Chapter 12

Ukraine: Surrogacy as Human Reproductive Procedure



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Abstract

Ukraine's changing ART landscape offers medical opportunities and ethical debates around IVF, AI, and surrogacy. These technologies address Ukrainian and European couples' rising infertility rates, but scientists, religious groups, and policymakers argue about women's rights, exploitation, and ethics. The state balances reproductive autonomy with medical control, especially for Family Code maternal/paternal rights. Reproductive rights legislation is lacking. Critics say surrogacy and gamete donation markets require stricter protections against exploitation, while current policies emphasise informed consent and medical ethics.

Ukraine's assisted reproductive technology (ART) sector operates within a carefully regulated medical framework yet faces significant regulatory gaps that require urgent attention. While the country maintains strict clinic accreditation standards mandating at least two years of operational experience and proper technological capabilities for ART providers, several critical areas remain underregulated. The surrogacy industry, though legally recognised under the Family, Civil Code and Ministry of Health Order No. 787, lacks comprehensive oversight mechanisms to prevent potential exploitation and ensure ethical practices across all surrogacy arrangements. Ukraine's legal system currently fails to clearly define reproductive rights in primary legislation, creating ambiguity around fundamental issues like access, consent, and governmental limits on reproductive autonomy. In Ukraine, there are legal restrictions that only recognise heterosexual married couples as eligible for treatments like surrogacy. The absence of a centralised donor tracking system presents risks of genetic material misuse and complicates long-term health monitoring for donor-conceived individuals. These regulatory shortcomings persist despite Ukraine's

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otherwise progressive stance on ART technologies, including the full legalisation of IVF, intrauterine insemination, and preimplantation genetic testing. The growing international demand for Ukrainian surrogacy services and increasing domestic infertility rates underscore the pressing need for legal reforms that would establish proper safeguards, expand access rights, and implement robust monitoring systems while maintaining the country's position as a regional leader in reproductive medicine. Current legislative proposals aim to address some of these gaps, particularly concerning surrogacy oversight and data protection, but fail to comprehensively tackle issues of discrimination in access or establish clear reproductive rights frameworks that would bring Ukraine in line with international human rights standards and modern medical ethics practices.

Keywords: rights, obligation, surrogacy, child, mother, family, responsibility, assisted reproductive technologies, spouse, contract

1. Policies Regarding Medical Help Through ART in Ukraine

Assisted Reproductive Technology (hereafter referred to as ART) is a modern medical breakthrough that helps couples and individuals fulfil their dream of having a child. Around the world, thousands of families face difficulties getting pregnant naturally, and ART is becoming an effective solution to overcome many forms of infertility. The problem of infertility is becoming more acute every year, not only for Ukrainian families, but also for European couples. At the same time, it is not uncommon for the use of reproductive technologies to result in the inability to use a partners' biological material due to their health status and the need for gamete donation. Since 2024, Ukraine has been operating an ART infertility treatment programme, which is part of the Medical Guarantees Programme.

The National Health Service of Ukraine (hereafter referred to as NHSU) enters contracts for the provision of medical services for the treatment of infertility using assisted reproductive technologies (*in vitro* fertilisation) with healthcare institutions regardless of their form of ownership. The tariff for medical services for *in vitro* fertilisation (full cycle), which is provided for by the specifications, is defined as the rate for a medical service, which is UAH 84826.1.[1]

According to the World Health Organisation, approximately 1 in 6 women in the world suffer from infertility. The treatment of infertility using assisted reproductive technologies (ART, or *in vitro* fertilisation) gives a moderately high chance of becoming parents. But ART infertility treatment is expensive. This makes reproductive

1 *Deiaki pytannia realizatsii prohramy derzhavnykh harantii medychnoho obsluhovuvannia naselennia u 2025 rotsi*. Postanova Kabinetu Ministriv Ukrainy vid 24.12.2024 No. 1503.

health services almost inaccessible for many people, not only in Ukraine, but across the world. Given the current situation in Ukraine and to increase the chances of Ukrainians attaining their dream of parenthood, the NHSU is introducing a new package, the 'Treatment of infertility with the help of assisted reproductive technologies (*in vitro* fertilisation)',[2] which starting in 2024. This means better access to reproductive health services, since these services will be paid for by public funds under the Medical Guarantee Programme. According to preliminary forecasts, this decision will allow more than 10,000 little Ukrainians to be born every year. Today, this ART programme is available in 20 facilities across Ukraine, including 15 private, three municipal, and two state institutions. To use it, a patient must contact her doctor and have a consultation with a gynaecologist who will confirm the diagnosis of infertility. After that, the necessary preparations can begin. By 2025, there have been 1100 successful pregnancies under this programme.[3]

In the context of maternity and paternity protection, the state must establish legal regulation of the reproductive function. In Ukraine, Art. 281 of the Civil Code of Ukraine establishes the right to provide for artificial termination of pregnancy in part 6, and the right to use assisted reproductive technologies in part 7. Art. 49 of the Family Code of Ukraine guarantees the right to motherhood, and Art. 50 the right to fatherhood, which persons outside of family relations can exercise. These Arts. guarantee the right to motherhood and fatherhood, and are addressed specifically to 'a woman'[4] and 'a man',[5] respectively, in the context of their marital relationship, rather than generally to any woman or man. While the wording of these Arts. refers to the rights of a wife and husband within marriage, the Ukrainian legal system, through subsequent legislation and judicial interpretation, has expanded the practical application of these rights to encompass a broader understanding of parenthood, including in the context of assisted reproductive technologies (ART) and specific circumstances such as the ongoing war. While primarily framed within marriage, these provisions, combined with other legal acts, form the basis for recognising and protecting the broader right to parenthood in Ukraine, including through ART, even for unmarried individuals in specific circumstances, such as those related to the war, where the broader state interest in maintaining family ties and population is at play. The key difference from the ECHR jurisprudence regarding 'no right to become a parent' lies in the Ukrainian approach to interpreting these foundational rights in conjunction with other legal instruments (e.g., specific laws on ART, decrees related to martial law) and the state's interest in supporting procreation and family formation. For instance, post-mortem ART procedures, permitted under specific Ukrainian regulations during wartime, illustrate this more extensive approach, allowing individuals to become parents even after the death of their spouse, which

2 Government Portal, 2024.
3 Vpershe v Ukraini, 2025.
4 Art. 49.
5 Art. 50.

aligns with the spirit of securing the 'right to motherhood' or 'right to fatherhood' for the surviving partner.

