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Legal regulation of surrogacy: International experience, status and prospects for development in Ukraine

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Abstract. The use of assisted reproductive technologies in Ukraine is insufficiently regulated at the legislative level, which necessitates a study of one of the types of assisted reproductive technologies – surrogacy – and the legal basis for the use of this phenomenon in Ukraine. The purpose of this study was to clarify the status and identify the shortcomings of legal regulation of surrogacy under the national legislation of Ukraine, and to investigate the world practices of its development. To fulfil the stated purpose, the study employed general scientific and special methods of scientific cognition, specifically, the formal legal method, the comparative legal method, and the method of functional forecasting. The study focused on the specific features of consolidating the institution of surrogacy in European legislation. The study found no unified international regulation of surrogacy relations, which leads to the existence of different approaches to their regulation in legislation. The study analysed the current state of national legislation on the use of assisted reproductive technologies through surrogacy and highlighted the existing gaps and shortcomings that need to be addressed. It was found that Ukraine lacks comprehensive legal regulation of surrogacy relations, which leads to contradictory opinions on the problem of using this type of assisted reproductive technologies. Based on the study conducted, conclusions were drawn on the need to amend the legislation of Ukraine regarding the use of surrogacy as a type of assisted reproductive technology. An analysis of the regulations of Ukraine suggests the need for a unified legal regulation of the surrogacy process. This analysis of the regulatory framework is of practical significance for further legislative regulation of legal relations in surrogacy matters

Keywords: legal framework for surrogacy; assisted technologies; Ukrainian and international legislation; fourth generation of human rights; human rights protection

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Introduction

Technologies that are being introduced in various areas of human activity, including medicine, law, and other related fields, are prompting a rethinking of the understanding of the human right to reproduction. This right is a part of the fourth generation of human rights and is an element of a set of opportunities for a person to exercise their personal and conscientious choice to reproduce and to exercise this right. To enjoy one of the natural human rights – the right to one's physical condition, body, and health (Convention for the Protection of Human Rights and Dignity..., 1997) – any person can make an informed independent decision regarding their health, including reproductive health, and decide on childbearing, including the use of assisted reproductive technologies.

Issues related to the legal nature, system, and content of reproductive human rights, as well as the specific features of their implementation through the lens of surrogacy programmes as a type of assisted reproductive technology, are becoming the subject of special attention of researchers in the fields of law, medicine, psychology, and ethics. Thus, Yu. Turyansky (2020) examined surrogacy as a somatic right of an individual to use and dispose of their body at their discretion. Therefore, surrogacy is considered as a specific activity carried out by a "gestational" courier. According to the researcher, altruistic and commercial types of surrogacy procedures provide an underestimated opportunity to become parents thanks to modern reproductive technologies, which requires a clear regulation of the legal relations by the state.

B. Ostrovska (2022) investigated the commercial surrogacy as an element or part of ART (assisted reproductive technologies) services in Ukraine. The researcher focused on the significance of the problem of protection and restoration of human and reproductive health, specifically on the protection of the rights and interests of children born under the surrogacy programme, as well as Ukrainian surrogate mothers, which is of particular importance in the context of martial law, and therefore necessitates a review of approaches to solving the problematic issues that exist in the issue of surrogacy at the state level.

O.M. Ponomarenko *et al.* (2020) and E.R. Kostyk (2023) addressed the problems of legal regulation of the institution of surrogacy in private international law. The latter researcher, based on the study of legislative and doctrinal sources, Ukrainian and international judicial practice, including the ECHR judgements, investigated the genesis of legal regulation of the institution of surrogacy in international private law, the specific features of the subjective composition of the institution of surrogacy, and the forms of implementation of reproductive rights in the field of surrogacy in international private law.

R. Maidanik (2020) provided a general description of the phenomenon from the perspective of a foreigner. The researcher analysed the features of substantive and conflict-of-laws regulation of surrogacy relations and considered conflicts in establishing and challenging paternity of a child born through the studied type of ART. The researcher suggests implementing positive foreign practices in the field of surrogacy into Ukrainian legislation.

