



SURROGATE MOTHERHOOD

Woms for hire

A NEW WAY OF EXPLOITING WOMEN AND HUMAN TRAFFICKING .

By Mujer, Madre y Profesional, an initiative of PROFESIONALES POR LA ÉTICA

- July 2015 -

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An increasingly extended practice that, in order to obtain social acceptance, often masquerades under the guise of compassion, but true compassion cannot turn its back on the truth.

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INTRODUCTION

“Surrogate Motherhood is in no way progress or social advancement. To the contrary, it is a new way to exploit women and to traffic in human beings, which turns children into commercial goods.”

Surrogate Motherhood is in no way progress or social advancement. To the contrary, **it is a new way to exploit women and to traffic in human beings, which turns children into commercial goods.** It is a violation of the dignity of both the mother and the child.

Surrogacy has often been presented as another method of medically assisted reproduction and as an altruistic treatment to help couples that cannot have children by providing them with an opportunity to achieve their desire of becoming parents.

But the reality is quite different.

As many as 6 adults may claim parental rights over a baby born through surrogacy: the genetic mother (egg donor), the surrogate mother, the commissioning mother, the genetic father (sperm donor), the couple of the surrogate mother (presumption of paternity) and the commissioning father. Apart from the more than probable legal conflicts and litigation, this deprives the child of the right to know his or her own identity as provided for in articles 7 and 8 of the Convention of the Rights of the Child.

Commercial surrogacy is also a way of exploiting exploitation. In surrogate motherhood, **women hire or sell their body in exchange for money or some other kind of compensation.**

Whilst in Europe it is largely either partially or wholly forbidden, surrogacy is a growing business worldwide. Agencies profit from the suffering of infertile couples and the vulnerability of poor or disadvantaged women and develop a business based on the process of selection and quality control of women and babies.

In many countries, surrogate motherhood is linked to prostitution networks which offer women a job or a passport for their surrogacy. The hiring or selling of the body necessarily implies inevitable psychological consequences for the person as a whole. Nowadays, more and more studies highlight the importance of the bonds created between the mother and the baby during pregnancy.

However, surrogacy is presented as aseptic and with no further psychological consequences for the mother or the baby. It is also necessary to take into consideration the wide variety of unforeseen situations and conflicts that may arise from this practice: a high risk pregnancy or a pregnancy that puts the mother's health in serious danger, disabilities in the baby, a change of mind on the part of the commissioning parents...

“The women who hire their body, often under coercion, and turning the child into a commercial product.”

The goal of commercial surrogacy is not the good of the child, but exploiting an otherwise legitimate desire to become parents even when it means exploiting the women who hire their body, often under coercion, and turning the child into a commercial product.

The refusal of the Civil Registry of a country to register the filiation of a child born through surrogacy appears to be effective in dissuading parents from surrogacy and therefore in preventing the development of a market in children market and the exploitation of women.

Adoption would thus become the legitimate way to become parents other than through natural conception and pregnancy.

Surrogate motherhood is contrary to numerous European and international legal provisions, especially those related to human dignity, adoption, the protection of women and children and human trafficking.



1. SURROGACY AS A METHOD OF EXPLOITATION

Surrogate motherhood is clearly a method of exploitation and a way of turning human beings into a commodity. The child becomes a commercial product that is ordered, bought and sold, and even returned if the client is not fully satisfied. And the woman who hires her body becomes a mere vehicle, an incubator, a gestational oven. It can easily lead to exploitation, coercion and human trafficking that benefit particularly from women in poor or developing nations. These women are deprived of their inherent dignity and together with the children born in surrogacy become the innocent victims of unjust situations and the violation of basic human rights.

a) Children as commercial products subject to quality control

When an important amount of money has been invested in the purchase of a product, quality expectations are clearly high.

The parties involved in a surrogacy contract have very often already spent a considerable amount of money in reproductive treatment, and even if surrogacy is the first attempt of the commissioning parents, it is an expensive transaction in itself. Surrogacy prices vary from around 30,000 euros to up to more than 100,000 euros depending on the country where it is carried out.

After making such an investment, expectations are high, and can even lead the commissioning parents to consider that they have the right not only to receive the baby but also that he or she will have certain characteristics and will even carry some kind of guarantee in relation to personal, social and academic success.

