



Review article

The Czech legislation on surrogacy and its comparison with foreign standards

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Abstract

Members of the Czech Parliament submitted the Amendment to the Civil Code and the Criminal Code that considers surrogacy as a specific form of human trafficking addressing the prohibited commercialization of the human body. The amendment aims to protect women, whose social status is often exploited, and children, who are reduced to commodities.

The proposed changes seek to prevent the abuse of international surrogacy and reproductive tourism and, as a result, prohibit surrogacy even in an altruistic form between close relatives.

Current Czech legislation tolerates surrogacy. Many social and ethical questions associated with this phenomenon deserve a society-wide discussion. Foreign legislation oscillates from clearly regulated conditions for surrogacy, through regulations that tolerate surrogacy without further regulation, to the prohibition of this specific phenomenon.

This paper discusses the legislative regulation of surrogate motherhood in the Czech Republic (CR), as it compares with foreign regulation, and focuses on parameters used to compare different legal systems.

Detailed national legislation, but especially uniform international rules can contribute to the protection from potential abuse caused by surrogacy. While altruistic surrogacy can be morally acceptable, commercial surrogacy, especially in an international context, can lead to the aforementioned abuses.

Keywords: Altruistic and commercial surrogacy; Child status; Fertility tourism; Intending parents; Inter-country surrogacy; Surrogacy

Introduction

If the development of the approach to surrogate motherhood is evaluated over time, the tendency towards a clear legal regulation of the altruistic form of surrogate motherhood prevails. This article contributes to the discussion on legislative regulation of surrogate motherhood in the Czech Republic, providing a comparison with foreign regulations, which can inspire future legislative development. It also focuses on parameters used to compare different legal systems, including methods of regulation of surrogacy, payment acceptance, and the status of the child in determining maternity after the birth of the child, i.e. whether the mother is the woman who gave birth to the child, or whether there is a different legal regulation of motherhood in the given country. The article reacts to the parliamentary proposal to amend the Civil and Criminal Code in the CR (Chamber of Deputies Parliament of the Czech Republic (2023). It highlights potential pitfalls of Czech legislation and offers links with international regulations. This area requires a broad public debate involving the professional and lay audi-

ence. An unilateral prohibition of this widespread social phenomenon may not increase protection for the parties involved but could lead to even more detrimental behaviour for children and surrogate mothers.

Materials and methods

The initial search was based on a systematic literature review of articles listed in PubMed, SCOPUS, and UKAŽ for diploma and dissertation theses concerning surrogacy, published in the 21st century and written in English, Czech, and Slovak. The review process is illustrated in a flowchart (Diagram 1). Several keywords were used according to the individual limitations of the databases. These were: altruistic surrogacy, commercial surrogacy, child status, fertility tourism, intending parents, inter-country surrogacy, human trafficking, and prevention of child trafficking.

Data collection and analysis covered the period from 2000 to 2023, with current information from 2024 added. Fourteen papers were used for the overview study (see [Suppl. Table S1](#)).

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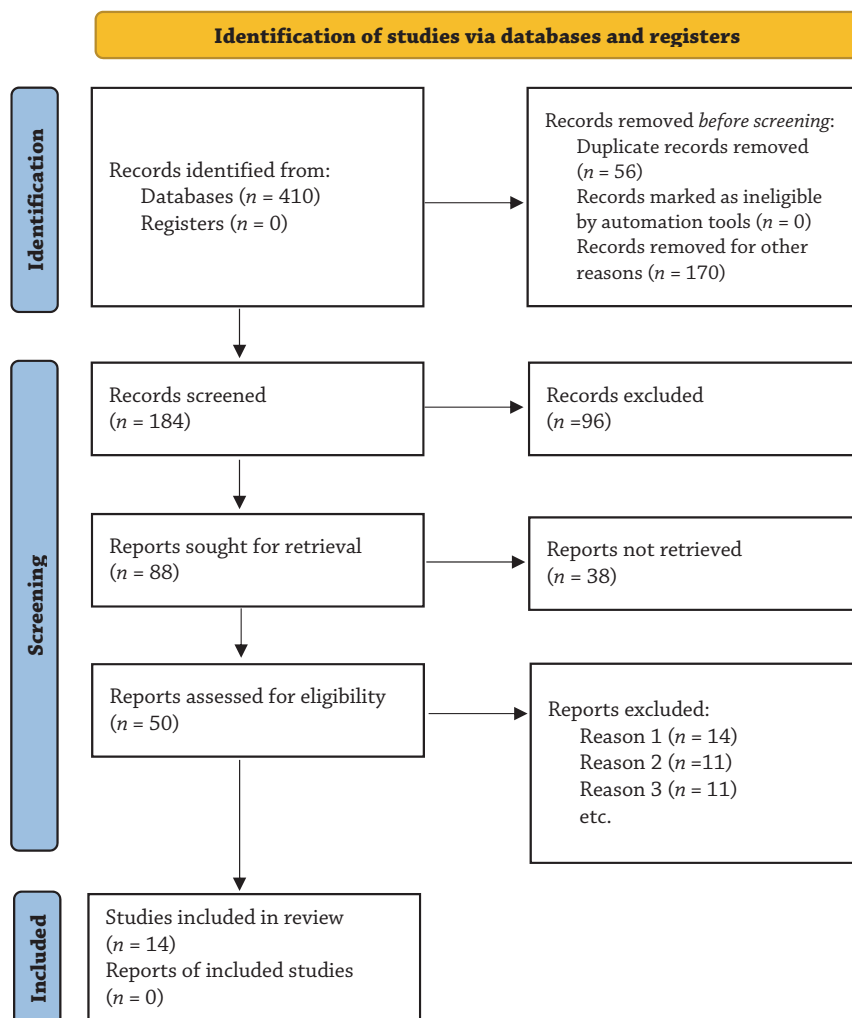


