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Health Law, International Health Law, Comparative Health Law, Health Policy, Health Cases, Medical and Biomedical Law

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Abbas Poorhashemi

André G. Dias Pereira

Danilo Fontenele Sampaio Cunha

Diogo Leite de Campos

Elisa Mattias Sartori

Ellen Cristina Rivas Leonel

Fabiano Marcelo Nava

Francine Baldin Able

Hamilton Sarto Serra de Carvalho

Inácia Maria de Paulo Sá

Ivete Aparecida de Mattias Sartori

Marcello Novoa Colombo Barboza

Marisa Aizenberg

Radmyla Hrevtsova

Renata Salgado Leme

Renato Braz Mehanna Khamis

Sidney Sato Oku

Thais N. Cesa e Silva

Editorial – Volume 1 – nº 01- 2023

It is our great pleasure to introduce the inaugural issue of the **Global Health Law Journal-GHLJ**. Through an important initiative of the Master's Program in Health Law of the Santa Cecilia University, in Santos, São Paulo, Brazil, the Journal seeks to ensure an international publication spot among the world's leading academic forums concerned with Health Law.

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The Journal targets a broad and diverse audience of academicians, professionals, and students in Law, Medicine, Biomedicine, as well as policy makers, law operators, and legislators in health care.

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It has been created and raised in an innovative, cooperative and participatory spirit, and will always continue its commitment to these values.

We hope you will enjoy the Global Health Law Journal, and that you can contribute to future issues.

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GESTATIONAL SURROGACY: LEGAL DILEMMAS AND EXPERIENCES IN BRAZIL, PORTUGAL AND UKRAINE [1]

André G. Dias Pereira[2]

Radmyla Hrevtsova[3]

Thais N. Cesa e Silva[4]

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[2] **André G. Dias Pereira**:
Professor of Civil Law, University of Coimbra.
Director of the Centre for Biomedical Law.
Vice-President of the National Ethics Committee for Life Sciences.

[3] **Radmyla Hrevtsova**:
Advocate
Associate Professor at the Taras Shevchenko National University of Kyiv (Ukraine).
Research fellow at the Center for Biomedical Law at the Law Faculty of the Coimbra University (Portugal).

[4] **Thais N. Cesa e Silva**:
Master and PhD student in Civil Law at the University of Coimbra (Portugal).
Judicial Analyst at the Court of Justice of the State of Rio Grande do Sul (Brazil).

Abstract

Gestational surrogacy is a “hard case” between equality and responsibility. Surrogacy brings two enormous ideals into confrontation: equality and responsibility. On the one hand, we have the right to build a family and the right to dispose of one's own body (by the pregnant woman); on the other hand, the best interest of the child and the non-instrumentalization of the woman who has the surrogate pregnancy should be ensured. In this paper, we are taking a glance at some dilemmas of surrogacy motherhood viewed them from the perspective of an EU country (Portugal), an EU-candidate country (Ukraine), and a South American country (Brazil). The new developments, including the legislative ones, will be discussed.

Keywords: surrogacy, altruistic surrogacy, commercial surrogacy, law, consent.

Introduction

The primer question on the horizon concerns the acceptance of surrogacy as such.

There are two different approaches: refusal and acceptance. Supporting the refusal side, some voices defend that biological maternity is equal to legal maternity, keeping the public order and avoiding conflicting parental projects. To support the acceptance, there are arguments that mention surrogacy as a new ART (Assisted Reproduction Technique), the right to find a family and the freedom of the individual/woman that can offer her “services” to help someone else concretize they wish to have a family, according to the

aforementioned right. Therefore, it is a sensitive topic that has already raised several controversies and is to be discussed in different legal systems, giving rise to an ethical and legal discussion of its foundations.[5]

To accept or not to accept?

The classic opinion that biological maternity should match the legal maternity leads us to the prohibition of surrogacy. Several European countries (for e.g., in Germany, Italy, Spain, France[6], Sweden) ground their approach to surrogacy on the said opinion.