The selection of surrogate mothers and egg donors thus includes a very inquisitorial process to guarantee the “quality” of the eggs or the carrying womb and can even include sex and race selection.

b) Surrogate mothers as disposable products

During pregnancy, the relationship between the surrogate mother and the commissioning parents or the agency is usually close and the surrogate receives all kind of care and attention. But once the baby is born and the legal proceedings are completed, both the contracting parents and agency disappear and the surrogate becomes an unnecessary and sometimes galling element. It is then that the surrogate experiences the burden of exploitation, the loneliness of relinquishing the baby, the fact of a pregnancy turned into a commodity and the vested interests of a business transaction dealing in human beings and not simply in inert products.

“ ... the surrogate experiences, the loneliness of relinquishing the baby, the fact of a pregnancy turned into a commodity and the vested interests of a business transaction dealing in human beings and not simply in inert products...”

c) Medical and psychological implications

Since surrogacy is a relatively recent practice, it has still to be determined how surrogacy affects the baby. More and more experts and studies highlight the importance, however, of the links created between mother and baby during pregnancy. It is not unreasonable to assume, therefore, that after a pregnancy considered as a business, the relationship with a son or daughter abandoned after birth and considered as a product and a source of income, may well affect the normal psychological development of the child, particularly when he or she becomes aware of the surrogate origin. *A surrogate pregnancy intentionally severs the natural maternal bonding that takes place in pregnancy—a bond that medical professionals consistently encourage and promote. The biological link between mother and child is undeniably intimate, and when*

severed has lasting repercussions felt by both. In places where surrogacy is legalized, this potential harm is institutionalized¹.

In the same way, it is more than likely that **the detachment and relinquishing of the baby will affect the surrogate mother** in one way or another, even if the surrogate mother is determined to consider the pregnancy as a mere business. Very often, surrogate mothers need some psychological support during and after the pregnancy.

The commissioning parents also suffer psychological pressure.

During the nine months of surrogate pregnancy, the commissioning parents cannot be fully certain that the surrogate mother will not repent and break the contract or that one of the donors may claim custody of the child. Very often, the commissioning mother also needs some kind of psychological aid to face a stressful situation and the acceptance of an external pregnancy of her supposedly own son or daughter.



¹From STATEMENT STOP SURROGACY NOW CAMPAIGN www.stopsurrogacynow.com

²The risks to women include Ovarian Hyper Stimulation Syndrome (OHSS), ovarian torsion, ovarian cysts, chronic pelvic pain, premature menopause, loss of fertility, reproductive cancers, blood clots, kidney disease, stroke, and, in some cases, death. Women who become pregnant with eggs from another woman are at higher risk for pre-eclampsia and high blood pressure.

³Children born of assisted reproductive technologies, which are usually employed in surrogacy, also face known health risks that include: preterm birth, stillbirth, low birth weight, fetal anomalies, and higher blood pressure.

⁴ <http://www.profesionalesetica.org/2015/02/abolicion-de-los-vientres-de-alquiler-en-tailandia-un-triunfo-de-los-derechos-humanos-universales/>

There is also a difficult relationship between the surrogate mother and the commissioning father. He sees a woman carrying his natural son but with whom there is no natural relationship whatsoever.

Unnatural situations, unusual scenarios ... all of them contrary to human nature. On the other hand, the use and abuse of artificial reproductive methods may easily bring medical complications for both the surrogate mother, the young women who sell their eggs², and the baby born via the assisted reproductive technologies employed³.

d) Unforeseen complications: the baby as an unwanted product of a business transaction.

