

LEGAL AND ETHICAL CHALLENGES OF SURROGATE MATERNITY: LEXICOLOGICAL ASPECT, COMPARATIVE ANALYSIS AND REGULATORY PERSPECTIVES

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Abstract

Contemporary society and the transformations of the traditional family have brought with them the appearance of new phenomena that open numerous legal, ethical and social issues, especially regarding non-traditional forms of marriage and motherhood. One of the most complex and controversial forms of biomedically assisted reproduction is surrogate motherhood, i.e. contractual birth of a child for another person or couple. Although it represents hope for many who cannot become parents naturally, this institute is legally prohibited in numerous countries and in certain cases subject to criminal liability - depending on whether it is an altruistic or commercial form of surrogacy. The legislator must especially take into account the fact that this form of birth for many couples represents the only possibility to have a child with whom they would be genetically related, however, commercial surrogate motherhood increases the risk of instrumentalization and creation of a business, which violates the dignity of surrogate mothers for the sake of a certain fee, which aims exclusively at earnings. This paper analyzes the normative challenges of surrogacy, shedding light on the ethical dilemmas that accompany it, as well as the need to establish a clear legal framework - both at the national and international level. Comparative legal analysis points to significant differences in the approach to this phenomenon, while at the same time emphasizing the necessity of unification and harmonization of legal norms in order to prevent abuses and suppress reproductive tourism.

Key words: Surrogate motherhood, comparative law, the best interest of the child, parental rights, reproductive tourism.

Introduction

The development of biomedical technologies has led to the emergence of new social phenomena that require adequate linguistic designation. One such phenomenon is surrogate motherhood, the term of which is increasingly encountered in legal, medical and social texts.

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Its linguistic status, structure and semantic nuances represent an interesting subject of lexical analysis, especially within the framework of studying the terminological system of the Serbian language.

The word surrogate comes from the Latin *surrogatus*, which means “placed in place of another”. It entered the Serbian language as a loanword from the English *surrogate*. In Serbian, the word surrogate is used exclusively as a noun, which is confirmed by the Dictionary of Matica Srpska, which defines this lexeme as:

* surrogate, -ata m lat. 1. an object that partially replaces another with which it has some common properties, but does not have its quality. 2. counterfeit, forgery.

The syntagm surrogate motherhood (mother) represents a *noun+noun* model, where the noun surrogate has an attributive function because it describes the type of motherhood, indicating that it is a replacement for the biological mother in the process of pregnancy and childbirth. In the Serbian language, it is common for a noun to stand in front of another noun, forming a syntagm: cornerstone, migratory bird, poisonous snake... The noun motherhood in the aforementioned syntagm has a core function, because the syntagm semantically refers to a form of motherhood in which a woman (surrogate mother) carries a child for another parent/parents, most often on the basis of a legal agreement.

Semantically, this syntagm implies the relationships of substitution, mediation, and legal-medical regulation. In professional discourse, the term surrogacy is considered an ethically and semantically neutral description of a medical-legal process, while in public and media contexts it often acquires value connotations. This connotational weight stems from the fact that the term activates a whole range of moral, cultural and social issues. In the public and in the media, surrogacy is often presented as a controversial practice, most often in the sense of “renting a body” or “trafficking in children”, which creates negative implications of motives and social consequences. In addition, the media often sensationally use this phrase, which can be seen in headlines such as “Surrogate mother sues parents” or “Renting a womb is not the path to women’s liberation”, which intensifies its emotional and ideological coloring.

Surrogate motherhood represents one of the most complex and controversial phenomena of modern biomedical reproduction and law. In response to the ever-present problem of infertility, which according to the World Health Organization (WHO) affects between 8% and 12% of couples of reproductive age globally (World Health Organization, 2023), this institute enables the realization of parenthood by engaging a third person, i.e. a woman who carries and gives birth to a child for another person or couple. This institute requires a comprehensive approach due to its complexity as it connects biomedical technologies, family and civil relations, human rights, as well as ethical and social values. Surrogate motherhood, in itself, represents an answer to the problem of infertility because it enables a couple or an individual who cannot have a child naturally to achieve parenthood with the help of a third person, i.e. women who agree to carry and give birth to a child for them.

