



SURROGATE MOTHERHOOD IN UKRAINE AND AROUND THE WORLD: LEGAL REGULATION & MANAGEMENT PRACTICE

Sergii V. Dzholos

The Bohdan Khmelnytsky National University of Cherkasy, Cherkasy, Ukraine
<https://orcid.org/0000-0002-0001-5523>

Oksana Koshulko

TUM Institute for Advanced Study (TUM-IAS), Munich, Germany
<https://orcid.org/0000-0003-1571-2695>

©MESTE

JEL Category: **K38, M19**

Abstract

This paper presents the results of theoretical and practical studies of surrogate motherhood in Ukraine and worldwide, its legal regulation, management practice, and prospects of development. It deals with a critical analysis of Ukrainian legislation concerning this subject. The methodology of the research consisted of primary and secondary sources of information. The authors collected primary data from semi-structured interviews with Ukrainians living in Poland, Ukraine, the United States, and several other countries. The interviews aimed to investigate the reasons for the growth of commercial surrogacy in Ukraine. The authors also scrutinized the attitudes of Ukrainians towards the flourishing of this phenomenon in their country. Secondary information the author took from sources such as the International Labour Organization (ILO), the United Nations (UN), and others. The paper also considers surrogacy maternity as a legal fiction and one of the rights of the fourth generation and discusses the links between surrogate pregnancy, exploitation, and human trafficking.

Keywords: surrogate motherhood, Ukraine, world, legislation

1 INTRODUCTION

The surrogate pregnancy method allows women to bear a child for another woman or a couple with or without a financial reward. The scientists P.

Address of the corresponding author:
Oksana Koshulko
[✉ oksanakoshulko2015@gmail.com](mailto:oksanakoshulko2015@gmail.com)

Saxena, A. Mishra, and S. Malik give the following definition: "Surrogacy refers to a contract in which a woman carries a baby through pregnancy 'for' another couple" (Saxena, 2012). If the object of the surrogate pregnancy is a financial reward, it is known as commercial surrogacy. If the surrogate pregnancy was undertaken voluntarily, and not for profit, it is considered altruistic surrogacy. The majority of developed countries worldwide prohibit



commercial surrogacy and allow only altruistic surrogacy. In a minority of countries, commercial surrogacy flourishes successfully by legal or illegal means. Where the law is not enforced illegal schemes of all kinds proliferate, including illegal commercial surrogacy. This paper aims to explore surrogate pregnancy in Ukraine and worldwide, considering its legal regulation, management practice, and prospects for further development.

2 THE METHODOLOGY OF THE RESEARCH

The methodology consisted of analyzing primary and secondary data. Primary data was collected through qualitative semi-structured interviews with Ukrainians to discover their attitude toward commercial surrogacy in their country and to look at related legal issues. Around 50 Ukrainians were chosen for interviews, using the purposive sampling method. They were invited to participate in the semi-structured interviews. The aim was to explore their attitudes to commercial surrogacy in Ukraine. Overall, 45 people took part in the research via the Internet during the Covid-19 pandemic from March to May 2020. This data, including names and surnames, was coded. The first participant was coded as P 1 and so on (from P_1 to P_45). All participants agreed that the research results the authors can use in this paper. As the secondary data sources, the authors used data from international organizations (ILO, UN), different websites (Saxena, 2012; BioTexComClinic, 2020), articles, books, and chapters of books on the subject. The authors used legislation of Ukraine and other countries. Also, the authors considered Data from the Ministry of Social Policy of Ukraine, the Constitution of Ukraine, the Civil, Family, and Criminal Code of Ukraine, and Orders of the Ministry of Health and the Ministry of Justice of Ukraine.

3 PREVIOUS RESEARCH IN THIS AREA

International scientists worldwide have studied various aspects of surrogacy, including the ethical, cultural, biological, medical, religious, legal aspects. The group of researchers V. Jadva, C. Murray, E. Lycett, F. MacCallum, and S. Golombok studied this issue from the point of

view of the surrogate mothers (Jadva, 2003). H. A. Tehran, S. Tashi, N. Mehran, N. Eskandari, T. D. Tehrani, and other scientists studied the emotional experiences of mothers who gave birth to children for other women. (Tehran, 2014) The third group explored other aspects of surrogacy; among them, there were N.H. Patel, Y.D. Jadeja, H.K. Bhadarka, M.N. Patel, N.H. Patel, and N.R. Sodagar (Patel, 2018). E. Teman studied the social construction of this kind of motherhood (Teman, 2008), while G. Torres, A. Shapiro, and T.K. Mackey analyzed the legal regulation of surrogate pregnancy in ten countries in South America, comparing them to the international framework (Torres, 2019). J.G. Payne, E. Korolczuk, and S. Mezinska made a critical review of surrogacy relationships (Payne, 2020). The study of surrogacy and its various aspects is still in its infancy because each country has its legislation. The production of a common international standard on the regulation of surrogacy would be extremely useful.