Importantly, the European Parliament has pronounced about this matter. On the European Parliament resolution of 17

[5] See: PEREIRA, André G. Dias, "Gestação de substituição e acesso de todas as mulheres à procriação medicamente assistida em Portugal: as leis de 2016 e as profundas transformações no direito da filiação", in *Actualidad jurídica iberoamericana* - Año 2018, Número 8, pp. 32-47 (ISNN 2386-4567) - http://revista-aji.com/20188.html ; PEREIRA, André G. Dias, "Gestação de substituição e acesso de todas as mulheres à procriação medicamente assistida em Portugal: as leis de 2016 e as profundas transformações no direito da filiação", in *Actualidad jurídica iberoamericana* - Año 2018, Número 8, pp. 32-47 (ISNN 2386-4567) - http://revista-aji.com/20188.html ; PEREIRA, André G. Dias, "Gestação de Substituição – Conflito entre a Assembleia da República e o Tribunal Constitucional: haverá um caminho?", in *Atas das Jornadas Internacionais – Igualdade e Responsabilidade nas relações familiares*, Escola de Direito da Universidade do Minho e Centro de Investigaçao em Justiça e Governação, 2020, pp.141-158. http://bit.ly/atas-ji-irrf-rd

[6] The recent Law that reviews the bioethics in France (Loi du 2 août 2021 relative à la bioéthique) does not accept surrogacy motherhood.

December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter (2015/2229(INI))[7], point 115, we can read that European Union "Condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity; considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or another gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments."

In some countries, where surrogate motherhood was not an option, there is, however, a move from the total ban towards a restrictive approach when surrogacy is allowed on an exceptional basis.

Thus, in Portugal, Law 32/2006, regulating Assisted Reproduction Techniques, initially did not recognize surrogacy. In the original version, Article 8, stated: "Contracts of surrogate motherhood, free or costly, are void". The Law followed the classical idea of *mater semper certa est* – the woman who delivers the baby is the legal mother.

[7] Available at https://www.europarl.europa.eu/doceo/document/TA-8-2015-0470_PT.html .

After several tentative amendments, in 2021, the law changed, and we can read that:

"The conclusion of legal transactions of surrogacy is only admissible on an exceptional basis and free of charge, in cases of absence of uterus, injury or illness of this organ or other clinical situation that absolutely and definitively prevents the woman from becoming pregnant."

A considerable number of people suffering from a medical condition and an effort to ensure their reproductive rights is certainly a decisive factor for accepting the surrogacy. This is true, for example, for Ukraine, the country the legislation of which is very liberal about ART, including surrogacy.

In Ukraine, there is more than 1 million infertile couples for whom the ART is the only treatment method that exists. (BORIS, 2015, p. 29). Order of the Ministry of Health of Ukraine No. 787 of 9 September 2013 "On Approval of the Procedure for the Use of Assisted Reproduction Technologies" (MOH Order No. 787) regulating the use of ART in Ukraine, defines surrogacy as "a method of treatment."

The requirements for conducting the surrogacy treatment set forth by the said Order, *inter alia* include:

- availability of medical conditions (absence or malformation of uterus, the changes of endometrium resulted in

the loss of receptivity, non-curable intrauterine adhesions, grave somatic diseases that threaten the mother's life or health but do not influence health of the future child, repeated ART failures (four or more times) with getting the qualitative embryos the transfer of which did not result in pregnancy);

- genetic connections of a married couple (or one of the spouses) in the interests of which the treatment is conducted, with the child;

- absence of genetic connections of a surrogate mother with the child (carrying of pregnancy by close relatives of the intended parents (mother, sister, female cousin, etc.) "shall be allowed", etc.

Notably, the proportion of surrogacy programs among all the ART programs conducted in Ukraine is comparatively low (thus, for e.g., in 2014, the total number of the commenced circles involving the surrogates constituted 2,46 % from the total number of the ART circles commenced in Ukraine) (YUZKO, 2016), though this technique is the most ethically and legally debatable one, and the issues arising from the use of ART are manifested to the highest extent in case of surrogacy. Admissibility of commercial surrogacy (that is not prohibited in Ukraine) or acceptance of only the altruistic one is among such issues and is a matter of principle.

