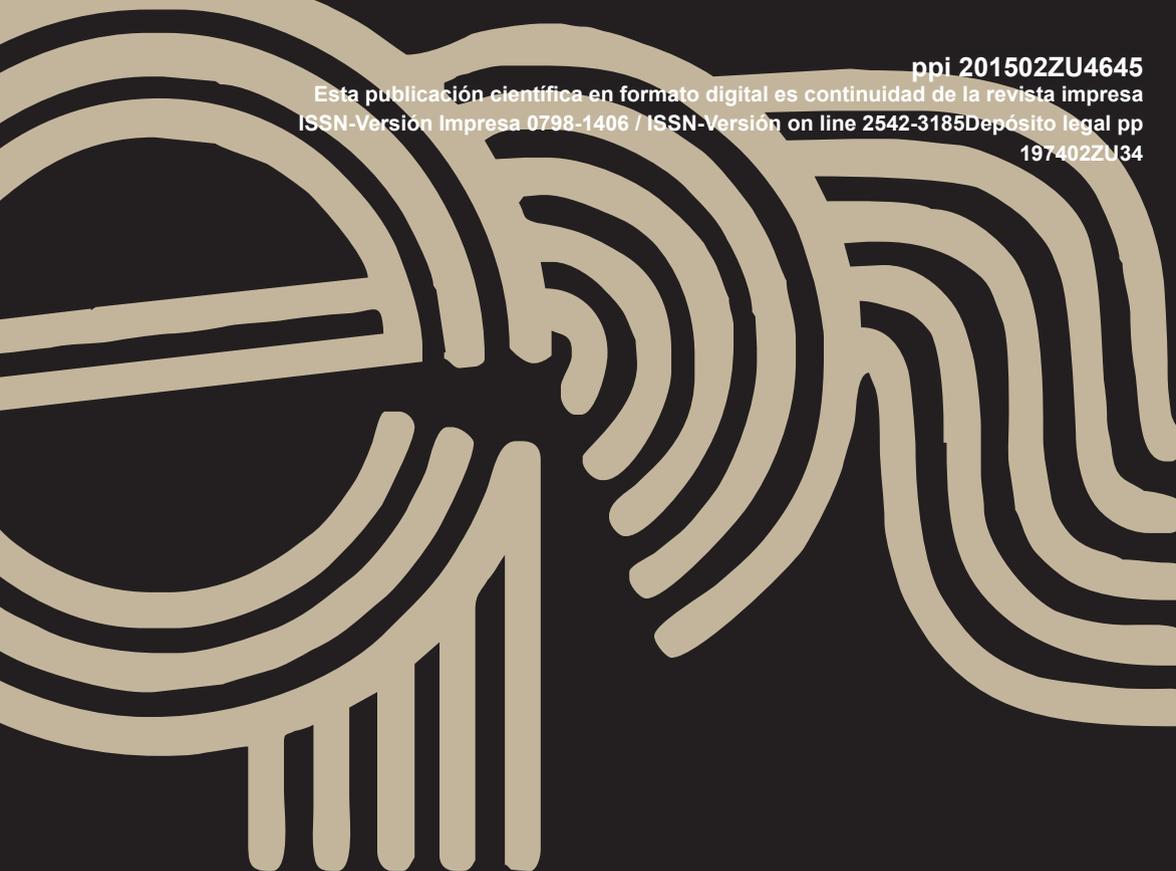


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# Problems of Concluding Surrogacy Agreements: Practice of Ukraine and the EU

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## Abstract

The aim of the article was to identify and analyses typical problems of concluding surrogacy agreements in the context of supranational challenges and pandemics. This aim was achieved with a view to the peculiarities of the legal status of surrogacy in leading European countries. Methods of observation, comparative legal analysis and legal simulation became the basic methodological tools. The study resulted in grouping of the European countries according to the state of surrogacy legalization, as well as outlining the leading problems of concluding and executing surrogacy agreements. It was stated that women in current realities are becoming commercial gestational carriers, and are not acting in the best interests of the child. The study proves a high degree of levelling of the terms of surrogacy agreements in Ukraine, which requires immediate legislator's response. It is argued that the approach to altruistic surrogacy has the potential to eradicate commercial agreements in a cross-border context. Further author's research will focus on establishing a unified and optimally effective international approach to solving problems of concluding surrogacy agreements.