3.1 Historical roots of the appearance of surrogate motherhood in the world

Surrogate pregnancy has a long history dating back to antiquity and only technology has changed the way modern surrogacy happens. Different methods and means, similar to surrogate pregnancy existed in many countries of the ancient world. Plutarch writes that Stratonice, the wife of the king Deiotarus of Galatia, chose the beautiful captive girl, Electra, to bear their heirs. They were educated with just as much love as if they had been born by Stratonice herself (Plutarchus, 2011). A similar story is described in the Bible, Gen. 16:1-4: "Now Sarah, Abram's wife, bore him no children. She had a handmaid, an Egyptian, whose name [was] Hagar. {16:2} And Sarah said unto Abram, behold now, the LORD hath restrained me from bearing: I pray thee, go unto my maid; it may be that I may obtain children by her. Moreover, Abram hearkened to the voice of Sarah. {16:3} And Sarah, Abram's wife, took Hagar her maid the Egyptian after Abram had dwelt ten years in the land of Canaan and gave her to her husband Abram to be his wife. {16:4} and he went unto Hagar and she conceived: and when she saw that she had conceived, her

mistress was despised in her eyes” (The Bible, 2005). Thus, it is possible to see that in ancient Judea, infertile women used the assistance of female slaves to bear their children. Also, S. Hostiuc writes that ‘in Ancient Rome, womb rental - *ventrem locare* - was a common practice. In this, there was a man whose wife was fertile and able to give her temporarily to another man, whose wife was sterile or whose pregnancies were ending in stillbirths’ (Hostiuc, 2018).

3.2 Examination of surrogacy maternity as a legal fiction

According to the theory of law, it seems that surrogate maternity is very close to such a category as legal fiction. The Black's Law Dictionary, says, that *legal fiction* or *fiction of law* means: “an assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place”, or “a rule of law which assumes as true, and will not allow being disproved, something which is false, but not impossible”, or “Something is known to be false is assumed to be true, and these assumptions are of an innocent or even beneficial character and are made for the advancement of the ends of justice” (Black, 1968). So, in the case of surrogacy, two different women are assumed to have the features of a mother (the genetic and the surrogate one), but each of them separately does not have these features, and it is done to protect the legal private, social, and state interests.

3.3 Exploration of surrogacy maternity as one of the rights of the fourth generation

Surrogate maternity is a very controversial phenomenon from legal, social, biological, and ethical aspects. People of the conservative worldview, as usual, think that surrogacy is an inadmissible interference of a human into God's prerogatives, an infringement upon the sanctity of marriage and family. At the same time, liberals think that surrogate maternity is one of the rights of the fourth generation, which includes, also, rights to euthanasia, cloning, transplantation, same-sex marriages, and changes of sex (Ivanii, 2019).

4 EXPLORATION OF THE RELATIONSHIP BETWEEN SURROGATE MOTHERHOOD, EXPLOITATION, AND HUMAN TRAFFICKING

It is necessary to answer the question: Surrogacy is not an act of human trafficking and exploitation of women? On the other hand, is it an act of exceptional humanism and mercy, when single people or infertile couples receive the happiness of motherhood and fatherhood, procreation, and heir? In this context and according to our opinion, the truth is somewhere in between. According to item (a) of Article 3 of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, “trafficking in persons” means the “recruitment, transportation, transfer, harboring or receipt of persons, through the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices like slavery, servitude, or the removal of organs” (The UN, 2004). At the same time, according to the item (b) of this article, “the consent of a victim of trafficking in persons to the intended exploitation outlined in subparagraph (a) of this article shall be irrelevant where any of the means outlined in subparagraph (a) have been used” (The UN, 2004). According to international law, as was written above, “exploitation should be considered exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices like slavery, servitude or the removal of organs” (The UN, 2004), but not surrogate maternity. In our opinion, surrogate maternity is not the exploitation of a woman (surrogate mother), because first, her consent is based on her own free will. Second, she may act with good intentions to help single people or infertile couples. And third, she may receive different forms of compensation, including direct material profit (commercial surrogate maternity). Otherwise, a desire of a husband to have a child, the involvement of a wife in raising a child, even