Diagram 1. Prisma 2020 flow diagram for new systematic reviews (Page et al., 2021)

Results and discussion

Definition: Surrogacy involves a surrogate mother giving birth to a child created from the gametes of the intended parents (referred to as the “intending couple”). The surrogate mother births the biological parents’ child from an embryo implanted in her uterus. The purpose of surrogate motherhood is to give birth to a child and hand it over to the biological parents – if the woman is unable to carry and deliver the child, especially for health reasons (Fidan, 2016).

Foreign and medical literature prefers to distinguish between gestational surrogacy and traditional surrogacy. Practice Committee of the American Society for Reproductive Medicine... (2017). In gestational surrogacy, the surrogate has a fertilized embryo, often from the intended parents’ sperm and egg, transferred into the surrogate mother’s uterus (Fidan, 2016). For *in vitro* fertilization, the sperm and egg of the intended parents could be used, however, gay men and single people can also use donated eggs or sperm. Thus a gestational surrogate has no genetic contribution to the child they are carrying. On the contrary, traditional surrogacy involves the surrogate mother being fertilized with the sperm of the intended father, providing a genetic contribution to the child (Fidan, 2016).

Current Czech legal provision

The current applicable legislation does not expressly regulate surrogacy, nor is it prohibited. Therefore, the definition given in Article 2, paragraph 3 of the Charter of Fundamental Rights and Freedoms (Act no. 2/1993 Coll.), “Everyone can do what is not prohibited by law, and no one may be forced to do what is not required by law,” can be used. However, relatively extensive related legislation can be cited. The basis is the regulation in Act. No. 89/2012 Coll., Civil Code (hereinafter “Civil Code”), because a surrogate mother is always a mother as she gives birth to a child. Current legislation is based on Roman law, according to which “the mother is always certain, the father uncertain” (Těšinová et al., 2019).

Childbirth is the only relevant fact that establishes the determination of maternity. Therefore, a woman providing the genetic material to conceive a child cannot successfully assert a claim in court to determine maternity against the woman who gave birth to the child – and this is an important aspect when assessing surrogacy in the Czech Republic. However, this concept is also applied in other states based on the Roman law tradition. The Civil Code excludes adoption between persons directed related and between siblings. This does not apply in the case of surrogacy and allows persons involved in surrogacy to be close people according to the Civil Code provision of § 804. If the Civil Code did not specify this regulation, it would

not be possible to adopt a child if a mother in the position of a surrogate mother gave birth to a daughter from intending couple. It would be the same if the surrogate mother was the woman's sister from the intending couple. Foreign and current experiences in the Czech Republic show that the greatest interest in surrogacy is among women who are related to each other (Švestka et al., 2014). Rumpík et al. (2019) report the opposite finding in a study involving 75 intended mothers and 82 surrogate mothers. In most cases, surrogate mothers were found using the internet. In only four cases, the surrogate mother was a sister of the intended mother in the study (Rumpík et al., 2019).

The surrogate mother becomes the legal mother with all parental rights and obligations because she acquires these through parental responsibility. The intending mother only becomes the legal mother through the child's adoption. The woman who gave birth to the child will only express her will to give the child up for adoption in court. This is mostly the so-called direct adoption, in which the consent expressed in court specifies the specific name of the woman who will later adopt the child based on standard procedure. A surrogate mother can agree to the adoption of a child no earlier than 6 weeks after the birth of the child, and she can still withdraw her consent within three months from the time she gave it. If the intending mother has already adopted a child, she also has the right to withdraw her consent to the adoption within 3 years of the adoption decision. After this period, the adoption is irrevocable. Whether the surrogate mother will proceed according to this arrangement is perceived only as the surrogate mother's moral responsibility. Suppose paternity is not determined before the birth of the child. In that case, the intended parents' moral obligation is again to take care over the child. Uncertainty about whether the child will be handed over by the surrogate mother or accepted by the intended parents exists for all persons involved.

