

## FORMATION AND CONCEPT OF THE INSTITUTE OF A SURROGATE MOTHER

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### ANNOTATIONS:

**I would like to emphasize once again that the study of ways to legitimize the service of commercial surrogacy is not limited to the above. It is necessary to conduct further research, involving the opinions of other agents involved in the process of providing the service. In addition, the question of legitimizing the surrogacy program, during which donor genetic material that does not belong to the customers of the service, is used remains open for study.**

**Keywords: assisted reproductive technologies, surrogacy, commodification, kinship, Euro-American concept of kinship, legitimation, logic of justification.**

### INTRODUCTION:

The institution of surrogate mothers in family law is new, the formation of which is associated with the development of assisted reproductive technologies in science and the practical application of methods of artificial human reproduction. Indeed, scientific and technological progress has contributed to the search for new ways to solve the problem of infertility. Modern surrogacy became possible after the advent of artificial insemination and in vitro fertilization technologies.

The development and application of the institution of surrogacy in family law of the Republic of Uzbekistan is undoubtedly influenced by modern legislation and legal regulation of Western countries.

Historically, when it comes to many other similar cases of infertility, slaves and concubines in many countries around the world are often used as surrogate mothers.

Of course, then only "traditional surrogate motherhood" could be used: the child's genetic parents were considered the father - the "client", and the surrogate mother herself - fertilization was performed naturally.

For the first time in the UK, in vitro fertilization was successfully performed and (test tube baby) Louise Brown was born. She was born on July 25, 1978, and four years later, her sister Natalie Brown was born. Elena D was the first such child in Russia, she was born in February 1986.

However, the development of reproductive technologies based on the results of scientific and technological progress has posed a number of problems. Naturally, when this is not possible, we will focus on the use of high technologies for reproduction (male and female infertility, etc.).

Reproductive technologies include fertilization of an egg inside or outside a woman's body, gender selection of the unborn child, genetic purification of the population, cloning, and much more.

One of the important areas of application of reproductive technologies is the artificial fertilization of an egg in a woman's body. One of the options for in vitro fertilization is surrogacy. In this case, the "clients of the couple" who want to have children, but cannot have them themselves (due to the woman's

illness), enter into an agreement with a woman who agrees to have children for them on the basis of donor or completely foreign material (eggs and sperm).

The birth of a genetically alien child from a surrogate mother was first successfully carried out in 1986 in the United States.

Today surrogacy is becoming an urgent problem in a number of countries, including Uzbekistan. However, due to the long history of this institution, unlike many European countries and the United States, which are regulated by law, the legislation of Uzbekistan in the field of reproductive technologies is far from perfect.

It should be noted that the modern level of development of medicine, even if it does not work miracles, can successfully solve many complex medical problems. But now this procedure is a common medical manipulation, which is successfully carried out in many clinics.

Attempts to legalize relations with surrogate mothers were made in Uzbekistan and a number of neighboring countries. Of course, the distinction between the spheres of legal and individual regulation of social relations is of great theoretical and practical importance.

In our opinion, in order for this attempt to be crowned with success, it is necessary first of all to determine the legal nature, character, characteristics, concept of a surrogate mother and her criteria.

The question of defining the concept of "surrogate motherhood" is especially relevant for the Uzbek legislator, since today the Family Code of the Republic of Uzbekistan, unfortunately, regulates only some issues, but does not address issues related to the concept of a surrogate mother. the inscription is highlighted. For example, if a child is born as a result of the use of these methods to persons

who are married and have given written consent to create an artificial embryo or embryo transfer, they are recorded in the birth register as the parent of the child.

It was noted that persons who are mutually married and who have given written consent to transfer the embryo to another woman for the purpose of developing the fetus can be registered as the parents of the child with the consent of the woman in labor to kid.

Although there is no clear law regulating relations between future parents and surrogate mothers, the only source of legal regulation of these relations is the Regulation "On the use of assisted reproductive technologies", approved by the Ministry of Health of the Republic of Uzbekistan in January 14, 2020 No. 106.

As a result of the analysis of the regulations, the main features of a surrogate mother were identified: issues such as artificial insemination of a woman, embryo transfer. Therefore, the general definition of surrogacy is the transfer of an embryo to a woman, an attempt to achieve pregnancy. However, one definition of this concept of a surrogate mother is not enough. To do this, we considered it necessary to pay attention to foreign legislation and the views of scientists in order to clarify the concept of surrogate motherhood and fully disclose its content.

First, it should be noted that there are different definitions of the concept of a surrogate mother.

For example, E. Afanasyev divides the concept of a surrogate mother into "real" and "broad". He argues that a surrogate mother in a "real" sense is a woman who carries an embryo, is not considered her biological mother, and does not want to be the legal mother of an unborn child in the future. In the "broad sense", a surrogate

mother is a woman carrying a pregnancy and carrying a child for adoption.

A.A. According to Pestrikova, surrogacy is an agreement between a person who wants to become a parent and a woman (surrogate mother) who agrees to artificial insemination, bearing children and childbirth, after which the surrogate mother transfers the child to the other party for a fee is to give. Here an important condition of the surrogacy contract arises, that is, under the contract, the child must be transferred to contractors (contractors).

In our opinion, surrogacy is an auxiliary reproductive process in which the genetic father transfers his sperm to the egg of another stranger for fertilization, carries the embryo and agrees to give birth to it. In this case, the parties have certain rights and obligations.