**Keywords:** altruistic motherhood; bodily autonomy; gestational carrier; innovative technologies; reproductive medicine.

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## Problemas de la celebración de acuerdos de subrogación: práctica de Ucrania y la Unión europea

### Resumen

El objetivo del artículo fue identificar los problemas típicos de celebrar acuerdos de gestación subrogada en el contexto de desafíos supranacionales y pandemias. Este objetivo se logró teniendo en cuenta las peculiaridades del estatus legal de la gestación subrogada en los principales países europeos. Métodos de observación, análisis jurídico comparado y simulación jurídica se convirtieron en las herramientas metodológicas básicas para la investigación. El estudio resultó en la agrupación de los países europeos según el estado de legalización de la gestación subrogada, así como en la descripción de los principales problemas para concluir y ejecutar acuerdos de gestación subrogada. Se afirmó que las mujeres en las realidades actuales se están convirtiendo en portadoras gestacionales comerciales y no están actuando en el mejor interés del niño. El estudio demuestra además un alto grado de nivelación de los términos de los acuerdos de subrogación en Ucrania, lo que requiere una respuesta inmediata del legislador. Se argumenta que el enfoque de la subrogación altruista tiene el potencial de erradicar los acuerdos comerciales en un contexto transfronterizo. La investigación adicional de los autores se centrará en establecer un enfoque internacional unificado y óptimamente eficaz para resolver los problemas de celebración de acuerdos de subrogación.

**Palabras clave:** maternidad altruista; autonomía corporal; portadora gestacional; tecnologías innovadoras; medicina reproductiva.

### Introduction

Reproductive function with the use of medical technologies is a trend characterized by striking roots and continuous development in society. Increasingly limited opportunities for international adoption have contributed to the spread of international surrogacy. In this regard, a wide range of methods are available today for infertile couples, which are important in supporting natural fertilization (Wennberg, 2020). If surrogacy is legal in any country, citizens have the right to travel abroad for a variety of reasons: to gain access to surrogacy with more innovative infertility treatment, lower costs, the ability to use genetic engineering using specific genetic materials (Caldwell, 2019).

Cross-border gestational surrogacy may raise some legal issues regarding the return of these citizens to their country with children conceived illegally

or fraudulently. Surrogacy also raises important ethical issues that make it difficult to solve legal problems in case of international surrogacy. This is a major obstacle to achieving a common approach and a minimum international legal framework (González, 2020).

Unfortunately, international surrogacy is increasingly positioning itself as a negative form of cross-border reproductive assistance, so-called “reproductive tourism”. The international community recognize that it is currently impossible to monitor medical procedures, professional practices, ethical standards, the free consent of a surrogate mother or the independent counselling used in the framework of an international surrogacy agreement. Profits or intermediaries of any kind automatically make international surrogacy agreements ethically questionable.

Surrogacy is not always viewed from a negative perspective. Surrogacy can be traditional or gestational: in the first case, the surrogate mother uses her own egg and undergoes artificial insemination with the sperm of the intended father or donor. Gestational surrogacy instead relies on an embryo created by in vitro fertilization (IVF) and implanted in the surrogate uterus. A child born as a result of gestational surrogacy has no genetic link to the surrogate mother. The intended parents may be heterosexual or homosexual couples, or even single. In gestational surrogacy programmes, the incidence of clinical pregnancies with embryo transfer ranges from 19 to 33%, with 30 to 70% of couples who have reached clinical pregnancy becoming parents (Piersanti et al., 2021).

However, critics believe that variable methods, including surrogacy, can lead to the transformation of human life into the commodity and exploitation of women, making surrogacy highly commercial and bioethically controversial (Bertelli *et al.*, 2019). These methods, taken separately, provide fertilization, but when used together can lead to the emergence of real “children’s factories”, which already exist in poor countries and mostly operate illegally.

Litigation over the conclusion, interpretation and legal consequences of surrogacy agreements is currently on the rise in many countries. When deciding on surrogacy, courts tend to prefer several factors that often conflict with each other: the best interests of the child, the rights of the gestational mother, the genetic link between the child and the genetic father, or the couple who signed the surrogacy agreement. There is no consensus in the legal or ethical community as to which of these factors should be a priority (González, 2020).