N. Patel *et al.* (2018) performed a comprehensive analysis of surrogacy in terms of medical, legal, and social aspects. The researchers delved into topics such as medical advances, legal regulation, psychological impact on surrogates and intended parents, public perception and cultural impact, providing a holistic view of surrogacy. By providing a nuanced understanding of this complex reproductive phenomenon and its implications for the various stakeholders involved, the study added valuable insights to the existing discourse through the Indian experience.

R. Deonandan (2020) studied the ethical aspects of gestational surrogacy from different perspectives through the lens of classical ethics of religion, adoption standard, and Western liberalism with an emphasis on understanding heredity. V. Piersanti *et al.* (2021) analysed the ethical and legal complications associated with surrogacy and "procreative tourism", the problems of commercialisation of reproductive services, exploitation of surrogates, respect for the rights and welfare of the child, and the complexities of cross-border reproductive care, including the potential for exploitation or legal uncertainty in surrogacy arrangements. P. Brandão & N. Garrido (2022) and N. Hodson *et al.* (2019) analysed the risks of international commercial surrogacy arrangements, especially in the context of the debate around organ sales and the possible harm to potential surrogates, both individually and collectively, specifically considering the gendered nature of such arrangements.

Despite the substantial developments in the field, the lack of proper legal regulation of the relations arising from the use of surrogacy as a separate type of ART calls for further scientific investigation. Such studies will help to identify the main problematic aspects in the surrogacy process and seek to eliminate them at the legislative level, i.e., improve modern Ukrainian legislation, considering foreign practices in surrogacy.

The purpose of this study was to identify certain shortcomings and specific features of legal regulation of surrogacy in Ukrainian legislation, and to outline the prospects for its development, considering positive international practices.

Materials and methods

The study employed general scientific and special methods of scientific cognition in their combination. Using the method of formal legal analysis, the study examined the regulations of Ukraine aimed at governing relations in the field of surrogacy as a type of ART and studied the doctrinal sources in this area. The comparative legal method helped to make a comparative characterisation of Ukrainian legislation and the legislation of European countries (which allow or prohibit surrogacy) regarding the regulation of the institution of surrogacy. This study applied the method of problem analysis, specifically, in the part which identified the problematic aspects caused by the use of ART, as well as the method of alternatives, which revealed distinct positions of different researchers, and offered original recommendations and classifications, namely, the groups of states formed by the method of statutory regulation of surrogacy, as well as surrogacy in Ukraine. The method of synthesis and systematisation was used to formulate the conclusions and generalisations.

The regulatory framework of the study included international documents, as well as individual laws and regulations of Ukraine and the European Union. The Law of Belgium "On Medical Assisted Reproduction and the Assignment of Surplus Embryos and Gametes" (2007) regulates the use of medical reproductive technologies in Belgium, which is the basis for considering the legal aspects of surrogacy. It

served as a comparative basis for analysing Ukrainian legislation and helped to assess legal norms in other countries. Council of Europe reports have become a valuable source for investigating international trends in reproductive rights, including surrogacy. They helped to study the positions of different states on the rights of surrogate mothers and biological parents, which is essential for generalising international practices and prospects for the development of this institution in Ukraine (Resolution of the European..., 2015; De Sutter, 2016; Council of Europe Portal..., 2024). The analysis of the draft laws played a significant role in the study. This played an important role in the investigation of the legal regulation of surrogacy in Ukraine and helped to demonstrate the development of legislative initiatives aimed at streamlining the use of assisted reproductive technologies and regulating surrogacy. The analysis of the Draft Law of Ukraine No. 6475 "On Assisted Reproductive Technologies" (2021) helped to investigate the initial proposals of the legislators, which concerned not only surrogacy, but also the broader issue of the use of assisted reproductive technologies, including the regulation of the rights and obligations of biological parents and medical institutions. The study of subsequent draft laws, including Draft Law of Ukraine No. 6475-d "On the Use of Assisted Reproductive Technologies and Substitute Motherhood" (2023), helped to reflect the current changes and proposals for the regulation of ART and surrogacy. These documents became essential for determining the prospects for the development of the institution in the future.