In the era of globalization and the progress of reproductive medicine, surrogate motherhood increasingly takes on a cross-border character, which further complicates its legal treatment and causes a series of dilemmas in the international legal context (Trimmings & Beaumont, 2013). In the contemporary legal discourse, the need to harmonize national norms with international standards is recognized, especially in light of the protection of the rights of the child, but also the rights of surrogate mothers and intended parents (Choudhry & Fenwick,

2011). The focus is on the principle of the best interest of the child, the right to identity and family life, as well as the protection of a woman's dignity. State approaches to this matter vary from complete prohibition to legalization and precise regulation under strictly controlled conditions (Ragone, 2001).

The aim of this paper is to present and compare different legal regimes of surrogacy, identify key legal and ethical challenges, as well as analyze international standards and recommendations related to this area. Special attention will be paid to the role of international organizations such as the UN, the Council of Europe and the Hague Conference on Private International Law (Haška konferencija za međunarodno privatno pravo., 2021). The methodological framework of the work includes normative, comparative and analytical methods. The analysis is based on existing legal regulations, judicial practice, international documents and academic literature. The approach is interdisciplinary, with respect for legal, medical, ethical and social aspects of the topic.

Concept, development and forms of surrogate maternity

Surrogate motherhood, in the broadest sense, implies a situation in which a woman (surrogate mother) agrees to carry a pregnancy and give birth to a child for another person or couple (intended parents), and then, after giving birth, renounces parental rights in their favor (Kovaček-Stanić, 2013). This institute developed in response to the problem of infertility and medical barriers to childbearing, enabling persons who would otherwise be deprived of biological parentage to become parents.

Surrogacy today includes a complex mix of biological, medical, legal and ethical relationships. It is a specific form of biomedical assisted fertilization that relies on modern technologies of in vitro fertilization, while simultaneously regulating the rights and obligations of several actors: the surrogate mother, clients, medical institutions and, most importantly, the child (Ragone, 2001).

Although the roots of this practice go back to the distant past, when women gave birth to children for others within family and slave relationships, the modern concept of surrogate motherhood was formed only at the end of the 20th century. The first formal case of surrogacy in the legal sense was recorded in 1980 in the USA, when a concluded surrogacy contract resulted in a court case known as the "Baby M" case (In re Baby M, 109 N.J. 396, 537 A.2d 1227 (N.J., 1988)). In that case, the surrogate mother refused to surrender the child after giving birth, which led to a legal battle for parentage and revealed numerous legal loopholes in the legislation at the time. This case opened up a series of legal and ethical questions about the validity of the surrogate contract, the legal status of the surrogate mother and the child, and the regulation of this procedure within family and medical law (Kovaček-Stanić, 2013).

In modern theory and practice, two basic forms of surrogate motherhood are distinguished:

Traditional (genetic, partial) surrogacy: in this model, the surrogate mother uses her own ovum, which is fertilized with spermatozoa from customers or donors, most often by the method of intrauterine insemination. The surrogate mother is therefore both biologically and genetically the child's mother. This type is more legally and emotionally complex, as the biological connection often makes it difficult to relinquish parental rights and increases the likelihood of legal disputes.

Gestational (full) surrogacy: an embryo is formed in the laboratory by joining the ovum and sperm of the orderer (or donor), and then it is implanted in the uterus of a woman who is not genetically related to the child. This form is becoming dominant in countries that legally allow surrogacy, because it reduces the possibility of legal disputes over parentage and enables more precise regulation of the relationship between surrogate mothers and clients (Trimmings & Beaumont, 2013).

From the aspect of the relationship between the surrogate mother and the clients, the following types are distinguished:

- Family surrogacy - when the surrogate mother is related to one of the clients (eg sister, mother, daughter). This type is more often found in altruistic settings and implies a high level of trust and emotional connection (Blyth & Farrand, 2004).
- Friendly surrogacy - where the surrogate mother is not a relative, but there is a previous emotional or personal connection with the couple or individual ordering the pregnancy.
- Anonymous surrogacy - when there is no previous relationship between the surrogate mother and the clients, but contact is made through agencies or medical institutions (Kovaček-Stanić, 2013).

In relation to financial compensation, surrogacy is further divided into:

- Altruistic surrogacy - the surrogate mother does not receive any compensation except reimbursement of real expenses incurred during pregnancy (medical expenses, food expenses, transportation, etc.). This form is often promoted as more ethically acceptable (Shenfield et al., 2005).
- Commercial surrogacy - includes additional financial compensation to the surrogate mother. In many countries, this species is banned due to the potential exploitation of women, especially those from socially disadvantaged groups, and the perception that the child is being "trafficked" (Pande, 2010).