assignment on a woman of any one function of housekeeping should be considered as an exploitation of a woman. At the same time, a desire of a wife to have a child, the involvement of a husband in raising a child, the necessity of a husband to work to receive a salary to maintain a family, and the assignment of a man of any function of housekeeping should be considered as an exploitation of a man, etc. Undoubtedly, these will lead the family to the abyss of a legal and bureaucratically absurdity: one party will make a lawsuit over who should take out the trash today, and another one will make a countersuit over who should buy bread today and for whose money. The existence of a court of appeal, a court of cassation, and other judicial institutions will transform such kinds of litigations into the familial 'Hundred Years' War', where nobody will win because the family will die of hunger without the bread or will drown in an ocean of garbage. Also, in our opinion, not every case of surrogacy should be considered as "an act of exceptional humanism, kindness, and mercy, committed to helping childless couples or single people," because many surrogate mothers act from mercenary motives, and their moral and intellectual level, with all respect, is far from perfect. Besides, the question of whether surrogacy is a form of human trafficking and exploitation should be answered. It should be noted that surrogacy should not be considered human trafficking or exploitation unless it is carried out by the methods set out in the above-cited Protocol (The UN, 2004).

Therefore, surrogate maternity should be considered as a form of human trafficking or exploitation only if it is done 'using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (The UN, 2004). In other cases, surrogate maternity should not be considered a form of human trafficking or exploitation. Besides, it is necessary to say that non-commercial surrogate maternity is not a form of human trafficking, because in this case the provided service is not paid. Also, under ordinary conditions, commercial surrogate maternity is not a form of human trafficking, because the genetic parents pay only for the services (reimburse for expenses) of the

surrogate mother and the medical personnel, and a child, is created with the help of surrogacy, is their offspring. If some parents turn their child into a slave (as was permitted in Ancient Rome by the Law of the Twelve Tables of 451-450 BC, the type of creation of this child (natural birth or birth with the help of surrogacy) will not play an important role in the criminal prosecution of guilty persons and will not have an important influence on the imposed punishment. (Johnson, 1961) By the way, it is necessary to remember, that the condemnation of slavery is the achievement of the last century and a half, and that slavery was abolished only in 1833 in the British Empire, in 1848 - in France, in 1865 - in the USA, etc.

5 LEGISLATION OF SOME COUNTRIES WORLDWIDE ON SURROGATE MATERNITY

The legal status of surrogate maternity depends on the legislation of a certain country. Surrogacy is banned in many countries in Europe. Countries such as Canada, Australia, New Zealand, and the UK, highly restricted it. (Bromfield, 2014) In Canada, Israel, and the UK, commercial surrogacy is banned, but an altruistic surrogate may be reimbursed for reasonable expenses related to the pregnancy (Henaghan, 2013) In Germany, Italy, France, Japan, and China, surrogacy is banned outright (Henaghan, 2013) and no form of surrogacy is permitted. In the USA, several states have liberal surrogacy laws, but US citizens still enter into global surrogacy arrangements with women from other nations, because of the prohibitive expense of surrogacy services in the USA (Henaghan, 2013). Some of the authors had similar opinions on reasons for Western individuals to search for surrogate maternity abroad: 'increasingly, Western individuals or couples enter into surrogacy arrangements with women from lower-resource nations such as India or Thailand not only because surrogacy arrangements are less costly than elsewhere but also because the laws may be less restrictive than in their home countries, where commercial surrogacy may be either highly restricted or illegal' (Bromfield, 2014). It is necessary to say that the current legislation on surrogacy is not perfect, even in those countries where it is permitted.

6 LEGISLATION OF UKRAINE IN THIS AREA AND ITS ANALYSIS

Ukraine is a country where surrogacy is very often. In this case, it is necessary to analyze the Ukrainian legislation as an example. The legal aspects of surrogacy are regulated in Ukraine by such acts of legislation as the Ukrainian Constitution of 1996 is (Constitution of Ukraine, 1996). The Civil Code of Ukraine, Article 281. The Right to Life (Article 281 as amended by the Law of Ukraine of 02.11.2004 N 2135-IV) (The Civil Code of Ukraine, 2004). The Family Code of Ukraine No. 2947-III of January 10th, 2002, Article 123 "Establishing Maternal and Paternal Affiliation in Case of Medically Assisted Procreation and Ovum Implantation" (The Family Code of Ukraine, 2002). The Order of the Ministry of Health of Ukraine 'On approval of the Procedure for the Use of Assisted Reproductive Technologies in Ukraine', No. 787 of September 9th, 2013. (The Order of the Ministry of Health of Ukraine, 2013) The Order of the Ministry of Justice of Ukraine of October 18th, 2000, No. 52/5 'About approval of Rules of civil registration in Ukraine' (The Order of the Ministry of Justice of Ukraine, 2000).

