

Média a vzdělávání – Media & Education 2023

ISBN 978–80–87570–62–3

The Need to Raise the Level of Legal and Civil Education on Surrogacy in Georgia

(Including the Need for Mass Media Involvement)

<http://www.media4u.cz/mav/9788087570623.pdf>

Gocha Ochigava, Grigol Robakidze University, g.ochigava@gruni.edu.ge

Abstract

Today, declining birth rates and the demographic crisis are some of the most intense problems for European politicians. Several different methods are applied in several European countries; however, the picture does not change dramatically. Among other reasons, the birth rate is reduced by new diseases, and stressful life, which leads to infertility. Therefore, couples try to resort to artificial insemination and use the services of countries where surrogacy is allowed. Georgia is among such countries. Recently, issues related to surrogacy have become increasingly relevant. The mass media devotes more and more time to covering this topic. The inevitable need for legal regulation of this issue at the international level and raising public awareness of this problem has been clearly identified.

Key words: Civil education, surrogacy, legal regulation, international law, Georgia

Main part

A new initiative related to the use of surrogacy in Georgia

In Georgia, civic education and raising the population's awareness of women's and children's rights are gaining more and more importance. On the one hand, this is because our country is trying to create even stronger mechanisms for the protection of human rights, corresponding to European standards, and on the other hand, the legal condition of women and children in this specific direction is unfavorable. Recently, issues related to surrogacy have become more and more relevant, which led the Parliament of Georgia to decide to make serious changes in this regard. The Ministry of Health has worked on a draft law (currently under parliamentary discussion), according to which surrogacy for foreign couples will be prohibited in Georgia from January 1, 2024, and only Georgian citizens will be allowed to use this service. According to the same draft law, the issue of surrogate mothers' remuneration should be regulated by law, which, as the Minister of Health explains: "will be based only on the principle of altruism".

The surrogate mother will have the opportunity to receive the compensation that may accompany the medical examinations, complications, and other necessary expenses related to this process. This is not the first attempt when the Georgian authorities make changes in the existing legislative framework in the direction of children born as a result of extracorporeal fertilization (in vitro). Earlier, in August 2020, the then Minister of Justice issued an order amending the 2012 order "On Approving the Rules for Registration of Civil Acts". According to the amendment (Order No. 598, effective September 1, 2020), **[1]** a woman and a man can raise a child born extracorporeally if they are married and have been married for at least one year. or are in a de facto cohabitation, also for at least the last one year. As we can see, the determining factor here is not marriage, but the granting of this right only to a man and a woman (as a couple). Reference to a specific one-year period was necessary to prevent the transnational crime of baby trafficking and to prevent a child born by surrogacy in Georgia from becoming a subject of sexual exploitation, inhumane treatment, and torture. In addition, the purpose of the change was to prevent those fictitious couples who resorted to surrogacy for criminal purposes and took the children out of Georgia.

Legal regulations of surrogacy in Georgia

According to the Law of Georgia on Health Protection **[2]** (Article 143), fertilization is allowed: a) for the treatment of infertility, as well as in the presence of the risk of genetic disease transmission from the wife or husband, using the couple's or donor's gametes or embryos, if the written consent of the couple is obtained; b) if the woman does not have a uterus, by transferring and growing the embryo obtained as a result of fertilization into the uterus of another woman ("surrogate mother"); Written consent of the couple is required. In the case of the birth of a child, the couple is considered to be the parents, hence the responsibility and authority; A donor or "surrogate mother" does not have the right to be recognized as the parent of a born child. As for the issue of citizenship of a child born through surrogacy. According to Article 10, Clause "b" of the Law of Georgia on Citizenship: **[3]** A person born as a result of extracorporeal fertilization (surrogacy) on the territory of Georgia shall acquire the citizenship of Georgia at birth. In the same paragraph, we read about the exception that concerns the citizenship of the parents: a person born through surrogacy cannot receive Georgian citizenship if the country of citizenship of one of their parents considers them to be its own citizen. However, after the ban we talked about above, which will come into force on January 1, 2024, this restriction will no longer be relevant, since foreign citizens will already be prohibited from using surrogacy in Georgia. However, it is still unclear what rights will be enjoyed by persons with dual citizenship (parallel to Georgian citizenship). It is interesting to know how Georgian legislation regulates the use of artificial insemination for the purpose of gender selection. Such intervention is prohibited, except in cases where it is necessary to prevent a sex-linked hereditary disease. It is true that the Georgian Law on Patient Rights **[4]** does not specify the forms of artificial insemination, but in the definitions of the law, we read that "artificial insemination" includes forms of surrogacy (Article 34) as one of the forms of family planning, surrogacy has been regulated by legislation in Georgia since 1997 through several normative acts and orders. Among them are, for example, "Law on Health Care",