The variety of forms of surrogacy indicates the complexity of this phenomenon, but also the need to clearly define the legal system according to each of its aspects. The method of conception, the relationship between the actors and the presence or absence of compensation all significantly affect the legal consequences, especially when it comes to determining parentage and protecting the rights of the child. Considering the differences in the approaches of national legal systems, clearly defining the concepts and classification of forms of surrogacy is the first step towards building international standards in this area.

Legal status of surrogate maternity in comparative law

The legal status of surrogacy varies considerably in comparative legal systems, from complete prohibition and criminal liability, to formal recognition and legal regulation. These differences reflect the cultural, religious and legal values of individual countries, but also the legal challenges arising from international surrogate arrangements (Trimmings & Beaumont, 2013). This chapter provides an overview of the different approaches and their implications, with special reference to the European context and the practice of some of the most significant legal systems.

In a comparative framework, three basic models of regulation can be identified: (1) countries that allow surrogacy (under different conditions), (2) countries that explicitly prohibit it, and

(3) countries that do not have a clear legal framework, which creates legal uncertainty and potential abuses.

States that allow surrogacy

In states that allow surrogacy, legal regimes generally make a clear distinction between altruistic (non-commercial) and commercial surrogacy. Legal systems that accept surrogacy often establish strict conditions to ensure the protection of the rights of all involved - the child, the surrogate mother and the clients. Regulations usually include procedures for prior judicial approval, mandatory informed consent and psychological counseling, which seek to reduce the risk of exploitation of women (Trimmings & Beaumont, 2013).

One of the most liberal models is the one in California (USA), where surrogate motherhood is not only allowed, but also institutionalized as part of the reproductive industry. In California, the legal validity of the surrogacy contract is confirmed by court, and the parentage of the ordering parties is recognized before the birth of the child through the so-called pre-birth orders (Shanley, 2001). The case of *Johnson v. Calvert* from 1993 laid the foundation for this practice, confirming that the "intended mother" (genetic parent) is legally recognized as the mother, and not the surrogate woman who gave birth to the child (*Johnson v. Calvert*, 1993).

In the United Kingdom, surrogacy is permitted solely on an altruistic basis and subject to strict controls. The Human Fertilization and Embryology Act of 2008 prohibits any financial compensation other than "reasonable expenses", and parental rights are transferred through a court decision known as a parental order, provided the surrogate mother gives her consent after the birth (Human Fertilisation and Embryology Act, 2008). This approach aims to preserve the dignity of women and prevent the commercialization of pregnancy, while at the same time enabling the realization of parenthood for couples facing infertility.

Greece is one of the few members of the European Union that explicitly allows surrogacy by law, both for domestic and foreign citizens. According to Law 3305/2005, amended in 2014, the court must first approve any surrogate arrangement, and a medical indication is a condition for its legality (Hatzis A., 2010). The embryo must come from the orderer, while the surrogate mother must not have a genetic link with the child. The Greek model is often cited as an example of legal practice that successfully balances between legal certainty and ethical restrictions (Hatzis, 2010).

States that prohibit surrogacy

In many European countries, surrogate motherhood is prohibited by law, primarily based on the normative protection of the dignity of women and children. Argumentation often relies on the principles of public order, human dignity and prevention of exploitation.

For example, in Germany, the Embryo Protection Act (*Embryonenschutzgesetz*) from 1990 prohibits all forms of surrogacy, as well as medical assistance in its performance (*Embryonenschutzgesetz*, 1990). Also, the Law on mediation in adoption prohibits advertising and mediation in connection with surrogate motherhood, and violation of these provisions is subject to criminal liability (*Adoptionsvermittlungsgesetz*, 2021).

France takes a similar position - the Civil Code (art. 16-7 and 16-9) prescribes the nullity of all contracts that place the human body as an object of legal disposal (*Code civil*, 2025). The judgment of the Court of Cassation from 1991 confirmed that maternity cannot be transferred by contract, regardless of the consent of the parties (*Ass. Plén*, 1991). However, France's

position was criticized by the European Court of Human Rights (ECtHR), which ruled in the *Menesson* (*Menesson v. France*, 2014) and *Labassee* (*Labassee v. France*, 2014) cases that the lack of legal recognition of the relationship between the child and his clients constitutes a violation of the right to private life, guaranteed by Article 8 of the ECHR.

