

## SUMMARY

**Key Words:** surrogacy agreement, medical organization, assisted reproductive technologies, potential parents

**Subject matter:** The legal nature and content of the surrogacy agreement

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**The relevance of the research topic.** Surrogacy is one of the ways to overcome the disease of infertility. The special specificity of surrogacy gives rise to many problems, both social and legal. Turning to the legal side of surrogacy, we can state that there is a very fragmentary legal regulation of the surrogacy agreement (the absence of both a single law designed to regulate the legal relationship of surrogacy and the fundamental concept of its content), which inevitably creates all conditions for abuse of the right, and, consequently, to violate the balance of rights and legitimate interests of its participants. The legal nature of the surrogacy contract, its specificity has not been determined, the moment and the basis for the emergence of legal relations of surrogacy have not been sufficiently studied. From a medical point of view, the participation of a medical organization in the implementation of surrogacy is obvious and indisputable, but its legal status as a subject of the contract is not so obvious and requires its own analysis. From a legal point of view, the emergence of new technologies can give rise to fundamentally new contractual relations that are not fully subject to the current norms of law - that is, a gap in legislative regulation arises. However, with an obvious lack of legal norms governing the surrogacy agreement on the territory of Russia, the legislator does not pay due attention to this issue. As a result, on the one hand, the growing need for surrogacy in Russia is not sufficiently regulated at the legislative level.

**The purpose of the work:** substantiation of theoretical provisions on the legal nature of the surrogacy agreement, its content, subjects and essential conditions, as well as the development of proposals aimed at improving the legal norms in the field of contractual regulation of surrogacy.

**Objective:** give the concept and define the legal nature of the surrogacy agreement; to determine the subject composition of the surrogacy agreement; to disclose the content of the subjective rights and legal obligations of the surrogate mother and potential parents in the surrogacy agreement; determine the scope of subjective rights and legal obligations of a medical organization in a surrogacy agreement; formulate proposals for improving the legislation governing the surrogacy contract.

**The theoretical and practical significance of the research.** The theoretical significance of the work. The conclusions and proposals contained in the dissertation develop the theory of Russian civil and family law in the field of contractual regulation of surrogacy. The practical significance of the work. Theoretical conclusions and practical suggestions can be used in reforming the current civil and family legislation, in law enforcement practice, in the educational process of higher educational institutions of a legal profile, in the development of educational materials for the course "Family Law", "Civil Law", as well as various special civil law disciplines.

**Results of the study:**

1. Until now, the issue of legislative regulation of assisted reproductive technologies remains open. At the present stage in Russia there is no branch of law that would completely regulate the entire range of relations in the field of surrogacy and the surrogacy agreement, in particular. In the current realities, we believe that reproductive rights are a complex institution that combines the norms of both private and public law, while none of the existing branches of law can fully cover the entire scope of legal relations of surrogacy. It is for this reason that we consider it necessary to develop an integrated approach to the legal regulation of the surrogacy agreement, in which the legal relationship of the parties that are not formally a legal relationship of

surrogacy, but their organically preceding ones, should be resolved in a comprehensive manner, simultaneously with the settlement of the surrogacy agreement.

2. For the artificial termination of pregnancy, it is necessary for the woman herself and the presence of special social or medical indications, if the pregnancy exceeds 12 weeks. At the same time, the law does not mention at all the right of a surrogate mother to artificial termination of pregnancy. It is necessary to amend the legislation, where it is determined that the right of a surrogate mother to terminate pregnancy should be limited in favor of potential parents. Also, due to the fact that surrogacy is based on a contractual basis, it seems that the surrogate mother and potential parents, as parties to the contract, have the right, by mutual agreement, to terminate the surrogacy contract. In this case, if there is an agreement to terminate the contract, the surrogate mother has the right to artificially terminate the pregnancy.

3. We consider it necessary to support the positions of scientists I.V. Avkhadeeva, A.R. Purge, M.N. Malein in terms of the priority of potential parents in parental rights in relation to a child born to a surrogate mother. In the current situation of conflict of interests of potential parents (one of them) and a surrogate mother, one should be guided not by the “principle of recognition”, but by the “principle of origin”, especially since both of these principles are usually combined in the person of potential parents (one of them).

4. The family-legal content of the legal relationship of surrogate motherhood for a surrogate mother is the only obligation of the surrogate mother to transfer the newborn child to potential parents, the surrogate mother does not have any family rights. Thus, the surrogate mother does not act as a participant in family legal relations, therefore, she cannot be subjected to family legal responsibility in the surrogacy agreement. Since a surrogate mother can only be brought to civil liability under a surrogate mother's agreement, the main form of responsibility of a surrogate mother in a surrogacy agreement is compensation for harm caused to potential parents by illegal actions. Consequently, if a surrogate mother guiltyly violates the rights of potential parents to implement the surrogacy program, then she also violates the moral rights of potential parents, which is the basis for compensation for moral damage in the amount determined by agreement of the parties or in court.

5. One of the key problems in the field of legal regulation of surrogacy is the lack of a conceptual apparatus that allows one to reveal and correlate such definitions as “potential parents”, “genetic parents”. No less controversial and controversial is the question of the possibility of participation in the surrogacy program of only one parent - a man or a woman. From the literal interpretation of paragraph 4 of Article 51 of the IC RF it follows that a man or woman cannot independently resort to surrogate motherhood. While paragraph 9 of Article 55 of the Law on the Basics of Health Protection allows the independent participation of a single woman in the legal relationship in question, but at the same time it is silent about the right of a man to independently participate in surrogate motherhood. That is, the current legislation does not allow making an unambiguous conclusion about who can act as potential parents in a surrogacy agreement.

#### **Recommendations:**

- Taking into account that a surrogate mother enters into a surrogate motherhood agreement voluntarily and consciously, it is necessary to amend the legislation, where it is determined that the right of a surrogate mother to terminate pregnancy should be limited in favor of potential parents. In particular, the surrogate mother should be deprived of the opportunity to artificially terminate the pregnancy at will. An exception is the situation when the pregnancy of a surrogate mother threatens her life and health, in this case, the surrogate mother has the right to terminate the pregnancy regardless of the opinion of potential parents.

- Addressing the issue of terminological uncertainty in the legal relationship of surrogacy and to eliminate possible conflicts, it is necessary to legislate the following definitions: “potential parents are a man and a woman, both married and unmarried (one of them), or a single woman, or a single man who has entered into an agreement with a surrogate mother aimed at bearing, giving birth and transferring a child ”; "Genetic parents (genetic mother, genetic father) are

potential parents, whose germ cells were used to conceive a child, born and born by a surrogate mother."