

Surrogacy and it's Legal Regulation in Russia

Konstantin N. Svitnev

Rosjurconsulting, Reproductive Law & Ethics Research Center

Correspondence: Russian Federation, 109147, Moscow, ul. Taganskaya, d. 3, office 514;

Tel: +7 495 225 5595; e-mail: svitnev@jurconsult.ru

Birth of a child is an absolute weal. Surrogacy might help to overcome both biological and the social infertility, being a lucky chance to have a child of their own not only for medically infertile couples, but also for socially infertile individuals not willing to get married. Unjust and illogical bans deny people this right and lead to “reproductive tourism”.

Russia is one of a very few countries where gestational surrogacy is absolutely legal, being available for all adults willing to be parents. There has to be certain medical indication for surrogacy: absence of uterus; uterine cavity or cervix deformity; uterine cavity synechia; somatic diseases contraindicating child bearing; repeatedly failed IVF attempts, when high-quality embryos were repeatedly obtained and their transfer wasn't followed by pregnancy.

Surrogacy is regulated by the Family Code of Russia. Clause 4 of Art. 51 says: *Persons who are married to each other and who have given their consent in written form to the implantation of an embryo in another woman for the purpose of bearing may be entered as parents of the child only with the consent of the woman who gave birth to the child (surrogate mother).*

Apart from that consent no adoption nor court decision is required. The surrogate's name is never listed on the birth certificate. After the entry of parents in the book of birth registrations is made (normally 3-5 days after the birth, no need to apply and wait for months for a parental order), the surrogate irrevocably loses all rights to the child.

There is no requirement for the child to be genetically related to at least one of the commissioning parents as in the UK or in Ukraine.

Children born to heterosexual couples who are not officially married or single intended parents through gestational surrogacy should be registered in accordance to analogy of jus (art. 5 of the Family Code). A court decision might be needed for that. On August 5, 2009 a St. Petersburg court definitely resolved a dispute whether single women could apply for surrogacy and obliged the State Registration Authority to register a 35 year old single intended mother Nataliya Gorskaya as the mother of her “surrogate” son who became the first woman in Russia to defend her right to become mother through a court procedure. On November 3, 2009 a Moscow district court adopted the same decision on a similar case. On August 4, 2010 a court in Moscow decided that single man who applied for surrogacy can be registered as father of a “surrogate” child.

After these landmark decisions authorities started registration of “surrogate” children born to single intended parents without waiting for a court ruling.

In contrast to the UK (Surrogacy Arrangements Act 1985) or Canada commercial surrogacy is not prohibited, so the surrogate can be compensated for actual expenses (medicine, travel, baby-sitting, missed time from work etc) and get remuneration for her service after the childbirth.

The surrogate parenting contract is enforceable as for parties' financial responsibility only. Any clause obliging the surrogate to give the child to intended parents is unenforceable. Prior consent of the surrogate to give the child to the intended parents – if given - is not binding. In theory a surrogate can abort the pregnancy and even keep the child, though no such cases have ever been registered.

The first surrogacy program in Russia was implemented in 1995 at the IVF centre at the Institute of Obstetrics and Gynecology in St. Petersburg. In general, the public opinion is surrogacy-friendly, recent cases of a famous singer and a well-known business-woman, who openly used services of gestational surrogates received very positive news coverage.