

State Regulation of Surrogate Motherhood: Liberal or Restrictive Approach

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Abstract

It is the heritage of contemporary society that guarantees freedom of reproductive rights, including the decision when and whether the child would be born and the period between the births of children in a family. The right to freely make decisions about birth in cases of infertility or decreased fertility is directly conditioned by the progress of medicine (bio-medically assisted reproduction). The Serbian Constitution states that everyone has the right to freely make decisions about childbirth (article 63 of Constitution of Serbia).

Surrogate motherhood is one of the procedures of bio-medically assisted reproduction in which a woman consents to pregnancy and birth in order to relinquish the child to the couple that has commissioned the pregnancy. In Europe, this country is legal today in the UK, the Netherlands, Greece, Ukraine, and Georgia, but it is prohibited in France, Austria, Spain, Italy, Germany, Switzerland, Slovenia, and Serbia.

There are two forms of surrogate motherhood: one is that in which a woman gives birth to a child who is genetically hers (“partial,” genetic surrogacy), and the other that in which the surrogate mother only carries and delivers the child, which is genetically that of other persons (“full”, “total” surrogacy). Looking from the biological side, the woman whose egg cell is fertilized could be called the genetic mother, and the woman who carried the child the gestational mother.

Nowadays legislation of Serbia does not permit surrogate motherhood. Relevant acts are the Family Act of Serbia, passed in 2005, and the Act of Treatment of Infertility with Bio-Medically Assisted Fertilisation Procedures, passed in 2009. At this moment, the Civil Code of Serbia is in the drafting process. In the draft the practice of surrogate motherhood is provided, and it is called giving birth for another.

In this paper the author analyzes European legislation on surrogate motherhood. The paper discusses the issue of whether the offspring has a right to learn of his or her origins. The article proposes the way in which surrogate motherhood should be regulated in Serbia.

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