In our opinion, it is necessary to say that some aspects of the above-mentioned acts are rather controversial and even may contradict the natural rights of humans and the human rights of the fourth generation. Part 7 of article 281 of the Civil Code of Ukraine declares the right of an adult woman or man the undertake medical treatment programs of supportive *reproductive technologies* according to the *medical indications* (The Civil Code of Ukraine, 2004). These provisions of the law contradict articles 21 and 24 of the Ukrainian Constitution of 1996, which declare the principle of equality, part 3 of article 51 of the Ukrainian Constitution of 1996 that says that "The family, childhood, motherhood, and fatherhood shall be under the protection of the State" (Constitution of Ukraine, 1996). Also, the cited-above part 7 of article 281 of the Civil Code of Ukraine contradicts parts 1-2 of article 5 of the Family Code of Ukraine of 2002, which say: "The State protects the family, childhood, motherhood, fatherhood, and creates conditions for the strengthening of the family. The state creates conditions for motherhood and fatherhood, ensures protection of mother and father rights, and financially and morally

encourages and supports motherhood and fatherhood" (The Family Code of Ukraine, 2002) because it limits the usage of surrogacy only in the cases of *medical indications* and *medical treatment programs*. In such a way it deprives the procreation rights of healthy but lonely and unconnected people. The provisions of part 1 of article 49 of the Family Code of Ukraine are even more imperfect. They say, "The wife has the right to motherhood" (The Family Code of Ukraine, 2002). The provisions of part 1 of article 50 of the Family Code of Ukraine say that "The husband has the right to fatherhood" (The Family Code of Ukraine, 2002), because they put the right to fatherhood and motherhood independently of the family status, deprive the procreation rights of lonely unconnected people, and push them to the extramarital relationship, which was considered immoral until the mid-20th century. The licensure of the medical practice, connected with assisted reproductive technologies (sub-section 1.4), is one of the good provisions of the Order of the Ministry of Health of Ukraine 'On approval of the Procedure for the Use of Assisted Reproductive Technologies in Ukraine' No.787 of September 9th, 2013 (The Order of the Ministry of Health of Ukraine, 2013). At the same time, sub-sections 1.7, and 6.1 of this Order say that *medical indications* are the necessary conditions for the usage of surrogacy (The Order of the Ministry of Health of Ukraine, 2013). Therefore, we see that the current legislation of Ukraine deprives the procreation rights of healthy but lonely unconnected people by the demand for the existence of *medical indications*, and we think that this is an unjust and harmful practice. Paragraph 11 of chapter 1 of the title III of the Rules for State Registration of Civil Status Acts in Ukraine as approved by the Order of the Ministry of Justice of Ukraine No. 52/5 of October 18th, 2000, defines the procedure of the state registration of the child, born by the surrogate mother. It prescribes that the state registration of the child's birth is made by the application of the spouse whose child embryo was moved into the organism of the surrogate mother.

According to the document, which proves the fact that a child was born by this woman, her notarized consent that the spouses will be written as a parent of a child, and the certificate which proves the genetic relation of parents (mother or father) to the fetus should be added (The Order of the

Ministry of Justice of Ukraine, 2000). It is necessary to add that a child, born with the help of the supporting reproductive technologies, should have the same rights as children, born naturally. Of course, such a child should have a family connection with the genetic parents (father, mother), but not with the surrogate mother, because else wise the usage of the supporting reproductive technologies (surrogacy) will lose any sense, and the base for the abuses of the surrogate mother will be created. At the same time, the surrogate mother should have the right to adopt the child in the case of the death or abdication from a child of one or both genetic parents and in other similar cases. In our opinion, such aspects of surrogacy should have additional legal regulation. Taking into consideration the dire demographic situation in Ukraine and the impossibility to control the fate of Ukrainian children abroad, the law should prescribe that only the citizens of Ukraine have a right to use supportive reproductive technologies on the territory of Ukraine. The law should prescribe those supportive reproductive technologies (services of surrogate maternity) that may be used not only by infertile married couples but also by single people, who have no reproductive health disorder. To avoid fraud and falseness in surrogacy, the law should prescribe that the contract of surrogacy should be notarized, that genetic parents should contribute the whole amount of money for the surrogacy into the notarial deposit, and this money should be transferred to the surrogate mother and/or the medical institution only after the state registration of the child's birth by the genetic parents and the confirmation of their genetic relation to the child by the sure remedies of the modern medical science. The law should prescribe that medical, social, and other specialized services should control not only the health status of genetic parents (father, mother) and the surrogate mother, but also their morale, intellectual, and social status, as well as the real aim of the supporting reproductive technologies usage. Article No.168 of the Criminal Code of Ukraine of 2001 (The Criminal Code of Ukraine, 2001). 'Disclosure of the secrecy of adoption' - should be supplemented with the words "*and of the usage of the supportive reproductive technologies (surrogate maternity)*" to secure from different offenses the family, childhood, motherhood, and fatherhood by the

means of the Criminal Law. Probably, these recommendations may be relevant not only for Ukraine but also for other countries.