On the other side of the ocean, in Brazil, since 1992, surrogate motherhood has been regulated by Resolutions of the Federal Council of Medicine (CFM) on assisted human reproduction, which have been updated several times. Currently, Resolution No. 2320/2022 is in effect, according to which clinics, centers or reproduction services can use assisted reproduction techniques to create the situation identified as a surrogate pregnancy, provided there is a condition that prevents or contraindicates the gestation[8].

The new document establishes that the temporary donor of the uterus must have at least one living child, belong to the family of one of the partners in blood relationship up to the fourth degree[9], and, if it is impossible to meet this requirement, authorization from the Regional Council of Medicine (*CRM*) must be requested.

Furthermore, in assisted reproduction clinics, the following documents and observations must be included in the patient's

[8] Although the permission for same-sex unions was left out of the text, it is worth transcribing the explanatory statement of the Resolution: “In male same-sex unions, with a replacement uterus, there is a need to fertilize the oocytes with spermatozoa from a single partner. Even if groups of oocytes are fertilized separately, with spermatozoa from both partners, the doctor must know the male genetic material that gave rise to the implanted embryo – the mixture of spermatozoa from both partners being prohibited, making it difficult to know the genetic origin.”

[9] Including the mother-in-law and the sister-in-law – according to Maria Berenice Dias (p. 650).

medical record: a) free and informed consent form signed by the patients and by the temporary transferor of the uterus, covering biopsychosocial aspects and risks involved in the pregnancy-puerperal cycle, as well as legal aspects of filiation; b) medical report attesting to the adequacy of the physical and mental health of all those involved; c) Term of Commitment between the patient(s) and the temporary transferor of the uterus who will receive the embryo in her uterus, clearly establishing the issue of the child's filiation; d) commitment, on the part of the patient(s) contracting public or private assisted reproduction services, with medical treatment and follow-up, including by multidisciplinary teams, if necessary, to the woman who temporarily gives up her uterus, until the puerperium; e) commitment of the civil registration[10] of the child by the patients, and this documentation must be provided during the pregnancy;

[10] It is worth mentioning the positive evolution that occurred with Provision 63/2017 of the National Council of Justice (CNJ), which simplified the civil registration of children born by surrogacy. Until then, many obstacles were faced in meeting the legal requirements for the due civil registration of the child born by surrogacy, since the Law 6015/1973 links the concept of mother to the concept of parturient - which, as we have seen, does not occur within the scope of filiation established by surrogate pregnancy, in which the mother and the woman in labor are not the same person. Solving the problem, Provision 63/2017 of the CNJ provides that the civil registry of a child born from assisted reproduction techniques will be entered in 'Book A', regardless of prior judicial authorization and observing the legislation in force in what is pertinent, upon the attendance of both parents, with the documentation required by this Provision (article 16).

and f) approval of the spouse or partner, presented in writing, if the temporary transferor of the uterus is married or living in a stable union.

In a comparative analysis between Resolution n.º 1358/1992 and Resolution n.º 2320/2022, it is possible to conclude that, in this period of thirty years, an awareness has developed in Brazilian legal system regarding the importance of taking into account the psychological state of those involved.

For-profit or non-profit surrogacy?

It is worth asking whether the attitude of the surrogate mother is a purely altruistic act or, on the contrary, this deserves (and whether it should be attributed to her) monetary retribution. If we see it as a for-profit activity, we must discuss the honorary for the service and the acceptance of mediators. If, in a different paradigm, we see it as a non-profit activity, we should only consider having a compensation of expenses and burdens.

The European Charter of Fundamental Rights states in Article 3 (Right to the integrity of the person) that: “3. the prohibition on making the human body and its parts as such a source of financial gain.”