In today’s world, there are different national approaches, from permissive to prohibitive, from regulatory to non-regulatory. The most liberal approaches are based on the right to start a family and women’s autonomy. Most prohibitive approaches reflect ethical or religious

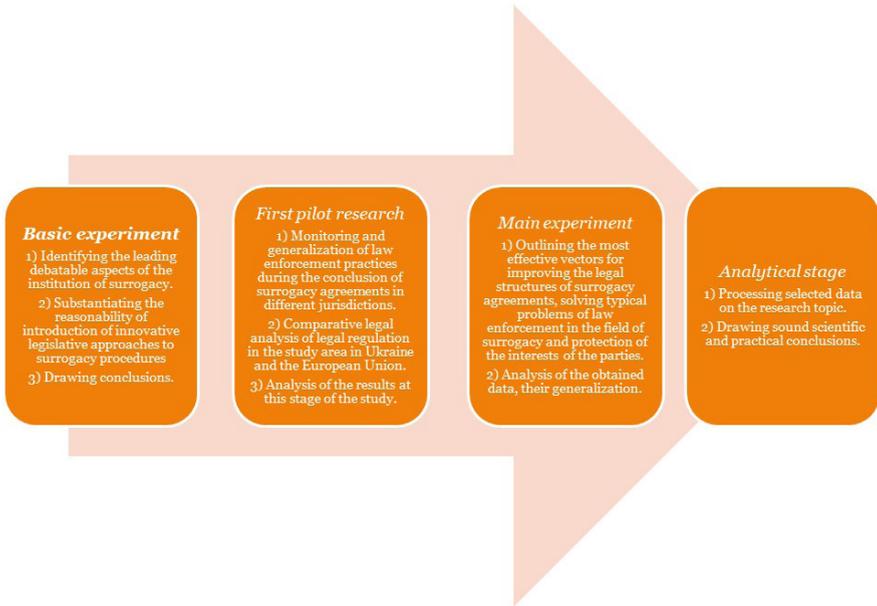
arguments against potential and documented methods of exploitation, especially when reproduced by third parties. Although case law is evolving in terms of children's rights, any international instruments do not directly address this issue, leaving different interpretations open.

The Surrogacy Agreement is a long and complex legal document that includes a wide range of legal remedies, contingencies and guarantees for both surrogate mothers and prospective parents, as well as protecting the child's well-being before and after birth. It is important to emphasize that the special medical component of such a legal relationship must also be taken into account in detail. Therefore, there is a need for in-depth bioethical and legal research to reform legislation on the combined use of assisted reproductive technologies.

Given the above, the aim of the article was to identify and reveal current issues of concluding surrogacy agreements in Ukraine and EU countries. This aim involved the following objectives: 1) identify current trends that affect the procedure for concluding surrogacy agreements; 2) reveal the state of legal regulation of surrogacy in Ukraine and EU countries; 3) outline the prospects of legal innovations in the legal field of Ukraine in the studied area.

## **1. Materials and Methods**

The research procedure is presented in Figure 1. In turn, the sequence of scientific research was determined by the leading areas of scientific and legal research on the selected topic. Particular attention was paid to the debatable rules of law in the field under study. Variable approaches to the legalization of surrogacy have revealed common mistakes in the conclusion and execution surrogacy agreements in this area in different countries.



**Figure 1: Schematic representation of the research on the subject of the article.**

The study was based on a set of general and special methods, scientific approaches and theories, which found their detailed consideration at each stage of scientific research. The main research methods were observation and comparative legal analysis. The specified methodological tools helped to reveal the main problems of realization of the rights and lawful interests of the parties to the contractual legal relations in the field of surrogacy; substantiate the reasonability of introduction of new medical procedures in a complex with the corresponding legislative innovations; it is proposed to find a unified international legal approach to the problems of contractual relations in the research area and to ensure the best interests of the child.

The comparative legal method was also used in the comparative analysis of current national legal norms of Ukraine in the field of surrogacy with legal systems and the latest scientific developments of other countries in order to identify positive legislative practice, which is appropriate and possible for testing in our country in view of the peculiarities of the domestic legal system.