Ukrainian law presently lacks a definition of reproductive rights and their extent. This definition is instead found in the bylaws. The Unified Clinical Protocol of Primary, Secondary (Specialised), and Tertiary (Highly Specialised) Medical Care 'Family Planning', sanctioned by the Ministry of Health Decree dated 21st January 2014,[6] asserts that

> reproductive rights are predicated on the acknowledgement of the fundamental right of all couples and individuals to make autonomous and responsible decisions regarding the number of children they wish to have, the timing of their births, the intervals between births, and access to the information and resources necessary to facilitate such decisions, as well as the right to select their preferred method of childbirth.

This definition directly translates a paragraph from the Programme of Action of the International Conference on Population and Development.[7] It is crucial to delineate the boundaries of state intrusion into women's private lives, namely their freedom to make autonomous decisions without arbitrary involvement in designated matters.

In Ukraine, ART is a method of infertility treatment in which manipulations with reproductive cells, some or all stages of reproductive cell preparation, fertilisation, and embryo development before transfer to the patient's uterus, are carried out *in vitro*.[8]

1.1. Types of ART in Ukraine

Currently, the legislation of Ukraine allows the use of the following ART methods: (1) *In vitro* – the technique of performing an experiment or other manipulations in special laboratory glassware or in a controlled environment outside a living organism. (2) Intracytoplasmic sperm injection (ICSI – Intra Cytoplasmic Sperm Injection) is a technique of assisted reproductive technologies, in which a husband's or donor's sperm is injected into the cytoplasm of an oocyte (intracytoplasmic sperm injection). (3) Testicular Sperm Aspiration Procedure (TESA) is a technique of assisted reproductive technologies, in which the sperm of the man or a donor is obtained (aspirated) from the testicular tissue by needle biopsy of several areas of the testicles. It is an invasive procedure for obtaining spermatozoa. Surrogate motherhood (method of assisted reproductive technologies), during which a human embryo

6 Decree of the Ministry of Health of Ukraine No. 59, 21.01.2014.

7 United Nations High Commissioner for Refugees, 1993, pp. 40–41.

8 *Pro zatverdzhennia Poriadku zastosuvannia dopomizhnykh reproduktyvnykh tekhnolohii v Ukraini*, 09.09.2013, No. 787.

conceived by genetic parents is transferred to another woman's body for childbirth. (4) Donation of oocytes, gametes, and embryos (a procedure by which donors donate their gamete germ cells (semen, oocytes) or embryos for written use in treating infertility in others). (5) Cryopreservation of oocytes, sperm, and embryos. (6) Preimplantation diagnostics.

Assisted reproductive technologies are methods of infertility treatment in which manipulations with reproductive cells, some or all stages of preparation of reproductive cells, fertilisation and development of embryos before transfer to the patient's uterus, are carried out *in vitro* (experimental techniques or other manipulations in special laboratory glassware or a controlled environment outside the living organism). In 2017, a team of researchers from the Children's Hospital of Philadelphia spent four weeks supporting the life and development of a sheep's foetus in an amniotic sac designed to mimic the womb from which the foetus was removed prematurely. Scientists note that the emotional bond between mother and child is essential for prenatal development.

When analysing the legal regulation of assisted reproductive technologies, the greatest number of unresolved ethical and legal issues arises from the use of surrogacy programmes. In Ukraine, the use of this method is possible only on medical grounds, so a situation where a woman who is able to bear children naturally does not want to bear and give birth to a child herself but wants to use a surrogate mother for this purpose cannot take place. Mykola Kuleba (Plenipotentiary of the President of Ukraine for Children's Rights) stated in 2020 that surrogacy in Ukraine is unregulated, violates children's rights, and is a form of exploitation of women.[9] It should be recalled that the first case of *in vitro* fertilisation was carried out in the city of Kharkiv, where a baby girl named Katya was born in 1995: the pregnant woman was granted the status of mother, thus becoming both mother and grandmother of the younger person at the same time.[10] On 28th April 2020, Ukrainian Parliament Commissioner for Human Rights Lyudmyla Denisova noted that she sees the provision of surrogacy services to foreigners as a violation of children's rights, as Ukraine cannot control and protect them. Therefore, the Ombudsman proposed to amend the legislation and allow surrogacy in the country exclusively for its citizens. In 2022, in the second round of dialogue between Ukraine and the UN Committee on the Rights of the Child, it was noted that Ukraine remained the largest surrogacy hub in Europe. That is why legislative regulation of the specifics and procedures of this type of assisted reproductive technology should be a priority for Ukraine.[11] All this led to the fact that in 2023, the Verkhovna Rada of Ukraine registered several bills directly aimed at improving, in the opinion of their authors, the regulation of various aspects of surrogacy. For example, members of the Parliamentary Committee on National Health, Medical Care and Health Insurance proposed to ban foreigners from

9 We do not know how many children Ukraine 'supplies' abroad.
10 Surohatne Materynstvo, 2023.
11 Ombudsman of Ukraine, 2022.

using surrogacy services during the period of martial law and for three years after its end. This in particular, was envisaged in the draft law on assisted reproductive technologies,[12] prepared on the basis of three alternative draft laws[13] and supported by the Committee. This proposal had objective reasons for its existence but did not solve the problematic issues. Therefore, on 3rd May 2023, the draft law was rejected and withdrawn from consideration. The draft laws were rejected because they had different approaches, sometimes even opposing ones. The balance of interests between the genetic parents and the surrogate mother was not established, and there are different requirements for surrogate mothers and the form of the agreement. There is no single approach to resolving the legal consequences in the event of force majeure, such as the birth of a sick child or the death of a surrogate mother. There are no guarantees for the natural child in the case of the surrogate mother's death. M.V. Mendzhul noted that the main value of the new law should be to guarantee the balance of interests of all parties and to guarantee the priority of the best interests of the child, which should be the basis of the legislative act. Such an act should clearly define the possibilities of using surrogacy by foreigners and guarantee special legal protection for children born to surrogate mothers. It is also important to clearly regulate the procedure for exporting reproductive material abroad, as well as the liability of all parties in the failure of fulfilment of the contract, unless it has been proved impossible to do so due to force majeure.[14] Lilla Garayová also noted that the principle of the child's best interest required a delicate balance between technological possibilities, ethical considerations, and the child's overall welfare. The principle serves as an ethical framework to navigate the complex terrain of modern reproductive technologies, ensuring that the physical, emotional, and psychological needs of the child remain the central concern in all decisions. As ART continues to evolve, so too must the legal and ethical frameworks that uphold the best interests of children born through these technologies.[15] And also to define surrogacy.[16]