"Law on Patient Rights", "Law on Civil Acts", "Organic Law on Georgian Citizenship", and "Law on Legal Status of Foreigners and Stateless Persons".

As for the removal of a child born through surrogacy from the country, the rules of this procedure are regulated by the 2016 joint order of the Minister of Justice and the Minister of Internal Affairs of Georgia. [5] If, on the basis of the information kept in the database of the State Service Development Agency, a public law legal entity operating in the sphere of governance of the Ministry of Justice of Georgia, it turns out that the child, who leaves the territory of Georgia for the first time, is born in Georgia through in vitro fertilization (surrogacy) and in the record of the civil act of his birth, issued by the agency, both parents are not specified, or the civil act of birth is not registered in his name by the agency, the authorized employee of the Ministry of Internal Affairs of Georgia is obliged to make a decision on the refusal to take the child out of Georgia (crossing the border). (Article 5, part two). According to the statement of a significant part of Georgian reproductive specialists and representatives of about 20 clinics working in this field: the announced ban on the reception of in vitro fertilization, including surrogacy and donation services for foreign citizens in Georgia, is a threat to the existence of the field, reproduction with the help of medicine, and to the economic development of the country. They believe that instead of a ban, certain acts should be introduced that will regulate donation-surrogacy issues in the country.

The main reason for the consent of the surrogate mother. Costs and procedures related to surrogacy.

Altruistic surrogacy is the rarest exception in Georgia. Most surrogate mothers make this decision because of the harsh social conditions. These women, most commonly, already have children, do not have accommodation, and do not have a stable income. They have husbands who often have debts. A woman who agrees to surrogacy due to an unavoidable situation, in many cases does it under her own compulsion. Therefore, a part of human rights defenders perceive this as a form of violence against women. In the case of natural birth, surrogacy is allowed to be repeated after six months, although observation shows that at the request of the women themselves, some agencies allow it after three months, which I think is absolutely unacceptable. Before joining the surrogacy program, in addition to the necessary studies, women also undergo an interview, where their psychological readiness is checked. Studies show that a woman who is in financial difficulty, and at the same time wants to change the environment for her children, has such great motivation that she is psychologically quite prepared to deal with many issues. Today, the salary of a surrogate mother in Georgia ranges from 17 to 23 thousand dollars. This amount includes the so-called Monthly maintenance during pregnancy, \$300, which is deducted from the total cost. There are cases when a surrogate mother gives birth to twins. In this case, she will get an additional \$2,000. According to contracts with surrogate mothers, if the pregnancy is terminated before 24 weeks because of a non-surrogate mother, the couple covers the cost of the surrogate mother's medical procedures and pays the woman \$500. If the pregnancy is terminated between 24 and 32 weeks, the couple must pay \$5,500 to the surrogate mother. A standard surrogacy contract. According to the order of the Minister of Justice of 2020, the parties are obliged to apply

to the same notary and sign the notarial deed with the request to enter into an agreement on surrogacy. When signing the contract, the surrogate mother undertakes to personally appear before a notary to sign. She has no right to enter a transaction through a representative. However, there was a period when it was common to adopt a surrogate mother without notarized contracts.