However, assisted reproduction is regulated by several laws: Act no. 373/2011 Coll., on specific health services, Act no. 296/2008 Coll., on human tissues and cells, and Act no. 227/2006 Coll., on research on human embryonic cells. Assisted reproduction is regulated quite precisely, but it does not elaborate on surrogacy. However, when participating in the surrogate motherhood process, the law on specific health services is violated, as infertility treatment is not a medical indication for assisted reproduction for the surrogate mother and the man (intended father). Furthermore, in the case of the implantation of the embryo of the so-called intending couple into the womb of the surrogate mother, the principle of anonymity is violated and the factual essence of the offense is thereby fulfilled. In the case of a surrogate mother, who should become the mother of the woman from the intending couple, the following facts must be considered. It is possible to perform artificial insemination on a woman of childbearing age if her age has not exceeded 49 years, which can be limiting for some couples considering a surrogate mother.

The current definition of an infertile couple using assisted reproduction methods allows many women to become mothers without any guarantee that they will properly care for the child after birth. This legal definition of an infertile couple allows a man who has married a woman other than the surrogate mother to be considered part of an infertile couple and seek assistance from a reproductive medicine centre. In the surrogacy process, not only are the surrogate mother and intended couple involved, but also a donor of oocytes, another woman, or a sperm donor. Thus, up to five people can be involved in the surrogacy process.

Determining paternity indirectly regulates surrogacy. In the Czech Republic, it is preferable that the surrogate mother be unmarried. If the surrogate mother is married, her husband is automatically considered the child's father. However, he can deny paternity, and paternity is then determined by the court.

The Civil Code provides the presumption of paternity of a child conceived by artificial insemination to an unmarried woman. The father of the child is the man who gave his consent to the insemination (the man of the intending couple).

In Czech reproductive medicine centres, the paternity of the conceived child is determined based on presumption. However, the centres do not know when and where the child will be born, therefore do not send this information to the registry office. If paternity arises based on the man's consent to artificial insemination, a consent declaration for registry entry is still needed in terms of the 2nd presumption of paternity, or the determination of paternity based on a court decision according to the 3rd presumption of paternity.

In the Czech Republic, a man's paternity is determined by the man's consent declaration with the surrogate mother before the relevant registry office. This declaration can be made during the surrogate mother's pregnancy, and the client couple often perceives this as a kind of insurance for the subsequent transfer of the child to the father for de facto custody. The surrogate mother hands the child over to the care of the child's father, and gives her consent to the adoption in court six weeks after childbirth. However, if the surrogate mother refuses to express her consent in court, there is no legal procedure for obtaining this consent, even if paternity is already established.

The mere initiation of paternity denial proceedings does not prevent the completion of illegal manipulation of the child and therefore suspends parental responsibility (Švestka et al., 2014). The current Czech Republic legislation assumes only an altruistic form of surrogacy. Surrogacy must not be associated with any financial compensation, as the Civil Code declares the principle of banning the commercialization of the human body and also that the organs of the human body are not negotiable items, i.e., *res extra commercium* (Skřejpek, 2011). The surrogate mother is entitled to compensation for the costs associated with the pregnancy and childbirth, but the amount of these compensations is not explicitly regulated. It is not possible to conclude a contractual relationship, the content of which would be the handing over of the child and then the obligation of the surrogate mother to express her consent to the adoption. In the Czech Republic this contractual relationship would be invalid. Attorneys draw up documents with surrogate mothers and potential parents that can be compared to informed consent, not to a contract.

There have already been cases when the surrogate mother decides to keep the child, or the intending couple decides they do not want the child. Chin (2023) points out that a child could be born with congenital deformities, and the intending couple refuses to accept it. Therefore, intended parents should be liable for the high cost of the child's upbringing if they decide to give up the child for institutionalization or adoption. Forcing the intending couple to accept the disabled child would not be in the child's best interest. It would likely lead to neglect and abuse, and it would be grossly unfair for the government/taxpayer to pay for the upbringing of a disabled child within a state orphanage (Chin, 2023). In a scandal known as "Baby Gammy", the intended parents left a boy with Down Syndrome in Thailand while taking home his healthy twin sister (Whittaker, 2016).