Fair enough, E.V. Vishnevsky and T. According to Turilkin, "until recently, women who did not have a sense of motherhood relied on the state, but today they trust people who have money. The new era has given birth to a new relationship - the "market". Previously, she simply refused the child, and now she wants to get money for it.

Trying to define the concept of a surrogate mother E.S. Mitryakov did this too. In particular, in his opinion, surrogate motherhood is a legal relationship between a surrogate mother (carrying a child) and a couple (clients) resulting from the implantation of a genetically alien embryo into the body of a surrogate mother for future pregnancy and childbirth. relationship. This definition completely excludes the possibility of a surrogate mother using her own genetic material.

E.S. Mitryakova defines surrogacy as a very accurate indication of a legal relationship, but the disadvantages of these definitions are the

lack of grounds for the emergence of surrogacy and the absence of a clear goal.

E.A. Ivaeva concludes that the definition of surrogate motherhood should include at least two signs, namely the presence of a genetic link between a child and an unborn child (embryo), as well as the fact that a woman is carrying a child, and the original goal should be passed on to her (while waiting).

Indeed, G. To the opinion of Romanovsky, it should be added that a number of problems (relationships) may arise in the field of surrogacy after the use of reproductive technologies. These include the status of the embryo and its fate, the fate of unused germ cells, human biological exploitation, freedom of scientific research, the right to terminate pregnancy, and much more.

Professors A. Levushkin and I. Saveliev also analyze the requirements for potential parents in surrogate motherhood, arguing that it should be impossible for a potential parent to carry a pregnancy and have a child or a single woman from a medical point of view.

T.E. Borisov argues that surrogate motherhood should strive for only one goal - overcoming female infertility.

This approach deserves unconditional support. If everyone has the right to use (surrogacy) regardless of medical advice, surrogacy can be transformed from a "last chance" to a "toy" to have a child of its own accord. Children can be treated like a commodity or a purchase. That is, wealthy people can create comfortable conditions for themselves by hiring a surrogate mother to carry children.

L.F. Drawing attention to the problem, Kurilo mentions a situation when a woman agrees to give (possibly sell) her newborn child to them in agreement with a married couple. The author

notes that this breeding method is widespread in Latin America, USA, Thailand, India and several other countries.

Now let's talk about the experience of foreign countries. In the UK, surrogate motherhood is understood as the process of bearing a child. In this case, a contract is concluded between the couple and the woman (surrogate mother), which cannot have children or give birth. In this definition, British authors emphasize medical indications and limit the range of people who can use this method, that is, couples who cannot or cannot have children.

In Australia, the concept of surrogacy is seen as a compromise. In this case, the woman (surrogate mother) agrees with the other person or person (the future designated parent) about the condition of carrying and giving birth to a child. This definition is considered a surrogacy agreement rather than other definitions, and there is no medical criterion here.

In the United States, surrogacy is based on an agreement with a foreign woman (orally or in writing) to adopt a child, that is, to impregnate a foreign woman and carry a child using genetic material from a non-foreigner husband.

The peculiarity of this definition is that the form of the agreement implies the use of written or oral and only male genetic material.

The Family Code of the Russian Federation provides that married persons who have given written consent to the use of artificial insemination or embryo placement must, if a child is born as a result of these methods, be entered in the birth registration book of their parents.

As you can see, the proposed definitions of surrogacy, including the legislative one, are very diverse and differ significantly in content.

In our opinion, neither the legislature nor the

doctrine fully reflects the essence of surrogacy. However, there are a number of shortcomings in the descriptions of surrogacy presented by the authors.

The legal regulation of surrogacy should be based on its legal nature. Finally, surrogacy should be viewed as a precautionary measure in cases where the situation cannot be achieved by other means. From this we can conclude that one of the important symptoms is surrogacy, which by its very nature should be considered as a measure that should be applied when there is no way to cure infertility.

In our opinion, surrogacy and its legal regulation should be considered not only as a family code, but also as an element of another legal institution. The institution of legal regulation of surrogacy may include the following, including constitutional, civil, administrative and criminal law. Of course, the institution of the family is an important element of social policy.

We believe that surrogate motherhood as a socio-legal phenomenon has the following characteristics: the presence of a genetic link between the client and the child (embryo); lack of marital relations between the client and the surrogate mother; artificial insemination or embryo transfer; a surrogate mother bears and transfers the child to the expectant mother; carried out by agreement of the couple and the surrogate mother; the original goal must be realized for a fee or free of charge; the emergence of the rights and obligations of the parties; for example, depriving a surrogate mother of the right to sue a child.

In conclusion, it should be noted that the institution of surrogate mothers in family law is fundamentally new, and its formation is associated with the development of assisted

reproductive technologies in science and the practical application of methods of artificial reproduction. We see that an attempt to legitimize relations with a surrogate mother is an urgent problem in Uzbekistan and a number of neighboring countries. Unfortunately, the Family Code of the Republic of Uzbekistan today regulates only a few issues. In this regard, surrogacy and its legal regulation are important not only in the family code, but also in theoretical study and legal regulation with other elements of the legal institution. In this case, it is advisable to clearly define the contracts between the couple and the surrogate mother, as well as the rights and obligations of the parties.

It should be noted that the study of foreign legislation, experience and its historical development of the institution of a surrogate mother helps to gain a deeper understanding of research work and a comprehensive understanding of its content. In addition, surrogacy should be considered as a precautionary measure when infertility treatment is not possible. After all, these measures play an important role in strengthening the family, which is the main link in society.

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