7 THE RESULTS OF THE SEMI-STRUCTURED INTERVIEWS AMONG UKRAINIANS ON THEIR ATTITUDES TO THE DEVELOPMENT OF COMMERCIAL SURROGACY IN UKRAINE

To explore the attitudes of Ukrainians toward the development of commercial surrogate motherhood in Ukraine, semi-structured interviews have been conducted with Ukrainians, who currently live in Poland, the USA, the Czech Republic, and Ukraine. Ukrainians participated in the interviews through the Internet from March-May 2020. The results of most of the questions were analyzed as a percentage of responses of the participants, and 45 participants of the research were equated to 100%. Thus, 45 Ukrainians of different ages, levels of education, place of living, and employment participated in the interviews. The names and surnames of the participants were coded in the paper. They have received the codes from P_1 to P_45. The interviews were based on a questionnaire, which consisted of 10 questions.

Question 1 was about the age of Ukrainians, who participated in the semi-structured interviews. According to the replies of the participants:

- 34% of them were young people between 21 and 25 years.
- 9.4% were between 26 and 30 years old, and
- 9.4% were between 31 and 35 years old.
- 12.5% of participants were between 36 and 40 years old.
- 6.3% between 41 and 45 years old, and
- 28.4% of participants were 46 years old and older.

Question 2 was about the educational level of the participants. As a result, educated and very well-educated persons participated in the research. According to their answers:

- 18.8% of them had a Ph.D. degree;
- 43.8% had a university degree, and
- 37.4% had a college degree.

Question 3 was about the employment of the participants. Concerning the answers of the participants about their employment:

- 58.3% of the participants worked now on conducting the interviews.
- 21.9% were temporarily unemployed.
- 6.2% of them were labor migrants.
- 6.3% of them were retired persons, and
- 7.3% were students.

Question 4 was about the parenting of the participants: *'Do you have children?'* 56.3% of the participants had children. The minority, 18.7% of the participants, did not have children, and 25% of the participants did not have children yet.

Questions 5-10 were about the attitudes of the participants to the development of commercial surrogacy in Ukraine, its legal regulation, management practice, and prospects of development.

Question 5: *'How do you feel about the flourishing of commercial surrogacy in Ukraine in the last few years?'*

- 34.4% of the participants had a positive attitude toward the development of commercial surrogacy in the country.
- 25% of the respondents had a negative attitude.
- 12.5% did not care.
- For 21.9% of the participants, this subject was not interesting in general.
- 3.1% of them answered that their attitude to altruistic surrogacy is positive, but commercial surrogacy aims to sell children, and it is not good.
- 3.1% of the participants were sure that commercial surrogacy is a consequence of the impoverishment of the country.

Question 6: *'Do not you think that Ukrainian women are used as raw materials for carrying and giving birth to children for foreigners, at a time when Ukraine itself is experiencing a deep demographic crisis and even a collapse?'* In this case:

- 43.8% of the participants positively answered this question; they agreed that Ukrainian women were used as raw materials.
- 34.4% of the respondents disagreed with this idea, and

- 21.8% of the participants did not care about the situation in general.

Question 7: *'In your opinion, is this issue enough regulated at the legislative level in the country? As known, Ukraine has one of the most liberal laws on this subject.'* According to 50% of the participants, this issue in Ukraine is unresolved at all. 44% of the participants were unsure if they knew enough about national legislation on commercial surrogacy in Ukraine to make conclusions. 6% of the participants answered that Ukraine suffers from spiritual impoverishment, and it is a reason for the most liberal laws on this matter.

Question 8: *'In connection with the pandemic and quarantine, the issue of commercial surrogacy has become widely covered by the media in Ukraine. In your opinion, is the birth and removal of children from Ukraine one of the forms of human trafficking?'* According to their answers, 37.5% of participants agreed that commercial surrogacy is one of the forms of human trafficking. 40.1% of the participants did not support that opinion. 18.9% of the participants were unsure about their position on this question. 3.5% of the participants answered that such a situation exists because of the bad life in Ukraine.