In turn, the dialectical method of cognition of phenomena and processes allowed determining the state, directions and prospects of development

of research and legislative developments in the field of legal regulation of the institution of surrogacy in Ukraine and the European Union. The historical and legal method was applied during the study of the genesis of the development of legislation governing the use of assisted reproductive technologies in Ukraine and foreign countries; methods of analysis and synthesis were used to establish the nature and content of the institution of surrogacy.

Besides, these methods allowed outlining the variability of legal structures of agreements. Conclusions were drawn in accordance with the aim of the study through the dogmatic method. Taking into account the experience of foreign countries, the method of analogy allowed concluding that it is necessary to adopt new regulations in Ukraine. Forecasting and proposals for legislative innovations were realized through logical methods of knowledge and the method of legal simulation.

The theoretical and methodological background of the author's scientific research was the works of leading scholars and practitioners in the field of surrogacy and contract law. Considerable attention was paid to the results of comparative studies of the legal status of surrogacy in various jurisdictions, previously conducted by representatives of the doctrine. Drawing author's conclusions was facilitated by the analysis of primary sources of legislative, regulatory acts and international documents on the subject of the article. A total of thirty-three sources have been tested in the article. Regulatory-semantic methods, as well as other scientific tools were used in formulating legislative proposals. The set of methods, techniques and tools determined by the aim of the article and the research objectives helped to reveal the issues outlined in the article as much as possible.

## **2. Results**

According to the 2019 Council of Europe Report: Anonymous Sperm and Oocyte Donation: Balancing the Rights of Parents, Donors and Children, about 8 million children were born using assisted reproductive technologies (Council of Europe, 2019). The global COVID-19 pandemic has slowed the growth of surrogacy and reduced the number of international surrogacy agreements concluded in 2020 due to restrictions on foreign border crossings imposed and implemented by most European legislators. It is believed that this trend will continue until the end of the global pandemic and is expected to end with the lifting of travel restrictions. Prior to the introduction of coronavirus restrictions, surrogacy was considered a global emerging market. According to the forecasts of GlobeNewswire (2019), by 2025 the cash flow in the field of surrogacy "will exceed \$ 27.5 milliard".

At the same time, not all surrogacy contracts are paid. Altruistic surrogacy refers to those agreements where the surrogate mother does not receive monetary compensation. In most altruistic agreements, the surrogate mother is a close relative of the probable parents. In turn, the commercial surrogacy agreement provides a surrogate mother's compensation package tailored to the unique situation of each surrogate mother. The surrogate compensation agreement details the pre-determined plan under which the intended parents agree to cover medical expenses, travel expenses, court costs and other potential expenses that may arise during the trip. The surrogacy agreement must include the provisions of regulatory law, as it is necessary to take into account the legality of surrogacy in a particular country.

It is advisable to refer to the general terms and conditions of the agreements in the research area. In particular, such an agreement should detail all aspects of conception, including whose gametes are used, how many embryos will be transferred in one attempt, how many attempts will be made to implant embryos, whether embryos used will be fresh or frozen, any genetic research, and similar details. It is especially important that any contract with a surrogate mother stipulates the legal maternity and paternity. It should be ensured that the intended parents are recognized as legal parents, releasing the surrogate mother (and her spouse, if any) of all rights and responsibilities with respect to the child. The agreement also guarantees that parents will receive immediate custody of the child after birth.

In order to properly protect the interests of the unborn child, the surrogacy agreement must provide for an emergency plan. For example, if the parents die or become disabled before the full fulfilment of the terms of the agreement. Intended parents must provide evidence that they are in any case capable of fulfilling their financial obligations under the contract and securing the child's future legal status. This includes the appointment of guardians for the child and custodians to ensure that the surrogacy agreement is concluded, executed and all costs and obligations of surrogacy are met.

The contract must specify the procedure if any of the parties involved divorces or marries before the end of the agreement. To avoid potential problems, surrogacy agreements generally prohibit both prospective parents and surrogate mothers from performing any of these actions before the child is born. Parents are responsible for obtaining health insurance for their child, and usually pay any insurance premiums, surcharges or uncovered medical expenses related to pregnancy and childbirth. The surrogate mother should review her own health insurance policy before signing the agreement to make sure that the policy does not preclude her from participating in surrogacy. The agreement must include information

on the amounts that can be paid to the surrogate mother and the procedure for such payments.

