

REVIEW ARTICLE

EAST SLAVIC SURROGATE MOTHERHOOD: STATE OF LEGAL REGULATION AND RISK OF HUMAN RIGHTS VIOLATION

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ABSTRACT

The aim: The aim of the study is to determine the state of legal regulation of surrogacy in Ukraine, Russian Federation and Belarus, to identify risks of human rights violations, to identify legal and medical mechanisms to combat the exploitation of women, and to outline a portrait of a surrogate mother.

Materials and methods: The empirical basis is the legislation of Ukraine, Russian Federation and Belarus, which regulates the service of surrogacy, information from the websites of agencies and clinics in this area, as well as personal stories of 41 surrogate mothers, set out in open sources. The following methods were used: dialectical, comparative, statistical, induction and deduction, questionnaire, analysis and synthesis, content analysis.

Conclusions: The results of the study clarify both the common features of the legal regulation of surrogacy in the East Slavic countries, and the specifics of each of them; the main problems in the field of its application are outlined; the risks of violation of the rights of genetic parents, children and surrogate mothers are characterized. Legal and medical mechanisms for counteracting the exploitation of surrogate mothers have been identified.

KEY WORDS: surrogacy, gestational courier, genetic parents, child, embryo

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INTRODUCTION

Surrogacy service is one of the most controversial. On the one hand, it is a unique opportunity to have your own child for people who are not able to conceive (bear, give birth) on their own. On the other hand, this phenomenon is criticized for: the possibility of use only by wealthy people; degradation of women; negative impact on a child [1]; unethical nature of such a procedure; exploitation of vulnerable position of women; risks of violation of the rights of genetic parents, surrogate mother and child.

The policy of different states on this issue is diverse and provides for three main regimes of its legislative regulation: prohibitive, altruistic and permissive [2]. In surrogate countries, any surrogacy is prohibited (Austria, Iceland, Italy, Moldova, Germany, Norway, Pakistan, Romania, Saudi Arabia, Serbia, some US states, France, Switzerland). In countries with altruistic regimes, there is a ban on commercial surrogacy, while it is allowed free of charge (Australia, Belgium, Great Britain, most provinces of Canada, the Netherlands, some US states). In countries with a permit regime, surrogacy is allowed (Ukraine, Belarus, Georgia, Kazakhstan, Kyrgyzstan, the Russian Federation, some US states, the Canadian province of Quebec), but has certain conditions and restrictions. The regime of zero

legal regulation should be added to these groups, which, in turn, can be divided into positive-zero (when the lack of legal regulation is not an obstacle to the provision of services: Azerbaijan, Ireland, Japan) and negative-zero (countries where the service of surrogacy is insignificant (ex lege null), for example, in Poland [3]).

One of the most favorable conditions for obtaining the service of surrogacy exists in the East Slavic countries (Ukraine, Russian Federation and Belarus). Attractive for people who want to become parents, especially from abroad, in their markets is the relatively high quality of medical services and lower prices than in other countries. The study of these states' legislation has shown that the key common features for them are: 1) relations are regulated through the conclusion of the contract for the provision of services; 2) both non-commercial and commercial surrogacy and exclusively gestational (for which there is no genetic link between the surrogate mother and the embryo) are allowed; 3) potential parents (or at least one of them) must have a genetic link with a child; 4) the service is not provided to homosexual couples; 5) persons may use the service only on medical grounds; 6) there are no restrictions on the service price. At the same time, the practice of these services has a few legal, medical, economic, social and ethical issues.

THE AIM

The aim of the study is to determine the state of legal regulation of surrogacy in Ukraine, the Russian Federation and Belarus, to identify risks of human rights violations, to identify legal and medical mechanisms to combat the exploitation of women, and to outline a portrait of a surrogate mother.

MATERIALS AND METHODS

The empirical basis is the legislation of Ukraine, Russian Federation and Belarus, which regulates the service of surrogacy, information from the websites of agencies and clinics in this area, as well as personal stories of 41 surrogate mothers, set out in open sources. The following methods were used: dialectical, comparative law, statistical, induction and deduction, questionnaire, analysis and synthesis, content analysis.