We agree that legal relations in reproductive technologies include: (1) a special subject composition: relations arise between patients (women, men) and healthcare institutions that provide assisted reproductive technologies; (2) subject number: these are the relations between at least two subjects. Two-subjectivity is characteristic, for example, of sperm donation, and multi-subjectivity is characteristic of surrogacy; (3) obligatory subject: a healthcare facility that provides assisted reproductive technologies; (4) spectral regulatory basis of occurrence: relations arise based on both legal provisions and contractual provisions; (5) dynamism: the existence of one legal relationship gives rise to the possibility of other legal relationships. For example, the provision of unused cryopreserved embryos by patients in an

12 *Pro dopomizhni reproduktyvni tekhnolohii: proekt Zakonu*, 27.07.2021, No. 1607.
13 Nos. 6475, 6475-1 and 6475-2.
14 Mendzhul, 2023, p. 157.
15 Garayová, 2024, p. 80.
16 Bizonia and Atamanchuk, 2021, p. 87.

in vitro fertilisation programme after the birth of a child for donation to an infertile patient/couple recipient, as well as to unmarried women recipients. The algorithm of the legal relationship is as follows: the relationship existed between the patients of the *in vitro* fertilisation programme and the healthcare facility, which under certain conditions may give rise to a relationship between the healthcare facility and, for example, an infertile couple regarding embryo donation; (6) binding nature: reciprocity of rights and obligations of the subjects of legal relations; (7) duality of will: the emergence of relations is conditioned by the will of the state, expressed in legislation, and the will of the subjects of legal relations in the field of medical care.[17]

Thus, legal relations in reproductive technologies involve special subject composition, spectral regulatory basis of occurrence, dynamism, binding nature, and duality of will. These relationships arise between patients and healthcare institutions providing assisted reproductive technologies and can be influenced by legal provisions and contractual provisions. The algorithm of these relationships includes the existence of relationships between patients and healthcare facilities, the binding nature of rights and obligations, and the duality of will in medical care.

2. Constitutional and Legal Framework Provisions of ART in Ukraine

At the current level of medical development, the use of assisted reproductive technologies is a direct implementation of human reproductive rights. The Constitution of Ukraine[18] states that 'fundamental human rights and freedoms are inalienable', 'everyone has the right to life', 'the state shall preserve the dignity of the individual', and 'no one shall be subjected to interference with his or her private and family life'. The state must take all economic, social, cultural, scientific, medical, hygienic, and epidemiological steps to protect and improve reproductive health under the Constitution. Promoting reproductive rights requires the state to shape demographic policy by changing social institutions and reviving family, spiritual, and moral traditions, the value of human life, motherhood, and fatherhood. Reproductive rights are a subset of Constitutional personal rights. However, the current legislation does not fully guarantee Ukrainian residents' reproductive rights and reproductive health. Reproductive rights are complicated and comprise a variety of personal rights incorporated in international human rights and freedoms, laws, and other legal acts. Reproductive rights are strongly tied to the right to life, health, bodily integrity, privacy, personal and family life, human dignity, and gender equality. The most

17 Seniuta, 2017, p. 267.
18 Constitution of Ukraine, 28.06.1996.

fundamental human right at birth is personal integrity, which underpins reproductive rights. Living, being well, and having moral and spiritual integrity all form integrity. The right to personal integrity entails that forced marriage, surgery, sterilisation, etc., cannot deprive a person of their reproductive capacities. Women can refuse risky contraception, an undesirable pregnancy, and surgery.

Section II of the Constitution of Ukraine enshrines not only fundamental human and civil rights and freedoms but also provides for appropriate constitutional and legal guarantees of their observance and protection. In particular, this concerns the prohibition of the abolition of constitutional rights and freedoms[19] and the impossibility of restricting constitutional rights and freedoms of a person and a citizen, except for restrictions on certain rights and freedoms in conditions of martial law or a state of emergency.[20] Reproductive rights are guaranteed for Ukrainian citizens also during martial law, but within the limits defined by law. On 22nd November 2023, the Law of Ukraine 'On Amendments to Certain Laws of Ukraine on Ensuring the Right of Military Personnel and Other Persons to Biological Paternity (Maternity)' was adopted.[21] No. 3496-ix, which raises the issue of ensuring the right to reproductive health care, including the right to biological parenthood (motherhood). It is important to emphasise that the state should facilitate the implementation of reproductive health programmes in every possible way, including by ensuring that certain services in this area are provided by the budget, based on the provisions proclaimed in the Constitution of Ukraine, namely that 'a person, his or her life and health are recognised in Ukraine as the highest social value',[22] 'family, childhood, maternity and paternity are protected by the state'.[23] At the same time, it is fundamentally necessary to introduce special programmes to create state cryobanks for the storage of human reproductive cells.[24] The provision of such programmes (projects) at public expense will facilitate the exercise of the right to biological parenthood (motherhood) of the above-mentioned persons who put their health at risk in connection with the performance of their duties to protect the state or gave their lives for the defence of Ukraine. Following their death, the state must bear the moral obligation to ensure the possibility (enshrined as a right) of their descendants to be born, and above all, conceived, which is the human right to procreation. Reproductive rights include the decision to conceive a child, the number of children, the intervals between their births, and the use of advanced reproductive technologies if pregnancy cannot occur naturally. The constitutional right to life is clearly implemented via reproductive rights. These rights apply to each natural person capable of procreation and aim to promote childbirth as humanity's highest benefit. The Ukrainian Constitution links

