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INTERNATIONAL SURROGACY LAWS AS THE SOURCE FOR RUSSIAN SURROGACY LEGISLATION DEVELOPMENT

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While surrogacy is not a new reproductive practice, it is commonly accepted that it is an increasingly prevalent phenomenon. Recent reports have documented a rise in the practice of surrogacy. The unprecedented advances in reproductive technology medicine gave hope to those who are desperate to have children. These technologies could surrogacy motherhood.

The rule of law always follows the development of the society. Thus, legislation in this area is in progress in all world countries as well as in Russia. Finally, there has been a recent surge in reported case law relating to surrogacy across a number of jurisdictions. Interestingly, while some of this case law does involve private disputes between the parties to the arrangement, the primary trend relates to difficulties in formal state recognition of the wishes of the parties to the arrangement with respect to the legal status and legal parenthood of the children involved. What is more, in some moments it would be good to look at advanced aspects of this issue in the legislation of other countries and basing on it to develop the legislative framework.

On 1 January 2012, the Federal law called "On the Fundamentals of Public Health Protection in the Russian Federation" came into force. According to some articles of this law and according to the articles of the Family Code and other executive orders, surrogacy received the legal commercial basic in Russia.

The current Russian legislation is one of the most liberal ones with regard to usage of reproductive technologies.

Surrogacy, according to the law, is childbearing only for a married couple (for those individuals who are officially married at the moment of implantation of the embryo). The child is biologically vicarious for the childbearing woman.

According to 55 article, paragraph 9 of the law called "On the Fundamentals of Public Health Protection in the Russian Federation" there is a definition of the method of auxiliary reproductive technologies which is "childbearing and childbirth (including premature birth) according to the agreement between the surrogate mother (the woman childbearing the fetus after the donor embryo transfer) and the potential parents, whose sex cells were used for the fertilization, or a lonely woman for whom childbearing and childbirth are impossible because of their medical indications".

According to 10 paragraph of the same article of law called" On the Fundamentals of Public Health Protection in the Russian Federation" there are certain requirements proved for the surrogate mother: "A surrogate mother can be a woman of the age from 20 to 35 years old, who has no less than one healthy child of her own, who got the medical report about the satisfactory health status, who gave the written informed voluntary agreement for medical interference. An officially married woman can become a surrogate mother only with her husband's written agreement. The surrogate mother cannot be the donor of the ovum at the same time".

There is also order №67 from The Public Health Ministry of the Russian Federation dated 2003 "About the usage of assisted reproductive technologies in the therapy of women and men's infertility", where it is defined if it's possible to have the surrogacy in Russia; which requirements there are for surrogate mothers; the number of researches for the surrogate mother and biological parents.

It is necessary to point out that the most advanced countries in this field are the United Kingdom and the United States.

Surrogacy is legal in the UK, although the law does not recognise it as a binding agreement on either of the parties involved during the period preceding and immediately after the birth of the child. With this in mind, if you use a surrogate who is based in the UK for example, the intended parents cannot do prior to the birth to secure their position with total certainty — even if IVF treatment has been used and the child is genetically-related to one or both parents and not related to the surrogate mother.

This is not the case if you choose to have your baby in the USA. In California for example, you can apply to the court for a pre-birth order that will name you and your partner as the legal parents of any children born to your surrogate between a certain set of dates.

This paperwork will come with instructions to the hospital setting out rules for them to follow on the birth of your baby. It will give you the absolute power of all decisions and it will allow both you and your partner to have your names listed on the birth certificate. This birth certificate can then be used to apply for British Citizenship at a later date.

In the UK, at birth, the intended father's name can be put on the birth certificate and he immediately has equal rights over the child, along with the surrogate mother. Six weeks after the birth of the child, the intended parents can apply for a Parental Order which gives them full and permanent rights over the child and, at this stage, the surrogate mother relinquishes all rights.

In the UK, surrogacy arrangements can only be made for UK residents. Therefore, a UK based surrogate cannot give birth to a child for an international couple. It is illegal under the Adoption and Children Act of 2002 for anyone to take a child out of the UK with a view to adopting/parenting it in another country. I believe it's a good law development idea for the legislation of the Russian Federation in this field because this rule simplifies the control of this relationship within one country.

