

THE EFFECTS OF LEGISLATION ON SURROGACY TOURISM

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Abstract Statistics show that one in every six couples are currently infertile. Due to new artificial reproductive techniques, infertile couples have a whole new range of possibilities to become parents. Surrogacy tourism is a type of medical tourism in which couples with infertility travel to other countries to rent wombs of surrogate woman. At present, surrogacy tourism is a multi-billion-dollar industry. One of the main reasons for surrogacy tourism is that surrogacy is not legal in some countries. It appears that legislation, ethical understanding, and concerns that human rights will be violated prevent people from benefiting from such developments while medicine continues to develop and advance. Economics also drive surrogacy tourism. Religion is also a significant factor in choosing the destination for the treatment. Infertile couples are more likely to prefer countries where their religious beliefs are respected and considered during the treatment. This paper seeks to highlight the effects of the legal provisions and precedents about surrogate motherhood on surrogacy tourism.

Keywords

surrogacy,
surrogate mother,
cross-border
reproduction,
commercial surrogacy,
transnational surrogacy

1 Introduction

Surrogacy, which is an assisted reproductive technique, is a medical method applied for those who want to have children but cannot or do not want to carry embryos in their wombs due to medical or other reasons. According to the European Council's definition, a surrogate mother '*is a woman who, upon request of another person, bears a child by consenting this before pregnancy and delivers it to that person after the birth*' (Ekşi, 2016).

Under a surrogacy agreement, the surrogate mother agrees to become pregnant with the embryo created by using either traditional or advanced technology; to carry the baby in her uterus; to give birth to it; and, to give the newborn child to the other party. The other party to the agreement agrees to be the parent of the child to be born. Such agreement may be either for financial consideration or be done free of charge. If such agreement is for a consideration, it is called 'commercial surrogacy'; if it is free of charge, it is called 'altruistic surrogacy'.

Under the traditional (conventional) surrogacy method, the sperm taken from the male is injected into the surrogate mother or, occasionally, he has sexual intercourse with the surrogate mother (Ekşi, 2016). Therefore, the surrogate mother is also an egg donor. In births that occur with this method, the aim is to establish paternity between the child to be born and another woman, although the genetic and pregnancy mother of the child is the same woman. The surrogate mother has no desire to give birth for herself or to be a mother. Instead, the surrogate mother has donated her egg and agreed to give birth to a child for another person.

In pregnancies in which advanced technology is used, the surrogate mother becomes pregnant with the eggs and sperm of others and does not make her own eggs available. Eggs and sperm may belong to the mother and father who will become parents through surrogacy. However, this can be done by injecting the eggs and sperm from the donors to the surrogate mother for parents who are unable to produce eggs and sperm. In cases in which advanced technological methods are used, there is no biological relation between the surrogate mother and the child (Ekşi, 2016).

Statistics show that one in every six couples is currently infertile (Ramskold & Posner, 2013; Binoy, 2018). Undoubtedly, one of the reasons for this is that the couples delay their plans to have children for economic, career-related or similar reasons. However, due to the new artificial reproductive techniques, infertile couples have a whole new range of possibilities to become parents. Surrogacy tourism is a type of medical tourism in which a couple with infertility travels to other countries in order to rent the womb of a woman (Binoy, 2018). At present, surrogacy tourism is a multi-billion-dollar industry. In 2009, India had an annual income of over two billion dollars derived from surrogacy tourism (Gunpath & Choong, 2015).

This paper seeks to highlight the effects of the legal provisions and precedents concerning surrogate motherhood on surrogacy tourism.

2 Surrogacy Tourism – Reasons in General

International surrogacy is one of the most common forms of infertility-related tourism. Surrogacy tourism involves intended parents crossing borders to find a woman who agrees to carry and deliver a baby for them (Gezinski, Karandikar, Huber, & Levitt, 2018).

Regulations governing surrogacy differ from country to country and even from state to state. While some countries allow surrogacy others prohibit it. Some countries that permit surrogacy do not regulate it, whereas others do.

One of the main reasons for surrogacy tourism is that surrogacy is not legal in some countries. It is more expected that surrogacy tourism occurs from the countries in which surrogacy is forbidden to those in which it is legally accepted (Gezinski et al., 2018). Surrogacy tourism is ‘pushed’ in higher numbers to countries where surrogacy is legal. For example, since most Western countries have banned surrogacy, intended parents seek commercial surrogacy arrangements elsewhere, such as in Russia, Ukraine, and Georgia, where commercial surrogacy is legally accepted (Söderström-Anttila et al., 2016).