Sadly enough, it has already happened that the baby has had some kind of disability, or he or she was not of the “expected” sex and the contracting parents refused to take him or her or asked for an abortion to be performed. In August 2014, a homosexual couple from Australia abandoned a baby with Down Syndrome but took her twin sister, who was born with a disability. The surrogate mother kept the Down Syndrome baby and asked for her daughter back, but her petition was rejected and the two men kept the baby girl. Paradoxically, it may thus happen that a baby has two or three mothers and fathers but nobody wants it. **When a baby is the result of a purchase and sale, and a large sum of money has been paid, it seems that what is expected, and therefore enforceable, is that the baby under contract should have a quality guarantee or that you can ask for your money back if not satisfied with the purchase**

e) Human Trafficking

*“surrogacy its
by its own nature,
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Surrogacy is a relatively recent issue and, at first glance, it may seem to involve only a very small percentage of society, which is why a common response to this practice is that of indifference or relativism. Surrogacy is often understood as the personal decision of an individual, who is autonomous and free to choose and decide over his or her body and life, which has no impact on society and in which legislation should not interfere.

However, apart from the numerous risks mentioned above, surrogacy is by its own nature, a breeding ground for exploitation, abuse and human trafficking, and not only in developing countries. Thus, in the United States, a network of lawyers was dismantled

who had created an inventory of unborn babies to be sold at the price of \$100,000 using surrogates⁵.

In Asia, Babe 101⁶ meant the dismantling of an illegal surrogacy ring and the liberation of several young women taken under the “promise” of a decent job, to be used as gestational mothers thought implantation or rape. In June 2012, Nigerian police liberated 32 pregnant girls aged between 15 and 17 from confinement. Some of them declared they had been offered around 192 dollars for their babies, the final price to be fixed according to the baby’s sex. The babies were then sold for an amount ranging between 2,000 and 6,000 dollars .



⁵ News Release, Office of the United States Attorney Southern district of California, Baby Selling Ring Busted 1 (August 9th 2011).

⁶ <http://infocatoica.com/?t=noticia&cod=22828>

The Thai Parliament has recently approved a bill to ban the surrogacy, a business practice that has developed considerably and tragically in recent years due to an existing legal vacuum. According to the data handled by the Medical Council of Thailand, this business can produce several hundred babies a year.⁸

It must be recalled that Article 7.1g of the Rome Statute of the International Criminal Court includes enslavement, rape, forced prostitution and forced pregnancy, forced sterilization, sexual abuse and other sexual abuses of similar importance as crimes against humanity⁹.

India is one of the leading countries in the surrogacy market. And because it is unregulated, surrogate mothers are exposed to constant situations of humiliation and exploitation only comparable to prostitution networks. Besides, medical attention and healthcare is almost exclusively directed to the child, leaving the mother unattended. In addition, it must be recalled that India is one of the countries with the highest rate of post-birth mortality.

Apart from the situation of flagrant crime, there are hundreds of conflicting cases implying human trafficking world-wide, from the first reported case in 1987, “Baby M”¹⁰, in the United States, or the extremely complicated case Manji in India 2008¹¹, to the recent Paradiso and Campanelli in Italy in January 2015¹², in which the ECHR validated the sale of a child through surrogacy, including a long list of similar cases all over the world.

“A consumerist society, along with the service mentality have contributed in recent decades to increase the new market and the legal commercialization of human life as a highly desirable product. Have we really come to believe that having children is a right?”

7 *The Korea Herald* 2012

8 <http://www.profesionalesetica.org/2015/02/abolicion-de-los-vientres-de-alquiler-en-tailandia-un-triunfo-de-los-derechos-humanos-universales/>

9 http://www.un.org/spanish/law/icc/statute/spanish/rome_statute%28s%29.pdf

10 <http://www.lfjp.org/laws822/docs/1.htm>

11 <https://web.duke.edu/kenanethics/CaseStudies/BabyManji.pdf>

12 https://www.academia.edu/12364922/Paradiso_and_Campanelli_v_Italy_The_ECHR_validates_the_sale_of_a_child_through_surrogacy

2. INTERNATIONAL LEGISLATION AND THE NEED FOR THE UNIVERSAL PROHIBITION OF SURROGACY AS BEING OPPOSED TO HUMAN DIGNITY AND FUNDAMENTAL RIGHTS.

The Universal Declaration of Human Rights states that human dignity is the basis of human rights and, therefore, the cornerstone of freedom, justice and peace. International treaties ratified by Spain and in force in the rest of Europe generalize policies protecting human dignity, prohibiting human trafficking, especially of women and children, ensuring the welfare of children in all circumstances, and against interference in the natural process of conception and birth¹³.