In Serbia, surrogacy is not explicitly allowed, but it is actually prohibited. Although the Family Law and the Law on Biomedically Assisted Fertilization (BMPO) of 2017 do not use the term "surrogate", Article 25 of the BMPO Law prohibits the involvement of third parties in the procedure of in vitro fertilization if they intend to transfer the child to another (*Zakon o postupcima biomedicinski potpomognute oplodnje*, 2017). This wording effectively prevents surrogacy in practice, leaving many issues, such as parental status and citizenship of the child, legally unregulated.

States with partial or ambivalent regulation

There are also countries that have a fragmented legal framework, which results in ambivalent legal practice and an increased risk of abuse in the field of surrogacy. One of the most famous examples of such practice is India, which in the 2000s became a global center for commercial surrogacy, attracting thousands of foreign couples thanks to its low costs and relatively liberal regulatory regime. Nevertheless, numerous ethical and legal challenges, including the absence of appropriate informed consent, inadequate health care and pronounced economic exploitation of women from poor strata, caused fierce reactions from the domestic and international public². In response to these criticisms, India adopted the Surrogacy (Regulation) Act, 2021, which prohibits commercial surrogacy and allows exclusively altruistic surrogacy for heterosexual married couples of Indian citizenship, under very restrictive medical and legal conditions (*Zakon o regulisanju surogat materinstva*, 2021).

In Ukraine, surrogacy, including commercial models, remains permitted and legally recognized. However, the legal framework primarily focuses on the issue of genetic connection between parents and child, while issues of the rights and protection of surrogate mothers, as well as the rights of the child, are in the legal gray zone (*Shchyrskya et al.*, 2020). During the armed conflict in Ukraine, international attention was drawn to the cases of dozens of babies born through surrogacy who were left without parents or stranded in hospitals and shelters, which further highlighted shortcomings in the monitoring and humanitarian aspects of this practice.

Russia also allows commercial surrogacy, but under conditions of insufficient institutional regulation, without clearly defined monitoring mechanisms and with minimal protection for all participants – especially surrogate mothers. Although the Russian Family Law allowed parents to obtain legal status after the birth of a child without formal adoption, the practice showed numerous shortcomings. In recent years, serious problems have emerged, including accusations of child trafficking, violations of women's rights and the absence of systemic control mechanisms, which indicate an urgent need for legal reform in this area (*Mouliarova*, 2019).

Table 1. Tabular presentation: Comparative overview of legal regimes

Država	Dozvoljenost	Tip surogacije	Pravna regulativa	Napomena
California (USA)	Allowed	Commercial and altruistic	Precedents + family law	Pre-birth orders
UK	Allowed	Altruistic	HFEA 2008	Commercial prohibited
Greece	Allowed	Altruistic (with costs)	Law 3305/2005	Court permission required
Germany	Forbidden	All forms	Embryonenschutzgesetz	Criminal responsibility
France	Forbidden	All forms	Code civil, art. 16-7	ECtHR criticism
Serbia	Imprecise (de facto ban)	Undefined	Law on BMPO (2017), Family Law	There is no legal recognition
Ukraine	Allowed	Commercial	Family laws	Insufficient protection
India	Limited	Altruistic	Surrogacy Act (2021)	Only for Indian couples

A comparative analysis of surrogate motherhood clearly indicates a deep unevenness and absence of international harmonization in this area. Legal regimes run the gamut from complete prohibition to almost complete liberalization with each approach bringing with it specific legal, ethical and social challenges. Liberal models, although they provide more flexibility and affirm the right to parenthood, often open space for the commercialization of reproductive processes and the potential exploitation of surrogate mothers. In contrast, restrictive regimes, although guided by the idea of protecting dignity and preventing abuses, often ignore the real needs of individuals to start a family and generate legal uncertainty, especially in cases of cross-border surrogacy. In such a context, the need for the establishment of internationally recognized minimum standards, as well as for the development of mechanisms of bilateral and multilateral cooperation, which would ensure legal security and protection of the rights of all actors involved, especially children, is becoming more and more obvious.