The international documents and national laws used in this study are to some extent the primary information on the use of ART, including the use of surrogacy. Based on international regulations, it is possible to overcome the gaps in Ukrainian legislation, which will allow the latter's adaptation to the needs of modern society and, specifically, families wishing to become full-fledged parents.

Results and discussion

International practices in regulating surrogacy. The issue of legal regulation of surrogacy by sources of international law is extremely controversial and problematic. As of 2024, there is no unified international regulation of surrogacy. Most countries in the world are trying to regulate the process of ensuring the right to maternity/paternity for married couples within their national legal acts. Therewith, a series of countries deny the possibility of surrogacy in general. Specifically, surrogacy is not recognised in Pakistan, while in the United Arab Emirates (UAE), France, Austria, Norway, Italy, Germany, and Switzerland it is prohibited and considered illegal, and in Sweden the ban is formalised legislatively (Swedish Parenting Code, 1949). Another group of countries (Belgium, the Netherlands, the United Kingdom, the Czech Republic, and Greece) allow altruistic surrogacy, while imposing certain legal restrictions. In Belgium, surrogacy is governed by special legislation, which is primarily regulated by the current Civil Code of Belgium (2019) and various regulations on reproductive technologies, such as the Law of Belgium "On Medical Assisted Reproduction and the Assignment of Surplus Embryos and Gametes" (2007). In the UK, the Surrogacy Arrangements Act (1985), as amended, and case law are in force. This law is part of a broader legal framework governing surrogacy in the United Kingdom, which includes provisions from other laws, including the Human Fertilisation and Embryology Act (2008), which contains more detailed rules on surrogacy, including parental orders to establish legal paternity. The principal law governing non-commercial surrogacy in the Netherlands is the Netherlands Embryos Act (2002) and related regulations. And only a small number of countries, including Ukraine, Georgia, and some US states, manage to balance the provision and receipt of surrogacy services (both altruistic and commercial) using their legislative acts. That is why this latter group of states is extremely attractive to couples who are unsuccessfully trying to become parents, giving rise to the concept of cross-border surrogacy.

As there are differences in national regulations governing surrogacy, there is a need for international cooperation and harmonisation of laws relating to assisted reproductive technologies. A common international convention or a legally binding agreement between different countries on the recognition of a child's legal paternity and granting them citizenship would ensure that the rights of the child, the rights of their biological parents and the surrogate mother are respected and reduce the risks of abuse in this area. There is a positive practice of a series of declarations and memoranda, which, while not being legally binding treaties, influence the conclusion of international agreements. Specifically, the Universal Declaration of Human Rights (1948), adopted by the United Nations General Assembly, is considered a fundamental document in the field of human rights protection and has influenced subsequent international treaties and conventions on human rights protection.

Notably, the issue of surrogacy is often addressed in the reports of the Council of Europe (Resolution of the European Parliament..., 2015; De Sutter, 2016; Parliamentary discussion on Reproductive Health Rights. 2024). However, according to E.R. Kostyk (2023), the problematic aspects of this phenomenon are local in nature and do not have a single, unified vision. Thus, the situation with the legal regulation of surrogacy relations in Europe is an example of regulatory diversity between relatively close states, despite some attempts to resolve these issues.

Differences in the regulation of law and order in different countries have led to the emergence of such a phenomenon as "reproductive tourism". These are citizens who, not having the jurisdictional capacity to exercise their right to reproduction in their country, travel to other countries where surrogacy is permitted to exercise their right to use assisted reproductive technologies. According to E.R. Kostyk (2023), this will lead to problems with the agreement between the future parents and the surrogate mother, as well as with the child born as a result of the exercise of such a right to reproduction under contractual relations.