Abuse of the child's basic human rights can occur when a foreign man acknowledges paternity together with the child's mother, and she then expresses her consent to the adoption in the relationship with this man's wife. The consent to the adoption expressed by surrogate mother would merely be a tool to circumvent the law and facilitate international adoption with elements of surrogacy and an example of abuse of rights. The Czech court can also enter into the process of surrogate motherhood in the event of this threat to the child's interests.

International legal provision of the current child protection rights is stated in the Convention on the Rights of the Child (hereinafter "Convention"), ratified in the CR in 1991. Article 3 (1) stipulates that the child's interest must be the primary consideration in any activity concerning children. However, many activities within surrogate motherhood may not fulfill this basic principle of social and legal protection of children. Article 7 of the Convention on the Rights of the Child declares the right of the child to know his parents, if possible. The right to know one's origin is hereby declared, but thanks to the mentioned postscript, this is not an absolute right. The valid legal regulation of criminal law could respond precisely to the actions that conflict with the child's interest.

The provision of § 169 of Act no. 40/2009 Coll., Criminal Code (hereinafter "Criminal Code") affects possible payments to the surrogate mother and states the following provision. To elaborate on the facts of the crime of entrusting a child into the custody of another, according to which whoever entrusts a child into the custody of another for a reward for adoption or another similar purpose will be punished by imprisonment for up to three years or a ban on activities. Only the mother of the child would be criminally liable, not the man from the so-called intending couple or intermediaries (health care providers).

Aspects of foreign legislation

A Preliminary Report on The Issues Arising from International Surrogacy Arrangements (2012) provides a comprehensive overview of the legal aspects of surrogacy with an international element. In 2023, HCCW Surrogacy Experts' Group issued the Final Report, "The feasibility of one or more private international law instruments on legal parentage". Negotiations are still in the process of adopting a Hague Convention regulation of international surrogacy. However, pressures for a complete ban on surrogacy are growing internationally. Even if national legislation is based on various cultures and religions, it will probably be possible to agree on a set of values that protect women and children from exploitation and ensure their dignity, integrity, and self-determination (Piersanti et al., 2021).

The Casablanca Declaration, dated 3rd March 2023, was signed by 100 experts of 75 nationalities. The Casablanca Declaration was presented to the public, calling on states to commit to the universal abolition of surrogacy (Declaration Genesis, 2024). The International Coalition for the Abolition of Surrogate Motherhood (ICASM) also shares the same effort to abolish surrogacy. ICASM is a coalition of feminist and human rights organizations, founded in 2018 to fight against reproductive exploitation (Coalition Internationale pour l'Abolition de la Maternité de Substitution (2024).

Significant negotiations also take place on the floor of the European Parliament. On April 23, 2024, the European Parliament included the exploitation of surrogacy as a minimum case of human trafficking when voted in favour of the revision of the Directive. The current Directive on combating trafficking in human beings newly includes also "the exploitation of

surrogacy". Now surrogacy shall be considered in the same way as slavery or forced prostitution. The directive was approved by 563 in favour, with 7 against, and 17 abstentions. The new law criminalises forced marriage, illegal adoption, and exploitation of surrogacy at the EU level (News of the European Parliament, 2024). According to the revised directive, not only could persons who directly participated in or mediated trafficking be punished, but also individuals who accepted these services knowing a victim of human trafficking was providing them.

Because the directive will come into force twenty days after its publication in the EU Official Journal, and member states have two years to implement its provisions, an accelerated amendment of the legal regulations in the EU states in the field of surrogacy is expected.

Individual legal regulations differ from different legal concepts, religious and ethical principles in particular societies. For example, Islamic law does not allow these procedures due to their connection with religious principles (Fidan, 2016). The criterion for the following division of legal regulations could be the fact whether they explicitly prohibit surrogacy, do not explicitly regulate them, or allow and regulate them according to the conditions set by law.

a) Surrogacy expressly prohibited by law

China (Mainland), France, Germany, Italy, Mexico (Queretaro), Sweden, Switzerland, United States of America (e.g., Arizona, District of Columbia) are states where surrogacy arrangements are expressly prohibited by law (Hague Conference..., 2012, p. 9). In UAE, Mongolia, Pakistan, and Taiwan surrogacy is banned (Frati et al., 2021). Norway does not allow surrogacy of any kind but recognizes the citizenship of children of Norwegian parents born by surrogacy abroad (Brandão and Garrido, 2022; Stuvøy, 2018). Even in these states (Mainland China, Germany, France, Italy, and Switzerland), entering into a surrogacy arrangement will also attract criminal sanctions for the parties involved, as well as any intermediaries, such as medical institutions facilitating the arrangement (Hague Conference..., 2012, p. 9). However, the question is whether a strict ban leads to the circumvention of legislation and uncontrollable practices (Frati et al., 2021).