It is therefore necessary for competent international institutions to impose a universal ban on surrogacy, since it gives rise to a real risk of exploitation and trafficking and because it is an attack on human dignity by converting to women and children in commercial goods.

I) European Framework

a) ECHR jurisprudence and the Project of the Hague Conference.

On June 26th 2014, The European Court of Human Rights (ECHR) passed judgement¹⁴ – hereinafter JECHR 26/06/14 – on cases 65192/11 *Mennesson c/ France*¹⁵ and 65941/11 *Labassee c/France*¹⁶, whereby a violation was found to exist of Article 8 of the European Convention of Human Rights (ECHR), concerning the right to respect for private and family life, by not recognizing the relationship of filiation of children born through surrogacy to the parents who have used this reproductive method¹⁷.

This decision is has triggered the legalization of surrogacy in the signatory countries of the ECHR and is already producing its effects in Spain, France, Germany, Ireland and Italy.

Very recently, in January 2015, this same Court passed judgement in another case concerning surrogacy, ECHR, 27 Jan. 2015, ap. 25358/12, *Paradiso et Campanelli v. Italy*¹⁸.

“The European Court of Human Rights (ECHR) decided, by five votes to two, that a child born by surrogacy abroad and those who ordered the child enjoy protection of the right to family life even though the child was obtained fraudulently, against pay-

¹⁵ *Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine. Art 14, April 4th 1997 C.E.T.S. 164*

¹⁶ <http://hudoc.echr.coe.int/web/services/content/pdf/003-4804617-5854908>

¹⁷ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145389>

¹⁸ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145180>

¹⁹ <http://noticias.juridicas.com/actual/3987-el-tedh-declara-contraria-al-convenio-europeo-de-los-derechos-humanos-la-negativa-a-reconocer-la-filiacion-a-los-hijos-nacidos-de-ventre-de-alquiler.html>

²⁰ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-150770>

ment, without any genetic relation and after a very short period of cohabitation (The child was purchased for 49,000 Euros and was produced on order by in vitro fertilization and then through surrogacy, and did not have any biological connection with the purchasing couple). The Court concluded that Italy could refuse to recognise the filiation established in Russia, but that taking the child away from the sponsors infringed their right to private and family life²¹.

Thus the ECHR validates the sale of a child through surrogacy and opens the door to baby trafficking and exploitation of women. On June 1st 2015, the European Court of Human Rights has decided to refer the case Paradiso and Campanelli “on appeal” to the Grand Chamber of the Court, following the request of the Italian Government²⁰.

It must be recalled that the judgments of the Grand Chamber define the doctrine of the Court and are binding in the 47 Member States of the Council of Europe.

The Permanent Bureau of the Hague Conference on Private International Law, acting in response to the mandate of its member countries, is working on a project on Filiation / Surrogate motherhood.

The latest draft document was prepared to be presented to the Council on General Affairs and Policy of the Hague Conference that was held in late March of the this year. At that meeting, in addition to reviewing the overall situation, it was decided to set up a commission of experts to develop a multilateral instrument in this field²².

b) Comparative Law.

Although in some states of Europe such as Albania, Georgia, Croatia, Netherlands, Russia, United Kingdom, Greece and Ukraine, surrogacy has been legalized, in most European countries is prohibited.

In Germany, the only allowed way to transcribe the filiation of a child born from a different woman is adoption. Moreover, German Courts have taken steps to ensure that **children born through surrogacy cannot be registered**. However, after JECHR 26/06/14, the German Federal Court broke with the jurisprudence and recognize a homosexual couple as the legal parents of a child born through subrogation.

Expressly Permitted

Albania, Georgia, Greece, Netherlands, United Kingdom, Russia, Ukraine.