In modern world, there is no generally accepted legal framework that would regulate this practice at the global level, leaving this area largely unregulated. The absence of legislative regulation of surrogacy in many countries raises many problematic issues. G. Torres *et al.* (2019), identifying the challenges faced by surrogacy in South America, focus on the different approaches to regulating surrogacy in the region and highlight the difficulties arising from the lack of standardised guidelines. The researchers identify three groups of countries in the region: one uses guidelines on the substantiation and legality of commercial surrogacy

(Brazil, Uruguay), the second has special legislation in this area (Argentina, Colombia), and the third has no special legal mechanisms and regulations (Chile, Ecuador, Paraguay). By examining policies and practices in different South American countries, identifying inconsistencies and gaps in the regulation of surrogacy, these researchers emphasise that legal uncertainty leads to ethical dilemmas and potential exploitation of surrogate mothers and intended parents. The researchers' call for an international legal framework reflects their recognition of the interconnectedness of surrogacy in different countries. Such a framework, according to G. Torres *et al.* (2019), could establish uniform standards, promote ethical practice, and protect the rights and welfare of all parties involved in surrogacy.

Another issue is access to and equality in surrogacy for LGBT (lesbian, gay, bisexual, transgender) individuals and couples, who often face major difficulties in accessing surrogacy services compared to heterosexual couples. These challenges include legal barriers, social stigma, and financial inequality, which can hinder their ability to use surrogacy as a means of starting a family. The problem covers issues related to legal recognition, discrimination, and equal access to surrogacy resources. Having analysed various social, legal, and cultural changes in recent decades, it can be argued that the modern world is becoming increasingly tolerant of same-sex couples. This manifests itself in various areas of human life. There has been legal progress, changes in public attitudes, educational initiatives, corporate, and institutional support. Surrogacy as a separate type of ART is no exception. However, even though in many countries where surrogacy is permitted and practised (Ukraine, Georgia, Thailand, India), same-sex couples are prohibited from using surrogacy services. This problem stays a hot topic for public debate and academic discussion.

The Georgian surrogacy legislation is mainly based on the Civil Code of Georgia (1997), which mandates restrictions for same-sex couples, especially those who are not Georgian citizens. They face legal restrictions and are effectively excluded from surrogacy services because of these restrictions. Thai surrogacy legislation is governed by the Law of Thailand "On the Protection of Children Born through Assisted Reproductive Technologies" (2015). According to this law, surrogacy is available only to heterosexual couples. The law explicitly prohibits surrogacy for same-sex couples and single individuals. The law requires that surrogacy agreements be concluded through licensed clinics and meet concrete regulatory requirements. The main piece of legislation governing surrogacy in India is the Surrogacy (Regulation) Act (2021), which stipulates that surrogacy services are available only to heterosexual married couples. The law does not allow same-sex couples, single persons, and unmarried couples to use surrogacy services.

P. Pérez Navarro (2020), analysing the personal experience of gay parents in Spain, argued that state regulation of reproductive practices, especially in the context of gestational surrogacy, is not neutral, but rather serves to maintain and protect the existing infrastructure of heterosexual kinship through various mechanisms, including elitism, institutional hostility, and outright criminalisation. The researcher concluded that such regulation can "cement" social norms that favour heterosexual families.

R. Henrion (2014) analysed the arguments for extending or lifting the ban on surrogacy for same-sex couples. The reasons given for this include the desire of same-sex couples to build a family from their gene pool; existing barriers to adoption; the desire for equality between heterosexual and same-gender couples; problems associated with cross-border surrogacy; and limited access to therapeutic alternatives. At the same time, the facts supporting the ban include medical and ethical arguments, such as physical and psychological risks for the surrogate mother, complex aspects of the exchange between mother and foetus during pregnancy and potential risks for the child, commercialisation, creation of a favourable environment for abuse, etc.