The phenomenon of transnational surrogacy, where people travel abroad for surrogacy, is common in countries with surrogacy bans. As surrogacy within the Swedish healthcare system is not permitted, Swedish intending parents have used transnational surrogacy, with the majority turning to India (Arvidsson et al., 2015). Australia, the Netherlands, and the UK are trying to draw preconception agreements for surrogate treatments abroad (Brandão and Garrido, 2022).

b) Surrogacy is largely unregulated

In Argentina, Australia, Belgium, Brazil, Canada, CR, Ireland, Japan, the United States of America (Michigan, New York), and Venezuela there is no general prohibition in the law concerning surrogacy arrangements. Still, such arrangements are void and unenforceable, either expressly or under general law principles (Hague Conference..., 2012, p. 10). There is also no explicit regulation in South Korea (Brandão and Garrido, 2022). African states do not have legal regulation, and Kenya, for example, has therefore become a desired destination for surrogacy (Brandão and Garrido, 2022).

In some of these states, commercial surrogacy is prohibited through specific criminal law provisions, or because such an arrangement would contravene other general criminal law provisions, for example, relating to child trafficking (Hague

Conference..., 2012, p. 10). This was pointed out above in connection with the provision of the Czech Criminal Code.

In these states, the legal status of the child born as a result of any arrangement will be determined by the general laws concerning legal parentage (Hague Conference..., 2012, p. 10). This approach is based on the principle of Roman law that the mother is always certain; the mother is the woman who gave birth to the child regardless of the genetic link (surrogate mother). Thus, the intending parent must often rely on the consent of the surrogate mother to secure their parental rights. The surrogate mother expresses her consent to the adoption by an intending woman. This legal regulation is in force in Argentina, the CR, Japan, Mexico, and Venezuela (Hague Conference..., 2012, p. 11).

c) Surrogacy is expressly permitted

Surrogacy is expressly permitted and regulated in Australia (the Australian Capital Territory (ACT)), Queensland (QLD), New South Wales (NSW), South Australia (SA), Victoria (VIC), Western Australia (WA)], Canada (Alberta, British Columbia), China (Hong Kong SAR), Greece, Israel, South Africa, United Kingdom and, to a certain degree, New Zealand (Hague Conference..., 2021, p. 12). California is unique because surrogacy arrangements are organized through agencies. The state has only a little interference (Twine, 2011). The Netherlands only allows altruistic surrogacy under strict conditions. There are discussions as to whether commercial surrogacy should also be allowed so that citizens do not travel abroad for this purpose (Blazier and Janssens, 2020). Since 2016, Portugal has allowed surrogacy arrangements in certain specific situations, defined in quite restrictive terms (women born without a uterus, or who have a serious lesion or disease of the uterus that prevents the gestation of a child, or in other justifiable clinical conditions). Surrogacy contracts cannot involve any kind of payment or donation to the surrogate, except for her actual expenses (medical care, transportation), and only to the extent that they are duly certified by the issued invoice (Raposo, 2017).

Greece is one of the very few jurisdictions in the European Union that enforces surrogacy contracts thanks to the progressive and tolerant legal framework in the Greek Civil Code. Surrogacy contracts have been valid and enforceable for altruistic gestational surrogacy since 2002. A recent legal reform established that the prerequisite of permanent stay in Greece, as a criterion for applying the law, has been abolished. The law explicitly prohibits traditional and commercial surrogacy (Vashtaroucha, 2019).

In the USA, there is no national governance of assisted reproduction technology policy. Each state has its laws that differ widely, from an absolute ban to the allowance of all forms, or specific restrictions (Finkelstein et al., 2016).

These states expressly permit certain forms of surrogacy arrangements for defined, eligible persons, and make specific provisions for the legal parentage of a child born as a result of an agreement that falls within the scope of the legislation (Hague Conference..., 2012, p. 12).

Entering into any arrangement not compliant with the legislation will amount to a criminal offence (Greece, Israel). Criminal provisions are limited to entering into, or brokering, a commercial arrangement (Australia, Canada, China (Hong Kong SAR), New Zealand, United Kingdom) (Hague Conference..., 2012, p. 12).

In Australia (VIC, WA, and ACT), Greece, Israel, and South Africa apply a process of "pre-approval" of surrogacy arrangements, whereby the prospective intending parents and the surrogate mother must present their arrangement to a court

or committee established specifically for this purpose. They have to receive this approval before the arrangement and any medical treatment may proceed. The court or special committee is required to verify that the conditions of the legislation have been met (Hague Conference..., 2012, p. 12).

