

LEGAL STATUS OF A CHILD BORN FROM A SURROGATE MOTHER AS A RESULT OF ARTIFICIAL FERTILIZATION - GENERAL OVERVIEW

Lili Gelukashvili, Full Professor

Lia Chiglashvili, PhD student

Grigol Robakidze University, Tbilisi, Georgia

Abstract

The subject of a surrogate motherhood in Georgia is no longer banned in Georgia at present. There are a lot of discussions currently occurring in the society. Moreover, medical technologies have gone even further and become more efficient in this respect. Therefore, these programs have become more popular all over country. People, who formerly tried to adopt children, now think of acquiring children through this particular method, which they would be genetically bound to.

Keywords: Legal status, surrogate mother, artificial fertilization, adopt children

Introduction

Artificial fertilization is a global subject, around which medical people and advocates have worked out a number of issues, reflected in legislation; however, problems persist, which still need further legal regulation.

The legal regulation issues on artificial fertilization

During the post Soviet period, the supreme council of the Republic of Georgia issued the order on “amendments and appendix to the family law

code of marriage in Georgia, the paragraph 52”, which has been an urgent topic all over the world; this has grown an interests from legal authorities to the fact of conception through artificial fertilization; they have even been partially involved into its legal regulation. Particularly, the following has been stated: “husband, who gives consent to artificial fertilization of the wife with the help of a donor, shall be registered as the father of a child, delivered by this woman and shall not be authorized to argue this record” (marriage – family code of the Republic of Georgia, paragraph 52, part 4).

We should also mention that the problems connected with artificial fertilization cannot be solved with this particular paragraph, as this issue has not been duly studied and a lot of problems, accompanying this topic were quite vague. Advocates joined their efforts with medical workers and have presently discussed these subjects and certain amendments have been introduced into the law on the basis of which a number of problems have been legally regulated.

In the 21st century, the facts of artificial fertilization have gone even further. Such medical intervention has been applied by the persons who cannot have their own common children naturally due to certain physiological reasons.

As commonly known, giving birth to a child as a result of artificial fertilization is possible in three ways:

1 – When a woman’s ovule is fertilized with the help of a donor’s sperm (insemination).

2 – When a woman’s ovule is fertilized with a donor man’s sperm (extra corporal - invitro);

3 – When fertilization is performed with extra corporal way; the embryo, received as a result of such fertilization is placed in the uterus of another woman (that of a surrogate mother).

In case of a surrogate mother, a woman gives consent to become pregnant, her wish is to bear and deliver a biologically alien child. In this particular case, she is transplanted with a fertilized ovule. After birth, the baby is returned to his/her biologic parents.

There are different legal attitudes towards the fact of delivering a baby with this method in different countries; surrogate motherhood is forbidden in some countries. Being a surrogate mother is permitted in the former Soviet countries, including Georgia, Russia, Belorussia, Ukraine, Kazakhstan.

For example, in western Europe those who cannot have their own children due to certain reasons, often apply such method of bearing a baby; Ukraine is becoming more popular where searching for the so called surrogate mothers is comparatively available.

The legislation of Ukraine supports foreign citizens who are willing to have children through such method and helps them achieve their goal at reasonable prices; however, there are cases occurring in some countries where the law is strict when determining a child's status, born as a result of such method.

French legislation, for instance, forbids surrogate motherhood. Let us remember the commonly known fact when the Le Rocces family (a French couple) that could not have their own baby, found a lady in Ukraine who agreed to become a surrogate mother. In compliance with the laws of Ukraine, foreign citizens are able to find a simple solution to this problem; however, the Embassy of France could not satisfy the requirement of the Le Rocces family to cross the border together with twin girls, delivered by Ukrainian surrogate mother. This was why they were obliged to take children away from the country illegally; it was followed by serious complications later. The court pronounced the judgment to impose 2 000 USD of penalty

fee to the respondent party as the children were illegally migrated from the country.

This kind of reproduction is also forbidden in Muslim countries. In Israel it is under the supervision of a special committee; in Japan, surrogate mothers are very rare, but they still exist.

Artificial fertilization of a woman in case of a single parent (for women and men) is performed on the basis of a written consent at the medical institution where confidentiality is preserved on implantation of embryo and the information about donors is kept as doctors' secret.

There might be some cases when a surrogate mother violates the liabilities under the contract and may become willing to get registered as a parent after the delivery of a baby. Therefore, it is necessary to create legal basis for that and the agreement should be signed in conformity with the local active laws which would refer to the relationship between a surrogate mother and genetic parents at the time of birth act registration.

In this case, it does not matter whether the marriage between parents is registered or not by the moment a baby is born. Registration should happen in both cases as this fact represents the basis for determining the legal status of a child born through this method.

Legal authorities of a child born from artificial conception should be specifically defined. This issue can be easily solved from the legal point of view if the problem arises only between doctors and people, willing to use the method of artificial fertilization.

What happens when a single man is willing to have a baby with a surrogate mother and a donor's ovule, especially when a surrogate mother and a donor are not one and the same person? As already mentioned, a donor and a surrogate mother are not authorized to be acknowledged as parents.

The Georgian law on "healthcare issues" regulates these issues and

explains that upon a baby's birth, the applicant couple shall be considered as its parents; therefore, all the responsibilities and authorities are imposed on them, consequently, a donor or a "surrogate mother" has no right to be acknowledged as the parent of the born child.

This formulation refers to couples and spouses which excludes the possibility of artificial fertilization with conception of a donor's ovule in a surrogate mother by a single man; however, another significant issue comes up as the aforementioned law and orders, given therein, do not clarify the concepts of a couple, while it involves the most pressing point of artificial fertilization all over the world and even settles its partial regulation. Namely, it says that "the husband, who agrees to fertilize his wife artificially with the help of a donor, shall be affiliated and registered as the father of the child, delivered by this woman and is not authorized to argue the record made therein, respective this fact".

The record on father's registration can become disputable by the person who has been recorded as the child's father; however, this issue can be even argued by the mother as well. In this particular case, the donor may debate any agreement and require affiliation to record him as the father of the child. Despite the fact that such disputes may occur with a donor who might dispute with a single woman, it may even happen with a woman who is under a registered marriage. Argumentation may even arise between the genetic parents and a surrogate mother.

Therefore, artificial fertilization of a woman and implantation of an embryo is performed with a written consent of spouses (or a single woman) signed in competent medical institutions where information and details about operation and donors are a doctor's exclusive confidentiality.

Conclusion

Starting all the above, it is necessary to introduce corresponding amendments into the Civil Code of Georgia and composing the specialized normative regulatory act which shall regulate the issues of artificial fertilization in details, namely determine legal status of a surrogate mother, her status, the legal status of a born child, as well as many other related issues; this will be necessary for making local acts in force adequate to the social relationships existing in Georgia and abroad.

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