Partly tolerated

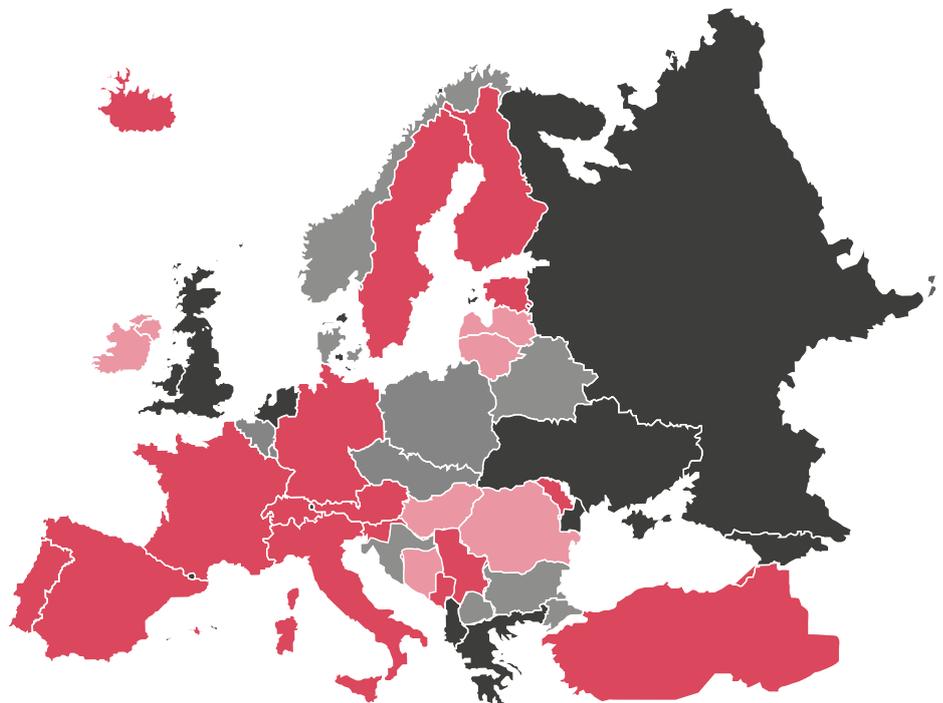
Belgium, Czech Republic, Luxembourg, Poland.

Expressly Prohibited

Germany, Austria, Spain, Estonia, Finland, Iceland, Moldova, Montenegro, Serbia, Slovenia, Sweden, Switzerland, Turkey, France.

Incierta o no tolerada

Andorra, Bosnia - Herzegovina, Hungary, Ireland, Latvia, Lithuania, Malta, Monaco, Romania, San Marino



²¹ http://www.hcch.net/upload/wop/gap2015pd03a_en.pdf

²² Conclusions at the Hague Conference March 2015 on surrogate Motherhood:

Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements

The Council decided that an Experts' Group be convened to explore the feasibility of advancing work in this area. The Experts' Group should first consider the private international law rules regarding the legal status of children in cross-border situations, including those born of international surrogacy arrangements. To this end, the Council decided that:

a) the Experts' Group should meet in early 2016 and report to the 2016 Council

b) the Group should be geographically representative and be composed in consultation with Members

c) Members are invited to keep the Permanent Bureau updated regarding significant developments in their States in relation to legal parentage and surrogacy.

“surrogacy
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another for
remuneration
or any other
consideration”

It is also expressly prohibited in **Switzerland**. Article 119 of its Constitution stated that: “*donation of embryos and all forms of surrogate motherhood are unlawful*” . Still, as a consequence of JECHR 26/06/14, the High Administrative Court of St. Gallen Cantonal ruled in favor of the registration of a child born through surrogacy as legal child of two men. The judgment is currently appealed to the Swiss Federal Court.

In Italy there was no law or regulation on this issue until 2004²⁴ when the Italian Parliament enacted law 40/2004 **to expressly prohibit surrogacy**. Again, JECHR 26/06/14 plus the case *Paradiso and Campanelli* condemning Italy, has more than probably breached to legalization of the practice in that country.

France, is the country that has lost in the two cases with JECHR 26/06/14. Thus, Prime Minister Valls publicly declared that France would not appeal the judgement and that the French government would reflect on this issue and possibly initiate an international effort to regulate surrogacy. There are currently two other similar cases against France pending resolution in Strasbourg: Laborie c / France (44024/13) and Foulon c / France (9063/14).

In Portugal surrogacy is forbidden by Article 8 of the Act on Medical Assisted Reproduction.

It is also **expressly prohibited in Austria, Estonia, Finland, Iceland, Moldova, Montenegro, Serbia, Slovenia, Sweden and Turkey**.