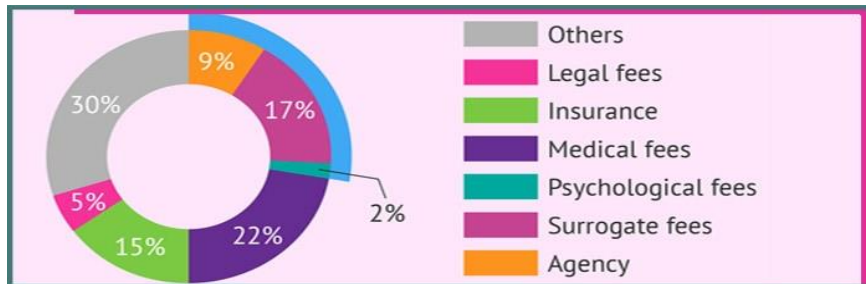
The standard contract should include the following:

1. The surrogate mother must strictly follow the doctor's instructions from the moment of embryo transfer until delivery. Can't do physical work.
2. At the request of the potential parents, the surrogate mother must meet with the potential parents at any time.
3. Should not breastfeed the baby after delivery. Do not have any contact with the child from the moment the child is born.
4. The surrogate mother is forbidden to have sexual relations with any person, including her husband.
5. From the moment of signing the contract, the surrogate mother is prohibited from leaving the territory of Georgia. She is allowed to leave the city/village only with the written consent of the potential parents and the doctor.

Why was it necessary to introduce changes in the legislation that prohibited surrogacy for foreign couples?

One of the reasons for this is cheap surrogacy programs, which is why foreign couples are looking for surrogate mothers in Georgia. For example, if in some US states, surrogacy costs about 150,000 - 200,000 dollars, this service is 10 times cheaper in Georgia. In Georgia, 99% of surrogacy and donation users are foreign couples. Couples from the USA, Europe, Turkey, China, and Israel benefit most from the surrogacy program. Recently, Canada and Australia were added to these countries. Georgia became an even more popular country for surrogacy after the war in Ukraine, it is known that many childless couples applied to Ukraine, in this respect it was one of the leading countries in the world. [6] Another reason why foreign couples try to find surrogate mothers in Georgia is that Georgian law allows foreign couples to be listed as parents on the birth certificate as soon as the child is born. Those who are in favor of banning surrogacy believe that the main reason for this is the rights of women and children. The countries in the group opposed to surrogacy believe that: surrogacy violates the dignity of the child and the surrogate mother and turns them into objects of ordinary contracts; Surrogacy is against children's rights; Neither the human body nor the civil status of persons can be the subject of a private agreement.

Surrogacy is a process that is done in many different countries around the world. The cost of surrogacy can vary depending on the country. Surrogacy costs in European countries can be expensive. In Spain, the cost of surrogacy can be as high as €100,000. In Germany, the cost of surrogacy can be as high as €80,000. In the United Kingdom, the cost of surrogacy can be up to £60,000.



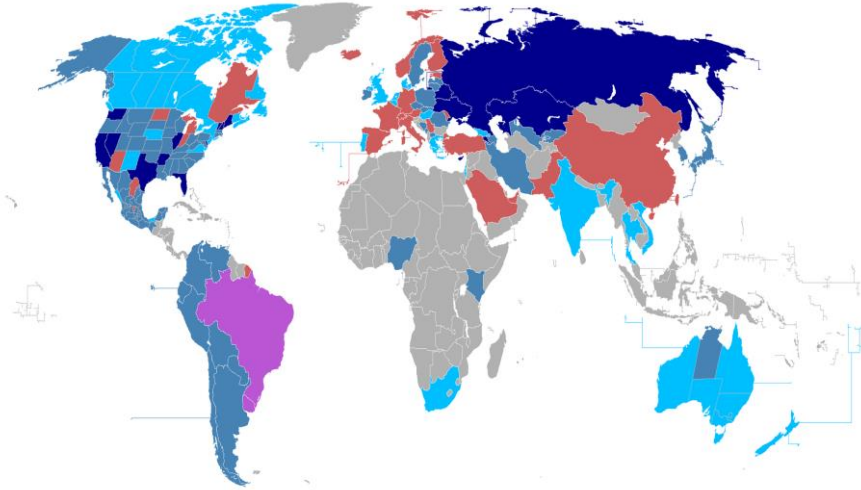
Supporters, opponents (worldwide)