The use of surrogacy services by same-sex couples raises issues that go outside the scope of purely medical aspects and constitute a social problem, as evidenced by a series of scientific papers. For example, O. Carone *et al.* (2018) investigated surrogacy involving same-sex couples in Italy, considering their relationships with surrogates and biomaterial donors, parents' decisions to keep/not keep the birth of their children in secrecy, and the latter's opinions on their origins. The emotional, psychological, and relationship aspects of surrogacy were highlighted, potentially affecting the legal, ethical, and social aspects of assisted reproductive technologies involving homosexual parents.

G. Sydsjö *et al.* (2019) studied the experiences of heterosexual parents and same-sex couples in Sweden who used cross-border surrogacy services to have a child. Parents, regardless of their sexual orientation, reported minimal parenting stress and generally expressed positive or neutral feelings about their parenting experience during interactions with healthcare professionals, in preschools, and during their child's leisure time.

Legal regulation of surrogacy in Ukrainian legislation. Ukraine is one of the countries where the law mandates the possibility of using surrogacy services. Therewith, the current use of this type of ART in the medical field is ahead of the formation of a regulatory framework in this area, and therefore surrogacy is one of the most complex institutions bordering on family and civil law and requires additional legislative regulation. Otherwise, the use of the type of ART under study will pose a threat to the rights of the child born through the surrogacy programme and the surrogate mother.

The contradiction of opinions on the issue of surrogacy is primarily conditioned by the lack of proper comprehensive legislative regulation of relations arising from the use of the type of ART under study. Thus, only a few provisions aimed at regulating this legal phenomenon are contained in the Civil Code of Ukraine (2003) ("the CC of Ukraine"), Family Code of Ukraine (2002), Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" (1992), Order of the Ministry of Justice of Ukraine No. 52/5 "On Approval of the Rules for State Registration of Civil Status Acts in Ukraine" (2000), Order of the Ministry of Health of Ukraine No. 787 "On Approval of the Procedure for the Use of Assisted Reproductive Technologies" (2013).

The Constitution of Ukraine (1996), covering the conceptual norms that serve as the basis for building relationships in all spheres of society without exception, states in Article 51 that the family, childhood, maternity, and paternity are protected by the state. This provision unequivocally prescribes the right of every individual to have a child both naturally and reproductively, which has become possible in the current conditions of medical technology development.

The current CC of Ukraine (2002) gives an opportunity for an adult woman or man to use medical services involving assisted reproductive technologies pursuant to the procedure and on the legislatively conditions established (Article 281, Part 7). The provisions of the family legislation of Ukraine are limited to indicating the origin of a child born under a surrogacy programme. Thus, in case of transfer of a human embryo conceived by a married couple (a woman and a man) using assisted reproductive technologies into the body of another woman, the spouses will be considered the child's parents – Article 123, Part 2 of the Family Code of Ukraine (2002).

At the request of the spouses, the state registration of the child's birth is performed. In this case, along with a document certifying the fact that the child was born to the woman into whose body the embryo was transferred, a certificate of genetic relationship between the parents (mother or father) and the foetus, as well as a statement of the woman's consent to the registration of the child as the spouses' child, must be submitted. The authenticity of the signature on such an application must be notarised (Item 11, Chapter 1, Section III of the Rules for State Registration of Civil Status Acts in Ukraine (Order of the Ministry of Justice of Ukraine No. 52/5, 2000). Notably, children born in Ukraine and, accordingly, their registration is not separately distinguished by state authorities into those born in the usual way and those born using ART.

By its nature, the only document dedicated to the regulation of relations in the field of ART, including the use of surrogacy programmes, is the Order of the Ministry of Health of Ukraine No. 787 (2013). Section 6 of the document, which is devoted to surrogacy, covers the processes and necessary conditions for the use of the type of ART under study. This refers to the liberal approach of the Ukrainian legislator and the sub-legislative level of legal regulation of assisted reproductive technologies (Pokalchuk, 2020), which leads to gaps in the regulation of the relations under study.