In some countries **it is partly tolerated** in the case of **Belgium, Luxembourg, Poland and the Czech Republic**. In Luxembourg, the prohibition of surrogacy arrangements derives at present from the domestic conception of public order. And in others, without being expressly forbidden, **it is not accepted or either there is no regulation in this regard such as Hungary, Ireland, Latvia, Lithuania, Malta, Monaco, Romania, San Marino and Bosnia- Herzegovina**.

In Ireland the Supreme Court recently heard a case of domestic surrogacy. The contracting genetic mother could not register as legal mother of the child instead of the gestational mother who gave his body for pregnancy. Reference was made to the JECHR 06/26/14 to urge the legislature to fill the legal gap in this field. The Irish government announced then that it would begin, as soon as possible, a bill that would give a response to this issue.

The United Kingdom was the first European country ruling on the issue.



16 www.camera.it/parlam/leggi/04040L.htm

Surrogacy is allowed in the UK since 1985 and also modified its right to filiation.

The map, however, varies when it comes to **filiation by subrogation, in that case, it is expressly permitted in Albania, Spain, Estonia, Georgia, Hungary, Ireland, Netherlands, Czech Republic, United Kingdom, Russia, Slovenia and Ukraine. And expressly prohibited in Andorra, Bosnia Herzegovina, Latvia, Lithuania, Moldova, Monaco, Montenegro, Romania, Serbia and Turkey.** The rest of the countries and depending on the characteristics of their legislation, could eventually allow it.

c) The position of the European Union and the Council of Europe.

Article 2^a of the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography states: “sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”²⁵.

This is exactly what surrogacy consist of. The International Commission on Civil Status (ICCS) in 2014 published a paper on “Surrogate Motherhood and Marital Status of the Child”²⁶ : “It must be first recalled that in all ICCS States maternity is founded on birth by virtue of the principle *Mater semper certa est*, that the indication of the mother’s name in the record of birth suffices to stablish maternity (...)”.

And concludes that the problems caused by this phenomenon are very complex and varied, so there are many difficulties and uncertainties. There is still no international convention on the subject.

In 2012, the Council of Europe published a written statement condemning subrogation: Considering that the practice of surrogacy involves a contract on the unborn child and the exploitation of the uterus of a woman who voluntarily disassociates motherhood and manipulates filiation ²⁷ .

In July 2014 a “motion for resolution” was filed and adopted by 23 members of the Parliamentary Assembly (PACE). The resolution considers this practice as a violation of the dignity of the

woman who lends her body and her reproductive function as merchandise and requests an analysis depth of the problem and a clear statement on the issue ²⁸.

“The practice of surrogacy also disregards the rights and human dignity of the child by effectively turning the baby in question into a product. The Convention on the Rights of the Child declares that children have a right to be protected from abuse or exploitation and calls on States to act in the best interest of the child. Surrogacy arrangements turn the baby into a commodity to be bought and sold.

Moreover, surrogacy manipulates the identity and parentage of children and robs them of any claim to their gestational carrier, which recent research points to being harmful to the development and wellbeing of the baby”.

²⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

²⁶ <http://www.cicel.org/Etudes/2014-SurrogacyAndTheCivilStatusOfTheChild.pdf>

²⁷ <http://assembly.coe.int/tw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18711&lang=FR#>

²⁸ <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=21092&Language=EN>



II) Spanish Framework

Law 14/2006 of 26 May on assisted human reproduction (LTRHA)²⁹ prohibits agreements surrogacy in Spain. Thus, Article 10 of that law declares null the contract of establishing a pregnancy - with or without economic compensation - in charge of a woman who gives up the maternal filiation of the child conceived in favor of the purchasing mother or father or even a third part.

The same article in paragraphs 2 and 3 also declares void the contract of surrogacy and determines maternal filiation by birth - mater semper certa est - with the possibility of paternity claim by the biological father. The Directorate General of Registers published the Instruction of 5 October 2010 on the registration of the parentage of children born through a surrogacy arrangement, directing civil-status departments to follow certain rules, of limited scope, on procedural recognition. Articles 1 and 2 of this Instruction lay down the following rules:

According to Article 1:

“1. Registration of the birth of a minor, born abroad following surrogacy techniques, can be effected only if the decision of the competent court determining the child’s parentage is attached to the application for registration.