Australia (QLD, NSW, and SA), Canada (Alberta and British Columbia), China, and the United Kingdom have a process in place for intended parents to obtain legal parentage for a child born as a result of a surrogacy arrangement. This regulation is focused on the transfer of legal parentage post-birth. In the United Kingdom, intended parents can acquire legal parental status after childbirth when the surrogate mother freely consents to the transfer of parental rights (Hague Conference..., 2012, p. 13).

The process usually includes a retrospective consideration of the arrangement to determine whether the conditions of the legislation have been met (Hague Conference..., 2012, p. 12). The emphasis of these approaches is therefore different.

Permitting only altruistic surrogacy is the trend across the states that regulate surrogacy (Australia, Canada, China, Hong Kong, Greece, New Zealand, South Africa, and the United Kingdom). In many states, this requirement is enforced with criminal provisions regarding commercial surrogacy (Hague Conference..., 2012, p. 13). In altruistic surrogacy, the intending parents could pay "reasonable expenses" to the surrogate. The range of the expenses varies from medical expenses, counselling and legal expenses, and also loss of income.

Israeli legislation authorizes the committee that pre-approves surrogacy arrangements to allow monthly "compensation payments" to the surrogate for "pain and suffering", as well as reimbursement for her expenses (Hague Conference..., 2012, p. 13).

In Greece and South Africa, the prospective parents are automatically considered and registered as the legal parents of the child from birth. In Israel, intending parents are required to issue a parental decree (no later than 7 days after the child's birth). The decree will be granted unless the child's best interest requires otherwise. Here there is room for some regulation and control of the whole process (Hague Conference..., 2012, p. 14). However, the approval of the state regulator is required for the arrangement to proceed. A transfer of parentage from the surrogate mother to intending parents will still need to be obtained by intending parents following the birth of the child (Hague Conference..., 2012, p. 14).

d) Surrogacy is permitted, including commercial

Commercial surrogacy is permitted, and procedures are regulated to allow legal parentage to be granted to one or both intending parents, with no residency or habitual residence requirement for the intended parents. This arrangement is in place, for example, in the United States of America (California, Maryland, Massachusetts, Ohio, Pennsylvania, South Carolina), Georgia, Russia, Uganda, and Ukraine (Hague Conference..., 2012, p. 16). Some of these states also require a genetic link between the child and the intending parents and allow only gestational surrogacy. However, it is not always the rule and traditional surrogacy is also permitted in some of these states. Georgia and Russia allow commercial surrogacy only for heterosexual couples (Khvorostianov, 2023), as do Ukraine (Brandão and Garrido, 2022).

In the USA, a gestational carrier usually receives an average amount of \$20,000 to \$55,000 per pregnancy (Brandão and Garrido, 2022).

Since there is no domicile requirement for surrogate mothers in these states, surrogate mothers can travel to them only

to become surrogate mothers (Hague Conference..., 2012, p. 17). There is room for possible abuse of these women, and consequently their children as well. Thanks to this legal regulation, these states are becoming centres for international surrogacy arrangements. In Australia and Greece, there is a regulation that both the surrogate mother and the intending mother must be domiciled in the same state (Hague Conference..., 2012, p. 15).

