mother. On 31 August 2023, the European Court of Human Rights ruled on the application in the case of C. v. Italy (application no. 47196/21) on the refusal of the Italian authorities to recognize the family ties established by the Ukrainian birth certificate between child C, born abroad through surrogacy, and her biological father and intended mother. Article 8 of the Convention is at stake. The court recognizes that Italian law does not allow a copy of the intended mother's birth certificate to be made. However, he acknowledges that Italian law guarantees the latter the possibility of legal recognition of the child through adoption. In this regard, the Court notes that, in the opinion of the Plenary Assembly of the Italian Court of Cassation, adoption allows the courts hearing the case to assess the requirements of Article 8 of the Convention and the best interests of the child [9].

Ukraine has become the key country of surrogacy in continental Europe. The rapid growth has coincided

with widespread bans on the practice in India, Cambodia, Mexico and Thailand, after there were increasing scandals over parents not taking away babies born sick.

The crisis in Ukraine fueled the surrogacy business: after Russia occupied Crimea in 2014, ongoing hostilities in the territories of Donbass and Luhansk since 2014, and from 2022 - military operations throughout Ukraine. Accordingly, the country's economy and currency are in free fall, unemployment is high, hundreds of thousands of people are leaving for EU countries, so the reproductive industry is superimposed on the poverty and weakness of the state with a strong tradition of corruption.

According to statistics, in Ukraine, before the war, surrogate mothers gave birth to 2,000 to 2,500 babies a year [10].

The founder and owner of one of the organizations that specializes in providing medical services related to reproductive technologies notes that he controls two-thirds of Ukraine's contracts on surrogacy with customers from other countries. 90 percent of cases were registered by the German Embassy in Kyiv [11].

In 2019, Ukrainian surrogate mothers gave at least 137 babies to fathers with German citizenship (this was reported by the German Ministry of Justice). That is, one child every three days. In 2020, as the pandemic worsened, there were 167 babies born to surrogate mothers who could not be picked up by their genetic parents in time.

Thus, Ukraine is a country where commercial surrogacy is allowed, a country where it is done professionally from a medical point of view, is available in monetary terms, and has a simplified approach to the paperwork procedure (even more simplified during the war). It is these factors that have attracted and continue to attract people who want to have children to choose Ukraine, turning to organizations that offer their services to support and resolve issues related to the selection of a surrogate mother, a medical institution, and legal issues. In fact, the surrogacy program is actually nothing more than trade, since the surrogate mother sells for money the child, whose embryo was given to her by doctors, into the future to her parents, who were found by intermediaries [12].

It should be noted that with the beginning of the war in Ukraine, certain organizations (intermediary organizations on assisted reproductive technologies) suspended the provision of services related to surrogacy, and this is not accidental. Outlined organizations, medical institutions, in which reproductive technologies were introduced, were forced to transport patients (surrogate mothers) to more/less safe cities, so that women could bear and give birth to children. At that

time, representatives of organizations acting as mediators in matters of surrogate motherhood were concerned about a number of issues, namely: regarding the evacuation of pregnant women abroad at the request of clients (genetic parents); registration of documents for a child during wartime; transfer and removal of children to the places of residence of genetic parents, etc.

It should be noted that organizations found reasonable answers to all these questions at the legislative level and actively implemented them.

In this regard, from June 2022, clinics resumed their work in safer cities in Ukraine, which were visited by foreign couples who cannot have children due to medical conditions [10]. Surrogate motherhood in accordance with the Procedure for the use of assisted reproductive technologies in Ukraine, approved by the order of the Ministry of Health of Ukraine dated 09.09.2013 No. 787, is defined as one of the assisted reproductive technologies, which allows a couple to become the biological parents of their child if one of them has congenital or acquired diseases that cause infertility [13]. In the Decision of the Court of Appeal of the Kharkiv region in case No. 645/9412/14-ts of June 25, 2015, it is noted that surrogate motherhood services are based on a contractual civil law nature, and in their content are a type of reproductive technologies, when some or all stages of conception and early development of embryos are carried out outside the organism of the genetic mother: «according to the general definition, surrogacy is the process of artificial fertilization, bearing and birth of a child by a woman (surrogate mother) with the aim of transferring the child to the named parents in accordance with a contract for remuneration or without it. A surrogate mother is a woman who voluntarily agreed to become pregnant in order to bear and give birth to a genetically alien child, who will be given to other persons - biological parents for upbringing» [14].