Another important reason for surrogacy tourism is financial. Intended parents are more willing to travel to the countries where the costs are lower (Gezinski et al., 2018). This is the main reason that couples historically chose India, where until recently (see discussion in section 3.2 below) there were no legal provisions regarding

surrogacy. In other word, although there were no any rules about surrogacy, low costs made India one of the major destination for surrogacy.

There are, of course, other reasons that propel surrogacy tourism, such as the lack of sufficiently skilled healthcare professionals and/or technological resources in the domestic country. Privacy reasons also may cause couples to travel from their domestic country to a foreign country (Gunpath & Choong, 2015). Studies show that religion is also a significant factor in choosing the destination for the treatment. Infertile couples are more likely to prefer countries where their religious beliefs are respected and considered during the treatment (Moghimehfar & Nasr-Esfahani, 2011). That is why, for instance, Iran is one of the most important destinations for Muslim infertile heterosexual couples.

3 Surrogacy in the World

There are no international treaties or conventions that regulate surrogacy. Each country has its own legal arrangement about the subject. In Europe, surrogacy is regulated in various ways in different EU Member States. While some jurisdictions, such as France, Germany, Italy, and Sweden, ban both altruistic and commercial surrogacy, others, such as Greece and the UK allow only altruistic surrogacy. Still others have adopted either very limited legislation or none at all on the topic. Accordingly, it is possible to group countries under three main headings: countries that explicitly allow surrogacy by law, countries that prohibit surrogacy by law, and countries where there are no regulations on this matter. Each will be considered in turn.

3.1 Countries that Absolutly Prohibit Surrogacy

There are different regulations among the states in the United States of America (Luetkemeyer & West, 2015). In New York State, for example, surrogacy is prohibited by law. A detailed regulation on the matter is included in Article 8 of the 'New York Domestic Relations Law.' It states that those who apply to this method, execute a surrogacy agreement, persons and entities who encourage it will be sentenced with a fine (New York Domestic Relations Law, 1969). Surrogacy is prohibited in Arizona and the District of Columbia; however, in California, Delaware, and Florida, surrogacy agreements are valid, legal, and enforceable. On the other hand there is no legal authority governing the enforceability of surrogacy

agreements in several states, such as Colorado, Georgia, and Hawaii. (Morrissey, 2015).

In France, reproduction and surrogacy for another person is prohibited by means of a provision introduced in the Civil Code in 1994 (Code Civil France, Article 16-7). The Fourth Section of the French Criminal Code, Articles 227-12 to 227-14 regulates paternity crimes, and criminal sanctions were introduced in this context (Yenerer, 2008). A judgment of the French Court of Appeal on 26 February 2009, states that the civil law provision is mandatory and the foreign court's decision ruling that the persons contracting with the surrogate mother are the parents of the child born shall not be recognized.

Surrogacy agreements are unlawful in Belgium. The Belgian First Instance Court disallowed the relation of the child of a gay couple who had received a child through surrogacy in California to their paternity; the court of appeals ruled that the child who was born with the help of a surrogate may establish a paternal relation with the male with whom it has a genetic relation based on the fact that one of the parties is the child's biological father. It is stated that the biologically unrelated party may relate the child to his paternity by way of adoption (Wautelet, 2010).

The Slovenian Criminal Code (Criminal Code, 2012) states that “*whoever illegally performs the procedure of fertilisation with biomedical assistance due to surrogate motherhood shall be sentenced to imprisonment of not more than three years*” (Article 121(4) – the title of this article is ‘Illegal Abortion’, so the criminal question related to surrogate motherhood is regulated under the criminal offence ‘illegal abortion’). Also, Article 7 of the Infertility Treatment and Procedures of Biomedically-assisted Procreation Act (The Law on Infertility Treatment and Procedures of assisted reproduction techniques, 2000, 2017) states that a woman who intends to give birth to a third party (surrogate motherhood) is not entitled to biomedical assistance fertilization treatment (Article 7). Under this Act, the person who provides such services is punished for the misdemeanour. If it is a legal entity that provides the treatment, the punishment is between €2090 and €20,920 Euro (Article 43 (1)). If it is a natural person, the punishment is from €209 to €627 (Article 45(1)). Although surrogacy is not allowed in Slovenia, the parental care that is obtained by way of judicial decision and recognized by Slovenian courts has full legal effects (Kogovšek, 2014).