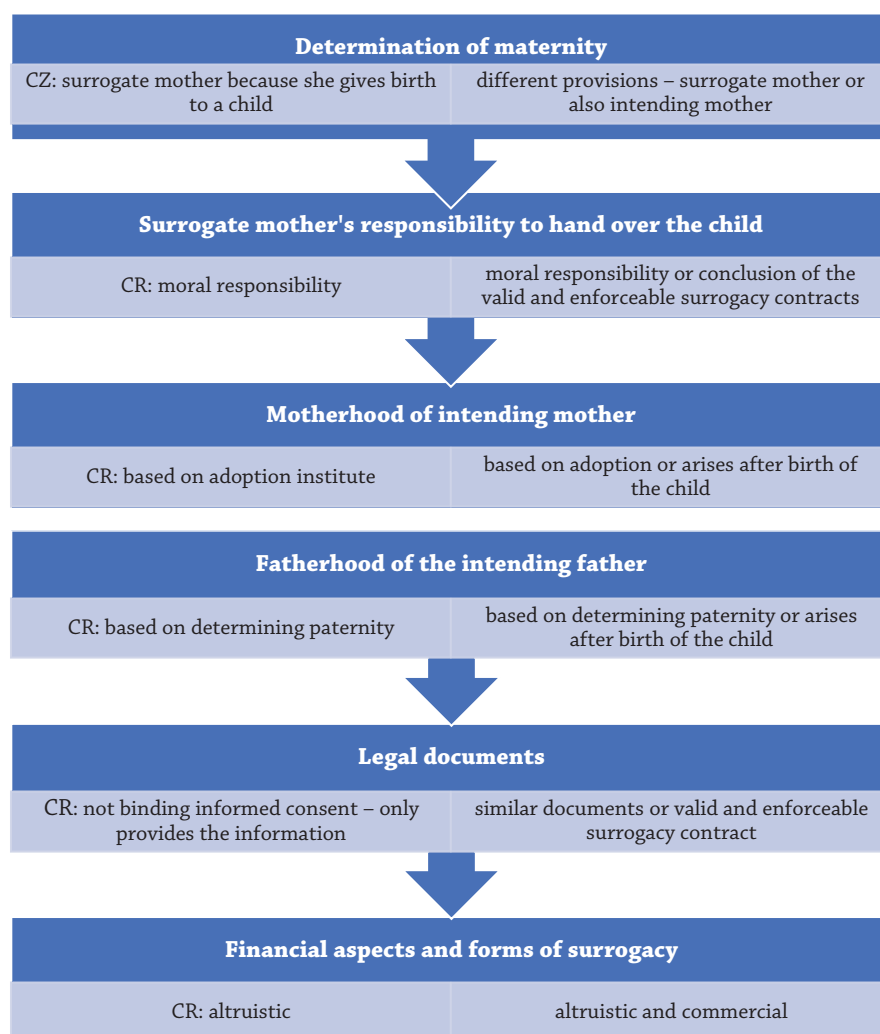
In India, commercial surrogacy has been allowed since 2002, and its affordability has attracted clients from all over the world. This resulted in a ban on foreign commercial surrogacy in 2015. India has been restricting such activities since 2012, and Thailand has responded by offering *in vitro* fertilisation services to foreigners. Problems also followed in Thailand, and surrogacy was banned in 2015. The Cambodian government followed suit, and it has been banned since 2016 (Hibino, 2022).

Schema 1 compares the Czech current provision of surrogacy with foreign legislation. Further information can be found in the Table of studies (Suppl. Table S1), where are mentioned 14 international studies that were carried out, the methods used, the specific area of the regulation and study, and the results on this topic are mentioned.

Foreign practical aspects of surrogacy

a) General health conditions, and legal consequences

Criteria for a suitable surrogate mother can be stated as follows: an age of 21–35 years, and having at least one child after a full-term, and uncomplicated pregnancy; the pregnancy history may be more predictive of obstetric complications than age (Duffy et al., 2005). South Africa requires a surrogate to be 21–34 (traditional surrogacy), and not over 50 years – gestational surrogacy (Hague Conference..., 2012, p. 13). Similarly, Israel states the surrogate must be 22–38 years old, and must have given birth once to three times (Hague Conference..., 2012, p. 13). Israeli Law on surrogacy states that the intended parents must find a suitable surrogate mother before submitting an application that is approved by an established commission. A psychological evaluation of the parties is necessary for matching the parents with the surrogate mother, and both parties undergo these evaluations (Honig et al., 2000). The surrogate mother retains all rights to manage her medical care, including any decisions regarding prenatal period testing, termination of pregnancy, or multifetal pregnancy reduction (Ethics Committee..., 2018). Other requirements are concerned with a completed surrogate family, civil status, sexual orientation, and age of intending parents.



Schema 1. Comparison of the Czech current provision of surrogacy with the foreign legislation

In some states of the USA, the pre-pregnancy contract is signed between both parties, and the surrogate waives any rights to motherhood after birth. Therefore, the birth certificate is automatically completed with the intended parents' names. In other countries, the original birth certificate is usually issued with the surrogate as a mother, and the intending parents have to ask national authorities to amend the certificate with their names (Brandão and Garrido, 2022).

b) Ethical questions, consideration, and psychological aspects

Two types of surrogacy are distinguished. However, in the case of the use of donor gametes, the question arises as to how desirable this procedure is since it is the adoption of a stranger's child, and there is no reason to undergo a surrogacy procedure. On an ethical level, the use of this method is also debatable if a woman wants to be a mother, but refuses to undergo pregnancy and childbirth.

The commercialization of human reproduction should be perceived, especially from the child's point of view, considering whether their interests are fulfilled. Certain factors include the ability of a woman who has not given birth to a child to provide a strong enough maternal relationship to the child. If a single man were to enter into a surrogacy process, would he not be fulfilling his mother's wish to conceive a grandchild?

According to the opinion of the author of this article, the point of view of children born earlier to a surrogate mother must also be considered. Will they understand the principle of surrogacy, and accept the fact that the child with whom their mother was pregnant is no longer in their family? Were the children looking forward to seeing their siblings?