The basis of surrogate motherhood is contractual legal relations, which refer to contracts aimed at providing services, namely medical services.

AIM

Analyze the legislation, judicial practice of Ukraine and EU countries, scientific views on surrogacy, as well as the procedure for legal regulation and registration of the procedure of surrogacy.

MATERIALS AND METHODS

When writing the scientific article, the following materials were used: the practice of a number of countries (USA, Canada, Israel, Italy, the Netherlands, Greece, etc.)

was studied regarding the permission/unauthorization of the use of assisted reproductive technologies – surrogacy; the regulatory framework of a number of countries on the use of assisted reproductive technologies has been studied; used scientific articles by scientists who researched issues on the use of assisted reproductive technologies; an experimental method of reproductive medicine - egg donation - is described; the practice of the European Court of Human Rights in relation to the raised problem is analyzed.

In conducting the research, a methodology was used that represents an interdisciplinary approach, which allows for a systematic analysis of theoretical and practical aspects of legal relations arising from the provision of medical services, namely, the conclusion and execution of a contract on surrogacy, as well as the legal consequences of non-fulfillment/improper fulfillment of assigned obligations ties to the parties. The indicated system of methodology included: historical method, which was applied in the analysis of the transformation of legislative approaches to the regulation of legal relations of surrogate motherhood; systemic - to determine and clarify the legal nature of surrogate motherhood; the formal-legal method was applied in the analysis of the texts of current domestic normative acts, the legislation of the member states of the European Union, which prohibit the procedure of surrogate motherhood, as well as court practice; legal hermeneutics was used to clarify the content of normative legal acts that regulate the procedure of using surrogate motherhood; the comparative legal method was applied to clarify the differences in the legal regulation of the procedure of using surrogate motherhood in Ukraine and foreign countries; the forecasting method made it possible to develop proposals for the elimination of legal conflicts that occur when surrogacy contracts are concluded by foreigners in Ukraine; the dialectical method helped in clarifying the possibility of protecting the rights of children born to surrogate mothers.

REVIEW AND DISCUSSION

In accordance with Article 901 of the Civil Code of Ukraine [15] under a contract for the provision of services, one party (the executor) undertakes to provide a service that is consumed in the process of committing a certain action or carrying out a certain activity, at the request of the other party (the customer), and the customer undertakes to pay the executor for the specified service, unless otherwise stipulated by the contract. From the definition follows the characteristics of the contract for the provision of services, namely, it is bilateral, consensual, in the vast majority, it has a

payment nature. However, this does not exclude the possibility of concluding a contract for the provision of services related to surrogate motherhood on a free basis (as is the case in a number of countries of the world, for example, in Belgium, the Netherlands). Altruistic surrogacy is legal in Belgium, but commercial surrogacy is illegal. And although altruistic surrogacy is technically legal, there is only one hospital taking in couples and there are extremely strict rules to get in. This makes a lot of couples seek treatment outside Belgium. Altruistic surrogacy is legal in the Netherlands, but commercial surrogacy is illegal. Entering or attempting to enter a surrogacy arrangement can be punished with imprisonment. Moreover, although altruistic surrogacy is technically legal, there are very few hospitals taking in couples and there are extremely strict rules to get in. This makes a lot of couples seek their treatment outside the Netherlands [16]. In Canada, commercial surrogacy is prohibited, although altruistic surrogacy is legal in all states except Quebec [17]. Currently, there is a penalty of four to ten years' imprisonment or a fine of between 250,000\$ and 500,000 \$ if a person is found guilty of violating Article Five of the Assisted Human Reproduction Law, which prohibits payment for the services of surrogate mothers. Egg and sperm donors are also subject to punishment [18].

In the United States, surrogacy has been permitted and enshrined in law since 1991. It should be noted that this procedure is not the same in all American states. And in some states (Virginia and New Hampshire) surrogacy is completely prohibited by law. In the United States there is no unified legal framework on surrogacy issues. The American Constitution gives states the right to make their own health care laws. For this reason, each state issues its own regulations to address this issue [19].