REVIEW AND DISCUSSION

There are no official statistics on the number of surrogacy services provided in Russia, Ukraine and Belarus. According to unofficial sources, several thousand children are born to surrogate mothers in Ukraine every year [4, 5]. According to the European Surrogacy Center, at least 22,000 children are born to surrogate mothers in Russia each year, with an annual increase of at least 20% [6]. Given the social importance and problems that exist in the field of surrogacy, it is seen that this phenomenon needs official registration.

Analysis of the legal regulation of the use of surrogacy shows that in Ukraine and Russia it is carried out by general acts: The Family Code¹, health care legislation² and civil status acts³. Special acts regulating the application of surrogacy procedures in these states are adopted by the Ministry of Health and operate at the secondary level⁴. These issues are regulated in more detail in Belarus. In addition to the general act of Family law⁵, a special Law "On Assisted Reproductive Technologies", 07.01.2012 № 341-3, as well as bylaws⁶ of the Government and the Ministry of Health⁷ are dedicated to them. The conclusion of an agreement between a parent and a surrogate mother in Ukraine and Russian Federation is based on the general

clauses of the Civil Code regarding the agreement on the provision of services⁸. Unlike in Russia and Ukraine, in Belarus, the surrogacy agreement is named and has mandatory conditions⁹.

There is no definition of surrogacy in the legislation of Ukraine. In Russia, it is defined as the delivery and birth of a child (including premature birth) under a contract between a surrogate mother (a woman who bears a fetus after the transfer of a donor embryo) and potential parents whose gametes were used for fertilization, or a single woman for whom childbearing and childbirth is not possible on medical basis (paragraph 9 of Article 55 of the Law "On Fundamentals of Public Health in the Russian Federation", paragraph 77 of the order № 107n). In Belarus, surrogacy is defined as a type of assisted reproductive technology, which is a combination of sperm and egg removed from the body of the genetic mother, or a donor egg outside the woman, the development of resulting embryo, subsequent transfer of this embryo to the uterus, carrying and giving birth to a child (Article 1 of the Law "On Assisted Reproductive Technologies").

At the same time, the regulations of the parties to this agreement differ in three countries. In Russia, the agreement is signed between the spouses-potential parents and the surrogate mother or between a single woman-genetic mother and surrogate mother (Article 55 of the Law "On the Fundamentals of Public Health in the Russian Federation"). At the same time, in practice the issue of the possibility of using the service of surrogacy and registering a child as one's own by persons who are not in a registered marriage, as well as by single persons (both women and men) resolved differently. Russian legislation in this regard, as well as the practice of its application, are quite contradictory [7, 8].

In Ukraine the issue is not fully resolved. On the one hand, paragraph 6.11 of the Procedure for the use of assisted reproductive technologies in Ukraine defines the list of documents required for surrogacy from a spouse in whose interests surrogacy is carried out, including a copy of marriage certificate (which, according to Article 21 of the Family Code of Ukraine, is a family union of a female

¹ In Ukraine - Art. 123 of the Family Code of Ukraine, January 10, 2002 № 2947-III; in the Russian Federation - articles 51, 52 of the Family Code, 29.12.1995 N 223- Φ3.

² Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care", November 19, 1992 № 2801-XII (Article 48); Federal Law "On the Fundamentals of Public Health in the Russian Federation", 21.11.2011 N 323- Φ3 (Article 55).

³ Order of the Ministry of Justice of Ukraine "On approval of the rules of state registration of civil status acts of Ukraine", 18.10.2000 № 52/5 (p. 11); Federal Law of the Russian Federation "On Civil Status Acts", 15.11.1997 № 143 (Article 16).

⁴ Order of the Ministry of Health of Ukraine "On approval of the Procedure for the use of assisted reproductive technologies in Ukraine", 09.09.2013 № 787 (Section VI); Order of the Ministry of Health of the Russian Federation "On the Procedure for using of assisted reproductive technologies, contraindications and restrictions on their use", 30.08.2012 № 107H.

⁵ Code of the Republic of Belarus "On Marriage and Family", 09.07.1999 № 278/3 (Article 52).

⁶ Resolution of the Council of Ministers of the Republic of Belarus "On the essential terms of the surrogacy agreement", 04.11.2006 № 1470.

⁷ Resolution of the Ministry of Health of the Republic of Belarus "On approval of the list of medical indications and contraindications to surrogacy, procedure and scope of medical examination of surrogate mothers, genetic mothers and their spouses", 14.09.2006 № 71.