2. Except if an international agreement was applicable, the foreign judicial decision must be subjected to the exequatur procedure provided for by the Civil Procedure Act 1881. For the registration of a birth to proceed, the application for registration and the order of the court closing the said exequatur procedure must be deposited with the Spanish civil-status department.

3. Notwithstanding the foregoing, if the foreign judicial decision originated in proceedings similar to Spanish non-contentious proceedings, the civil registrar will, as a pre-condition to registration, effect an ancillary review in order to determine whether the judgment can be recognised in Spain. In the course of that review, the registrar must verify:

(a) the regularity and formal authenticity of the foreign judgment and of all the other documents that may have been produced.

(b) that the original court based its international jurisdiction on criteria equivalent to those laid down in Spanish legislation.

(c) that the procedural rights of the parties, in particular of the pregnant woman, have been guaranteed.

(d) that there has been no infringement of the best interests of the minor and the rights of the pregnant woman. In particular, it must be checked whether the latter’s consent was obtained freely and voluntarily, with no mistake, fraud or violence, and that she has sufficient natural capacity.

(e) that the judgment is final and that the consents given are irrevocable or, if they were subject to a time-limit for revocation under the applicable foreign law, that such time-limit has expired without anyone having exercised his or her option to revoke.”

And according to Article 2 of the

Instruction:

“In no case shall there be accepted for registration of the birth and parentage of the child a foreign civil-status certificate or a simple declaration, accompanied by a medical certificate concerning the child’s birth, that does not record the identity of the pregnant woman.”

In 2014, and due to JECHR 26/06/14, the Spanish Minister of Justice declared that a revision of the Spanish laws on the issue should be made in order to adequate Spanish legislation to the ECHR judgement. But on June 2015 he stepped back and declared that such a revision would not finally happen.

²⁹ http://www.boe.es/diario_boe/txt.php?id=BOE-A-2006-9292

³⁰ <http://noticias.juridicas.com/actual/4014-justicia-se-compromete-a-adequar-la-legislacion-para-facilitar-la-inscripcion-en-el-registro-civil-de-los-ninos-nacidos-de-vientres-de-alquiler-.html>

³¹ http://www.forumlibertas.com/frontend/forumlibertas/noticia.php?id_noticia=33831

CONCLUSION

The trend in Western countries goes to the approval of the trade of the body of women and child trafficking. Europe seems to be willing to consecrate and facilitate the purchase of children to anyone who can afford it, and who would, therefore, require quality standards of the “product” acquired. Dignity of women and motherhood are not seen as something restricted and worth of protection but, as it also happens with prostitution, it seem that you can use the body of woman to satisfy a desire.

This new form of exploitation, commodification of human beings, trafficking and prostitution of the body of the woman, is making its way in the countries and institutions under the weight of the lobbies, the business generated around this type of transaction and economic interests.

It is urgent to react to this situation.

We advocate for the universal abolition of surrogacy. And, as an effective deterrent against this practice, we demand that the prohibition be enacted into law or retained, as the case may be in each country, to register at the Civil Registry the filiation in favour of non-biological parents of children born through gestational surrogacy.



Executive Summary

SURROGACY

A NEW WAY TO EXPLOIT WOMEN AND HUMAN TRAFFICKING

1º WHAT IS SURROGACY?

Surrogacy, also called gestational surrogacy is a financial transaction in which a woman rents her womb to gestate a baby, who may or may not have genetic ties with her, for which she will be compensated, giving rise to the violation of fundamental human rights and several international laws.

2º WHY DOES IT VIOLATE FUNDAMENTAL HUMAN RIGHTS AND THE DIGNITY OF BOTH THE MOTHER AND THE CHILD?

Surrogacy contracts are unquestionably a way to exploit of women who sells or rents her body in exchange for money or for some other type of compensation. In many countries, surrogacy is regularly linked to prostitution and other criminal activities.

The child becomes a mere commercial product to satisfy the whim or desire of the certain people to become parents, and may be subject to certain quality standards, and may be returned in case of not fulfilling them.