Surrogacy, egg, and embryo transplantation are prohibited by the Constitution in Switzerland. Sub-clause d, paragraph two, Article 119(2) of the Swiss Constitution clearly states that all forms of surrogacy are prohibited. Article 119 reads, '*[T]he donation of embryos and all forms of surrogate motherhood are unlawful.*' (Federal Constitution of the Swiss Confederation, 1998) The Swiss Criminal Code also contains provisions prohibiting surrogacy. Article 31 of the Federal Act on Medically Assisted Reproduction, provides the punishment for those involved in surrogate motherhood by stating that '*[a]nyone who uses an assisted reproductive technique in a surrogate mother shall be liable to a term of imprisonment or to a fine*', and '*[t]he same penalty shall apply to anyone who acts as an intermediary for surrogate motherhood*' (Federal Act on Medically Assisted Reproduction, 1998). Accordingly, fines and imprisonment are also imposed on a person who mediates a surrogacy. Specifically, both the surrogate mother and those who apply to surrogacy are subject to punishment (Dörr, 2015).

In Turkish legislation, it is not legally possible for a couple who cannot have a child in a natural way to become a parent with the help of a surrogate mother. The regulation on the matter is included in the additional article added on 15.11.2018 to the Law on the Collection, Storage, Vaccination, and Transplantation of Organ and Tissue No. 2238.

The Turkish legislature, who remained silent on the matter until recently, has made it clear that it is against surrogacy by introducing explicit regulations with the recently made amendments. These new regulations are related to the closure of institutions that assist infertile couples in becoming parents with the help of a surrogate mother and sentencing them to administrative fines and even freedom-restricting charges on persons who assume responsibility. In addition, if persons who have a child through surrogacy register the child as if they had given birth to him/her, they may be subject to being charged with the crime of changing paternity of the child, as regulated in Article 231 of the Turkish Criminal Law (Ünver, 2015).

In many countries in which surrogacy is explicitly prohibited, the legislation prohibits not only the application to this method by couples, but also bringing and claiming the parenthood of a child born with the help of a surrogate mother in another country. Similarly, legislation in these countries also prohibits the recognition of any court decision made for establishing a paternal relationship between the surrogate mother and the child in the country where she delivered the baby.

3.2 Countries Allowing Surrogacy Under Certain Conditions

There are countries that have legal regulations allowing the birthing of a child with the help of a surrogate mother. Some of these countries include Albania, Ukraine, Georgia, Cyprus, India, Israel, and some states of the United States.

California State has the most liberal regulations for surrogacy. The ‘Surrogacy Law’ entered into force in the State of California on 1 January 2013. In accordance with this law, regardless of the genetic relation to the born child, a paternity relationship can be established between the child born by the surrogate mother and those who apply under this method, and they can be considered parents of the child in a legal sense. Even before this liberal regulation came into force, the California Supreme Court had issued decisions mandating the need to protect the child's interests even though there was no applicable legislation (*Johnson v. Calvert et al.*, 1993).

However, with some reservations, surrogacy for compensation seems to be legally allowed in the states of Virginia, Arkansas, Illinois, Minnesota, Florida, New Hampshire, Wisconsin and Nevada (Çalışkan, 2016).

Surrogacy tourism is possible only when commercial surrogacy is legal in the country where surrogacy is carried out. In England and Norway, voluntary surrogacy is considered legal, whereas surrogacy for compensations is considered illegal. Accordingly, it has been accepted that a payment can be made to the surrogate mother for her reasonable expenses expended in connection with her services. In this respect, the amount to be paid is limited to the usual costs. Section 59 of the Human Fertilisation and Embryology Act 2008 allows for ‘reasonable payment’, meaning ‘a payment not exceeding the body’s costs reasonably attributable to the doing of the act’, to be paid to a surrogate mother for carrying the child. However, although commercial surrogacy is illegal in the United Kingdom, the High Court of Justice Family Division awarded parenthood rights to a British couple who entered into a commercial surrogacy arrangement overseas (*X v. Y*, 2008).