⁸ Civil Code of Ukraine, January 16, 2003 № 435-IV; Civil Code of the Russian Federation of 30.11.1994 N 51- Φ3.

⁹ According to Art. 21 of the Law "On Assisted Reproductive Technologies" essential conditions of surrogacy agreement are, in particular: the provision by one woman (surrogate mother) to another woman (genetic mother or woman who used a donor egg) services of carrying of a pregnancy and childbirth, conceived with the participation of an ovum (ova) removed from the genetic mother's body, or a donor egg (ova); quantity of embryos that will be transferred to the uterus of surrogate mother; an indication of healthcare organization (s) in which the connection of the sperm (s) and ovum will take place, removed from the body of the genetic mother, or donor egg (eggs), transfer of the embryo (embryos) in the uterus of surrogate mother, monitoring the course of her pregnancy and childbirth; the surrogate mother's duty to follow all the doctor's instructions and to provide the genetic mother or the woman who used the donor egg and her husband with information about her health and the health of child (ren), etc.

and a male). On the other hand, one of such documents is a notarized copy of a written joint agreement between a surrogate mother and a woman (husband) or spouses, which means that one of the spouses may be a party to the agreement. Despite the lack of a direct ban, the possibility to use the service of surrogacy for persons who are not in a registered marriage and single persons is not provided.

In Belarus, the parties to the agreement are a potential mother (a woman who used a donor egg) and a surrogate mother. Married females enter into a contract with the written permission of their husbands. However, if the potential mother is a genetic mother, she is not allowed to have a husband. At the same time, if a potential mother has used a donor egg, she must have a husband, as only his sperm are used to fertilize the donor egg (Articles 20, 21 of the Law on Assisted Reproductive Technologies). It follows that the service of surrogacy in Belarus can be used by a married woman who is in an actual marital relationship or a single woman, but a single man cannot.

In addition to the surrogate mother and genetic parents, the subject of the legal relationship is the clinic and may be an agency and intermediaries. In all three countries, the nature of the relationship between the medical institution and the parents, as well as between the medical institution and the surrogate mother, remains unclear; the status of agencies and intermediaries is unregulated. In this regard, the UN stressed the need to regulate all intermediaries involved in surrogacy arrangements, use of contractual arrangements, and ethical standards) [9].

Analysis of information from the websites of agencies and reproductive centers of the three countries showed that today the surrogacy market is filled with offers that vary significantly in price and scope of services (differentiated service packages such as standard, elite, premium). Thus, the elite offer a number of additional services, such as patronage and control of the program, additional legal services, city tour, babysitting services¹⁰. One of the clinics operating in Ukraine offers at least 20 packages of services that differ not only in price (the cheapest differs from the most expensive seven times), but also in a number of positions, including accessibility for single couples and single people, the country, in which the birth will take place, providing legal support, etc.¹¹

Moreover, it is even possible to choose the child's sex. This option requires special attention, because in Russia and Belarus, usually, it is not available, except in cases of inheritance of diseases related to sex (Part 4 of Article 55 of the Russian Federation Law “On Fundamentals of Public

Health in the Russian Federation” and Article 15 of the Law of the Republic of Belarus “On Assisted Reproductive Technologies”). Thus, the choice of sex is allowed only on medical grounds, not social. There is no such prohibition in the legislation of Ukraine, although it is contained in Art. 14 of the Convention for the Protection of Human Rights and Dignity of the World concerning the Application of Biology and Medicine, which Ukraine signed on March 22, 2002, but has not yet ratified. This provision is aimed at preventing gender discrimination, degrading human dignity and violating the natural relationship between women and men. Thus, Ukraine, leaving this issue out of regulation, does not adhere to international standards, but at the same time receives additional benefits from people who want a child of a certain sex.

In all three countries the legal nature of the surrogacy agreement, understanding of such key concepts as surrogacy, agreement on it, surrogate mother, genetic parents, remain debatable; rights and responsibilities of surrogate mothers and genetic parents; legal relations between genetic parents, surrogate mother and clinic, agency, intermediaries [10; 11; 12; 13]. The issues of unilateral refusal to perform the contract, refusal of parents from the born child, the fate of the child in case of death of parents or one of them, their divorce are not regulated by law. Therefore, the quality of the contract is an important aspect of using this method of reproductive medicine.