International legal aspects and standards

The regulation of surrogacy at the international level still remains fragmented and uneven. There is no universally accepted international legal framework that would comprehensively regulate this area, which creates serious legal gaps, especially in the context of cross-border surrogate arrangements. Although international organizations predominantly focus on the protection of children's rights, the prohibition of human trafficking and the preservation of women's dignity, the last decade has seen a growing institutional effort towards formulating basic rules and establishing a coordinated regulatory approach.

United Nations documents

Within the United Nations system, there is no specific document that directly regulates surrogacy, but the relevant universal treaties lay down fundamental principles that are indirectly applicable.

The most significant among them is *The Convention on the Rights of the Child* (Convention on the Rights of the Child, 1989), Article 7 of which stipulates that every child has the right to know his parents and to be cared for by them. Cross-border surrogate arrangements often result in situations where the legal status of the child is unclear - the child may remain without a recognized legal relationship with the biological or social parents, and at the same time his citizenship or registration in the birth registers may be contested. In 2013, the United Nations Committee on the Rights of the Child issued General Comment No. 14, which emphasizes that children born by surrogacy have the right to identity, family life and protection from discrimination (Committee on the Rights of the Child, 2013). The Committee called on states to develop effective mechanisms for legal recognition of the relationship between the child and the person who commissioned it, provided that the rights and safety of the child are not threatened.

Also, *The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) explicitly requires the protection of women from any form of exploitation. Although CEDAW does not prohibit surrogacy per se, commercial models of surrogacy are increasingly interpreted as a potential form of commodification of the female body, especially in countries with a low level of social protection (Committee on the Elimination of Discrimination against Women, 1999).

European Court of Human Rights (ECtHR)

Although the European Convention on Human Rights (ECHR) does not contain explicit provisions related to surrogacy, the jurisprudence of the European Court of Human Rights (ECtHR) plays a key role in the development and interpretation of standards concerning the right to family life, identity and legal status of the child. The Court faces the challenge of balancing the national sovereignty of member states in the area of family law and universal standards of human rights protection, especially when it comes to children born in the context of cross-border surrogacy arrangements.

One of the most significant cases is the aforementioned *Mennesson v. France* (Appl. No. 65192/11), in which the French authorities refused to recognize the legal relationship between the genetic father and a child born by surrogacy in the United States of America. The ECtHR concluded that such behavior is a violation of Article 8 of the ECHR, which guarantees the right to respect for private and family life (*Mennesson v. France*, 2014). The court pointed out that the state, even when it prohibits surrogate motherhood on its territory, must not neglect the interests of the child, who must not be a "victim" of the legal vacuum created by the inconsistency of legislation. The right of the child to have a stable legal relationship with his genetic parent was assessed as a priority in relation to the prohibitions contained in the national legislation.

In contrast, in the case of *Paradiso and Campanelli v. Italy* (Appl. No. 25358/12), the ECtHR in the Grand Chamber took a different position. In that case, an Italian couple brought a child from Russia, born through surrogacy, without the existence of a biological relationship. The Italian authorities took the child away, stating that no legal family relationship had been established, and that international adoption procedures had been violated. The court assessed

that, considering the short period of cohabitation and the absence of a biological relationship, "family unity" that would enjoy the protection of Article 8 of the ECHR was not achieved (*Paradiso and Campanelli v. Italy*, 2017). This judgment has caused a wide academic and professional debate because it seems to give more importance to formal legal frameworks than to the emotional and social bond between the child and the adults who have assumed the parental role.

These two cases illustrate the complexity of the issue of surrogacy in the European context and indicate that the ECtHR does not take a uniform position, but decides based on the specific circumstances of each case. Such practice can be interpreted as a reflection of respect for the sovereignty of member states, but at the same time it indicates the need for greater legal predictability and compliance, especially when it comes to protecting the best interests of the child.

Due to the increasingly frequent appearance of cross-border surrogacy arrangements and different national policies, the need to establish common European standards that would ensure legal security, both for children and for parents and surrogate mothers, is becoming more and more prominent. The ECtHR's practice, although fragmentary, contributes to the gradual shaping of those standards and indicates the direction of future harmonization.

The Hague Conference and international initiatives

The most serious attempt to create an international instrument in the field of surrogacy was initiated by the Hague Conference on Private International Law (HCCH). Since 2015, we have been actively working on a project whose goal is the adoption of a multilateral convention that would regulate the recognition of parentage in cross-border cases of surrogate motherhood. (Hague Conference on Private International Law, 2015). The main obstacles identified in the working papers include: lack of international consensus, different national laws on family and biomedical law, as well as complex issues of conflict of law.