Generally, the prohibition of such remuneration is a rule in European Biomedical Law. We can find a similar rule in the

Clinical Trials Regulation EU Nº 536/2014 – the article 28 states that "(h) no undue influence, including that of a financial nature, is exerted on subjects to participate in the clinical trial." Also, the Directive 2010/45/UE of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation states, in article 13 (Principles governing organ donation), that "2. The principle of non-payment shall not prevent living donors from receiving compensation, provided it is strictly limited to making good the expenses and loss of income related to the donation. Member States shall define the conditions under which such compensation may be granted while avoiding there being any financial incentives or benefit for a potential donor." The European Court of Justice in Case C-34/10 - Oliver Brüstle vs Greenpeace e V, from 19th October 2011 excluded patentability of human embryos[11].

Supporting this understanding, the European Convention on Human Rights and Biomedicine (Oviedo, 1997), in article 21,

[11] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0034 . (2. The exclusion from patentability concerning the use of human embryos for industrial or commercial purposes set out in Article 6(2)(c) of Directive 98/44 also covers the use of human embryos for purposes of scientific research, only use for therapeutic or diagnostic purposes which is applied to the human embryo and is useful to it being patentable."

prohibits financial gain: “The human body and its parts shall not, as such, give rise to financial gain.”

Most European countries that accept surrogacy as such allow only the altruistic surrogacy (for e.g., the Netherlands, the UK).

In other parts of the world, altruistic surrogacy is also the preferred surrogacy practice.

In Brazil, for instance, there exists the rule that surrogacy cannot be profitable or commercial, and the reproduction clinic cannot mediate the choice of uterus donor. From Resolution No. 1358/1992 to the current one, No. 2320/2022, surrogacy has always had a non-profit, non-commercial[12] and family nature.

Not surprisingly, legislators of several countries where commercial surrogacy is prohibited, provide for criminal liability for performing such a reproductive practice. Thus, for example, in Portugal, criminal penalties shall be attributed in the case of paid surrogacy - as described by the law [Law 32/2006 on Assisted Reproduction Techniques], in its article 39º, “1 -

[12] Pursuant to article 199, paragraph 4, of the Constitution of the Federative Republic of Brazil, the law will provide for the conditions and requirements that facilitate the removal of human organs, tissues and substances for purposes of transplantation, research and treatment, as well as the collection, processing and transfusion of blood and its derivatives, *all types of commercialization being prohibited.*

Anyone who, as a beneficiary, enters into surrogacy contracts for consideration is punishable with imprisonment for up to 2 years or a fine of up to 240 days. 2 - Anyone who, as a surrogate mother, enters into surrogacy contracts for consideration is punishable with a fine of up to 240 days."

There are also a few jurisdictions that allow (or at least do not explicitly probit) commercial surrogacy. The list of them is not a long one. It includes, for instance, Georgia, Mexico, Ukraine, and some states of the USA. In some countries (for e.g., in India and Thailand), however, the ban on commercial surrogacy – for foreigners or for all intended parents – was imposed in recent years.

So why do some countries still allow for-profit surrogacy? How do they substantiate the acceptance of such practice?

In Ukraine, for example, the first surrogacy performed in 1995, was an altruistic one when a lady carried a child for her daughter who suffered from a medical condition (ANLYATIPOVA, 2009, p. 168). Since that, however, further development of surrogacy medical techniques and patient care procedures and the growing demand for that has resulted in the increase of the for-profit surrogacy practice. This was encouraged by the absence of a legislative ban on commercial surrogacy and definite (and surrogacy-friendly) legislative

answer to the motherhood question. Thus, the Family Code of Ukraine in Article 123 states that "in case of transfer of an embryo conceived by a married couple (a man and a woman) in the result of assisted reproduction techniques, to the organism of another woman, the married couple shall be considered parents of the child".

The medically assisted reproduction industry has, therefore, grown up. As of the beginning of 2022, in Ukraine, there were 73 fertility clinics[13] most of which were privately-owned. They generally provide high quality reproductive services[14] the value of which is considerably lower than that of the services rendered by, for, e.g., the U.S. clinics. This has encouraged foreign infertile couples[15], including the nationals of the states which prohibit surrogacy, to choose Ukrainian clinics to get a chance of having their genetically related children.