As of 2024, the contractual principles set out in the Civil Code of Ukraine will be used to regulate the surrogacy programme. The contractual framework for regulating surrogacy relations, despite the existence of model applications and agreements approved by the relevant regulations of the relevant ministry, requires substantial revision. According to W.K.A.S. Atia (2020), this is not surprising considering the multi-subjective nature of the surrogacy services relationship, its duration, the significance of the object of the relationship – the surrogate mother's health and the child's life, ensuring the surrogate mother's due actions, the need to properly regulate the professional liability of the medical institution and its staff, etc.

In Ukraine, there is no special law that would define the essential terms of the agreement between the surrogate mother and the child's parents, regulate in detail the rights and obligations of the parties to the surrogacy relationship, their liability for violations of the law in the field of surrogacy services, etc. Particular attention should be paid to the protection of the rights of a child born as a result of the use of the type of ART under study.

A series of draft laws have been prepared to define the legal framework for the use of assisted reproductive technologies and surrogacy. Thus, in 2021-2024, the Committee on National Health, Medical Care and Health Insurance considered three draft laws, namely: "On Assisted Reproductive Technologies" (Draft Law of Ukraine No. 6475, 2021), "On the Application of Assisted Reproductive Technologies" (Draft Law of Ukraine No. 6475-1, 2022), "On the Use of Assisted Reproductive Technologies and Substitute Motherhood" (Draft Law of Ukraine No. 6475-2, 2022), which became the basis for the development of a joint document – Draft Law of Ukraine No. 6475-d "On the Use of Assisted Reproductive Technologies and Substitute Motherhood" (2023). None of these draft laws has been adopted.

The main provisions of these draft laws were aimed at improving the terminology in the field of assisted reproductive technologies, including relations in the use of surrogacy programmes, both by improving the existing terms (assisted reproductive technologies, embryo reduction, *in vitro* fertilisation) and by interpreting new terminology (infertility, surrogacy, genetic parents, embryo, cryopreservation of reproductive cells, etc.). It was equally important to define the key principles of the use of assisted reproductive technologies, including surrogacy, and the conditions and procedure for the use of the type of ART under study. Particular attention is paid to the protection of the rights and legitimate interests of both Ukrainian citizens and foreigners involved in surrogacy relationships, etc.

The problem of surrogacy, like any morally controversial issue, has supporters and opponents. Some researchers consider commercial surrogacy as a way to satisfy the interests of the client by purchasing an expensive product – a child. Others fairly deny the widespread public position that equates surrogacy with human trafficking and believe that it is a service provision, not a contract of sale, as from the moment of conception until birth, the child stays the child of their genetic parents (Markovych & Krikalo, 2020).

This gives grounds for a clear distinction between the terms "surrogacy services" and "human trafficking". The latter would occur in the complete absence of genetic relationship between the child and the parents, and in the case of payment for the transfer of the child to the customers. In the case of commercial surrogacy, financial compensation for the services rendered is provided, as well as coverage of the surrogate mother's expenses stipulated in the contract (Kostyk, 2022). Clearly, these postulates served as the basis for the authors of draft laws No. 6475-2 (2022) and No. 6475-d (2023) when defining the term "substitute motherhood" through "services involving the use of assisted reproductive technologies, as a result of which an embryo obtained in the laboratory, which has a genetic link with both or one of the genetic parents, is transferred to the body of a substitute mother for further gestation and birth of a child". Considering the above, it was found that surrogate (substitute) motherhood services are characterised by a contractual civil law nature and are, in essence, a separate type of assisted reproductive technologies.