In the 2019 report, the HCCH emphasized that a universal ban on surrogacy is not achievable, but that it is possible to define a minimum standard for recognizing parentage in cross-border cases, while respecting the best interests of the child (Hague Conference on Private International Law, 2019). The proposal includes the possibility of automatic recognition of parentage under certain conditions, which would prevent situations of legal uncertainty and violations of children's rights.

In addition, the Parliamentary Assembly of the Council of Europe adopted Recommendation 2096 in 2016, calling on member states to ban commercial surrogacy, but also to guarantee the rights of children born in such arrangements (Parliamentary Assembly of the Council of Europe, 2016). Although this recommendation does not have binding legal force, it clearly reflects the political will to balance ethical dilemmas with the real challenges of international practice.

Rights of a Child born through surrogate maternity

Children born through surrogacy, especially in the context of cross-border surrogacy arrangements, are often in a legally and identity uncertain position. The reason for this lies in the mismatch between the legal regimes of the countries where the surrogate pregnancy occurs and those where the commissioning parents have their residence. In such circumstances, there is a significant risk of violation of the basic rights of the child, including the right to identity, family ties, citizenship, and legal security.

Although the reproductive autonomy of adults and their right to parenthood cannot be ignored, the modern legal framework clearly indicates that these rights must be subordinated to the principle of the best interests of the child, which is the fundamental principle of the child's rights and a widely accepted standard in international instruments and the practice of international courts (Committee on the Rights of the Child, 2013).

Right to identity, name and citizenship

One of the basic rights of every child is the right to identity, which includes the right to a personal name, nationality, family relationships and legally recognized parentage status. This right is explicitly guaranteed by articles 7 and 8 of the Convention on the Rights of the Child, which obliges states to ensure the registration of the child immediately after birth, to assign him a name, citizenship, as well as to enable the knowledge and care of the biological or legal parents (Convention on the Rights of the Child, 1989).

In practice, however, many children born through surrogacy remain without legally recognized parents or without citizenship - especially in cases where the home countries of the clients do not recognize surrogacy contracts concluded abroad. Refusing to register a birth, or denying the parents' status of applicants, can lead to legal statelessness, which is directly contrary to international standards, including the provisions of the 1961 Convention on the Reduction of Statelessness (Convention on the Reduction of Statelessness, 1961).

The European Court of Human Rights took similar positions in the already mentioned judgments in the cases of *Mennesson v. France* and *Labassee v. France*, the Court clearly pointed out that states, even if they prohibit surrogacy, must ensure that the child has a legally recognized relationship with his genetic parents, in order to protect the right to identity and family life.

The right to parentage and family life

In addition to a formal identity, every child has the right to live with his parents and be under their care. This right is contained in Articles 9 and 18 of the Convention on the Rights of the Child, and is the foundation for the protection of family life.

In the context of surrogacy, especially cross-border, there is often a conflict of jurisdictions and laws, which results in the child remaining "trapped" in the country of birth, without the possibility of being reunited with the parents, or without legal recognition of the relationship with them.

In the judgment of *Foulon and Bouvet v. France* (Appl. no. 9063/14 and 10410/14), the ECtHR confirmed that the right of a child to be recognized as the child of his genetic parents falls within the domain of the right to family life. The court emphasized that the national interest in banning surrogate motherhood cannot completely prevail over the child's right to identity and family continuity (*Foulon and Bouvet v. France*, 2016).

In cases where there is no genetic link between the child and the donors, such as cases of complete embryo donation, the situation is further complicated. However, international standards require states to enable the establishment of parental ties, either through legal recognition or expedited adoption procedures, in order to avoid institutionalization and legal insecurity of the child.

Cross-border implications and legal uncertainty

Due to pronounced differences in national legislation regulating surrogacy, so-called "reproductive tourism" is increasingly occurring - a practice in which couples from countries with restrictive regulations go to countries with a more liberal approach, such as Georgia, Ukraine or certain federal states of the United States, in order to achieve parenthood through surrogacy.

However, upon returning to their home country, these couples often face serious legal obstacles: denial of recognition of parentage, impossibility of issuing a passport to the child, as well as denial of access to health care and other rights.