According to the latest data, commercial surrogacy is allowed in only a few countries: Russia, some US states, Kazakhstan, Armenia, Georgia, Belarus, and Ukraine. Commercial surrogacy is prohibited in all EU member states. The legal basis is the European Charter of Human Rights, [7] where we read that in the field of biology and medicine, it is necessary to observe the following law - "the human body cannot become a source of financial gain". (Article 3). I think European legislators should make more clarifications regarding this article; If they believe that carrying out such manipulations and using the body for this purpose cannot be a source of financial gain, then this should apply equally to the surrogate mother who voluntarily used her body in order to receive a certain remuneration, as well as to the medical institutions that carry out medical Procedures by "using" a specific human body. The ban should also apply to organizations or centers that conduct negotiations and attract clients. If the above-mentioned Article 3 applies only to a person who uses his body for financial gain, then a corresponding entry should also be made. In the previous case, all forms of surrogacy, including altruistic ones, should be prohibited, since the surrogate mother may not, but a specific medical institution saw financial benefits as a result of performing medical manipulations on a specific body.

If we take the example of Cyprus, the surrogate mother here is not an isolated person who was selected by an individual, or couple and included in the process, but she is an employee of a specific center, or medical institution, who is hired on the basis of a contract, periodically undergoes examinations, and who receives a certain amount of remuneration for her involvement in the process (regardless of whether it brings results or not). The latter increases if the procedure is successfully carried out and the child is born. Funds are not determined by the surrogate mother. The amount of funds is determined by a specific center or medical institution. Therefore, no one directly says that commercial surrogacy is allowed in this EU country, however, everyone gets financial benefits! Georgia, which is now trying to obtain the status of a candidate

for membership of the European Union, through the European Association Agreement, directly undertakes to make the legal regulation of the mentioned area subject to the standards of the European Union. In the absence of such regulations, very big risks arise both in terms of ethical side, legal side, and quality of medical services, as well as in terms of rapprochement with the European Union. All forms of surrogacy are prohibited in Bulgaria, and France (the age limit is set: 25-40 years, for parents 26-50 years). In Germany, Italy (the same age limit as in France) Portugal, Spain, Iceland, Finland, and Malaysia. In these countries, potential parents, and surrogate mothers as well as medical personnel and "intermediaries" can be fined or imprisoned. For example, under German law, "any person" who assists a surrogate mother in transferring an embryo into her womb can be imprisoned for up to 3 years or fined. Altruistic surrogacy is allowed in some European countries, but only if the client and the surrogate mother are citizens of that country. However, in the case of Greece (the only exception throughout the European Union), it is possible to represent a party who is not a citizen of Greece but enjoys the right of temporary or permanent residence in this country. Greece allows the child's nationality to be decided by the law of the EU country of which one of the parents is (it is emphasized that this can be one of a heterosexual couple). For example, in the case of altruistic surrogacy in Poland, and Belgium, the mother of the child is considered to be the one who gave birth to the child. Altruistic surrogacy is allowed in Brazil, Cuba, the Australian state - Victoria, Great Britain, Canada, Denmark, Holland, and India, where commercial surrogacy has been banned since 2022. There are countries where this issue is not regulated by legislation, for example: Ireland, Japan, Colombia, Kenya, Czech Republic, Belgium, and Finland. Czech law recognizes the term "surrogate mother". It forbids the latter from adopting a child whom she has given birth to but whose biological mother is not considered. **[8]** In some countries, surrogacy was legal for homosexual couples, for example in Portugal (since 2016 under certain conditions), the law has been suspended since 2018. Greek law defines and protects the legal status of a single woman of a couple (male and female) applying for surrogacy. There are countries where altruistic surrogacy is allowed, but any advertising related to surrogacy is prohibited. There are also countries (China) where it is prohibited, but violation only results in a fine, not criminal liability. The first country to legalize commercial surrogacy and related agreements with all treaty states (1996) is Israel. Only Israeli citizens are allowed. Homosexual couples are also allowed. The special commission allows. Denmark has a similar approach to the issue.