Question 9: *'What measures would you take regarding commercial surrogacy in Ukraine if you could influence and manage the situation?'* According to the responses of the participants, 22% of them would like to ban commercial surrogacy in Ukraine in general. At the same time, 19% of the respondents would like to ban commercial surrogacy in Ukraine for foreigners. Besides, 47% of the participants would like to improve the national legislation on this issue according to international standards of law, and 12% of the participants proposed perfecting moral, ethical, and spiritual principles in Ukrainian society, which should reduce the popularization of commercial surrogacy in Ukraine among women.

Question 10: *'Commercial surrogacy is banned in most civilized countries. Why is commercial surrogacy allowed and thriving in Ukraine?'* The participants had different opinions on this question. Some of the opinions of the participants are below:

- Participant P_1: "Because the law does not work in Ukraine".
- Participant P_3: "Because Ukraine is a third world country. Everything is possible here".
- Participant P_4: "Because of total poverty of population".
- Participant P_5: "Because people think about money. Awareness of some wrong steps will come later".
- Participant P_7: "Because of weak positions of the state of Ukraine, and the legal framework inside of the country".
- Participant P_10: "Because not every woman can give birth to a child for medical reasons."
- Participant P_11: "Because of the unemployment and low wages inside of the country".
- Participant P_14: "Because people don't have money to live".
- Participant P_15: "Because the country is so far from civilization".
- Participant P_17: "Because the law in Ukraine does not work".
- Participant P_19: "Because people in the country are poor and because of that they participate in a program of commercial surrogacy for money".
- Participant P_23: "The reasons are low living standards of Ukrainians and economic insecurity in the country".
- Participant P_25: "Because Ukrainians are poor people".
- Participant P_26: "Because of money".
- Participant P_28: "All the questions must be addressed to the Ukrainian Government".
- Participant P_26: "Because Ukrainian women are healthy women".
- Participant P_29: "Because, unfortunately, in recent time, Ukraine can no longer be called a civilized country because in the country everything is bought and sold".
- Participant P_32: "Because of poverty in the country".
- Participant P_35: "Because it is profitable for someone".
- Participant P_36: "Because Ukraine is one of the cheapest countries for commercial surrogacy in the world".
- Participant P_38: "Because it is the individual choice of each person, it is also an opportunity to make money".

- Participant P_40: "Because the Ukrainian Government does not care about Ukrainian women and future generations of Ukrainians. I am also convinced that the Government benefits from such an activity".
- Participant P_43: "Because of poverty in the state of Ukraine. Commercial surrogacy is a kind of activity to earn money".
- Participant P_45: "It seems to me that most families do not have enough money for living. According to that, women take such steps to make money in this way".

8 SOCIO-ECONOMIC REASONS FOR DEVELOPING COMMERCIAL SURROGACY MATERNITY IN UKRAINE

To understand the motives and reasons for Ukrainian women to be surrogacy mothers, it is necessary to analyze some national and international data, as well as to consider the fact that most Ukrainian women live in a poor and violent environment. Ukraine is a poor country compared with some countries, where Ukrainians traditionally try to find a better life. Among these countries are Poland, Germany, the Czech Republic, Turkey, Canada, and the USA. In case when a monthly minimum wage in Ukraine on 1 January 2020 consisted of 158 EUR, and on 1 July 2020 consisted of 175 EUR according to the data of the Ministry of Social Policy of Ukraine (Ministry of Social Policy of Ukraine, 2020), the monthly minimum wages of the countries - recipients of Ukrainians were several times higher. According to the data from Trading Economics, the minimum monthly wage in Poland in January 2020 was 523.09 EUR, and it was over three times higher than the Ukrainian minimum monthly wage in January 2020. The minimum monthly wage in Turkey in January 2020 made up TRY 2943 or 384.21 EUR. This minimum monthly wage in Turkey was over two times higher than the Ukrainian wage in January 2020 (Trading Economics, 2020). For the last ten years, Ukrainian women were forced to find employment abroad due to poverty, unemployment, low wages, and lack of social security in their country-of-origin, Ukraine. As a rule, they earned abroad around 600-800 EUR per month.

Therefore, it is not surprising that some Ukrainian women have chosen commercial surrogacy in their country of origin for a financial reward of 16-21 thousand EUR for the birth of a child according to the data of one of the clinics in the capital of Ukraine (BioTexComClinic, 2020). If this sum is divided by 9 months of pregnancy, a woman earns around 1.8-2.3 thousand EUR per month of pregnancy. For a poor country, it is a good financial reward in comparison with a monthly minimum wage in the country - around 158-175 EUR per month. It is the main reason, why commercial surrogacy maternity develops very actively in Ukraine.