19 Art. 22, Part 2.
20 Art. 64.
21 *Pro vnesennia zmin do deiakykh zakoniv Ukrainy shchodo zabezpechennia prava viiskovosluzhbovtsiv ta inshykh osib na biolohichne batkivstvo (materynstvo) Zakon Ukrainy*, 22.11.2023, No. 3496-IX.
22 Art. 3.
23 Art. 51; Ostrovska, 2024a, p. 115.
24 Ostrovska, 2022, pp. 66–69.

reproductive rights to the most fundamental human right, the right to life. A person's right to privacy, personal, and family life is guaranteed by the state and allows them to control information about themselves and prevent the disclosure of personal and intimate information. This is crucial to citizens' reproductive rights. In heterologous assisted reproduction procedures, the fact of the medical intervention and donor information are medical secrets, which are personal and make up family life, and the people required to keep them must not disclose them. These laws comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms,[25] which guarantees everyone the right to privacy and family. State-protected personal dignity underpins reproductive rights. The Constitution prohibits torture, violence, and other inhumane treatment. Medical, scientific, and other investigations require consent. Every individual, official, and state employee must follow this constitutional rule. This involves seeing women and women's organisations as active participants in social, economic, and political life, shaping demographic and health policies and reproductive rights decisions. At the individual level, this means a woman has the right to be treated with respect by doctors and specialists with whom they consult for reproductive health advice, since respect for human dignity requires not only attentive consideration of the individual's rights and legitimate interests but also ethical communication by such bodies' employees.

The Ukrainian Constitution guarantees gender equality, in accordance with Art. 3 of the International Covenant on Civil and Political Rights.[26] Part 3 of Art. 19 states that men and women have equal rights. Equality between men and women in reproductive rights means equal access to reproductive health information, family planning tools, and reproductive choice. Reproductive rights are linked to health care, motherhood, childhood, and family protection. A reproductive health protection scheme is the state's most indispensable demographic policy tool. According to the Ukrainian Constitution, state protection of maternity, childhood, and the family is crucial to citizens' reproductive rights. A woman's ability to reproduce and perpetuate the human race must be ensured by socio-economic, legal, and other conditions and preventive measures that promote family life, motherhood, and the rights of mothers, fathers, and children. N.V. Paramonov notes that reproductive rights show that they have a special place in the system of constitutional rights and freedoms because they include the right to life, health care, personal integrity, privacy, and family life. To sum up, reproductive rights are the rights of married couples and individuals to achieve the highest possible level of sexual and reproductive health, including the right to freely and responsibly make decisions about offspring reproduction without discrimination, coercion, or violence, to have the necessary information and access to the most effective and safe family planning and infertility prevention methods.[27] It should be noted that when deciding when and from what moment the constitutional

25 Rome, 4 November 1950, Art. 8.
26 International Covenant on Civil and Political Rights, Art. 6(1).
27 Paramonov, 2023, p. 86.

protection of the life of a particular individual arises, international law and foreign legislation, as a rule, legally and de facto protect human life even before the birth of a child. Ukrainian legislation in this area is rather controversial. According to the Constitution, the human embryo is not a holder of the right to life, as it states: 'Fundamental human rights and freedoms are inalienable and belong to everyone from birth'. However, in some cases, the life and bodily integrity of the embryo are protected by criminal, civil and other branches of law. The peculiarities of legal regulation of the status of the human embryo and reproductive rights determine the approaches to the regulation of artificial termination of pregnancy and high reproductive technologies. The use of assisted reproductive technologies is permitted only for therapeutic purposes and only by a doctor's decision. Human life is recognised in Ukraine as the highest social value. The rights and interests of a child born through surrogacy programmes are no less valuable and require special protection and guarantees from the state. In Ukraine, donation issues are regulated primarily by civil law; in particular, Art. 290 of the Civil Code of Ukraine, which provides for the right of a person to be a donor of reproductive cells.[28] In addition, the donation of reproductive cells is regulated by the decree of the Ministry of Health of Ukraine 'On approval of the Procedure for the use of assisted reproductive technologies in Ukraine' from 9th September 2013, No. 787.[29] It is positive to establish precise requirements for embryo donors at the regulatory level (they can be patients of *in vitro* fertilisation programmes who have cryopreserved embryos after the birth of a child and have not used them. Let us suppose the informed, voluntary consent of such patients is provided in writing. In such a case, these embryos can be donated to an infertile couple or woman), oocyte donors (women who are close relatives of the patient, anonymous voluntary donors or patients of an ART programme, of a certain age (18–36 years) with a living healthy child, with no negative phenotypic manifestations, hereditary diseases, bad habits, contraindications and sufficient somatic health) and sperm donors (men aged 20–40 with a healthy child, no negative phenotypic manifestations, somatic and hereditary diseases, contraindications). Gamete and embryo donation is a procedure by which donors donate their gametes (sperm, oocytes) or embryos with written voluntary consent for use in the treatment of infertility in others. Unlike in Ukraine, the donation of embryos and gametes is not allowed in all countries.

The approach in which gamete donations in Ukraine are anonymous should be considered as being positive. According to Clause 5.19 of the Decree of the Ministry of Health of Ukraine,[30] the selection of a sperm donor is based on phenotypic characteristics (information on age, height, skin, eye and hair colour, etc.). At the same time, a separate legislative act should stipulate whether embryo and gamete donations may be anonymous (in the case of embryo and gamete donations by close

28 Human germ cells that are suitable for use in the treatment of infertility through the use of ART.
29 Decree of the Ministry of Health of Ukraine, No. 787, 09.09.2013.
30 Ibid.