From time to time, scandalous situations broke out in the field of medically assisted reproduction, most of which arose in

[13] ТСН. Здоров'я. 2022 – рік впровадження медицини фертильності в Україні. 15.02.2022. [TSN. Health. 2022 – the year of implementation of fertility medicine in Ukraine. 15.02.2022] URL: https://tsn.ua/zdorovya/medicina-fertilnosti-yak-polipshiti-reproduktivne-zdorov-ya-ta-zahistiti-reproduktivnu-funkciyu-ukrayinciv-1978057.html.

[14] From the viewpoint grounded on the Ukrainian legislation, the gestational surrogacy method treatment shall be considered as medical "services".

[15] The interpretation of the applicable legislation of Ukraine gives ground to believe that these are only married couples who can enjoy the right to use the surrogacy technique.

connection with the provision of surrogacy-related services to foreign infertile couples. Several legislative responses to such situations (banning commercial surrogacy, prohibiting the provision of ART services to foreign nationals etc.) were suggested. No attempt, however, was successful.

It should be noted that in Ukraine, there is no special law regulating surrogacy and other ART. Some rules related to the ART are contained in the Civil Code of Ukraine and the Law of Ukraine "Fundamentals of Legislation of Ukraine on Health Care." The use of ART, however, is mainly regulated by MOH Order No. 787. Certain aspects of medically assisted reproduction (e.g., parenthood) are governed by the Family Code of Ukraine and some sub-legislative acts. There is, therefore, a need to overcome fragmentary regulation and to comprehensively address the burning issues related to surrogacy in the relevant law.

This has become even more evident since the COVID-19 pandemic and the beginning of full-fledged war unleased by the Russian Federation against Ukraine.

During the COVID-19 lockdown, when state borders were closed, dozens of foreign couples who were biological parents of babies born in Ukraine by surrogates, faced serious

difficulties in picking up their newborn children and bringing them to the country of the biological parents' residence.

At the beginning Russia's illegal and criminal invasion of Ukraine, the situation of all the participants of the surrogate motherhood programs was even more dramatic. The questions the answers to which had not been thought of at the stage of making surrogacy arrangements or thought in a different context, arose. Should surrogate mothers continue pregnancies? Should they move to safer countries, including those where surrogacy is prohibited or where it is the surrogate mother who would be considered as the legal one? Who should be responsible for taking care of the newborn children when their intended parents cannot come and pick them up? The parties to the surrogacy arrangements - intended parents, surrogates, agencies, clinics - could have different opinions regarding the issues (that could have not been properly regulated or the regulation of which could be inadequate to the situation.) There are certainly legal ways of resolving such conflicts if they appear, but would many people think of going to court when air ride sirens sound and bombs were falling in civil resident areas?

This puts the issue of the necessity of better protection of the rights of children born due to surrogacy, the surrogate

mothers, and the intended parents, with renewed vigor. The societal and professional discussions regarding surrogacy continue. Those participating in the discussions often have diverse, dissimilar points of view and arguments to substantiate them.

On 28 December 2021, the Ukrainian Government submitted the draft law (registration No. 6475) on assisted reproductive technologies. In January 2022, members of the Supreme Rada of Ukraine filed their bills (registration No. 6475-1 and No. 6475-2) aimed at improving the legal regulation of the use of ART.

Regardless of differences between the draft laws, none of them suggests imposing a ban on surrogacy or limiting surrogacy to the altruistic one. With the current level of development of surrogacy techniques and businesses, the above-mentioned legislative responses could result in shadowing of surrogacy motherhood and full-scale violations of the rights of children and other parties concerned. Moreover, when a considerable part of economy is shadow and the level of corruption is comparatively high, the covering of reasonable expenses normally made in case of altruistic surrogacy, may be used to shield for-profit surrogacy arrangements.