Besides, one of the important reasons for developing commercial surrogacy maternity in the country is domestic violence in Ukrainian families. Sometimes Ukrainian women, who suffer from domestic violence at home, cannot leave their violent husbands because they just do not have money for survival, especially with child/children. This stratum of Ukrainian women may very easily become surrogacy mothers, just for survival. Thus, the search for the financial independence of Ukrainian women is one of the most important, but not the last reason why they become surrogacy mothers.

9 MANAGEMENT PRACTICE OF SURROGACY MATERNITY IN UKRAINE AND ITS PROSPECTS FOR DEVELOPMENT

Surrogacy is developing very actively in Ukraine due to cheapness, affordability, liberal legislation, poorly functioning moral and ethical norms in the society, poverty, unemployment, the presence of high levels of violence in Ukrainian families, and so on. All these factors, taken together, provide a favorable basis for the development of surrogacy in Ukraine. This is not a favorable factor but a very worrying one. Thus, Ukraine is not approaching, but moving away from civilized societies. Thus, Ukrainian legislation must be brought into line with international law for the development of surrogacy to become part of the international community, where human rights, women's rights, and the rights of the child are a priority.

10 CONCLUSIONS

Based on theoretical and practical sources, the paper explored the crucial aspects, reasons, managing practices, and the prospect of surrogate maternity in Ukraine and the world. Among the aspects, there were historical roots of surrogacy, the examination of surrogacy maternity as a legal fiction, a right of the fourth generation, exploitation, human trafficking, etc. Besides, the paper dealt with the legislation of Ukraine and some countries worldwide on surrogate motherhood, opinions and attitudes of Ukrainians on developing commercial surrogacy in Ukraine, reasons for the development of commercial surrogacy maternity in Ukraine, as well as a management practice of surrogacy maternity in Ukraine and its prospects of development. In general, we came to the following conclusions: Different forms of surrogate maternity have a long history and are known since the period of Antiquity. From the theory of law, surrogacy should be considered close to legal fiction. Surrogate maternity should not be considered the form of human trafficking, exploitation of women, as well as 'an act of exceptional humanism and mercy.' Supportive reproductive technologies (surrogate maternity) are one of the human rights of the fourth generation. The prohibition exists only if it is supported by punishment. Therefore, countries that do not recognize surrogate maternity may adopt laws, which establish the legal liability for such types of activities. However, they must remember that groundless prohibitions provoke the appearance of the black market and violations of the law. Therefore, authorities should be very cautious and judgmatical in the context of permission or prohibition of surrogacy. Surrogate maternity should be permitted, but it should be controlled by the state and used, first, in the interests of its nation, but not the foreigners. The usage of surrogate maternity only by the 'medical indications' is an unjust limitation of single people's rights, and they should receive the right to fatherhood and motherhood with the help of supportive reproductive technologies. The disclose of the usage of supportive reproductive technologies (surrogate maternity) should be punished by the Criminal Law in the same way as the disclosure of the secrecy of adoption.