Incomplete legislation and the temptation to make big profits create high risks of violations of the genetic parents' rights, surrogate mothers and children, determine the favorable environment for the development of crime, attractiveness of the market for fraudsters.

One of the important issues involving the risks of violating the rights of prospective parents is the *recognition of their paternity*. This problem is especially acute in Russia, where the transfer of a child to parents is carried out with the consent of the surrogate mother¹². The Constitutional Court of the Russian Federation in its decision of 15.05.2012 № 880-O pointed to the surrogate mother's ability to register herself as the child's mother in birth certificate, which is recorded in the birth certificate, thus stipulating for the woman who gave birth, rights and responsibilities of the mother. As a result, parents have no guarantee that the child will be handed over to them. This problem, in experts view, hinders the development of the service in Russia [14].

Instead in Ukraine (Article 123 of the Family Code) and Belarus (Article 52 of the Marriage and Family Code) the presumption of the child's origin from the parents-donors

¹⁰ According to Part 2 of Art. 123 of the Family Code of Ukraine in case of transfer to another woman's embryo of a person conceived by a spouse (husband and wife) as a result of the use of assistive technologies, the child's parents are the spouses. <?> The information is taken from the sites of such agencies and clinics as Center Semya. <https://xn----7sbbjlc3aghvajcuff5m.xn--p1ai/surrogatnoye-materinstvo-2020/surrogatnoe-materinstvo-pakety-uslug-centra-semja.html>; Agency «babyforyou». <https://babyforyou.org/dlya-surrogatnyh-mam/>; Feskov human reproduction group. <https://surrogate-mother.ru/surrogatnoe-materinstvo>

¹¹ Feskov human reproduction group. <https://surrogate-mother.ru/surrogatnoe-materinstvo>;

¹² According to Part 4 of Art. 52 of the Family Code of the Russian Federation, persons who are married to each other and gave their written consent to the implantation of embryo to another woman for the purpose of childbirth, may be recorded by the child's parents only with the woman's consent who gave birth (surrogate mother); for item 5 of Art. 16 of the Law “On Civil Status” in the state registration of the child birth on application of the spouse who agreed to implant the embryo in another woman for the purpose of childbirth, along with a document confirming the birth of a child, must be presented a document issued by a medical organization certifies the fact of obtaining the consent of woman who gave birth to child (surrogate mother) to the record of the specified spouses by the child's parents.

of genetic material which is an important guarantee of the rights of the latter. However, it should be noted that in Ukraine the settlement of this issue is controversial. If the Family Code recognizes the parents of the child as a spouse, the Rules of State Registration of Civil Status establish an additional requirement for surrogate mother's consent to the registration of spouses' parents¹³, which allows the surrogate mother to refuse to give such consent and register the child in her name. As a result, there are additional risks for the couple when registering a child, because the surrogate mother can blackmail the couple, demanding, for example, additional fees. For comparison in Belarus, when registering the birth of a child from a surrogate mother, the applicant provides only a surrogacy agreement (paragraph 19 of the Regulation of the Council of Ministers "On the procedure for registration of civil status and issuance of documents and (or) certificates by civil registration authorities").

It has already been noted that in all three countries a surrogate mother cannot act as an egg donor. Lack of direct family ties (however, surrogate mothers are related to genetic parents and the child) reduces the risk of surrogate mothers wanting to keep the child. An analysis of the stories of surrogate mothers revealed that in half of the cases, women did not have attachment to the child - they perceived the need to give the baby as due. At the same time, in 5 cases, this attachment was such that it was difficult to transfer the child to genetic parents. In addition, there is the problem of determining the origin of child from the parents, when the embryo was conceived using donor material [16], when the donor egg and male reproductive cells are used for conception, as well as when donor zygotes and embryos are transferred to the surrogate mother [17].

The surrogacy market is attractive to black brokers, pseudo-agencies and those involved in fraud or blackmail. In particular, genetic parents suffer from surrogate mothers demanding additional services for the threat of having an abortion. Some women, due to childless couples, undergo a complete medical examination of their body, and sometimes treatment, after which they disappear [18]. In order to counter such manifestations, a number of agencies compile and publish blacklists of surrogate mothers, i.e. women who have committed fraud or other unfair acts¹⁴.