At the same time, as pointed out by Mykhaylo Radutsky, the chairman of the Supreme Rada Committee on Nation's Health, Medical Care and Medical Insurance, “surrogacy motherhood is the sphere of social relations where a business component shall not play a key role.” (RADUTSKY, 2022). Draft law No. 6475-2, therefore, suggests prohibiting the activities of commercial agencies working in the sphere of ART, banning advertising directed at the involvement of women in the provision of surrogacy services, keeping records of foreign nationals willing to enjoy surrogacy in Ukraine, etc. Importantly, the draft law sets forth substantial requirements of a surrogacy contact, the parties’ consent on which is to help better protect the intended parents and the surrogate and to contribute to securing the best interests of the child.

In Ukraine, many scholars and civil society activists pinpoint the necessity of regulating the ART, including surrogacy by a special law, while seeing the future in introducing altruistic surrogacy instead of for-profit one (POKALCHUK, 2020, p. 105).

Is there a right to revoke consent after delivery?

In the last decade, the understanding that surrogate motherhood should be accepted as an altruistic act, and that an

altruistic gestation in favour of couples in which the woman suffers from a serious disease in her uterus (or lack of the uterus) became accepted in public opinion and in bioethical bodies and at the Parliament of Portugal.

In 2009, several political parties presented draft-laws on this matter. The National Council of Ethics for Life Sciences presented us with his opinion in 2012 (Opinion n.º 63/CNECV/2012); the National Council for Artificial Reproduction Techniques defended the altruistic gestation, followed by several Parliament Acts in 2016, 2017, 2019, and finally in 2021.

However, this altruistic act leads us to another question: is there a right to revoke the consent after delivery?

In surrogacy, we can have two models. In the first one, the woman gives her consent only before insemination and shall comply with the duties of the contract afterwards. In a moderate version, the pregnant woman gives her consent before insemination, but keeps the right to undergo abortion (in cases accepted by law).

According to the opposite model, after delivery, the woman has the right to revoke her consent and may become the mother. The answer to this question was difficult in Portugal.

There were two different opinions. The National Council of Ethics for Life Sciences and the Parliament were in favor of the *genetic and intentional criterion*, that is to accept the validity of the contract and its efficacy without the right to revoke the consent after insemination. This would best serve the couple's parental project and the best interests of the child. The Constitutional Court, however, was in favor of the *gestational criterion*, based on the dignity of pregnant women and the right of development of her personality and the right to form a family (also of the woman he was pregnant). And the Constitutional Court has the ultimate power.

In 2016, in a Parliament Act, only one consent was necessary, but the President vetoed the Act.

In 2017, in another Act, the same rule of a binding consent was sustained. An altruistic gestation, with genetic material from the couple (eventually a third party) and without genetic material from the gestational woman, her consent was only needed until the beginning of the ART procedures, following an idea of intentional/genetic criteria. The President promulgated and the Act entered into force. However, in April 24th 2018, in the Judgment of the Constitutional Court, n.º 225/2018, gestational surrogacy was not per se considered unconstitutional. But, the Court stated that the sole consent

before the procedure is unconstitutional, considering that preventing the birth mother from giving up this contract and ultimately wanting to keep the child by not giving it to the beneficiary couple would be a "violation of the right to personality development, interpreted in accordance with the principle of human dignity, and the right to constitute family", considering that the consent after delivery is mandatory.

In 2019, there was another Act of Parliament, including once again one single consent before insemination. Without surprise the Constitutional Court declared the act unconstitutional once again. The right to revoke the consent – after delivery – is mandatory in order to respect the altruistic woman's fundamental rights, based on the principle of dignity of the human person, states the Constitutional Court decision of 2019 (Decision No. 465/2019).

It should be mentioned that the new Act from July 2019 developed important new requisites: (1) the law would only apply for Portuguese citizens or residents of Portugal, in order to avoid reproductive tourism; (2) it shall only be possible if the beneficiary woman has no uterus or an injury or disease that makes pregnancy impossible; (3) the woman who undergoes surrogate pregnancy is already a mother; (4) the authorization of several Committees is demanded (CNPMA; Medical

Association, Psychologists Association) and (5) there is a detailed regulation of the written contract.