Since the mother who gives birth to the child is still considered the mother legally, there is no legal remedy available to those who wish to become a parent through surrogacy if the woman who gives birth to the child refuses to hand over the child. According to Section 1A of the Surrogacy Arrangements Act ‘*No surrogacy arrangement is enforceable by or against any of the persons making it.*’ The surrogate mother has to give

her consent more than six weeks after giving birth in order to ensure that she has done so freely (European Centre for Law and Justice, 2012). The mother who gives birth to the child is given the priority. In addition to all these restrictions, application must be made to the appropriate local courts which must provide approval. The existence of such conditions leads to the absence of surrogacy tourism in countries such as the UK and Ireland.

India and Thailand have long been popular options for international parents seeking surrogacy. India was the international leader in surrogacy with approximately 3,000 fertility clinics and annual business at \$400 million. However, it has recently gone through major legislative reform to bring regulation to the surrogacy process. Since 2016, Indian and Thai surrogacy legislation has made it illegal for foreign intended parents to complete a surrogacy. In India, many restrictions came into force. For example, only Indian people can apply for surrogacy, and the surrogate mother has to be a close relative of the intended parents (Kamble et al., 2019).

In December 2018, an Indian surrogacy law was passed which made commercial surrogacy illegal. The new law also bans homosexuals and single parents from surrogacy. However, it still allows altruistic surrogacy for infertile Indian couples who are in need, given that these parents had been married for five years and had a medical certificate proving their infertility (Watson, 2016).

Today, the only people who can go through surrogacy in Thailand are those that are married and heterosexual. At least one spouse must be a Thai national, and the couple must have been married for at least three years. The exceptions are singles of all sexualities and homosexual couples, even if they are Thai citizens. As for the surrogate, she must be a sibling of one member of the couple, must be married, must have her husband's consent for the surrogacy process, and must have her own child (Hongladarom, 2014).

Provisions legally enabling surrogacy in Israel entered into force in 1996. According to the "Agreements Law for the Carriage of Fetuses" a married woman and a man can freely or through an agency sign an agreement with a surrogate mother. Such an agreement is submitted for the approval of the committee named "Surrogacy Agreement Approval Committee (Committee for the Approval of Agreements to Carry a Fetus)". This committee shall check the psychological and physical suitability of all persons involved in the process. According to the laws of Israel, a surrogate

mother is a person who accepts the transplantation of the sperm of the person envisaged to be the father and the fertilized egg of the person envisaged to be the mother in her uterus and to deliver the baby to these people after birth. Based on this definition, it is understood that it is not possible to have a child with the egg of the surrogate mother or the egg or the sperm of a third person. In Israel, a woman has to have had a healthy birth previously, to be not married, and to pass the psychological and physical tests to be a surrogate mother. Although couples wishing to have children with the help of a surrogate mother should be married, it must be certain that the woman is medically unable or subject to risk in pregnancy and childbirth.

Non-commercial surrogacy has been legal in the Netherlands since 1997. Between 1997 and 2004, data showed that altruistic surrogacy worked with good results without legal problems. Since 2006, the VU University Medical Centre in Amsterdam is the only hospital in the Netherlands where surrogacy treatment has been performed. However, like Turkey, Dutch laws assign the woman who gives birth to a baby the designation of mother. For that reason, intended parents have to follow a formal adoption procedure after birth (Peters et al., 2018) In the case of the Netherlands, we see that although surrogacy treatment is lawful, the paternity relation is not enacted.

In Iran, a surrogacy agreement is considered to be legally valid (Pirouz & Mehra, 2011). Only married and infertile couples are allowed to have children with the help of a surrogate mother (Hakeri, 2015).

Every kind of surrogacy was banned in Vietnam from 2003 to 2014. But in 2015, limited altruistic surrogacy was legalised. According to the revised Marriage and Family Law, surrogacy among close relatives is now legal. The reason for the amendment of the provision was the high demand of surrogacy from Vietnamese couples (Hibino, 2018). The amendment also serves to demonstrate that many countries have started to revise their laws about the subject.

Since 1997, Georgia has been one of the countries that legally regulates and allows surrogacy. Surrogacy treatment is cheaper in Georgia compared to the USA. Both economic and legal reasons have made Georgia a desirable destination for prospective parents from many parts of the world, including Europe, the United States, and Australia (Ünver, 2015).