For information, 3.7 million babies are born every year in the world through artificial insemination.



Legal regulation of surrogacy in the world: [9]

- Both commercial and altruistic forms are legal
- No legal regulation
- Only altruistic is legal
- Allowed between relatives up to second degree of consanguinity
- Banned
- Uncertain

Conclusion

While the problem of infertility is increasing every year in the world (according to international studies, 15-20% of couples have the problem of infertility, which amounts to a billion people in total), when surrogacy is still being commercialized in many countries, when the majority of surrogate mothers make this decision due to their difficult social situation, when there are no limits for those who sell their biological material, I think the international community should develop a unified approach to this very urgent and painful problem. It is important to study and analyze the opinions of scientists and researchers regarding such issues as:

1. Who is considered the child's biological mother, the one who gave birth to the child or the one who owns the fertilized egg?
2. Does a surrogate mother have the right to adopt a newborn and in what case?
3. Is it necessary to protect the rights of surrogate parents?
4. Should there be any limit on one person's use of his own biological material? We are talking about the sale of the mentioned material to solve the problem of infertility of others.
5. Can homosexual couples apply for surrogacy?
6. Should the right of surrogacy be extended to foreign citizens?

7. Can surrogacy be perceived as one of the distinct forms of coercion if the surrogate mother lived in the worst social conditions?
8. What are the contraindications of multiple surrogacy? How does hormone therapy affect a woman?
9. How should the issue of citizenship of a child born through surrogacy and leaving a specific country be regulated?
10. How should the future surrogate mother's psychological condition be checked?
11. How should the issue of selecting a citizen of a foreign country as a surrogate mother be regulated?
12. Is it possible to give a cash gift to the surrogate mother outside of the amount established for specific procedures, and this is not considered a commercial surrogacy?

As we can see, there is really a lot to work on. Specialists and experts from different fields should be involved in the process on a larger scale. The experience of different countries should be studied in detail. Any statistics related to this process are noteworthy. Moreover, it is important to observe in a certain way the daily life, psyche, and dynamics of development of children who came into being through surrogacy. It is also important to study the health status of "mothers" who consented to multiple surrogacies. The issue of the validity of the consent obtained without coercion from the biological mothers, who mainly represent Asian countries and who give birth to their children as family members for seemingly altruistic purposes, should also be studied. It is necessary to conduct more informative campaigns in this direction, to inform society more and, accordingly, to raise the level of education in this subject. It is equally important to increase the role of the mass media in raising awareness about the problems and legal regulations related to surrogacy.

Literature:

- [1] Order No. 598 of the Minister of Justice of Georgia - "On Approval of the Rules for Registration of Civil Acts" regarding making changes to the Order No. 18 of the Minister of Justice of Georgia dated January 31, 2012;
- [2] Law of Georgia "On Health Protection", date of adoption: 10/12/1997, consolidated publications - 03.07.2023;
- [3] Organic Law of Georgia "On Citizenship of Georgia", date of adoption: 30/04/2014, consolidated publications -16. 12. 2022;

[4] Georgia Law "On Patient Rights", date of adoption: 05/05/2000, consolidated publications - 15. 12. 2022;

[5] The 2016 joint order of the Minister of Justice and the Minister of Internal Affairs of Georgia, which regulates the removal of a child born through surrogacy from the country;

[6] Ponniah, Kevin (13 February 2018). "In search of surrogates, foreign couples descend on Ukraine". BBC. Retrieved 11 April 2019.

[7] European Charter of Human Rights;

[8] Hobzová, Hana "Náhradní mateřství", Disertační práce v oboru Sociální lékařství, MASARYKOVA UNIVERZITA, LÉKAŘSKÁ FAKULTA, ÚSTAV LÉKAŘSKÉ ETIKY, 2020. (23)

[9] https://en.wikipedia.org/wiki/Surrogacy_laws_by_country.

Gocha Ochigava,

Grigol Robakidze University

g.ochigava@gruni.edu.ge