WORKS CITED

- BioTexComClinic. (2020). Cash payments to a surrogate mother [online] <https://cutt.ly/Ku40sTl>
- Black, H.C. (1968). *Black's Law Dictionary. Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern. Revised 4th edition.* St. Paul: Minnesota: West Publishing Co, p. 751.
- Bromfield, N.F., & Rotabi, K.S. (2014). *Global Surrogacy, Exploitation, Human Rights, and International Private Law: A Pragmatic Stance and Policy Recommendations.* Global Social Welfare, Vol. 1, pp. 123-135.
- Constitution of Ukraine. (28 June 1996). ILO [online] <https://cutt.ly/piE7BCb>
- Henaghan, M. (2013). International surrogacy trends: How family law is coping. *Australian Journal of Adoption*, Vol. 7, No. 3.
- Hostiuc, S. (2018). *Clinical Ethics at the Crossroads of the Genetic and Reproductive Technologies.* London, United Kingdom; San Diego, CA, United States: Academic Press, an imprint of Elsevier: Academic Press, 416 p.
- Ivanii, O.M., Kuchuk, A.M., & Orlova, O.O. (2019). *Biotechnology as Factor for the Fourth Generation of Human Rights Formation.* International Journal of Advanced Biotechnology and Research. Special Issue-1. pp. 491-497.
- Jadva, V., Murray, C., Lycett, E., MacCallum, F., & Golombok, S. (2003). Surrogacy: the experiences of surrogate mothers. *Human Reproduction*, Vol. 18, No. 10, pp. 2196-2204.
- Johnson, A.C., Coleman-Norton, P.R., & Card Bourne, F. (1961). *Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary, and Index.* University of Texas Press, 290 p.
- Ministry of Social Policy of Ukraine. (2020). Social Indicators [online] <https://cutt.ly/ju42fuN>
- Patel, N.H., Jadeja, Y.D., Bhadarka, H.K., Patel, M.N., Patel, N.H., & Sodagar, N.R. (2018). Insight into Different Aspects of Surrogacy Practices. *J Hum Reprod Sci.* Vol. 11, No. 3, pp. 212-218.
- Payne, J.G., Korolczuk, E., & Mezinska, S. (2020). Surrogacy relationships: a critical interpretative review. *Uppsala Journal of Medical Sciences*, Vol. 125, No. 2, pp. 183-191.
- Plutarchus, Nachstädt, W., Sieveking, W., & Titchener, J. (2011). *Plutarchi Moralia.* Vol. 2. Leipzig: B.G. Teubner.
- Saxena, P., Mishra, A., & Malik, S. (2012). Surrogacy: Ethical and Legal Issues. *Indian J Community Med.* Vol. 37, No. 4, pp. 211-213.
- Tehran, H.A., Tashi, S., Mehran, N., Eskandari, N., & Tehrani T.D. (2014). Emotional experiences in surrogate mothers: A qualitative study. *Iran J Reprod Med.* Vol. 12, No. 7, pp. 471-480.
- Teman, E. (2008). The social construction of surrogacy research: An anthropological critique of the psychosocial scholarship on surrogate motherhood. *Social Science & Medicine.* Vol. 67, No. 7, pp. 1104-1112.
- The Bible. (2005). *The New Cambridge Paragraph Bible, with the Apocrypha, King James Version*, ed. by David Norton. Cambridge, Eng.: Cambridge University Press.
- The UN. (2004). *The United Nations Convention against Transnational Organized Crime and the Protocols thereto*, adopted by General Assembly resolution 55/25 of 15 November 2000. United Nations, New York, 2004. Printed in Austria: Vienna International Centre, 84 p.
- The Civil Code of Ukraine. (2004). Article 281. The Right to Life of 02.11. 2004, No 2135-IV.

The Family Code of Ukraine. (2002). Article 123. Establishing Maternal and Paternal Affiliation in Case of Medically Assisted Procreation and Ovum Implantation. № 2947-III.

The Order of the Ministry of Health of Ukraine. (2013). On approval of the Procedure for the Use of Assisted Reproductive Technologies in Ukraine, No. 787 of 09 September 2013.

The Order of the Ministry of Justice of Ukraine. (2000). About approval of Rules of civil registration in Ukraine, No. 52/5 of October 18, 2000.

The Criminal Code of Ukraine. (5 April 2001). No. 2341-III. ILO [online] <https://cutt.ly/4iE5yr7>

Torres, G., Shapiro, A., & Mackey, T.K. (2019). A review of surrogate motherhood regulation in south American countries: pointing to a need for an international legal framework. *BMC Pregnancy Childbirth*, Vol. 19, No. 46.

Trading Economics. (2020). Gross Minimum Monthly Wage [online] <https://cutt.ly/luLZ2JW>

Received for publication: 18.02.2022

Revision received: 04.05.2022

Accepted for publication: 26.06.2022

How to cite this article?

Style – APA Sixth Edition:

Dzholos, S. V., & Koshulko, O. (2022, 07 15). Surrogate motherhood in Ukraine and around the world: Legal regulation & management practice. (Z. Cekerevac, Ed.) *MEST Journal*, 10(2), 46-56. doi:10.12709/mest.10.10.02.05

Style – Chicago Sixteenth Edition:

Dzholos, Sergii V., and Oksana Koshulko. "Surrogate motherhood in Ukraine and around the world: Legal regulation & management practice." Edited by Zoran Cekerevac. *MEST Journal* (MESTE) 10, no. 2 (07 2022): 46-56.

Style – GOST Name Sort:

Dzholos Sergii V. and Koshulko Oksana Surrogate motherhood in Ukraine and around the world: Legal regulation & management practice [Journal] // *MEST Journal* / ed. Cekerevac Zoran. - Belgrade – Toronto : MESTE, 07 15, 2022. - 2 : Vol. 10. - pp. 46-56.

Style – Harvard Anglia:

Dzholos, S. V. & Koshulko, O., 2022. Surrogate motherhood in Ukraine and around the world: Legal regulation & management practice. *MEST Journal*, 15 07, 10(2), pp. 46-56.

Style – ISO 690 Numerical Reference:

Surrogate motherhood in Ukraine and around the world: Legal regulation & management practice.
Dzholos, Sergii V. and Koshulko, Oksana. [ed.] Zoran Cekerevac. 2, Belgrade – Toronto : MESTE, 07 15, 2022, *MEST Journal*, Vol. 10, pp. 46-56.