3.3 Countries Without Any Legal Regulation Regarding Surrogacy

Until very recently, India, Thailand, and Turkey were among the countries without legislation regarding surrogacy. The statutes and regulations of health institutions in these countries did not include any provisions that prevented surrogacy with the use of advanced technology. The fact that it is economically cheaper than other countries has made India and Thailand centres for surrogacy tourism, despite the fact that neither country explicitly allow surrogacy by law. Although until recently Turkish law did not expressly forbid surrogacy, its laws did not allow having children with the help of a surrogate mother using advanced technology. Therefore, Turkey is not a country preferred for surrogacy.

Although there have been robust discussions in Sweden in recent years regarding whether it would be desirable to permit altruistic surrogacy, Sweden presently has no explicit regulation on altruistic or commercial surrogacy. However, the existence of some requirements in the regulation of assisted reproduction in the Swedish healthcare system make surrogacy impossible to access (Guntram & Williams, 2018). Because under Swedish law surrogacy is treated the same as adoption the intervention of a judge becomes necessary. In addition, if the surrogate mother changes her mind, she may keep the child. These reasons prevent Sweden from developing its tourism in this area. Sweden will not be preferred because of the possibility of being deprived of the right to be the parent of the child born after all the effort taken by the would-be parents.

4 Effect of Decisions of the European Court of Human Rights Regarding Surrogacy on Surrogacy Tourism

Couples who are unable to have a child through surrogacy because they live in countries that prohibit surrogacy often try to have children with the help of a surrogate mother in another country legally permitting this act. Couples travel to a country where surrogacy is permitted, sign a surrogacy agreement with a surrogate mother found for them in a centre or clinic providing surrogacy service and take delivery of the newborn child. Doctors working in the countries where surrogacy is not prohibited, regardless of the nationality or the residence of the couples, perform the necessary procedures for having a child through surrogacy according to the law of the country where they practice (professional *lex fora-lex loci professionis*). However, in such cases, it is not possible to recognize decisions taken abroad in countries

prohibiting surrogacy. The inability to recognize these decisions implies the risk that they shall not be legally accepted as the child's parent according to the law of the state of which they are citizens, which in turn prevents the growth of surrogacy tourism.

The European Court of Human Rights has made decisions on this against France in 2014; these decisions are of utmost importance for surrogacy tourism. In a dispute that was subject of one of the decisions, a couple had a child in Minnesota (USA) via a surrogate mother using their own ovum and sperm. The couple went to France with their child and requested that their child be registered with the registry; the French Registry of Vital Records did so in the name of the couple. However, the prosecutor's office filed a lawsuit to cancel the registration. The French Court held that that the surrogacy was unlawful, and that this provision was mandatory, and that no different conclusion could be made based on Article 8 of the ECHR (the principle of best interest of the child and judged that the parents of the child given birth by the surrogate mother cannot be considered the persons who have made an agreement with the surrogate mother and who are the genetic parents of the born child). On appeal, the European Court of Human Rights decided in both of their two judgments, made for two different concrete cases in which the couples who wished to register in their registry were genetic parents, that the refusal of the French Vital Records Registry violated the child's right to respect for private and family life (and therefore Article 8 of the ECHR) (*Menneson v. France*, 2011; *Labassee v. France*, 2011). The ECHR rejected the allegations that the parents' right to respect for private and family life guaranteed by Article 8 of the ECHR had been violated and instead held that it only applied in the case of the children.

Following these two decisions, the European Court of Human Rights issued three more decisions against France (*Foulon and Bouvet v. France*, 2014). After all these decisions, since 2017, the French Court of Appeal has issued several resolutions authorizing the issuance of birth certificates for children born with the assistance of surrogate mothers with biological ties with parents. It is noteworthy that the Court issued these decisions under circumstances in which the child was born with the genes of the prospective parents. When making these decisions, the French Court of Appeal clearly stated that it has changed its decision on the grounds that the paternity between the child and the French father is without doubt. Regardless of the justification, it is evident that a serious decision change was made in France in line with the decisions of the European Court of Human Rights.

It is clear that when we consider these decisions made by the European Court of Human Rights against France, which are premised upon what is in the best interests of the child, irrespective of explicit provisions on this in the country in question, the ECHR would rule against all other countries prohibiting surrogacy in similar situations. Thanks to the precedents set by the ECHR in its recent decisions, surrogacy tourism will grow, and the problem of not registering the born child with their national registry will be eliminated.