US Law on Surrogacy is very complicated as different states have different laws. But California is a state where the surrogacy law is more simple. For example, California is accepting of surrogacy agreements and upholds agreements that include Lesbian, Gay, Bisexual and Transgender individuals. Also, while the State has no Statute directly addressing surrogacy, California's courts have used the State's Uniform Parentage Act to interpret several cases concerning surrogacy agreements. Next, California court has decided some important cases that formed the basis of California law.

In 1993, the California Supreme Court decided Johnson v. Calvert, in which they held that the Intended Parents in a Gestational Surrogacy agreement (where the surrogate is not the biological contributor of the egg) should be recognized as the natural and legal parents. The Court decided that the person who intended to procreate — in this case, the mother who provided her egg to the surrogate — should be considered the natural mother. This also follows through to a couple who uses the services of an Egg Donor.

In the 1994 the case of the marriage of Moschetta, a California Court of Appeals addressed the question of how to determine parentage when a child is conceived via Traditional Surrogacy (in which the Surrogate Mother is the biological contributor of the egg) and is born after the Intended Parents had separated. The Court held that the Intended Father and the Surrogate Mother were the legal parents of the child, leaving the Intended Mother without parental rights.

The 1998 the case of the marriage of Buzzanca, is an example of how complex the facts in surrogacy cases can get. In Buzzanca, a Gestational Surrogate was impregnated using an anonymous egg and anonymous sperm. In other words, one could identify six individuals as having the potential to be a legal parent of the child: the Egg Donor, the sperm donor, the Intended Mother, the Intended Father, the gestational mother or the husband of the gestational mother. Ultimately, the Court found that when a married couple intends to procreate using a non-genetically related embryo implanted into a surrogate, the Intended Parents are the lawful parents of the child.

In 1999, in the case of Drewitt-Barlow v Bellamy, the same-sex couple from Essex UK who petitioned the Supreme Court of California for both their names to be assigned to their unborn twin babies' birth certificates when they were born as Parent 1 and Parent 2, was won. This was a landmark case that paved the way for same-sex couples around the world to be named on their babies' birth certificates.

Finally, in 2005 the California Supreme Court decided three companion cases that concerned lesbian couples who had reproduced via surrogacy, Elisa B. v. Superior Court, Kristine H. v. Lisa R. and K.M. v. E.G. The Court held that, under the Uniform Parentage Act, two women can be the legal parents of a child produced through surrogacy. This ruling presumably applies to all members of the LGBT community.

One of the most important advantages of performing surrogacy in California, is that it is possible to get a Pre-Birth Order which will establish you as the legal parents of any children born to your surrogate within a specified time period. The timeframe to obtain a judgment can take several months, mostly due to the court's availability to review the documents and/or set the matter for hearing.

To obtain the Pre-Birth Order, the paperwork would usually be filed with the court between the fourth and seventh month of your surrogate's pregnancy. This is now seen as a very standard application and certainly not a hearing that you have to attend in person.

However, if your surrogate becomes high risk for early delivery at any point of the pregnancy, for example if your surrogate is pregnant with multiples, you may choose to file earlier. This is in order to ensure the judgment is in place prior to the birth of your child(ren) to prevent the Surrogate's name from being listed on your child's birth certificate.

Once the Order is obtained, the hospital where your surrogate will be delivering at should be forwarded a copy. Normally this will go to the social work department. This will highlight to the hospital team that this is a surrogacy arrangement, and that specialised handling should be put in place to accommodate the needs of the Intended Parents and the surrogate and her family.

This law is different from laws that exist in Russia. The Family Code of the Russian Federation formulates the following definition with regard to surrogacy. According to Article 51, paragraph 4: "The officially married individuals who agreed in a written

form to the implantation of an embryo to a different woman in order to childbearing of it, might be written as parents of the child only after the woman's who gave birth agreement (the surrogate mother)". According to Article 52, paragraph 3 "Neither the married couple who gave the agreement to the implantation of an embryo, nor the surrogate woman cannot adduce these circumstances in case of contestation the maternity and paternity after the record of the parents in the book of the recorded births". It is better to give an official document (order) to intended parents in the first stages of surrogate motherhood because it would be better psychologically and legally correct to inscribe intended parents, regardless of the agreement of the surrogate mother.