relatives). The donor's anonymity may be disclosed under a procedure provided for by law. Spouses have the right to information about the assisted reproductive technologies procedure and the medical and legal aspects of its consequences, the results of the donor's medical and genetic examination, his or her external data, nationality (if the donor's sperm is used for fertilisation), the use of prescribed hormonal drugs and other medicines by the wife, transvaginal puncture under ultrasound control to obtain one or more oocytes from the wife, and the insemination of eggs obtained in this way with the husband's (donor's) sperm. The law also provides for the right to keep the embryo(s) under the control of medical personnel until they are transferred to the wife, for the personnel to select the embryo(s) most suitable for transfer, for the transfer of the selected embryo(s) to the wife, for possible complications arising from the method, and for additional surgical measures that may be necessary during the procedures. It is important to inform the woman that children born through *in vitro* fertilisation may have developmental disabilities as often as those born through natural fertilisation, and that there may be complications during pregnancy that are also typical of pregnancies that occur naturally. Despite the list of spouses' rights set out in the Order, the law does not establish the child's rights, the need for which may arise in the future. The Order defines the conditions and procedure for assisted reproductive technologies, methods, and requirements for the donor and the expectant mother. An important aspect is that the spouses to whom this method is applied are provided with information by the doctor who performs the medical intervention. Both the husband's and the donor's sperm are used for ART, and information about ART and the identity of the donor constitutes medical confidentiality. In addition, the future parents assume equal rights and obligations towards the unborn child concerning its upbringing and maintenance, as well as the obligation not to identify the donor (when using donor sperm). According to the Order,[31] a doctor ensures compliance with the principles by strictly adhering to the principles of medical ethics and deontology, namely the adherence to the principles of professional ethics, the preservation of medical secrecy, confidentiality, and anonymity under the current legislation of Ukraine. Thus, the legislator's repeated emphasis on the confidentiality of the ART procedure is only declarative, as it is not difficult to establish the identity of the codes in the cards mentioned above.

In Ukraine, in connection with the spread of assisted reproductive technologies, to prevent errors in the calculation of genetic risk during medical genetic counselling, a geneticist relies on information about the child's biological parents following the current legislation. Ethicogenetic care for pregnant women with high genetic risk includes: medical genetic counselling, including clinical and genealogical analysis of the family; study of biochemical markers of congenital and hereditary pathology in the mother's blood serum; ultrasound examination of the foetus; if necessary, invasive prenatal diagnostic methods using cytogenetic, biochemical, molecular

31 Decree of the Ministry of Health of Ukraine No. 383, 02.06.2009.

studies; bacteriological and virological studies of the pregnant woman's biological material to detect intrauterine infection of the foetus.

Accordingly, reproductive rights should be implemented based on: the respect for human and civil rights; the impossibility of forcible deprivation of reproductive properties and the deterioration of reproductive function; the prevention of discrimination in the sphere of the implementation and protection of reproductive rights in all its manifestations; the prohibition of the humiliation of human dignity, including that based on gender, the ability to perform reproductive function; the equality of men and women, if this does not contradict their biological nature; and confidentiality when considering and resolving issues related to the implementation and protection of reproductive rights.[32] At an international level, the legal aspects of medical genetics are regulated by the Regulations on Genetic Counselling and Genetic Engineering adopted by the World Medical Assembly in Madrid in 1987. It is necessary to create legal norms that would prevent the possibility of their uncontrolled use by Ukrainian or foreign reproductive medicine clinics from the moment they are transported abroad as donor biomaterial or for other illegal (commercial or experimental) purposes. It is the absence of a clearly defined legal status of human reproductive cells, and especially of the human embryo, in national legislation that leads to abuses in this delicate area of human rights, including of the unborn.[33] The state's concern for future generations is a long-term investment in human capital as the basis of the country's national wealth.[34] Reproductive rights are drawn from the Constitution of Ukraine's fundamental rights and freedoms.

3. Medical Regulation of ART in Ukraine

ART should be used in private and state-funded health care facilities licensed to conduct medical practice, with appropriate equipment and facilities. These clinics are regulated by the Law of Ukraine 'Fundamentals of the Legislation of Ukraine on Healthcare' No. 2801-XII of 19th November 1992, which establishes standards for medical technologies, procedures, and patient safety. According to Art. 16 of the Law, state authorities and local self-government bodies shall promote the development of healthcare institutions of all forms of ownership. The network of state and municipal healthcare institutions of Ukraine is formed by taking into account the development plans of hospital districts, the needs of the population for medical care, the need to ensure the proper quality of such care, timeliness, accessibility to citizens, and the efficient use of material, labour and financial resources. The existing network of such

32 Dzhochka, 2007, p. 132.
33 Ostrovska, 2024b, p. 77.
34 Ostrovska, 2024a, pp. 107–110.

institutions cannot be reduced. In order to ensure territorial accessibility of quality medical and rehabilitation care to the population, a hospital district is defined. A hospital district is divided into hospital clusters, within which comprehensive access to inpatient medical care is organised. The boundaries of hospital districts and hospital clusters, the procedure for their definition and functioning, as well as the procedure for determining cluster, supercluster and other types of healthcare institutions that are part of a capable network of healthcare institutions of a hospital district, are determined by the Cabinet of Ministers of Ukraine based on the needs of the population for comprehensive inpatient healthcare.[35] A healthcare institution carries out its activities on the basis of a charter (regulation) approved by the owner of the institution (its authorised body). The heads of state and municipal healthcare institutions are appointed by the authorised executive body of the owner of the healthcare institution on a competitive basis by concluding a contract with them for a term of three to five years. The procedure for conducting a competition for the position of head of a state or municipal healthcare institution and the procedure for concluding a contract with the head of a state or municipal healthcare institution, as well as the standard form of such a contract, shall be approved by the Cabinet of Ministers of Ukraine.[36] Healthcare institutions can be state, communal, private, or mixed-ownership. Communal and state hospitals are not privatised. State-owned healthcare institutions might be non-profits or institutions, depending on their structure. Communal healthcare facilities can be non-profit or institutional, depending on their organisation and legal status. In accordance with the law, territorial communities can create and operate communal healthcare institutions as joint ventures. Private healthcare institutes can choose any organisational and legal shape. The owner or permitted management body can reorganise and reform community and state-owned healthcare establishments.

Accreditation certificates are also required for healthcare facilities that have been performing medical practices for over two years.[37] ART must be carried out in an accredited healthcare facility using methods approved by the Ministry of Health of Ukraine, at the request of a woman of legal capacity and upon written application of the spouses, with a full medical examination of both spouses. The age limit for a woman to undergo this procedure is unlocated in Ukraine, in line with the European Court decision *in Case of Lia v. Malta*[38] in which the court stated that there was a violation of Art. 8 Convention, namely that the refusal of the couple's request for a self-funded second homologous *in vitro* fertilisation procedure, on the basis of the wife's age (43), was not in accordance with a law of sufficient quality. The interpretation

35 *Poriadok funktsionuvannia hospitalnykh okruhiv i hospitalnykh klasteriv ta vstanovlennia yikh mezh*, No. 174, 28.02.2023.