An important caveat, however, is that the ECHR issued its decisions in situations where the child was created from the genetic material of the prospective parents. Therefore, when analysing the reasoning of the Court, it can reasonably be concluded that it would not reach the same result in cases where a surrogate mother would give birth to a child with her ovum or sperm of a third person. In fact, the European Court of Human Rights later ruled in favour of Italy (*Paradiso and Campanelli v. Italy*, 2012), stating that it was not in breach of Article 8 of the Convention that sperm or eggs taken from a third party and the child born by the surrogate mother were not attached to voluntary parents (Kraljić, 2015).

5 Conclusion

The world is constantly witnessing significant innovations and developments in technology and medicine. Having a child with the help of a surrogate mother is one of the opportunities provided by advanced medicine. It appears that legislation, ethical understanding, and the concerns that human rights will be damaged prevent people from benefiting from such developments while medicine continues to develop and advance. The primary justifications for criminalizing surrogacy arrangements are the perceived protection of the personal rights of those who accept becoming surrogate mothers, the children born utilizing these methods, and even the couples who apply. Others object on moral and/or ethical grounds, fearing that societal values and mores will be undermined by surrogacy arrangements. In the experiences of India and Thailand underline that these concerns were justified, as many disturbing incidents occurred. As a result, in 2016, surrogacy in consideration for compensation was completely banned in India.

In our opinion, it is not realistic to use personal rights as a reason for legally prohibiting surrogate motherhood. Indeed, it is legal to apply to surrogacy in many developed countries in which personal rights are especially protected. Therefore, it is essential to regulate the matter carefully rather than to prohibit the opportunities provided by surrogacy. The clearer the laws are, the safer the parties to the relationship shall feel; the parties shall prefer to have a child with the help of a surrogate mother in the countries where they feel safe. In other words, to expand surrogacy tourism, it is necessary to regulate provisions stating that surrogacy is expressly permitted and to introduce detailed provisions protecting the interests and personal rights of the newborn child. Both surrogate mothers and people who want to have a child by the surrogacy method will prefer countries where they believe they are well protected. In India and Thailand, it would be more appropriate to introduce legal regulations protecting the surrogate mother, the newborn child and the intended parents, rather than prohibiting surrogacy for commercial purposes, which would completely end surrogacy tourism and have deleterious effects on the economy.

Moreover, the prohibition of surrogacy in a country does not prevent couples from applying to this method. In particular, as explained above, the fact that surrogacy is not permitted in a country does not preclude couples from having children utilizing this method in another country and relating such child to their own paternity, according to the current decisions of the European Court of Human Rights. In line with these decisions of the European Court of Human Rights, surrogacy tourism will absolutely grow. Indeed, the risk of not relating a child born with the help of a surrogate mother to the paternity of the intended parents, which is the biggest obstacle facing the couples who want to apply to this method, is eliminated.

Admittedly, cross-border gestational surrogacy challenges legal and ethical norms in many countries. Beyond such discussions, the practise of international surrogacy and surrogacy tourism is developing. While developing, it is also raising a number of issues of private international law and fundamental rights. The decisions of the European Court of Human Rights show that the world is empowered to act on the determination of parentage, the civil status of the child, the child's nationality, the right to family life, and the merchandising of the human body and the commodification of the child.

With its many ethical concerns, surrogacy is a highly sensitive topic. However, globalisation provides new potential for the scope of reproductive service markets, which in turn will continue to foster the growth of surrogacy tourism. In order to help this type of tourism grow, it is primarily necessary for the countries to demonstrate clearly their approach regarding surrogacy. If there is a belief that surrogacy may harm moral and ethical values, then it should be adjudicated that at least the decision of those who have children in other countries with the help of a surrogate mother will be recognized in their own country after stating that it is strictly forbidden to use surrogacy. Otherwise, the European Court of Human Rights may have to make a decision against that country.