According to the Federal law "On acts of civil status" the order of the registration of newborns in the register offices is defined like "at the time of the state registration of the childbirth due to the application from the parents who gave the agreement to the implantation of an embryo to a different woman in order it to be gestated". At the same time with the document confirming the fact of the childbirth, there must be provided a document given by a medical organization and certifying the fact of receiving the agreement from the woman who gave a childbirth (the surrogate mother) to registration the mentioned couple as the parents of the child.

Another approach to surrogate motherhood has New York State. Since 1992, surrogate parenting contracts in New York have been seen as void, unenforceable and contrary to public policy.

The main reason for this is because surrogacy contracts have been interpreted to involve, in the words of one New York court, the, “trafficking of children”. The Statute defines surrogate parenting contracts as agreements in which a surrogate agrees to be either impregnated with the fertilized ovum of another woman or artificially inseminated; and further agrees to consent to the adoption of the child born as a result of the impregnation or insemination.

Parties to surrogate parenting contracts involving compensation are subject to civil penalties of up to $500. The stiffest penalties, fines of up to $10,000 and forfeiture of fees received in connection with such contracts, are leveled against those who arrange compensated surrogacy contracts for profit. Repeat violators of the Statute may be charged with a felony. Parties to uncompensated surrogacy contracts are not subject to civil or criminal penalties.

People who assist in arranging the contract (agencies or facilitators) are liable for up to a civil penalty of $10,000 and forfeiture of the fee received in brokering the contract. A second violation constitutes a felony. A birth mother’s participation in the contract, however, may not be held against her in a custody dispute with the genetic parents or grandparents.

In Florida state surrogacy look like deliberate adoption. Florida law explicitly allows both Gestational Surrogacy agreements and Traditional Surrogacy, but neither is available to same-sex couples. This is because the Florida Gestational Surrogacy Statutes impose strict requirements on the contracts, among them limiting involvement to, “couples that are legally married [which then prevents same-sex couples from being allowed to use surrogacy as they are not legally married] and are both 18 years of age or older.”

The law governing Traditional Surrogacy arrangements, which are referred to as, “pre-planned adoption agreements,” connects those contracts to State adoption law. Additionally, Florida law explicitly prohibits “homosexuals” from adopting. In 2004 this law was upheld in federal Court by the 11th Circuit Court of Appeals in the case of Lofton vs. Kearney.

Traditional Surrogacy is referred to as a, “pre-planned adoption agreement”, with a “voluntary mother”, and requires court approval of the adoption. The most important distinction between them is that under pre-planned adoptions, the birth mother has 48 hours after the birth of the child to change her mind; the adoption must be approved by a court; and the Intended Parents do not have to be biologically related to the child.

For the Russian legal reality it is an appropriate idea to give surrogate mothers some time for thinking before making her decision because there are a lot of cases that are related with mothers’ refusal to give the child to biological parents.

In contrast, under the Gestational Surrogacy contract, the surrogate must agree to relinquish her rights to the child upon its birth; the Intended Mother must show that she cannot safely maintain a pregnancy or deliver a child; and at least one of the Intended Parents must be genetically related to the child.

Both laws provisions require that the Surrogate Mother has to undergo the medical evaluation; make the surrogate the default parent if an Intended Parent who is expected to be a biological parent turns out not to be related to the child; limit the types of payment allowed; and require from the Intended Parents to agree to accept any resulting child, regardless of any impairment the child may have. Recruitment fees for Traditional Surrogates are prohibited.

Surrogacy law of Texas have the same requirements as the Russian surrogacy law. For example, to be a Surrogate Mother, women must have had at least one prior pregnancy and delivery. She will maintain control over all health-related decisions during the pregnancy. The Intended Mother must show that she is unable to carry a pregnancy or give birth. The Intended Parents must be married and must undergo a home study. There is a residence requirement of at least 90 days for either the gestational mother or the Intended Parents. An agreement that has not been validated is not enforceable, and parentage will be determined under the other parts of Texas’s Uniform Parentage Act.