36 *Poriadok provedennia konkursu na zainiattia posady kerivnyka derzhavnoho, komunalnoho zakladu okhorony zdorovia*, No. 1094, 27.12.2017, *Poriadku ukladennia kontraktu z kerivnykom derzhavnoho, komunalnoho zakladu okhorony zdorovi*, No. 792, 21.08.2019.

37 *Poriadok akredytatsii zakladu okhorony zdorovia*, No. 765, 15.07.1997.

38 Case EctHR of Lia v. Malta, 05.08.2022.

and application of the impugned age-limit provision by administrative and judicial authorities lack the required foreseeability.

Allowed and regulated technologies include homologous techniques, such as IVF using gametes from the intended parents, and heterologous techniques, such as sperm or egg donation, which are legally permitted under specific conditions. Certain advanced technologies such as genetic manipulation or embryo editing are restricted or forbidden due to ethical concerns and safety issues, and surrogacy is legally permissible primarily for married heterosexual couples, with specific regulations governing surrogate agreements. Informed consent from all parties, donors, recipients, and surrogates, is a mandatory legal requirement, ensuring the voluntary participation and understanding of procedures, risks, and rights.

A donor's status is regulated to ensure anonymity or transparency depending on the procedure, and cryopreservation of embryos is allowed with clear guidelines on the storage duration, use, and disposition, including provisions for embryo destruction or donation. Concerning embryo protection, Ukrainian law emphasises the dignity of the embryo, setting restrictions on sex selection, genetic manipulation, and the number of embryos cryopreserved, aiming to prevent unethical practices. In Ukraine, donor anonymity is the general rule. The current legislation[39] stipulates that information about the donor (gametes or embryos) is confidential and should not be disclosed to the recipient parents or the child. The rights of children born through IVF include the right to health and to be cared for by both parents, with legal provisions ensuring their protection and welfare. However, under current Ukrainian legislation, anonymity of donors is maintained, which generally precludes the child's right to know their genetic origin from donors.

3.1. Posthumous Fertilisation

The Law of Ukraine 'On Amendments to Certain Laws of Ukraine on Ensuring the Right of Servicemen and Other Persons to Biological Parenthood (Motherhood)', which took effect on 23rd March 2024, raised the issue of posthumous reproductive cell use in November 2023. According to Subpara. 3 of para. 2 of Sec. II of this Law, if a person whose reproductive cells are stored in accordance with the law dies or is declared dead by a court, their storage shall be free of charge for three years. After this period, the individual's reproductive cells may be stored at the expense of another person selected in their will in accordance with the law in the case of their death or court declaration of death. On March 6th 2024, Appendix 24 to the Decree of the Ministry of Health of Ukraine 'On Approval of the Procedure for the Use of Assisted Reproductive Technologies in Ukraine' was amended to establish the form of application for thawing sperm, oocytes, ovarian tissue, or biological material from the testicle or its appendage. This application can now be signed by the person designated

39 Primarily Order No. 787 of the Ministry of Health of Ukraine, 'On the Procedure for Application of Assisted Reproductive Technologies' from 2013.

in the 'application (order) of another person for the disposal of reproductive cells in the event of death or declaration of death'. Before the aforementioned regulations, there was no legal mechanism for posthumous conception and birth in Ukraine, but judicial practice in resolving disputes over cryopreserved reproductive material was developed. Today, the National Children's Specialised Hospital '*Ohmatdyt*' has a cryobank that stores children's cells and other biomaterials for free of charge, and the military can store them in any of the 12 cryobanks in Ukraine. The Ukrainian Cabinet of Ministers approved the Procedure for the collection, cryopreservation and storage of reproductive cells of military personnel and other persons in case of the loss of reproductive function while performing duties related to the defence of the state, defence of the Fatherland and other duties assigned to them in accordance with the law, Resolution No. 78 on January 24th 2025, allowing the program to begin. This project received UAH 190 million (4.1 million euros) in the 2025 state budget. Resolution No. 78 applies to military, State Emergency Service, Special Operations Department, State Criminal-Executive Service, and police officers who are directly involved in combat operations or ensure the implementation of measures for national security and defence, repelling and deterring arms. Medical facilities having NHSU agreements can let military personnel donate and store reproductive cells. Those who have given biological material and are storing it at their own expense might apply to a healthcare facility for free storage.[40]

In case No. 759/265/23 of 14th April 2023, the Svyatoshinsky District Court ordered a healthcare facility to give the plaintiff *in vitro* fertilisation services using her husband's cryopreserved reproductive material. The Svyatoshinsky District Court considered that the plaintiff's husband had left a statement during his lifetime stating that he consciously and voluntarily agreed to the thawing and use of his cryopreserved biological material within the limits of the assisted reproductive technologies specified in his statement.[41] In case No. 947/7597/24 of 18th June 2024, the Kyiv District Court of Odessa ruled that the plaintiff's husband's statements, in accordance with the Procedure in force at the time of his application to the healthcare facility (the defendant) for the cryopreservation and storage of his biological material, did not allow for the consideration of the disposal issue. Given the aforesaid, the claimant was granted the right to dispose of and use her deceased husband's biological material, which was preserved in a healthcare institution.[42] Even without lifetime consent to the creation and birth of a joint child, the Ukrainian courts have satisfied claims for the posthumous use of cryopreserved reproductive material by a wife. The Ukrainian courts have also developed a case law of satisfying claims for

40 *Pro zatverdzhennia Poriadku zdiisnennia zaboru, kriokonservatsii ta zberihannia reproduktyvnykh klityn viiskovosluzhbovtsiv ta inshykh osib na vypadok vtraty reproduktyvnoi funktsii*, 24.01.2025, No. 78.

41 Case No. 759/265/23 the Svyatoshinsky District Court, 14.04.2023.

42 Decision of the Kyiv District Court of Odessa in case No. 947/7597/24, 18.06.2024.

the posthumous use of a man's cryopreserved reproductive material by his wife, even in the absence of a lifetime consent to conceive and give birth to a child together.