In practice, there are such manifestations of illegal activities of agencies and clinics as masking the purchase of children under a surrogacy agreement. This can happen through the fictitious marriages of surrogate mothers with foreigners, artificial insemination of these women and the sale of children born to foreigners; giving visibility to the procedure of surrogacy, when the prospective parents do

not provide any biological material at all and as a result the newborn child is not genetically related to them [18, 19, 20]. In such cases, the alleged parents may be complicit in illegal actions, as well as become victims of crime, or, being in the arms of a desired child with an uncertain legal status, may be forced to violate the law.

Foreign couples from countries where surrogacy is not recognized or prohibited face the problem of recognizing and admitting their children, which sometimes leads to criminal prosecution of those who try to take such children out of the country where surrogacy is allowed, in those countries where it is prohibited [16]. Thus, in 2016, the Embassy of the Republic of Poland appealed to the law enforcement agencies of Ukraine with information about citizens of their country who tried to obtain passports for two children who were allegedly born to this couple in Ukraine. The Polish side was suspicious of the date of birth of children, which coincided with the date of their mother's entry into Ukraine. Based on the information contained in the letter of the embassy, law enforcement agencies undertake legal proceedings under Part 3 of Art. 149 of the Criminal Code of Ukraine [21].

Applications for recognition of children have been repeatedly submitted to the European Court of Human Rights. Regarding these issues, the Court in "Mennesson v. France and Labassee v. France" stressed that a wide margin of appreciation had to be left to States in making decisions relating to surrogacy, in view of the difficult ethical issues involved and the lack of consensus on these matters in Europe [22].

At the same time, at the request of the French Court of Cassation, the ECHR issued an advisory opinion dated 10.04.2019 with recognition in domestic law of a legal parent-child relationship between a child born abroad through a gestational surrogacy arrangement and the intended mother, designated in the birth certificate legally established abroad as the "legal mother", in a situation where the child was conceived using the eggs of a third-party donor and where the legal parent-child relationship with the intended father has been recognized in domestic law) [22].

Also, every case of surrogacy always carries the risk of abandoning children. According to the Commissioner for Children's Rights in Ukraine, at least 10 children are known to have been abandoned by their parents from abroad [23]. In Ukraine, more than 80% of children are taken from surrogate mothers by foreigners [4, 24], and the state accompanies these children only before departure. The risks of potential orphanhood are also significant in situations where the genetic parents abandon the child because of his/her illness or if they divorce and the child

¹³ In accordance with paragraph 11 of Section 3 of the Rules of state registration of civil status in the case of childbirth by a woman who was transferred to the body of such an embryo, state registration of birth is carried out at the request of the spouse who agreed to such transfer, to which simultaneously with the document the fact of child birth by this woman, an application for her consent to registration of the spouses by the child's parents, as well as a certificate of genetic kinship of the parents (mother or father) with the fetus.

¹⁴ In particular, blacklists of surrogate mothers are published on the following sites: <https://surmama-donor.ru/chernyy-spisok-surrogatnykh-mam/>; <http://www.surconsult.by/>; <https://surmoms.com/blacklist/>.

is no longer needed. From the personal stories of surrogate mothers, three cases of child abandonment were identified. On the other hand, the interests of children always suffer in disputes between genetic parents and surrogate mothers. Judicial proceedings in such cases can take a long time, which negatively affects the child, who gets used to one family, and then by court decision moves to another.

Therefore, children's rights are the least protected in surrogacy. All three countries do not monitor their fate after crossing the border, in particular, the legal regime prohibiting surrogacy, the state of which the genetic parents have citizenship, is not an obstacle to concluding an agreement. It should be noted that some clinics and agencies have made it a rule not to provide services to those persons in whose countries surrogacy is prohibited [25]. However, this practice is not common. Given the high risk of violations of children's rights, UN experts consider it necessary: to adopt clear and comprehensive legislation that prohibits the sale of children, in the context of surrogacy; to ensure that in all parentage and parental responsibility decisions involving a surrogacy arrangement, a court or competent authority makes a post-birth best interests of the child determination, which should be the paramount consideration; to protect the rights of all surrogate-born children, regardless of the legal status of surrogacy arrangement under national or international law) [9].