In Israel, surrogacy is the most preferred solution to the problem of infertility. Thus, in 2018, 128 requests for the surrogacy procedure were considered and only 2 of them were rejected. Surrogacy in Israel is legally permitted with certain restrictions. The most important are the following: previously in Israel, only an unmarried woman could act as a surrogate mother, but 4 years ago the Law "On Contracts for Carrying a Child" was changed. Currently, a married woman can also be a surrogate mother, however, with certain restrictions (a potential "married surrogate mother" must have at least one birth process, but no more than 3). In addition, restrictions from the point of view of legislation include: a couple who decides to resort to the surrogacy procedure must be heterosexual, and a relative of the biological parents cannot act as a surrogate mother [20].

In 1996, the Knesset (Israeli Parliament) adopted the Law "On Contracts for Carrying a Child," which regulates

the rights and obligations of the parties to surrogacy. The most interesting legal provisions are the following: the service cannot be used by unmarried couples and in which the man cannot have children; Only those women who have their own children (from 1 to 4 years old) can bear a child; only those couples who are married to representatives of different sexes and have no other ways to continue the family have the right to apply for surrogacy services [21]. In February 2020, Israel's Supreme Court ruled that restrictions on same-sex couples entering into surrogacy agreements were discriminatory, giving the state one year to change the law. In July 2021, the Supreme Court issued a second ruling stating that the law prohibiting same-sex couples and single men from becoming parents through surrogacy would be invalid for six months. In January 2022, Health Minister Nitzan Horowitz announced that surrogacy would be allowed for same-sex couples, transgender people, and single men as of January 11 [22].

A contract under which the party must receive a fee or other consideration for the performance of its duties is recognized as a paid contract. At the same time, the actions performed by one person (handover of the thing into ownership, use, performance of specified work, provision of services) are compensated by the actions of the other party (payment of the stipulated price, remuneration, etc.). Honiger considered the following to be the conditions of a payment transaction: 1) each of the counterparties is obliged to perform a known action; 2) everyone specified in the contract receives certain actions; 3) the obligation to perform the action of each counterparty depends on the performance of the action by the other counterparty. In contrast to this, the concept of gratuity, according to the author, requires the absence of all the above three points [23].

If unpaid relations lead to a decrease in the volume of the property sphere on one side and to a corresponding increase in it on the other side, then in paid relations - if equivalence is observed - such changes do not occur, and if there is a deviation from equivalence - there are changes in the property spheres, but not in such striking proportions as in unpaid relations. Payment relations assume a certain ratio between exchanged goods: if equivalence is observed, they are equal; when departing from equivalence, they are not equal. In both cases, a direct connection, characterized by us as a connection in the actions of the participants of the payment relationship, takes place. For each participant, this is expressed in the relationship between the means spent and the results obtained [24]. Some authors concluded that women agree to bear someone else's child mainly in order to improve their financial situation situations [25].

Therefore, legal relations related to surrogate motherhood should be classified as civil law, which are regulated by a contract concluded and signed by the parties. In support of this thesis, it should be noted that draft laws on the regulation of surrogate motherhood in Ukraine have been repeatedly submitted to the Parliament for consideration. In particular, draft laws "On Assisted Maternity" No. 8703 dated 17.06.2011, "On Amendments to Certain Legislative Acts of Ukraine Regarding Restrictions in the Use of Assisted Reproductive Technologies" No. 8282 dated 23.03.2011 (the law was adopted by the VRU in October 2012, but due to the veto imposed by the president it never entered into force), "On assisted reproductive technologies" No. 8629 dated 07.19.2018, alternative project No. 8629-1 dated 08.01.2018 and other draft laws aimed at introducing changes and additions to the current normative legal acts of Ukraine. For one reason or another, there is currently no comprehensive law that would ensure proper state regulation of surrogate motherhood in Ukraine.

Thus, the contract in certain legal relations acts as a source of law. The regulation of social relations by contract was called autonomous regulation as early as the 60s of the 20th century. The importance of the contract is especially increasing under modern conditions, when the contract "not only becomes the main regulator of economic relations, but also acquires the importance of a universal regulator." Expanding the scope of application of legal contracts, as well as strengthening the process of contractual law-making with the development of any of our societies and states, is undoubtedly a progressive phenomenon. In theoretical and practical terms, this means the known limitation of the state monopoly in the field of national law-making and the inclusion of a number of other, non-state entities in this process. A constitutive feature of surrogate motherhood is the conclusion of an agreement on childbearing by a surrogate mother before the child is conceived, with the aim of further establishing parental legal relations between this child and the persons who concluded this agreement with the surrogate mother.