Another important point in the context of the study of the legislative regulation of the status of frozen reproductive cells is the fact that a private reproductive medicine centre has the right to export patient biological material abroad, namely cryopreserved embryos and reproductive material (sperm and oocytes) for preservation purposes. This provision is regulated by the states in which biological material (including embryos or oocytes, sperm, ovarian/testicular tissue or its epididymis) may be transported to another healthcare facility both within and outside Ukraine at the request of the patient/patients.[43] Such transportation may take place only if it is provided for in the agreement on the storage of embryos (reproductive material) or by an additional agreement to this agreement and upon a written application of the patient/patients who transferred them for storage to this healthcare facility, and the written consent of the head of the relevant healthcare facility.[44]

3.2. In vitro Fertilisation

According to Clause 3.6 of Decree No. 787, *in vitro* fertilisation is performed using sperm prepared using appropriate technology from a husband or donor. However, Clauses 3.1.–3.6 of the Procedure, which deal with the procedure for *in vitro* fertilisation, do not require that persons wishing to use this programme be married. At the same time, in Annex 2 to the Decree No. 787, in the Application of the patient/patients for the use of assisted reproductive technologies, there is a box that mentions the husband/partner of a woman who wishes to use *in vitro* fertilisation. However, by applying a systematic interpretation of the legislation, it can be concluded that this application is intended for all types of ART programmes (*in vitro* fertilisation, intrauterine insemination, surrogacy, etc.), and in some of them, marriage is mandatory (surrogacy programme). However, a single woman can use an *in vitro* fertilisation programme, as Art. 48 of the Law of Ukraine 'Fundamentals of the Legislation of Ukraine on Healthcare' refers to Clauses 3.1.–3.6. of Decree No. 787, which does not contain such a marriage requirement. In addition, Clause 1.7 of Decree No. 787 guarantees the possibility for adult women and/or men to undergo ART treatment programmes on medical grounds. Clause 3.6. of the Decree mentions that the use of husband's sperm in IVF is intended for cases when a female patient is married. Therefore, if such a woman is unmarried or falls under other circumstances, donor sperm can be used in her case. It is possible that a situation may arise when pregnancy does not occur, in which case it is possible to hold the healthcare facility liable and invalidate the contract for the provision of medical services for the treatment of infertility using ART methods and recover double material damages. Explanations can be found in the Resolution of the Kyiv Court of Appeal in

43 Sub-clause 11.3. of the Decree for the Application of Assisted Reproductive Technologies in Ukraine.
44 Yakubenko, 2023, p. 239.

case No. 760/20309/20 of 22th December 2022,[45] where it is stated that by signing the agreement, the plaintiff has agreed to its terms and conditions, has taken actions related to the fulfilment of obligations under the agreement, which indicates that she was aware of its legal nature and legal consequences at the time of the transaction. In addition, the Court of Appeal takes into account the irrefutable denials of the clinic's representative that the plaintiff's disease did not exclude the possibility of her pregnancy and childbearing; and that the clinic had selected embryos in accordance with the terms of the agreement.

The current framework for assisted reproductive technologies (ART) in Ukraine, as outlined in Decree No. 787, offers various fertility treatment programmes – such as IVF, egg donation, and embryo transfer – to individuals and couples. However, these programmes are structured in a way that primarily accommodates single women or cohabiting unregistered couples (de facto unions), effectively excluding single men from accessing the same reproductive rights. This restriction stands in direct conflict with Art. 24 of the Ukrainian Constitution, which guarantees gender equality and prohibits discrimination based on sex. Furthermore, Section 1.7 of Decree No. 787 explicitly acknowledges a man's right to use ART for infertility treatment, yet the absence of legal mechanisms enabling single men to exercise this right creates a clear legislative contradiction.[46]

3.3. Surrogacy Motherhood in Ukraine

Surrogacy, as defined under Decree No. 787,[47] is an assisted reproductive technology (ART) designed to help married heterosexual couples to become the biological parents of their child, and overcome infertility caused by congenital or acquired medical conditions. Ukraine permits only gestational surrogacy, meaning the surrogate mother carries an embryo created through *in vitro* fertilization (IVF) using: (a) An egg from either the intended mother or an anonymous donor, (b) Sperm from either the intended father or a donor.

3.4. Subjects of Surrogacy of ART

The subjects of civil legal relationships arising from surrogacy are: (1) The client: an infertile married couple. They may be Ukrainian citizens or foreigners, but the mandatory condition is that they must be married men and women. Only spouses registered according to the procedure established by law may engage in surrogacy. Single or unmarried individuals, as well as cohabiting couples, cannot take advantage of this possibility. (2) Surrogate mother: A woman who agrees to undergo the *in vitro* fertilisation procedure. A surrogate mother may be a woman who has: an

45 *Postanova Kyivskoho apeliatsiinoho sudu u spravi*, No. 760/20309/20, 22.12.2022.
46 Trynova, 2022.
47 Order of the Ministry of Health of Ukraine, 09.09.2013, No. 787.

age between 18 and 36 years, good physical, mental, and social health, the absence of bad habits, a child of her own in good health, with at least one year having passed since the last birth, Ukrainian citizenship, the submission of a voluntary written application, and the absence of medical contraindications.[48] Pregnancy is also permitted for close relatives of the future parents (mother, sister, cousin, etc.). In addition, a married surrogate mother must present her husband's informed consent to participate in the programme. (3) A medical institution accredited by the Ministry of Health, Ukraine, can only conduct such procedures. Only medical establishments with a licence to conduct business in the medical sphere, adequate equipment and facilities, and all requirements set by the Decree may perform the procedure.