There are also high risks of exploitation of surrogate mothers, including their use as incubators who agree to become a gestational courier. Due to the widespread provision of services by women in India and Thailand, commercial surrogacy for foreigners has been banned in these countries since 2016. Such risks are exacerbated by the lack of regulatory restrictions on totaling of providing surrogacy services of single woman and encourages them to engage in these activities regularly¹⁵, poor living conditions in the last months of pregnancy and low maintenance [26; 27; 28].

At the same time, some mechanisms can be identified to counteract the exploitation of surrogate mothers. *Legal mechanisms* include: 1) permission to enter into an agreement on a gratuitous basis only on the basis of kinship of the parties¹⁶; 2) only the marital status of a surrogate mother under commercial surrogacy¹⁷; 3) the requirement for the surrogate mother's husband to give written

consent (in case of her marriage)¹⁸; 4) notarization of the contract¹⁹. *Medical mechanisms* include: 1) age restrictions and lack of medical contraindications. Age thresholds are set in all countries. Thus, in Ukraine (paragraph 6.4 of the order "On approval of the Procedure for the use of assisted reproductive technologies in Ukraine") a surrogate mother may be an adult woman, the upper age limit is not set (although clinics, of course, set upper age barriers). In Belarus (Article 22 of the Law "On Assisted Reproductive Technologies") and Russia (paragraph 78 of Order № 107n), the age of a surrogate mother ranges from 20 to 35 years; 2) restriction of surrogate mothers to participate in the program more than a certain number of times. It is usually set by agencies that have an unspoken rule regarding a woman's participation in the program no more than three times²⁰, which does not preclude her from once again applying to another agency. There is also a rule of a break between pregnancies at 12 months²¹; 3) limiting the number of embryos that can be transferred to the uterus of a surrogate mother. Thus, in Russia there is no more than 2 embryos, as an exception – 3 ones provided that the surrogate mother gives voluntary informed consent after giving her a doctor full information about the high risks of miscarriage, low survival and high risk of disability among premature babies (pp. "e", paragraph 83 of the order № 107n). In Belarus there are no more than 2 embryos, and for a patient who has reached 35 years, as well as a patient regardless of age, for which the use of assisted reproductive technologies three or more times did not lead to pregnancy - no more than 3 embryos (Article 7 of the Law "On reproductive technologies"). In Ukraine (paragraph 3.8 of the order) there is a recommendation to transfer to uterine cavity no more than 1-2 embryos, and with the predicted reduced probability of implantation - 3 embryos (with clinical justification and with the patient's consent).

A separate problem is the stigmatization of surrogate mothers. Despite the fact that the market of surrogacy in Russia, Ukraine and Belarus is developing, and more and more participants uphold positive image of this activity, in society there is still condemnation and harassment of surrogate mothers. There is a stereotype of a surrogate mother as a woman from a small town or low-income village, which makes her vulnerable and forces her to

¹⁵Thus, according to information taken from the websites of surrogacy centers, women who already have surrogacy experience receive a higher financial reward. See, for example, the Mother to All Surrogacy Center. <https://surmama.in.ua/ru/vse-o-surrogatnom-materynstve/>

¹⁶ Provided in Belarus in accordance with Art. 21 of the Law "On Assisted Reproductive Technologies", which stipulates that the surrogacy agreement may be concluded free of charge in cases where the surrogate mother is a relative of genetic mother or woman who used the donor egg, or a relative of the husband of genetic mother or woman who used donor egg

¹⁷ Provided in Belarus, in accordance with Art. 22 of the Law "On Assisted Reproductive Technologies", only a married woman can act as a surrogate mother on a commercial basis.

¹⁸ This requirement is available in the legislation of all three countries: paragraph 6.10 of the order "On approval of Procedure for the use of assisted reproductive technologies in Ukraine", Art. 21 of the Law of Belarus "On Assisted Reproductive Technologies", paragraph 78 of the order "On the use of assisted reproductive technologies, contraindications and restrictions on their use" in Russia.

¹⁹ In Belarus, according to Art. 21 of the Law "On Assisted Reproductive Technologies", in Ukraine - according to item 6.11 of the order "About the statement of the Order of application of auxiliary reproductive technologies in Ukraine" the notary has to be convinced of free will of parties. Instead, in the Russian Federation there is no such requirement for the agreement.

²⁰ Family Medicine Center. <https://www.cfm.ru/poleznaja-informacija/stati/kak-stat-surrogatnoi-mamoi>.