If a country's laws explicitly legalize the right to have a child with the help of a surrogate mother, such laws must provide detailed and clear arrangements on the subject in order to prevent the human right abuses. For example, a regulation must be made taking into consideration issues such as whether or not one should be required to have a medical difficulty in giving birth in order to apply for a surrogacy; whether it is possible for the surrogate mother to refrain from turning over the child; whether a parent who is willing to give birth to a child through surrogacy may be able to refrain from taking the child born; who will decide whether an intervention should be made in case the child has any problems while *in utero*; what kind of criteria should be met to become a surrogate mother; whether the consent taken from the surrogate mother should be open and even subject to a format; what should be done to inform the surrogate mother; and, how paternity issues shall be solved. In other words, if the ethical concerns are addressed in well thought out and explicit legislation and regulations then there are no reasons to forbid surrogacy. In this way, surrogacy tourism will increase, benefitting not only the directly interested persons but the economic growth of the countries.

Legislation and case-law

Anna Johnson v. Mark Calvert et al., Supreme Court of California, case No.: S023721, May 20, 1993 available at <https://www.echr.coe.int/>

Federal Act on Medically Assisted Reproduction 810.11 (Reproductive Medicine Act, RMA) of 18 December 1998 (Jan. 1, 2001) (English translation) retrieved from http://www.admin.ch/ch/e/rs/810_11/index.html#fn3

Federal Constitution of the Swiss Confederation, Apr. 18, 1998, (English translation), retrieved from <http://www.admin.ch/ch/e/rs/1/101.en.pdf>

Foulon and Bouvet v. France, case no.: 9063/14 and 10410/14 available at <https://www.echr.coe.int/>

Labassee v. France case no.: 65941/11, ECHR 2014, available at <https://www.echr.coe.int/>

Mennesson v. France, case no.: 65192/11, § 61, ECHR 2014, available at <https://www.echr.coe.int/>

New York Domestic Relations Law, 1969, retrieved 05.02.2019, 10:10 from <https://codes.findlaw.com/ny/domestic-relations-law/#tid=N1FEB8F64592D4888B3B90A38A8F29E93>.

Paradiso and Campanelli v. Italy, case no.: 25358/12 available at [https://www.echr.coe.int/X v. Y, \(2008\), FD08P01466, EWHC 3030 \(United Kingdom\).](https://www.echr.coe.int/X v. Y, (2008), FD08P01466, EWHC 3030 (United Kingdom).)

References

- Binoy, T.A. (2018) An evaluation of surrogacy tourism in India – a study on ethical and legal perspective, *International Journal of Current Research*, 10(2), pp. 65160-65163.
- Çakmut Yenerer, Ö. (2008) Soybağının Belirlenmesi Ve Ceza Hukukunda Çocuğun Soybağını Değiştirme Suçu. Beta Basım Yayım.
- Çalışkan Urgan, H. (2016) Bırakınız taşıyınlar: Taşiyıcı Anneliğe Günel Bakış, *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırma Dergisi*, 22(1), pp. 489 – 509.
- Dörr, B. (2015) Taşiyıcı annelik ve embriyo bağışı. Encloser: Merve Ürem, *Tıp Hukuku Dergisi*, 4(8), pp. 193- 210.
- Ekşi, N. (2016) Mahkeme Kararlarında Sınıraşan Taşiyıcı Anneliğe İlişkin Hukuki Sorunlar, *Public And Private International Law Bulletin*, 36(2), pp. 1-51.
- European Centre for Law and Justice. *Surrogate Motherhood: A Violation Of Human Rights*, retrieved from: <https://www.icb-cib.org/ancien-site/pdf/surrogacy-motherhood-icjl.pdf> (November 20, 2019).
- Gezinski, L.B., Karandikar, S., Huber, S. & Levitt, A. (2018) Commissioning Parents' experiences with international surrogacy: a qualitative study, *Health & Social Work*, 43(3), pp. 175-183, doi: 10.1093/hsw/hly018.
- Gunpath, R.P. & Choong, K.A. (2015) Surrogacy tourism: the ethical and legal challenges, *International Journal of Tourism Sciences*, 15(1-2), pp. 16-21, doi: 10.1080/15980634.2015.1119388.
- Guntram, L. & Williams, N.J. (2018) Positioning uterus transplantation as a 'more ethical' alternative to surrogacy: exploring symmetries between uterus transplantation and surrogacy through analysis of a Swedish government white paper, *Bioethics*, 32(8), pp. 509-518, doi: 10.1111/bioe.12469.
- Hakeri, H. (2015) Türk Hukukunda Yapay Döllenme, *Tıp Hukuku Dergisi*, 4(8), pp. 103-128.
- Hibino, Y. (2018) Non-commercial surrogacy among close relatives in Vietnam: policy and ethical implications, *Human Fertility an international, multidisciplinary journal dedicated to furthering research and promoting good practice*, 22(4), pp. 273-276, doi: 10.1080/14647273.2018.1461936.
- Hongladarom, S. (2014) *Surrogacy Law in Thailand*, retrieved from: https://www.researchgate.net/publication/322286708_SURROGACY_LAW_IN_THAILAND (October 15, 2019)
- Johnson v. Calvert, A. (1993) Gestational surrogacy and the meaning of "Mother", *Harvard Journal of Law and Public Policy*, 9(3), pp. 907-918.
- Kamble, S., Mane, S., Petitfils, C., Sastre, M. T. & Sorum, C.P. (2019) Mapping Young Indians' views regarding the acceptability of surrogate motherhood: a pilot survey, *Universitas Psychologica*, 18(3), pp. 1-12.
- Kogovšek Salamon, N. (2014) *Slovenia: full recognition as a continuous challenge*, Retrieved from: https://www.academia.edu/26125000/Slovenia_Full_Recognition_as_a_Continuous_Challenge (April 15, 2019).
- Kraljić, S. (2015) Nadomestno materinstvo in varstvo otrokovich koristi. Komentar sodbe ESČP v zadevi Paradiso in Campanelli proti Italiji, *Lexonomica*, 7(1), 77-83.
- Luetkemeyer L. & West, K. (2015) Paternity Law: Sperm donors, surrogate mothers and child custody, *Missouri Medicine*, 112(3), pp. 162-166.
- Moghimehfar, F. & Nasr-Esfahani, M. H. (2011) Decisive factors in medical tourism destination choice: A case study of Isfahan, Iran and fertility treatments, *Tourism Management*, 32(6), pp. 1431-1434, doi: 10.1016/j.tourman.2011.01.005.
- Morrissey, Joseph F. (2015) Surrogacy: The Process, The Law, And The Contracts, *Willamette Law Review*, 51(4), pp. 462-558.