In such circumstances, children born through surrogacy may be left without basic legal protection, which is a direct violation of their fundamental rights guaranteed by international law. Such legal uncertainty has encouraged numerous legal experts and organizations for the protection of human rights to call for the urgent establishment of universal mechanisms for the recognition of parentage, as well as for the strengthening of international cooperation between states. The goal of such initiatives is to ensure consistent, comprehensive and effective protection of the rights of the child, regardless of the legal model under which the child was born.

Bearing in mind the above, the rights of the child in the context of surrogate motherhood must represent a key landmark in the normative regulation of this complex area. Regardless of the legal position of an individual country towards surrogacy, the child's rights - to identity, citizenship, parentage and legal protection - must be unconditionally respected. The introduction of international instruments and the development of mechanisms for the automatic recognition of parentage represent a necessary step towards the elimination of legal uncertainty and the provision of full protection of the rights of every child born through surrogacy.

Challenges and perspectives for Serbia

Surrogate motherhood represents one of the most complex bioethical and legal issues of modern times. In the Republic of Serbia, this practice is currently legally prohibited, which leaves the space for parenthood through surrogacy to a gray area or is completely "moved" abroad. Although there are normative frameworks governing assisted reproduction and maternity protection, surrogacy remains legally unregulated and socially taboo, which opens up a series of challenges - legal, ethical and social - both for couples facing infertility and for children born outside of Serbia as part of surrogacy arrangements.

Legal framework and existing ban

As stated above, according to the current legislation, surrogate motherhood is not allowed in the Republic of Serbia. The Family Law does not recognize the possibility of a woman who is not the legal or biological mother of the child presenting the pregnancy (Porodični zakon Republike Srbije, 2005/2011). The Law on Biomedically Assisted Fertilization of 2017 explicitly prohibits the involvement of third parties in the pregnancy process, allowing BMPO only in case of medical indication in heterosexual couples.

The ban is most often justified by the need to protect the dignity of women and prevent potential commercial exploitation. However, this approach ignores the rights of individuals facing sterility and ignores the legal needs of children born through surrogacy abroad, especially regarding recognition of parentage, registration of births, acquisition of

citizenship and access to social and health rights (Zakon o postupcima biomedicinski potpomognute oplodnje, 2017).

Ethics and social perception

Surrogate motherhood in Serbia still causes strong ethical and social controversies. Key dilemmas concern the possibility of commodification of the female body, the economic exploitation of women in a vulnerable position, as well as the disruption of the traditional understanding of motherhood. Conservative parts of society, including religious communities, often express strong opposition to this practice, relying on arguments that call for the preservation of the "natural order" of family relations.

On the contrary, more and more experts - lawyers, doctors, psychologists, as well as citizens themselves - are advocating for a rational and legally based approach to this issue. In the light of negative demographic trends, increasing infertility and increasing recognition of the right to reproductive autonomy, there is a need to review the current ban and introduce a clearly regulated, primarily altruistic form of surrogacy, with strict control and protection of all participants in the procedure.

Perspectives on decriminalization and recommendations for reform

There are indications that in the coming years, a serious public and professional debate on the legalization and regulation of certain forms of surrogacy in Serbia could be initiated. Models from countries such as Greece and the United Kingdom, which have established a balance between legal certainty and ethical standards, can serve as a model.⁶ In this context, consideration of the following recommendations may be of crucial importance:

1. Legalization of altruistic surrogacy, with an explicit ban on commercial forms, in order to preserve ethical acceptability and protect the dignity of women.
2. Establishing a central registry and ethics committees to oversee surrogate arrangements, ensure informed consent and prevent any form of coercion.
3. Precise definition of parental rights and responsibilities, including automatic recognition of the parentage of the ordering parties with the consent of the surrogate mother.
4. Guaranteeing the rights of the child - especially the right to identity, citizenship and family continuity - in accordance with the Convention on the Rights of the Child (Convention on the Rights of the Child, 1989).

The opening of this topic requires an interdisciplinary dialogue in which lawyers, bioethicists, health workers, psychologists and representatives of the civil sector should be involved. At the same time, the formation of a social consensus is a key prerequisite for a democratically legitimized and sustainable legal reform in this area.