Before the enactment of the law in 2021, we could state that Portuguese society had shown a significant tolerance for this reality, since: there were already three Acts of the Parliament approving this technique (in 2016, 2017 and 2019); the President of the Republic promulgated the Law of 30 July 30 2016, and the Constitutional Court Judgment Nº. 225/2018 did not declare the unconstitutionality of the method itself.

Finally, in 2021, the Portuguese Law on Surrogacy was approved. In article 8th, it states that "in cases of surrogate pregnancy, the same can happen, at the will of the pregnant woman, until the birth of the child is registered.". Considering this, in cases of surrogacy the revocation of consent may take place until the registry of the child. The Civil Registry Code provides a timeframe of 20 days for registration. The regulation of this procedure is problematic and has not yet been accomplished.[16]

[16] See the Opinion 115/CNECV/2022 about the proposed regulation of the law. The Council sees as very problematic the definition of paternity in case the pregnant woman revokes her consent after delivery and assumes the condition of (legal) mother. Shall the male member of the beneficiary couple (when he is the biological father) continue as father (that is the opinion of André Pereira) or shall the parental project be reserved to the woman who was pregnant and delivered the baby (a single mother)? See -

It shall be possible to configure realities in which, due to the existential proximity and the competent medical and psychological selection and monitoring of the pregnant woman and the couple, it is possible to have a strong probability that the child will be born and - out of respect for the dignity of the woman - after a renewal and free consent. This form of establishing affiliation to a regime closer to adoption. It shall not be considered as a "contractual affiliation" (which would be strange in Portuguese family law system). The Portuguese law follows, in a certain sense, the British system, since the first consent is not binding. In Britain altruistic surrogacy is accepted and is only effective after a "parental order" six months after delivery.

In Brazil, the regulation mentions the requirement of only one consent before insemination. So, in a reading of the cold letter of the law, both the woman and the parents shall comply with the duties of the contract.

Faced with the eventuality of non-compliance with the term of commitment (contract) and the informed consent form by the temporary donor of the uterus (non-compliance configured, for example, by the refusal to hand over the child born to the

https://www.cnecv.pt/pt/1656935972?download_document=9651&token=b673fe49586343b989a2e901f240d71d

contracting parents) the question arises of knowing what responses the Brazilian legal system would be able to give. In this context, one should start from the premise common to the commitments provided in the surrogate pregnancy, referring to the establishment of filiation to the contracting parents – *the donor of the uterus is not the mother*.

The absence of specific legislation makes the search for solutions difficult. However, both the *term of consent* and the *term of commitment* establish the role of each person involved in this type of filiation project, representing true *sources of obligation* between the parties. Therefore, in the given hypothesis, the parturient would be subtracting or registering someone else's child in her own name, which leads some doctrine to suggest penal implications for the situation, such as articles 249 and 243 of the Brazilian Penal Code (MELO, 2022).

In the event of non-compliance with the terms of commitment and consent by the contracting parents, configured by the abandonment of their own child, one could think of the application of art. 133 of the Penal Code, with no need for the parturient to commit to keeping the child - *since she is not the mother* - and placement for adoption is appropriate (MELO, 2022).

Conclusions

From a global analysis of surrogate motherhood in the Brazilian, Portuguese and Ukrainian legal systems, it is possible to conclude certain striking differences.

First, differentiating itself from all the systems under analysis, the possibility of the profit nature of surrogacy in Ukraine stands out, which represents the strong liberal character of the practice in this country, as well as the connection of this technique to the guarantee of reproductive rights of people with fertility problems.

On the other hand, when comparing the Brazilian and Portuguese systems, the difference between the consent and revocation models stands out, which very well represents the great distinction between the strong presence of *biological truth* in the Portuguese legal system and, on the contrary, the rise of *socio-affective affiliation* in the Brazilian legal system, especially when in this country consent before insemination is enough to bind the donor of the uterus, and in that country the first consent is not binding in itself.

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