²¹ Surrogacy Center «Artemida». <https://artemida.ua/ru/info-surrogacy/>; Family Medicine Center. <https://www.cfm.ru/poleznaja-informacija/stati/kak-stat-surrogatnoi-mamoi>.

accept another's child in order to improve her financial situation.

One of the definitions of surrogacy is formulated in the scientific literature, which reflects public opinion, it is the commercial surrogacy – that is similar to existing forms of care work/services but is stigmatized in the public imagination, among other reasons, because of its parallels with sex work) [29]. Negative attitudes towards surrogate mothers are observed not only among the general public, but also among acquaintances, relatives, neighbors and medical staff. This necessitates the anonymity of this procedure, including secrecy in clinics where the child is born, the surrogate mother's move in the last months of pregnancy to other cities under the legend of “earnings” in order to hide their condition.

An analysis of 41 personal stories of surrogate mothers published in open sources²² revealed a certain portrait of them, according to which the vast majority of women (88%) experienced financial difficulties and provided services on a commercial basis, half of them seeking to buy new housing. Thus, these indicators confirmed the social stereotype according to which women agree to bear another's child mainly in order to improve their financial situation. It was also found that at least 40% gave birth to foreigners (in a quarter of cases - for compatriots, and in a third of cases there was no information). In a situation where there is a decline in birth rates in these countries, such indicators indicate a distraction of some women of reproductive age from replenishing the gene pool of their populations. This is due to the initiatives taking place in Russia and Ukraine to ban the provision of surrogacy to foreign citizens.

CONCLUSIONS

Common features of the legal regulation of surrogacy in the East Slavic countries are: 1) the relationship is determined by the contract for the provision of services; 2) both non-commercial and commercial surrogacy and exclusively gestational (for which there is no genetic link between the surrogate mother and the embryo) are allowed; 3) potential parents (or at least one of them) must have a genetic link with the child; 4) the service is not provided to homosexual couples; 5) persons may use the service only on medical grounds; 6) there are no restrictions on the price of the service. In all countries, the protection of the rights of parents, surrogate mothers and children needs additional regulation.

Settlement of surrogacy relations in Ukraine and Russia is insufficient due to the lack of special regulation, the predominance of bylaws and the application to specific legal relations of the general provisions of the contract for the provision of services. As these states interfere less in these legal relationships, their members - clinics, agencies,

genetic parents and surrogate mothers - gain more freedom, but also carry increased risks. In Belarus, the legal regulation of surrogacy is more detailed, although not without drawbacks.

There are restrictions on the ability to use surrogacy for unmarried people (Russia, Ukraine), single women (in Ukraine - a gap in regulation, in Russia it is allowed, but there are difficulties in registering a child) and single men (all three countries). The risks of violations of children's rights are high in all states, in particular, due to unregulated interaction with foreign states of prohibitive or negative-zero type of regulation. The problem of recognition of paternity is most observed in Russia, although in some respects it affects Ukraine and Belarus. A distinctive feature of surrogacy services in Ukraine is the option of genetic parents to choose the sex of the child, which raises several ethical objections.

The study of the personal stories of surrogate mothers confirmed the social stereotype that women agree to bear another's child mainly in order to improve their financial situation. Therefore, in the considered states various legal and medical mechanisms of counteraction to exploitation of surrogate mothers are developed. The legal ones include permission to conclude a contract on a gratuitous basis only on the ground of kinship of the parties; only the marital status of a surrogate mother in commercial surrogacy; the requirement for the surrogate mother's husband to give written consent; notarization of the contract. Common to all countries medical mechanisms are age restrictions and lack of medical contraindications; restriction of surrogate mothers to participate in the program more than a certain number of times; limiting the number of embryos that can be transferred to the uterus of a surrogate mother.

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²² The cases of surrogate mothers were taken from: <https://svoi.city/read/monologi/82241/istoriya-surrogatnoj-mami-iz-doneckoj-oblasti>; <https://www.6262.com.ua/list/205078>; <http://www.avicenna-nsk.ru/about/news/395>; <https://www.bbc.com/ukrainian/features-42995390>; <https://life.pravda.com.ua/society/2020/05/29/241146>; <https://pink.ua/news/8966>; <https://news.tut.by/society/519111.html>

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