So, at first glance, Ukraine gives the right to use ART, even gives consent to conclude agreements with citizens of other countries, but does not provide the appropriate regulatory framework on this issue. Therefore, all issues must be reflected in the agreement (as a source of law), which is concluded between the surrogate mother and the genetic parents. Therefore, the parties to the said contractual obligation need to be very careful when deciding on the terms of the contract [26]. According to the position of the World Health Organization, which was expressed in Geneva

in 2001, a surrogate mother is a gestational carrier - a woman whose pregnancy has occurred as a result of the fertilization of oocytes belonging to a third party with sperm belonging to a third party. The current legislation of Ukraine does not provide the legal status of a «visiting mother» for a surrogate mother. Establishing such a status is considered inappropriate, given that the child must have one mother, which is completely natural [27]. A woman carries a fetus with the condition that the parents of the child born will be one or both of the people whose gametes were used for fertilization. In this definition, the words "mother" or "parents" are not used, which indicates the contractual nature of the relationship between the customers and the performer.

Thus, in Greece, the implementation of the considered method of assisted reproductive technologies is permitted only with court permission and on the basis of a surrogacy agreement (Article 1458 of the Civil Code) [28]. At the same time, two terms are used in Greek legislation: "gestational motherhood" (gestational motherhood) and "surrogate motherhood" (substitute motherhood). The first term refers to a situation where a woman (relative, friend or stranger) proposes to transfer into her uterus an embryo obtained in vitro from a pair of gametes (the applicant or assignee). In characterization, it can also be thought of as a "loan" or "womb rental." The second term refers to situations in which the woman provides both the eggs and the uterus. A woman gives birth to a child on the side on which he is "ordered". In fact, the second situation is prohibited by Greek law, but "womb rental" is permitted: "The transfer of a fertilized egg to another woman and her pregnancy with the permission of the court, if prior to the transfer there is a written agreement between the parties wishing to have the child and the surrogate mother, provided that the latter also is married. The court's permission is issued after filing an application wishing to have a child, provided that due to the circumstances of the circumstances she is not capable of conceiving a child" (Article 1458 of the Greek Civil Code). Yes, the right to appeal in court, only the actual mother is available for data if she has a medical certificate confirming that she is infertile and (or) there is a transmission of a severe hereditary disease to the child (for example, the risk of anemia) (Article 1455 of the Civil Code of Greece). Greek legislation stipulates that a surrogate mother must undergo not only a medical examination, but also a serious psychological examination. In court, a surrogacy contract is drawn up, which is concluded in writing and signed by the actual and surrogate mother, as well as their spouses (if any) [29, p. 282-287]. Thus, by signing this agreement, the parties confirm their consent to ensure surrogacy, as

well as respect for parental rights of genetic parents after the birth of the child. In addition, in Greece, as in the UK, there is monetary compensation only for the current expenses ("reasonable expenses") of the surrogate mother.

In accordance with Ukrainian legislation, under the agreement on surrogacy, the surrogate mother (the performer) gives her consent to the fact that the embryo of the married couple (the customer) will be implanted in her body and, accordingly, assumes the responsibility for bearing and giving birth to the child, and the customer undertakes to pay all the stipulated costs. The cost of surrogacy in Ukraine today starts at 50,000 Euros. This amount includes: 1) organizational costs (meeting customers, hotel accommodation, food, etc.); 2) expenses related to the selection of a surrogate mother (medical examination, introduction of material into the woman's body, etc.); 3) expenses related to the normal course of pregnancy (proper nutrition, accommodation, treatment, medical examination, etc.); 4) expenses related to the remuneration of the surrogate mother (executor) for the proper performance of the duties assigned to her, related to the proper bearing and birth of the child; 5) expenses related to the preparation of documents.

Thus, with the consent of a woman to become a surrogate mother, she is solely entrusted with the duties that are prescribed in the contract and which she must fulfill properly. If the surrogate mother performs her duties improperly, then she will not receive the remuneration stipulated in the terms of the contract (remuneration for carrying and giving birth to a child). As for the customers (a married couple), they have a single obligation, namely: covering all agreed costs.