A similar aspect is also mentioned by Patel et al. (2020) who reflect on the emotional conflicts that can arise in surrogate mothers. They mention doubts about informing their children of the pregnancy, and about informing their relatives, in-laws, and friends. Children will perceive surrogacy as an altruistic service to an infertile couple or as a trade-in child because after the birth of a child, the financial side of their family may improve, and they can put this into context (Patel et al., 2020).

The altruistic arrangements of surrogacy as an acceptable procedure are mentioned by the European Society of Human Reproduction and Embryology. Only paying for services is unacceptable, reimbursement of reasonable expenses, and compensation for loss of actual income should be considered (Shenfield et al., 2005). It may not be easy to clearly define the border between altruistic and commercial surrogacy, and the above-mentioned compensation could seldom be used off the record to mask payment for surrogacy.

Advertising agencies frequently use narratives of altruism, and in some countries, such as India, and Ukraine, the agency controls communication between surrogates, and intended parents to avoid surrogates requesting more money (Siegl, 2018).

Paying a small amount may be regarded as compensation for expenses, damage, and exploitation. Paying higher amounts leads carriers to be better compensated for their efforts but may also lead to a competitive reproductive market; the woman becomes a mere instrument for giving birth to children (Brandão, 2022). In the Netherlands, some attempts have been made to define lower and upper limits for compensation, mainly based on the oocyte donation models (Brandão and Garrido, 2022).

The Ethics Committee of the American Society for Reproductive Medicine (2018) compares gestational surrogacy to medical research, where individuals are paid for activities that

demand time, stress, physical effort, and risk. Thus they consider financial compensation for surrogacy ethically justifiable.

Patel et al. (2020) state the possible psychological problems that surrogate mothers may experience: postnatal depression in 0–20% of cases, difficulties in letting go in 35% of cases, and feelings of guilt/doubt/desperation about the decision to enter surrogacy in 39% of cases. 33% were at risk of post-traumatic stress disorder, depression, or anxiety disorders, and significant stress was observed in 65% of cases if *in vitro* fertilisation results were negative (Patel et al., 2020). In a recent study, Patel et al. (2020) pointed out that surrogates had higher rates of depression, and factors such as low social support during pregnancy, concealment of surrogacy, and criticism from others were found to predict postpartum depression.

Conclusion

The proposed legislative changes in the CR aim to prevent the abuse of international surrogacy, and reproductive tourism, resulting in a prohibition of surrogacy, even in altruistic forms between close relatives. The legislative effort seeks international consensus on surrogacy regulation. A ban in one country will encourage the development of surrogacy tourism in another country with liberal legislation.

However, a significant change to the intended legislative process (not only in the Czech Republic) arrived in the form of the adoption of a new directive that included the exploitation of surrogacy as a minimum case of human trafficking. EU member states are required to transpose this change into national legislation within 2 years. States such as Greece, and Portugal which introduced progressive regulation within the EU and set clear criteria for altruistic forms of surrogacy and enforceable surrogacy contracts, will also have to respond to this change.

Therefore, the future regulation of surrogacy in the Czech Republic will not only be influenced by any professional public discussion but will also be guided by the already-mentioned European directive. European directive monitors the interests, and well-being of the child, guaranteed by the Convention on the Rights of the Child, and the prevention of child trafficking. Another important value of the new legislation will be the prevention of exploitation of surrogate mothers.

During the transposition of the European directive into national legislation, the following aspects from foreign legal regulations could be taken into account, but as far as the set goals of the directive allow. However, the possibilities of national legislators are limited, as the directive specifies an adjustment goal that states of the EU must fulfill within 2 years.

It could be recommended to recognize surrogacy only between a couple with habitual residence in one state to avoid the abuse of international surrogacy. Information from states that allow commercial surrogacy, and do not require domicile surrogacy mothers and intending couples confirms that these states are frequent centres for international surrogacy arrangements.

Possible new legal provisions could consider the modification of the motherhood definition differently, deviating from the traditional Roman legal principle, to regulate surrogate motherhood in advance. However, it is desirable to establish clear criteria to protect the persons involved. A change in the Roman law principle may be associated with a risk for newborn children, as intending parents would become parents with full parental rights. The modification in the child's legal status could come into consideration but under clearly defined

conditions (domicile of the mother, and surrogate parents in the Czech Republic, medical examination including psychological assessment of the surrogate mother, determination of the maximum age of both the surrogate mother and intending couple).

Focusing on the amendments according to which the child of a surrogate mother should have a genetic connection with one or both intending parents could also protect child against potential abuse. Otherwise, there is no reason why surrogate motherhood should occur when it is possible to use the adoption institute.

Detailed national legislation, based on society-wide discussion, along with uniform international rules can contribute to the protection of women, and children from potential abuse.

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Ethical aspects and conflict of interest

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