The agreement between the parties must also provide for legal consequences in the event of a miscarriage or abortion. According to the current practice, the decision to try again in this case is made either with the consent of the parties, or, more often, remains at the discretion of the surrogate mother. In the tragic case of a child dying at birth or shortly thereafter, custody of the remains is usually passed on to the prospective parents who arrange the funeral. The child's name should be included in the agreement, along with instructions for the hospital on how the names of the prospective parents will be listed on the birth certificate. Given the above, it is advisable to summarize the leading standard terms of the surrogacy agreement (Figure 2).



**Figure 2: Leading typical essential terms of the contract in the field of surrogacy in a cross-border context summarized by the author based on the analysis of empirical data.**

Let's turn to the practice and problems of concluding relevant agreements in different jurisdictions. The implementation of surrogacy procedure in Ukraine is characterized by a number of features: there must

be a commercial surrogacy agreement, which provides for the payment of a specific amount of fee, which does not contain restrictions on the amount of remuneration; there is no legislative provision for obtaining a permit from the guardianship and wardship authority (as in the case of adoption). Upon the birth of a child, the surrogate mother signs a permit to transfer the child to the biological parents.

In this case, there is no need to consider the case in court, all legal relations are governed primarily by Article 123 of the Family Code of Ukraine (Verkhovna Rada of Ukraine, 2002) and the relevant agreement. The names of the biological parents are entered in the birth certificate. The parental rights to the child fully belong to the genetic mother and father. A surrogate mother in Ukraine should not be genetically related to the unborn child and is considered only as a “gestational carrier”.

Besides, the basis of legal regulation in Ukraine is the Law of Ukraine “On Fundamentals of Health Care Legislation” (Verkhovna Rada of Ukraine, 1992) and the Procedure for the Use of Assisted Reproductive Technologies in Ukraine, approved by the Order of the Ministry of Health of Ukraine No. 787 of 09.09.2013 (Ministry of Health of Ukraine, 2013). Therefore, the current legislation of Ukraine regulates the possibility of implementing assisted reproductive technologies, in this case — surrogacy. Ukraine has no obligation to test the ability of expectant parents to legalize child status in countries where surrogacy is prohibited. Unfortunately, minimizing legal risks is a matter for biological parents alone, not for medical clinics and agencies that provide this procedure.

Legal relations arise between the surrogate mother, potential parents and medical organizations, and are governed by the relevant agreements between them. Two types of agreements are concluded for the purpose of legal support in this case: between the genetic parents and the agency (medical institution), and between the genetic parents and the surrogate mother.

The main terms of the agreement between the agency (medical institution) and the genetic parents are not clearly established by law. As a result, those agreements are concluded in a simple written form provided by the agency, without notarization. There is a current problem of contractual regulation of surrogacy in Ukraine. Paragraph 6.11 of Order No. 787 (Ministry of Health of Ukraine, 2013) stipulates that such an agreement is not subject to mandatory notarization, but a notarized copy of the written general agreement between the surrogate mother and the woman (wife) or spouses.

In contrast, in most EU countries, the principle of family law “*mater semper certa est*” acts as a legal barrier to surrogacy agreements. According to this principle, a surrogate mother is also considered a legitimate mother

because she gives birth to a child. Therefore, the future parents must go to court if they want to be appointed legal parents of this child. The main purpose of these prohibitive and restrictive laws is to protect the rights, dignity and well-being of both surrogate mothers and future children.

In parallel with the increasing use of surrogacy, EU countries have decided to allow surrogacy only in certain cases: for example, Greece (Masry, 2003), Portugal (VLex, 2016) accept an altruistic model only. However, in 2019, the Portuguese Constitutional Court repealed a number of provisions of a law passed by parliament on suspicion of violating constitutional principles and rights in the field of family law. Some countries have decided to explicitly prohibit surrogacy, such as Germany (Ministry of Justice of Germany, 1990) and Spain (Instituto Bernabeu, 2007) or even consider it a crime, such as Article 227-13 of the Penal Code of France (Legislationline, 1992).