Surrogate mothers can be women who have given voluntary consent. Article 48 of the Fundamentals of the Legislation of Ukraine on Health Care [30] provides that the use of artificial insemination and embryo implantation is carried out according to the medical indicators of an adult woman with whom such an operation is performed, subject to the written consent of the spouses, ensuring the anonymity of the donor and maintaining medical confidentiality. These women can be relatives or acquaintances of an infertile couple, those who wish are specially examined. The requirements for surrogate mothers include: age (from 18 to 36 years old; (in Greece up to 50 years of age)), having a healthy child of their own, mental and physical health. A surrogate mother cannot be an egg donor at the same time. A married woman can be a surrogate mother only with the written consent of her husband. Part 2 of Art. 139 of the Civil Code of Ukraine establishes a ban on contesting maternity in cases where the procedure of transferring a

human embryo conceived by a couple as a result of ART was carried out into the body of another woman [31].

Most of the parents-customers, as practice shows, are over 50, some even over 60 years old. Customers are offered a menopause withdrawal service. This is an experimental method of reproductive medicine: mitochondrial donation. Thus, egg donation can be genetically disguised and physical capacity can now be created not only for the father, but also for the mother. Mitochondria – cell bodies with their own genetic material – are removed from the eggs provided by the woman, and mitochondria from the customer's mother are used instead. If a child was born from a fertilized egg that contained genetic material from another woman, a DNA test will not show that the two mothers were related before conception. This method is being experimented in one of the clinics in Ukraine. However, the use of mitochondrial donation is subject to criticism.

A counter argument might be posed that the decision to use a certain reproductive option is a down to personal choice, and for some patients, being genetically related to the child will influence this decision. To support this, recent HFEA figures show that ~5% of IVF cycles performed in the UK in 2014 used donor eggs [32]. This implies that most couples opting for fertility treatment choose to pursue a reproductive option that allows them to have a genetically related child when such an option exists

Therefore, surrogate motherhood is a type of Assisted Reproductive Technology (ART), in the case of which a woman (surrogate mother) voluntarily agrees to become pregnant in order to carry and give birth to a child biologically alien to her, who will then be transferred to other persons (genetic parents) for upbringing, and with whom the surrogate mother will no longer be bound by either rights or obligations.

In the decision of the ECtHR in the case "Labassee v. France"[33] it is noted that each state can independently decide on the issue of allowing or prohibiting surrogate motherhood on its territory. In this regard, scientists note that although the right to reproductive choice is provided for by international and regional normative legal acts, in some cases, national legislation prescribes restrictions on the exercise of reproductive rights [34].

In the case of the birth of a child by a woman into whose body a human embryo, conceived by a spouse as a result of ART, was transferred, the state registration of the child's birth is carried out at the request of the spouse who gave consent to such a transfer. In such a case, together with the document confirming the fact of the birth of a child by this woman, a statement is submitted about her consent to the registration of the marriage by the child's parents, the authenticity

of the signature, which must be notarized, as well as a certificate about the genetic relationship of the parents (mother or father) with the fetus. Thus, the genetic parents acquire legal rights over the newborn child [35, 36].

It should be noted that on March 4, 2022, the Ministry of Health of Ukraine approved the order "Regarding registration of newborns under martial law" [37]. The adopted decision allows to register the birth of a child if the birth took place outside the health care facility. In this case, a document on the birth of a child in the form of a medical birth certificate (form No. 103/o) can be issued by medical workers who were present during the birth or conducted the first examination of the newborn.

If the genetic parents do not dare to come to Ukraine in person, heeding their own government's advice about the risks of travel during martial law, there is the possibility of obtaining a birth certificate from their duly authorized representative in Ukraine. For this, after the birth of a child, the spouses of the genetic parents must take certain actions at their place of residence or stay, namely: issue notarized copies of passports, power of attorney for a representative and an application for registration of the child's birth; submit these documents to the competent authorities of the state where they were signed for affixing an apostille or passing the consular legalization procedure; send original documents to Ukraine.

The issue of legalization of the legal status of a child born to a surrogate mother has already been raised at the level of decisions of the European Court of Human Rights. According to the precedent law of the European Court, Art. 8 of the Convention requires that national legislation provide for the possibility of recognizing the legal relationship between a child born under surrogacy arrangements concluded abroad and the intended father, if he is the biological father. The lack of such an opportunity entails a violation of the child's right to respect for private life, guaranteed by Art. 8 of the Convention.