N.M. Kvit (2016) is correct in stating that most European laws aimed at regulating the surrogacy institution are mostly characterised by common features, such as the establishment of age limits for both the clients and the surrogate mother; limiting the circle of persons who can use surrogacy services to their citizens or persons permanently residing or staying in these countries. In the context of the latter of these features, Ukraine is one of the few countries that provides an opportunity to have a child using assisted reproductive technology programmes with the participation of foreign couples but does not regulate all aspects of them in detail. As a

result, it is not uncommon for children born to foreigners by a surrogate mother in Ukraine to be unrecognised abroad in countries where the use of relevant reproductive technologies is prohibited by law, and as a result, illegal methods of taking children out of Ukraine are used. One of the most resonant in Ukraine was the criminal scheme of trafficking children born under a surrogacy programme to countries where surrogacy is prohibited, uncovered by law enforcement in 2023 (They traded newborn children..., 2023).

Considering the above, it appears reasonable to propose that the legislation should mandate the possibility of spouses, one or both of whom are foreigners and/or stateless persons, to resort to surrogacy services in Ukraine only if the spouses have a common personal law, and if the spouses do not have a common personal law, the law determining the legal consequences of marriage does not prohibit the use of this type of ART as a method of solving the problem of infertility (Opinion on the Draft Law of Ukraine No. 6475-d, 2023). Failure to follow these requirements would be grounds for denial of the right to use surrogacy services, according to Article 22, Part 2 of the Draft Law of Ukraine No. 6475-d (2023).

Despite the positive trends in the regulation of surrogacy relations, these draft laws require critical reflection and revision, specifically in terms of their compliance with the provisions of Article 14 of the Convention for the Protection of Human Rights and Dignity in the Application of Biology and Medicine (1997). Particular attention should be paid to the principle of ensuring the best interests of a child born under a surrogacy programme. Furthermore, a series of issues require more detailed regulation and clarification. Thus, there is a need to regulate the contractual relationship between a medical institution and a surrogate mother and genetic parents; it is necessary to determine the scope and legal regime of information on the surrogacy procedure, including information on its individual stages, duration, possible risks, and alternative solutions; relations with human embryos require special legal regulation, including the absence of a proper legislative mechanism for controlling the importation into the customs territory of Ukraine or exportation of embryos and reproductive cells.

Considering the different methods used in the field of reproductive technologies, the study focused on one of them, namely surrogacy, which is the newest method that involves an unnatural (artificial) way of fertilisation. To have a genetically related child, a married couple who, for certain physiological and medical reasons, cannot naturally produce offspring, will only be able to exercise their right to procreation as part of the right to life in this way (i.e., using assisted reproductive technologies).

Undoubtedly, surrogacy as a type of assisted reproductive technology has its drawbacks and unregulated aspects. Such unresolved issues include gaps in legislation, as well as the fact that there are countries that allow its use at the legislative level, but there are also a series of countries that categorically prohibit it, while in other countries surrogacy is not mandated by the current legislation, which complicates international uniformity. As for Ukraine, as of 2024, there is no comprehensive legal regulation of surrogacy, and the issue of reproductive rights in general also requires considerable legislative regulation.

Proceeding from the data from the Report of the Public Health Centre of the Ministry of Health of Ukraine (2022), there are nine institutions of the Ministry of Health of Ukraine that provide medical services for ART, as well as 59 outpatient clinics with family planning and reproduction rooms. There are also private healthcare facilities that provide the same surrogacy services – there are 39 of them in Ukraine. According to the report, the provision of services can be distinguished, which are in one way or another related to surrogacy: embryo transfer using *in vitro* fertilisation (IVF) – 189; transfer of cryopreserved embryos – 12,963; embryo reduction – 26.

Therefore, the identification of the main problems, the search for ways to solve them, and the improvement of national legislation in the field of surrogacy, considering the practices of foreign countries, appears to be a major area for the development of legal science. International cooperation and harmonisation of laws on assisted reproductive technologies is essential. The creation of a universal convention or legally binding agreement between countries on the recognition of legal paternity of a child and the granting of citizenship would protect the rights of the child, their biological parents, and the surrogate mother, and reduce potential abuses in this area. Only proper regulation of relations in the field of surrogacy services will ensure that the right to surrogacy is perceived through the lens of ensuring and exercising the rights of the fourth generation.