Surrogacy is prohibited by law in Spain, so the only option available to prospective parents is to consider going to another country to complete the procedure. However, individuals and couples can start the treatment process in Spain in a private clinic and arrange for their gametes to be transferred to the country where the surrogacy process will begin. The cost of surrogacy will depend on the country of destination and whether treatment is started in Spain (Statista, 2019).

In countries where surrogacy is permitted, there may be specific legislation governing it (Legislation.gov.uk, 1985), or surrogacy is permitted without any specific law, applying the principle that “everything that is not forbidden is allowed” (for example, Belgium and the Netherlands). In practice, cases of surrogacy still exist (this is possible in some hospitals, under certain conditions and under strict control), for example in Belgium. The surrogacy agreement is considered invalid, so the surrogate mother (whether or not she is the genetic mother of the child) cannot be forced to give up the child after birth.

Therefore, the parental relationship between the child and the prospective parents must be established through adoption, as the surrogate mother’s name is recorded on the birth certificate and the surrogate mother is considered the legal mother. Belgian courts generally agree to grant adoption in such cases if it is in the best interests of the child and provided that surrogacy has not been rewarded. If the surrogate mother is not married, the prospective father may recognize the child if the surrogate mother agrees. In this case, only the prospective mother should adopt the child. When surrogacy is legal (altruistic or commercial), it can be restricted for citizens or legal residents (for example, in Portugal). Therefore, a conditional list of countries for the implementation of surrogacy procedures can be provided (Table 1).

**Table 1. Surrogacy in the world — the distribution by the state of implementation (summarized by the author based on the results of observation over the transformation of legal regulation).**

<b>Distribution of countries by trends in the implementation of surrogacy procedures</b>		
<b>Altruistic and commercial surrogacy is prohibited</b>	<b>Altruistic surrogacy is allowed</b>	<b>Altruistic and commercial surrogacy is allowed</b>
<ul style="list-style-type: none"> <li>• France;</li> <li>• Germany;</li> <li>• Italy;</li> <li>• Spain;</li> <li>• Portugal;</li> <li>• Lithuania</li> </ul>	<ul style="list-style-type: none"> <li>• Netherlands (commercial surrogacy is prohibited)</li> <li>• Belgium (commercial surrogacy is illegal)</li> <li>• Denmark;</li> <li>• Greece;</li> <li>• Czech Republic;</li> <li>• United Kingdom (commercial surrogacy is prohibited)</li> </ul>	<ul style="list-style-type: none"> <li>• Ukraine;</li> <li>• Russian Federation.</li> </ul>

It should be emphasized that most surrogacy agreements are international agreements. An international agreement in the field of study is an agreement that includes more than one country of permanent residence, citizenship or place of permanent residence of prospective parents, donors and pregnant mothers. Such arrangements have emerged over the past few decades, primarily due to the evolution of the “family concept”, which has shifted from traditional heterosexual couples to single parents, foster families, the legalization of extramarital relationships or same-sex couples. Second, this trend is determined by the increase of international mobility of people as a result of globalization. Even in situations that do not allow such parents/couples to have children on their own, they are still willing to become parents and therefore resort to surrogacy, which has become an alternative to adoption.

Legal problems usually begin when a person or couple returns to their country with a surrogate child and tries to be recognized as the child’s parents. Problems may arise before returning to their country. For example, a baby needs to obtain a passport, and their own embassy may not issue the necessary documents because they may have evidence that the child was born as a result of fraud. For the most part, children’s citizenship depends on the nationality of their parents (*ius sanguinis*; for example, in Spain, the

first paragraph of Article 17 of the Civil Code states that a child is Spanish if at least one parent is a Spanish citizen) (Ministry of Justice of Spain, 2013).

At the same time, in the case of surrogacy, the issuance of a passport may be denied because paternity and maternity are not recognized, so the child cannot obtain the citizenship of his/her parents. Depending on national law, legal recognition of a child as a person indicating his/her origin may be required; in some cases, this may be required when a child needs to be enrolled in school, vaccinated or when a fee must be paid to the national health system. Besides, the authorities of the parents' country of origin can intervene in a wide range of legal issues to recognize the legal status of a child belonging to a married couple at any time.