The European Court considers that the general and absolute lack of possibility to obtain recognition of the relationship between a child born under surrogacy arrangements concluded abroad and the intended mother is incompatible with the best interests of the child, which require at least that each situation be considered with taking into account the special circumstances of the case.

On April 10, 2019, the European Court of Justice prepared an advisory opinion at the request of the French Court of Cassation regarding the recognition in national law of legal relations between parents and a child born abroad in accordance with an agreement on gestational surrogacy.

In its opinion, the European Court observed that the right to respect for the private life of a child born abroad

under a gestational surrogacy agreement requires that national law provide for the possibility of recognizing the legal parent-child relationship between the putative mother designated as the “legal mother » in a birth certificate officially issued abroad.

From the point of view of international private law, in the case of the birth of a child by a surrogate mother - a citizen of Ukraine abroad, the law of the country of the place of transfer of the embryo(s), i.e. Ukraine, cannot be used to regulate the issue of establishing paternity. In such cases, determining the origin of a child born as a result of using the surrogacy method from parents of other countries in the territory of a third country requires clarification of conflicting connections. And of course, the main reference for solving this issue will be the personal law of an individual (*lex personalis*), which determines the legal status of an individual, that is, the law of the state of which he is a citizen. Given the specificity of the legal relationship of surrogacy, it will be the personal law of one or both genetic parents, unless the child was born in a country that recognizes the acquisition of citizenship by birth (for example, the USA). The legislation of certain American States are sufficiently progressive in the context of legal regulation of surrogacy and its consequences. Taking this fact into consideration it can be used as a sample for legislation of other countries [38].

CONCLUSIONS

1. At the legislative level, the provision of medical services (surrogate motherhood services) in Ukraine is partially regulated, therefore the basis of the legal relationship that arises between performers (surrogate mother) and customers (genetic parents) is the contract concluded and signed by the parties on the provision of surrogate motherhood services. According to the contract on surrogacy, the surrogate

mother (the performer) gives her consent to the fact that the embryo of the married couple (the customer) will be implanted in her body and, accordingly, assumes the responsibility for bearing and giving birth to the child, and the customer undertakes to pay all the stipulated costs. Costs related to the proposed service should be divided into: 1) organizational costs (meeting customers, hotel accommodation, meals, etc.); 2) expenses related to the selection of a surrogate mother (medical examination, introduction of material into the woman's body, etc.); 3) expenses related to the normal course of pregnancy (proper nutrition, accommodation, treatment, medical examination, etc.); 4) expenses related to the remuneration of the surrogate mother (executor) for the proper performance of the duties assigned to her, related to the proper bearing and birth of the child; 5) expenses related to the preparation of documents.

2. A contract in defined legal relations is a source of law. This contract should be characterized as bilateral, paid and consensual. Therefore, surrogate motherhood in Ukraine should be clearly regulated at the legislative level, first of all, the interests of the child, and not someone else, should be taken into account. In this context, the legalization of the legal status of a child born to a surrogate mother needs clear regulation.
3. Having analyzed the legislation of a number of countries in which surrogacy is prohibited or limited, the author of the article comes to the conclusion that in Ukraine it is worth limiting surrogacy and moving away from commercialization (surrogacy tourism). Children are not a commodity; they cannot be sold. In exceptional cases, assistance to a healthy woman in carrying and giving birth to a child may be allowed to a family that, for medical reasons, cannot have children, but exclusively on a free of charge basis, as provided in a number of countries.

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CONFLICT OF INTEREST

The Authors declare no conflict of interest

CORRESPONDING AUTHOR

Viktoriia V. Nadon

Yaroslav Mudryi National Law University
77 Pushkinska St., 61024 Kharkiv, Ukraine
e-mail: nadonviktorija@gmail.com

ORCID AND CONTRIBUTIONSHIP

Viktoriia V. Nadon: 0000-0001-8240-7717 **A** **D** **E**

Arsen N. Isaiev: 0000-0002-9982-0572 **A** **B**

Olena O. Ruban: 0000-0002-8602-0517 **D** **E**

Tetiana I. Brovchenko: 0000-0002-2095-8887 **C** **E** **F**

A – Work concept and design, **B** – Data collection and analysis, **C** – Responsibility for statistical analysis, **D** – Writing the article, **E** – Critical review, **F** – Final approval of the article

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