Concluding considerations

Surrogate motherhood as an institute brings multiple benefits to those who face the impossibility of achieving parenthood in a natural way, enabling them to achieve the right to family life with the help of a third person. However, this practice simultaneously opens significant legal, ethical and social dilemmas that require careful consideration and precise regulation. The legal position of all participants in the surrogacy process - the child, the

⁶ In Greece, altruistic surrogacy has been legal since 2002 with court supervision, while the United Kingdom allows non-commercial surrogacy with prior court approval.

surrogate mother and the clients - depends on a number of factors that vary from country to country, which further complicates cross-border cases.

Analysis of national legislation shows that there is no single, universally accepted approach to surrogacy. National systems range from a complete ban (as in Germany, France or Serbia), through partial or strictly controlled models (as in Great Britain or Greece), to liberal regimes that also allow commercial surrogacy (eg California). States that prohibit surrogate motherhood generally refer to the principles of protecting the dignity of women, preventing the commercialization of the human body and protecting the rights of the child, while those that allow this practice try to ensure legal security and clearly defined parental rights through regulated mechanisms.

However, precisely these differences lead to problems of cross-border disputes, legal uncertainty in the recognition of parentage, as well as possible abuses, including "surrogacy tourism" and unclear legal statuses of children. The international legal framework in this area is fragmented and limited - it mainly relies on soft instruments such as recommendations and case law (eg ECHR), without a comprehensive and binding document that would harmonize approaches and provide a universal legal minimum.

In this sense, the key challenge in the coming period will be the establishment of international legal standards that will: (1) protect the rights of the child as a priority, (2) ensure the legal and social security of surrogate mothers and clients, and (3) prevent cross-border abuses. An interdisciplinary and multilateral approach is necessary, in which lawyers, bioethicists, medical workers and representatives of international organizations would participate. This is the only way to build a legal framework that is simultaneously effective, legally consistent, ethically acceptable and socially responsible.

In the conditions of globalization and increasing mobility, borders between countries are becoming more and more permeable, which further emphasizes the need for coordination and harmonization of legal norms. Without clear international legal standards, there is a serious risk of legal fragmentation, which threatens the rights of the child and other actors in the surrogacy process, and opens up space for injustices and manipulations.

This work contributes to a better understanding of the complexity and diversity of surrogacy, while emphasizing the necessity of legal and institutional development in this area. Especially in the context of national challenges, such as the case in Serbia, it is necessary to start a responsible and inclusive public debate about the future of this institute, with the aim of achieving legal certainty, ethical sustainability and protection of the basic human rights of all involved.

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PRAVNI I ETIČKI IZAZOVI SUROGAT MAJČINSTVA: LEKSIKOLOŠKI ASPEKT, KOMPARATIVNA ANALIZA I REGULATORNE PERSPEKTIVE

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Apstrakt

Savremeno društvo i transformacije tradicionalne porodice donele su sa sobom pojavu novih fenomena koji otvaraju brojna pravna, etička i društvena pitanja, posebno u vezi sa netradicionalnim oblicima braka i majčinstva. Jedan od najsloženijih i najkontroverznijih oblika biomedicinski potpomognute reprodukcije je surogat majčinstvo, odnosno ugovorno rađanje deteta za drugu osobu ili par. Iako predstavlja nadu za mnoge koji ne mogu da postanu roditelji prirodnim putem, ovaj institut je zakonski zabranjen u brojnim zemljama i u određenim slučajevima podleže krivičnoj odgovornosti - u zavisnosti od toga da li se radi o altruističkom ili komercijalnom obliku surogat majčinstva. Zakonodavac posebno mora uzeti u obzir činjenicu da ovaj oblik porođaja za mnoge parove predstavlja jedinu mogućnost da imaju dete sa kojim bi bili genetski povezani, međutim, komercijalno surogat majčinstvo povećava rizik od instrumentalizacije i stvaranja biznisa, koji narušava dostojanstvo surogat majki zarad određene naknade, koja ima isključivo za cilj zaradu. Ovaj rad analizira normativne izazove surogatstva, bacajući svetlo na etičke dileme koje ga prate, kao i na potrebu uspostavljanja jasnog pravnog okvira - kako na nacionalnom tako i na međunarodnom nivou. Uporednopravna analiza ukazuje na značajne razlike u pristupu ovom fenomenu, dok istovremeno ističe neophodnost ujedinjenja i harmonizacije pravnih normi kako bi se sprečile zloupotrebe i suzbio reproduktivni turizam.

Ključne reči: *Surogat majčinstvo, uporedno pravo, najbolji interes deteta, roditeljska prava, reproduktivni turizam.*

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