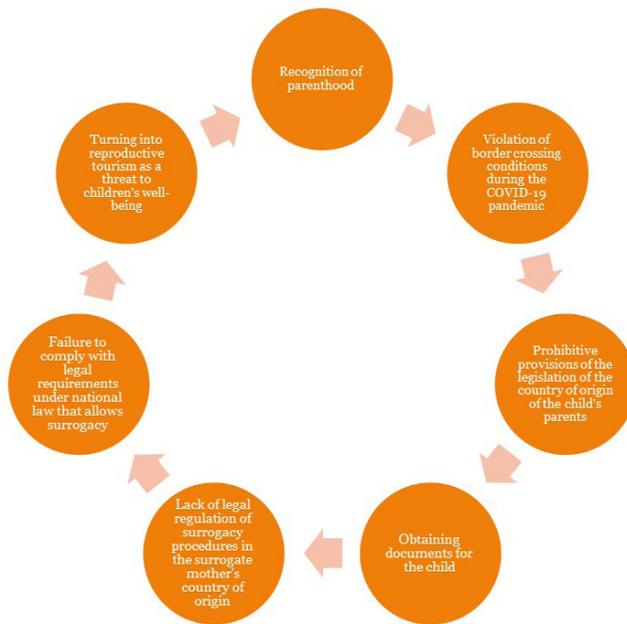
Problems can also arise when the probable parents are a same-sex couple or a single father. Surrogacy may be considered the only way to have a child, but national parental law may not allow same-sex couples or single parents to have children. When they return home, they may face certain legal difficulties in recognizing them as parents. Complications can arise when probable parents travel to another country to seek surrogacy, even though surrogacy is legal in the country of origin. This may apply to couples or single people who do not comply with the legal requirements of their national law. Upon returning home, these parents will face the same legal challenges in trying to be recognized as the child's legal parents.

Eventually, problems may arise if international surrogacy has taken place in a country where there is no special legislation on such procedures. Therefore, if there are any problems, such as complications during pregnancy, lack of agreement between the prospective parents and the surrogate mother, the surrogate mother's refusal to transfer the child after birth, divorce of the prospective parents during the process, or alleged change of parental views after pregnancy, there may be no legal provisions governing such cases.

However, a judge can always provide a legal solution to these potentially problematic situations by applying existing national rules of origin and contracts. The outlined problems significantly increase uncertainty and contribute to the negative attitude towards surrogacy. The leading problems during and after the conclusion of the surrogacy agreement were identified as a result of the scientific research (Figure 3).

There is little consensus among European states on the legal regime of surrogacy in general and transnational commercial surrogacy in particular. In this context, the case law of the European Court of Human Rights (ECHR) is particularly important in this regard, as it provides a common background for the legal regime of transnational commercial surrogacy in Europe. In 2010, the Hague Conference on Private International Law launched a project on parenthood and surrogacy.

In March 2019, a group of experts decided to develop a convention “on the recognition of foreign judgments on legal parentage” and “a separate protocol on the recognition of foreign judgments on legal parentage, recognition of the implications of an international surrogacy agreement.” The group will meet in 2022 again to finalize the report it will present to the General Affairs and Policy Council in 2023 (Experts’ Group on the Parentage, Surrogacy Project Chair of the Experts’ Group on the Parentage & Surrogacy Project, 2021).



**Figure 3: List of conditional problems in the field of implementation of the terms of the surrogacy agreement grouped by the author.**

In early 2021, a group of experts in international law and human rights adopted the Verona Principles for the Protection of the Rights of the Child Born through Surrogacy (International Social Service, 2021). These Principles are intended to inspire and guide legislative, political and practical reforms to protect the rights of children born through surrogacy. The principles were created in anticipation of further evolving efforts, in the broader human rights framework. The Verona Principles have received the support of the UN Committee on the Rights of the Child, they are

recognized as an important contribution to the development of guidelines on the protection of the rights of children born through surrogacy.