Conclusions

The study found that Ukraine is one of the countries where the possibility of using the services of a surrogate mother is legalised. It was found that legal regulation of relations in this area is carried out mainly at the level of a sub-legislative regulation with simultaneous application of contractual principles established by the Civil Code of Ukraine, since in the absence of a special law, it is the contract which will be the main source of regulation of these legal relations. At the same time, there is still a need to adopt a legislative act that would outline the rights and obligations of participants in relations arising from the use of the type of ART under study, define the terms of their liability, and protect the rights of a child born under a surrogacy programme.

An attempt to address this issue was made by developing four draft laws on assisted reproductive technologies and surrogacy, none of which were approved. Despite the positive trends in the legal regulation of surrogacy relations within the framework of the studied draft laws, including towards distinguishing surrogacy services from human trafficking, a series of provisions need to be finalised and revised, specifically, considering the requirements of the Convention for the Protection of Human Rights and Dignity of the Human Being regarding the use of biology and medicine.

According to Ukrainian legislation, relations in the field of surrogacy arise only based on a joint agreement between a surrogate mother and a woman (man) or a couple. Therewith, there is no statutory definition of a surrogacy agreement, nor a legislative list of essential terms and procedures for such an agreement.

On the positive side, the principal provisions of the Ukrainian draft laws are aimed at improving the terminology of the studied area of relations, including by interpreting new terms (infertility, genetic parents, embryo, surrogacy, surrogate motherhood, surrogate mother, cryopreservation of reproductive cells, embryos, etc. An urgent issue is the legislative formalisation of the institution of surrogacy (i.e., bridging the gaps in the legal framework of Ukraine) as a separate type of ART and the adoption of a relevant

law that would clearly define the rights and obligations of persons conducting ART programmes, including through surrogacy (substitute) motherhood. Considering this, further research should focus on formulating concrete recommendations for the legislator.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Правове регулювання сурогатного материнства: міжнародній досвід, стан та перспективи розвитку в Україні

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Анотація. Застосування допоміжних репродуктивних технологій в Україні є недостатньо врегульованим на законодавчому рівні, у зв'язку з чим виникає потреба дослідження одного із видів допоміжних репродуктивних технологій – сурогатного материнства, правових підстав використання цього явища в Україні. Метою статті було з'ясування стану та виявлення недоліків правового регулювання сурогатного материнства за національним законодавством України, дослідження світового досвіду його розвитку. Для досягнення поставленої мети було використано загальнонаукові та спеціальні методи наукового пізнання, зокрема, формально-юридичний метод, порівняльно-правовий метод та метод функціонального прогнозування. Акцентовано увагу на особливостях закріплення інституту сурогатного материнства в європейському законодавстві. Констатовано відсутність уніфікованого міжнародного регулювання відносин сурогатного материнства, що зумовлює наявність різних підходів їх регламентації в законодавстві. В межах статті здійснено аналіз сучасного стану національного законодавства з питань застосування допоміжних репродуктивних технологій методом сурогатного материнства, підкреслено наявні прогалини та недоліки, які потребують усунення. Встановлено, що в Україні є відсутнім комплексне правове регулювання відносин сурогатного материнства, що зумовлює наявність контраверсійних поглядів на проблему застосування цього різновиду допоміжних репродуктивних технологій. На основі проведеного дослідження зроблено висновки про необхідність внесення змін до законодавства України в частині застосування саме сурогатного материнства, як одного із виду допоміжних репродуктивних технологій. Аналіз нормативно-правових актів України дав підстави стверджувати про потребу в уніфікованому правовому врегулюванні процесу сурогатного материнства. Даний аналіз нормативно-правової бази має практичне значення для подальшого законодавчого урегулювання правовідносин в питаннях сурогатного материнства

Ключові слова: законодавча база сурогатного материнства; допоміжні технології; українське та міжнародне законодавство; четверте покоління прав людини; захист прав людини