Surrogacy law of Virginia requires pre-authorization of a surrogacy contract by a court. If the contract is approved, then the Intended Parents will be the legal parents. If the contract is void, the Surrogate Mother and her husband, if any, will be named the legal parents and the Intended Parents will only be able to acquire parental rights through adoption. If the contract was never approved, then the surrogate can file a consent form relinquishing rights to the child. However, if she does not, the parental rights will vary based on whether either of the Intended Parents have a genetic relationship to the child. Depending on the circumstances, they may need to adopt in order to obtain parental rights. Notwithstanding all of the above, if the surrogate is the genetic mother, she may terminate the contract within the first six months of pregnancy.

Virginia’s requirements for court approval include: a home study; a finding that all parties meet the standards of fitness applicable to adoptive parents; the surrogate must be married and have delivered at least one prior live birth; the parties must have undergone medical evaluations and counseling; the Intended Mother must be infertile or unable to bear a child; and at least one Intended Parent must be genetically related to the child.

What is more, in legislation of Virginia there are paragraphs that we have to have in Russian legislation. It is that the Intended Parents must accept the child regardless of its health or appearance.

Surrogacy is a complicated process that requires adequate legislation government so that the interested parties be able to find even slight nuances and aspects for any problem solution.

This legal relationship scheme needs to be developed because at this moment there are a lot of different cases, occasions and disputes within this process. Such disputes are constantly arising due to a great number of gaps in the Russian legislation that we need to eliminate.

In addition, there are different social opinions of the surrogacy: some people regard it only as an innovative instrument aimed at helping people, who cannot have children, to become happy parents. Other people treat this phenomenon negatively and think that surrogacy looks like selling children; they also believe in destroying effects for a woman participating in this process.

Nevertheless, legislation in this field has to be freed from people's opinions and be transformed into an integrated fair system capable to regulate all cases arising in this sphere.

To sum up, regulation of surrogate motherhood in Russia is a complex process that requires a developed legal framework.

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ПРАВОВОЙ СТАТУС ФРАКЦИИ ПОЛИТИЧЕСКОЙ ПАРТИИ В ЗАКОНОДАТЕЛЬНЫХ (ПРЕДСТАВИТЕЛЬНЫХ) ОРГАНАХ ГОСУДАРСТВЕННОЙ ВЛАСТИ СУБЪЕКТОВ РОССИЙСКОЙ ФЕДЕРАЦИИ

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Целью данной научной статьи является определение правового статуса такого депутатского объединения в законодательных органах государственной власти, как фракция. Для этого мной был проведен сравнительно-правовой анализ всех Регламентов законодательных органов государственной власти всех 85 существующих на настоящий момент субъектов Российской Федерации.

Несомненно, можно выделить множество критериев для проведения сравнительного анализа, но я выбрал следующие основания для сравнения:

- Наличие положений о фракции политической партии в Регламенте законодательного (представительного) органа того или иного субъекта Российской Федерации.
- Наличие определения или понятия фракции политической партии в Регламенте законодательного (представительного) органа того или иного субъекта Российской Федерации.
- Перечень лиц, которые могут входить во фракцию политической партии, закрепленный в Регламентах законодательных (представительных) органов государственной власти субъектов Российской Федерации.
- Кворум заседания фракции политической партии.
- Полномочия фракции политической партии, юридически закрепленные в Регламенте законодательного (представительного) органа того или иного субъекта Российской Федерации.

Положения о фракциях политической партии в том или ином виде присутствуют в **84 из 85** просмотренных мной Регламентов. Единственным Регламентом, в котором нет положений о фракции политической партии, является Регламент Законодательного Собрания Вологодской области.

По результатам исследования по первому критерию для сравнения можно сделать вывод о том, что в своем большинстве положения о фракциях политической партии присутствуют в том или ином виде практически во всех Регламентах законодательных (представительных) органов субъекта Российской Федерации. Исключение составляет лишь Регламент Законодательного Собрания Вологодской области.

Вторым основанием для сравнения является наличие четкого и законченного определения или понятия фракции политической партии. Какое — либо понятие, определение или дефиниция фракции политической партии содержится лишь