### **3. Discussion**

Research has shown that surrogacy is a procedure that raises deep ethical and religious issues and considerations. Usually, a person who wants to have a child assumes the medical risks of pregnancy, while the surrogate mother assumes the risk in surrogacy agreements. As a result, the state is obliged to ensure the practical implementation of the necessary rules and conduct long-term monitoring of all participants in the procedure to ensure that neither party suffers long-term harm (Ellenbogen, Feldberg & Lokshin, 2021). The dynamics associated with surrogacy agreements emphasize that the altruistic element, that is helping couples with fertility problems to achieve parental rights, is the driving force for most surrogate mothers (Piersanti *et al.*, 2021).

It should also be emphasized that a simple ban on commercial surrogacy does not solve the main problems: the ban could lead to the development of underground businesses, which is likely to jeopardize and harm the interests and rights of women who need to improve their financial conditions through illegal and disguised surrogacy (Rudrappa, 2018).

Besides, the use of altruistic surrogacy as the only legal alternative may contribute to the absolute deregulation of surrogacy, which in turn may lead to increased exploitation of women. In this case, the adoption of labour legislation aimed at protecting women who have decided to become surrogate mothers and considering them valuable and indispensable elements of the labour force could be an effective way to combat the exploitation of surrogacy (Stuvøy, 2018).

As a result of scientific research, it was stated that there is a problem of “physical autonomy” of the surrogate mother in all surrogacy agreements, which is mostly not taken into account in the discussion of surrogacy. So, the preferences of prospective parents are potentially formed. In this case, the best way to protect women’s independence in surrogacy is to consider each case individually and give women the right to become surrogate mothers only in case of no social pressure and coercion of all kinds (Gustafsson, 2019).

It can be concluded that reproductive medicine in Ukraine is not properly reflected in legislation, as there is no systemic approach to this regulation. Adoption of a high-quality legal act that will regulate and control the field of assisted reproductive technologies, including surrogacy, will be able to protect the rights of all participants in the process, to eliminate the relevant

abuses. A number of scholars conclude that it is necessary to use a notarized form of surrogacy agreement, which will significantly reduce the risk of adverse consequences for the parties and the criminal component in this segment of the service (Andrushchenko *et al.*, 2021).

Existing international legal instruments regulate some problems of international surrogacy, which cannot properly ensure the implementation of these issues. The ECHR has developed several decisions on international surrogacy, for example, reproductive tourism or recommendations on how to recognize a child-parent relationship in surrogacy with a prospective father who is not the child's biological father, but it is necessary to develop a good international legal instrument now. Prompt response in relevant cases is particularly relevant in this case.

The Hague Conference on Private International Law is currently developing such a protocol. However, there are a number of issues that also need to be addressed by this protocol. Scholars insist that the protocol should also provide a body that will have the right to monitor the implementation of this legal initiative and have the authority to resolve disputes between the parties to international surrogacy (Maydanyk & Moskalenko, 2020).

## Conclusion

Given the increasing number of couples who cannot conceive on their own, along with the latest technological innovations, and the largely altruistic nature of surrogacy, the practice of contracting in the field under study is growing. However, the expediency of strict precautionary measures to protect both the rights and interests of the gestational carrier and the alleged parent(s) is urgent. Therefore, the state, which implements surrogacy procedures, is obliged to legalize clear rules that will ensure the legal relations with the legal balance of interests of the parties when concluding agreements in this area.

A detailed study of different national approaches to solving the problem of surrogacy shows the ambiguity of the positions of legislators. In some countries surrogacy is completely prohibited, while in some countries only commercial agreements are prohibited, in others — the use of assisted reproductive technologies is limited in general. However, surrogacy is largely legalized by states, including the EU and Ukraine. Therefore, the comparative analysis of the basics of legal regulation of surrogacy agreements is of particular importance within the framework of legal science.

The research found that Ukraine is currently considered the most convenient and liberal country for commercial surrogacy, which differs

significantly from EU policy in the field of altruistic surrogacy. Therefore, it is reasonable to adopt a detailed regulatory act on the territory of Ukraine which will be able to regulate both legal relations in the field of surrogacy and the legal consequences of concluding agreements in this area in a cross-border context.

Given the need for legislative transformations both at the national level of Ukraine and EU member states, and in the international legal field, further research will be conducted in order to make a comparative legal analysis of relevant innovations.

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