3º WHAT ARE THE IMPLICATIONS FOR THE PRTOAGONISTS OF THIS TRANSACTION? CONSEQUENCES FOR THE CHILDREN

1. Children become a commercial products subject to quality control

When a large amount of money is invested in a product, obviously the quality expectations are very high, which leads to a mentality of claiming not only the right to receive the baby but also to receive a child with specific characteristics and bearing a certain guarantee of social and personal success.

2. Children are prevented from knowing their origin and identity

As defined in Article 7 and 81 of the Convention on the Rights of the Child (CRC), up to 6 adults may claim the paternity of each child born of a surrogate. Apart from being a source of legal disputes, this is more likely to prevent the child from knowing its identity.

3. Possible psychological damage

Experts have for decades stressed the importance of the bonds that are created between mother and child during pregnancy and its significance in the future development of children, and it can therefore be assumed that a pregnancy that is considered a business and the relationship with a child who has been surrendered in advance and is considered a product as well as a source of income, may affect the psychological development of children, especially when they discover their origin.

CONSEQUENCES FOR THE WOMAN WHO RENTS HER UTERUS

1. The surrogate mother as an animal pedigree

Surrogates selection processes include a host of tests and personal requirements to ensure the “quality” of the eggs and uterus that will carry the future child.

2. Surrogate mothers as disposable products.

During pregnancy, the contact between the surrogate and the parents who hired her is close and everything is taken care of. But once the legal process is over and the contract has terminated, the commissioning couple disappear and the surrogate becomes an unnecessary, annoying and depreciated element in market terms while she feels the full weight of the exploitation, of the separation from the baby, the commodification of pregnancy and the vested interests of a commercial transaction that involves human beings instead of commercial products.

CONSEQUENCES FOR THE PURCHASING PARENTS

Commissioning parents are also subjected to severe psychological pressure, since during pregnancy they can't be absolutely certain that the surrogate mother will not change her mind or that any of the donors will claim custody of the child.

Psychologically complex situations also arise between the commissioning father and the surrogate mother, or her husband, if any.

5° 5. ARE THERE FURTHER COMPLICATIONS?

The whole process gives rise to outlandish situations that are contrary to nature, which promote abuse, which represent the commodification of human beings and which lead to numerous ethical and legal problems.

In addition, unforeseen complications such as the possibility of a high-risk pregnancy and the health of the pregnant mother, the response of the commissioning parents to possible defects or the possibility that they might opt out halfway through the pregnancy, are other possible complications ... There are already cases in which the baby had malformations, or didn't have the “appropriate” sex and was rejected by the commissioning parents, or they demanded an abortion².

6° WHAT IS THE SITUATION OF COUNTRIES TOWARDS SURROGACY?

There are countries with legislation (United States, Mexico, Russia, Ukraine, Georgia and Kazakhstan) that does not prevent human trafficking. For example, in America, a network of lawyers was dismantled which had created an inventory of unborn babies to using surrogacy sell for \$100,000.

In other countries that allow surrogacy and where it is a booming activity, there have been cases of exploitation and abuse, since the practice is a breeding ground for such. Examples of this are Asia, where a network was dismantled that sold babies and kidnapped young Vietnamese women were freed, or Nigeria, where the police rescued 32 pregnant girls between the ages of 15 and 17 from a house where they were kept to sell their babies.

Apart from these flagrant criminal situations, there are other hundreds of conflicting cases worldwide. In Europe, surrogacy is wholly or partially forbidden in most countries, but due to political inertia it

² <http://www.profesionalesetica.org/2015/02/abolicion-de-los-vientres-de-alquiler-en-tailandia-un-triunfo-de-los-derechos-humanos-universales/>

is accepted and any ethical considerations are ignored under the alibi of creating “new rights” for a small part of the population, whilst current legislation is violated by the demands of lobbies’, business and financial interests. That is the case of Spain, Italy, Germany, France and Switzerland.

7° WHAT CAN BE DONE TO STOP THIS TREND?

Although we advocate for the universal abolition of surrogacy, the easiest way to end surrogacy would be the refusal to allow the registration of children born of surrogacy since it would work effectively as a deterrent and would radically reduce the business and exploitation that surrogacy implies.



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