- Peters, H., Schats, R., Verhoeven, M., Mijatovic, V., Groot J.M., Sandberg, J., Peeters, I. & Lambalk, C. (2018) Gestational surrogacy: results of 10 years of experience in the Netherlands, *Reproductive BioMedicine Online*, 37(6), pp. 725-731, doi: 10.1016/j.rbmo.2018.09.017.
- Pirouz, A. & Nassrin, M. (2011) Legal issues of a surrogacy contract based on Iranian acts continuation, *Journal of Family and Reproductive Health*, 5(2), pp. 41-50.
- Ramskold, L.A. & Posner, M.P. (2013) Commercial surrogacy: how provisions of monetary remuneration and powers of international law can prevent exploitation of gestational surrogates, *Journal of Medical Ethics*, 39(6), pp. 397-402, doi: 10.1136/medethics-2012-100527.
- Söderström-Antilla, V., Ulla-Britt, W., Loft A., Pinborg A., Aittomaki, K., Romundstad L.B., & Bergh, C. (2016) Surrogacy: outcomes for surrogate mothers, children and the resulting families, *Human Reproduction Update*, 22(2), pp. 260–276, doi: 10.1093/humupd/dmv046.
- Surrogacy: legal rights of parents and surrogates*, retrieved from: <https://www.gov.uk/rights-for-surrogate-mothers> (November 23, 2018).
- Turgut, C. (2016) *Yapay Döllenme Taşıyıcı Annelik ve Soybağına İlişkin Hukuki Sorunlar* (Oniki Levha Yayıncılık).
- Ünver, Y. (2015) Ceza Hukuku açısından taşıyıcı annelik, *Tıp Hukuku Dergisi*, 4(8), pp. 291-341.
- Watson, C. (2016) Womb rentals and baby-selling: does surrogacy undermine the human dignity and rights of the surrogate mother and child?, *The New Bioethics*, 22(3), pp. 212–228, doi: 10.1080/20502877.2016.1238582.
- Wautelet, P. (2010) *Belgian Court Recognizes Californian Surrogacy*, retrieved from: <http://conflictoflaws.net/2010/belgian-court-recognizes-californian-surrogacy/> (November 25, 2019)