The necessary conditions for surrogacy are: (1) The presence of medical indications relating to the couple: absence of the uterus (congenital or achieved); serious somatic diseases for which the pregnancy threatens the health or life of the biological mother, but not of the unborn child; multiple (4 or more) attempts at ART, using assisted fertilisation techniques, with production of high quality embryos, the transfer of which, however, did not lead to pregnancy), etc; (2) Foreign and native citizens who use surrogacy must be a married heterosexual couple; (3) The list of necessary documents: the surrogate mother's application; a copy of the surrogate mother's passport; a copy of the surrogate mother's marriage or divorce certificate (except for single women); a copy of surrogate mother's birth certificate(s); the consent of the surrogate mother's husband to participate in the surrogacy program; a declaration of the patient(s) (biological parent(s)) regarding the use of assisted reproduction techniques; copies of the biological parents' passports; a copy of the marriage certificate of the couple resorting to surrogacy; a certified copy of the joint written contract between the surrogate mother and the spouses. The list of documents that, under the Rules for State Registration of Civil Status Records in Ukraine, have been approved by Decree of the Ministry of Justice of Ukraine No. 52/5 of 18th October 2000,[49] must be submitted as an original copy to the body responsible for the state transcription of civil status records, remains unchanged: the passports of genetic parents (spouses of foreigners); the marriage certificate of genetic parents, which must be appropriately legalised, i.e., apostille-stamped or undergoing the consular legalisation procedure; a medical certificate of birth model No. 103/o issued by the maternity hospital; a certificate of the child's genetic relationship with the spouse of the genetic parents, issued by the reproductive medicine clinic where the embryos were transferred to the surrogate mother; a notarised statement by the surrogate mother on the consent to the registration of the genetic parents' spouses by the child's parents. (1) One of the spouses (future parents), in whose interest the surrogacy is carried out, must have a genetic link with the child; (2) The surrogate mother must not have a direct genetic link with the child.

48 Ibid.

49 *Nakaz Ministerstva yustytsii Ukrainy*, 18.10.2000, No. 52/5.

3.5. Genetic Link in Surrogacy Motherhood

In particular, para. 6.1. Sec. VI of Decree No. 787 on the use of ART stipulates that the spouse (or one of the future parents) in whose interests the SM is carried out must have a genetic relationship with the child. Clause 6.9. Sec. VI of Decree No. 787 on the use of ART states that in order to register the birth of a child, the spouses in respect of whom surrogacy was used shall submit to the civil registry office, together with the relevant application, a certificate of genetic relationship between the parents (mother or father) and the foetus. The form of the certificate of genetic relatedness of the parents (mother or father) to the foetus, issued by the healthcare facility where the surrogacy procedure is performed, is approved by the said Decree. Similar requirements for a certificate of genetic relatedness are contained in clause 11 of Chapter I of Section III of the Rules for State Registration of Civil Status Acts in Ukraine.[50] This approach of meeting the genetic relationship criterion does not guarantee that surrogacy children will not be genetically unrelated to their parents. Hospital or service provider abuse could result in violations. The genetic relationship criteria are usually violated when foreigners participate in surrogacy operations without a genetic link. DNA testing is requested by authorities in the country where the surrogate parents wish to take the child. The guardianship and custody authority decides what will happen to the child after erasing their birth papers. Children are placed in orphanages, their parents are held accountable even if abroad, medical staff are charged with crimes, and parents' and ART-born children's rights are infringed.

The deputy prosecutor of Kyiv sued the civil registration authority of the District Department of Justice in Kyiv, the guardianship and custody authority, to amend the birth record on 6th October 2010, in the Solomyansky District Court on behalf of a minor child. A claim to exclude information about the parents from the child's birth record and an obligation of the guardianship and custody authority to prepare a decision to enter information about the child and his/her parents was based on Part 2 of Art. 135 of the Family Code of Ukraine. A crime had been committed and the child's registered parents were not the child's biological parents. A surrogate mother fertilised with anonymous female and male donor material had borne the child. The court found the claim's facts true, including the fact that the child's contested birth record listed people who were not the child's parents and had no genetic relationship with the child, so the information should be removed as false. The prosecutor's child-interest claims were granted.[51] It should also be noted that the Supreme Court of Ukraine in the case of No. 344/1962/19[52] remarked that a father's consent to the use of donor embryos for infertility treatment is fundamental

50 *Pro zatverdzhennia Pravyl derzhavnoi reiestratsii aktiv tsyvilnoho stanu v Ukraini*, 18.10.2000, No. 52/5.

51 *Rishennia Sudu*, 06.10.2010, No. 2-2283-1/10.

52 *Postanova Verkhovnoho Sudu*, 03.08.2022 u spravi No. 344/1962/19.

to his parental rights and responsibilities, as this treatment method excludes any blood relationship between the father and the child. Respect for human dignity and freedom of will forms the basis of Legal Decree No. 787, which does not allow any exceptions to the use of parties to ART for infertility treatment without the patient's consent. This is why the plaintiff had to be informed about this treatment methodology in order to make a voluntary decision to become the father of a child who he was not genetically related to, which would be in line with Art. 8 of the Convention. In July 2018, a case involving Italian citizens who used a Kyiv clinic's 2011 surrogacy program went viral. A married couple from Italy signed a surrogacy deal with a Kyiv hospital in early 2011. The couple did not donate DNA and registered the child as their own after the birth, using medical institution paperwork. Italy received the child in October 2011. Law enforcement organisations in the Italian Republic discovered that the child's background had been misrepresented, and testing showed that the youngster had no genetic link to the married couple. The infant was placed in an orphanage and the parents prosecuted under Italian law. In Ukraine, employees of the medical institution were notified that they were suspected of committing a criminal offence under an Art. providing for the liability for human trafficking (Art. 149(3) of the Criminal Code of Ukraine), and the chief physician was also notified of the forgery of documents combined with human trafficking.[53]

In September 2019, another surrogacy case with a child born without a genetic relationship to the 'intended' parents was revealed. Chinese citizens contracted surrogacy services at a Kyiv hospital. The father's biological material and a donor egg were used. Following the birth, the couple performed a DNA test (a PRC legislation requirement for bringing a kid into China), which indicated no genetic link between the child and the father. The medical centre denied all fault. The parents and kid were deprived of their family rights and legitimate interests. However, such decisions conform with Ukrainian and prospective parents' home nation's regulations. The issue here was that current laws often do not guarantee the rights of ART-born children. Many ECHR decisions, particularly Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, are based on the idea of ensuring the best interests of the child. Considering the ECHR's reproductive rights practice when providing legal assistance to foreign citizens is necessary to fully clarify the legal consequences of surrogacy and the possibility of difficulties upon return to the country of origin after the child's birth.[54]

The surrogate mother does not acquire parental rights over the child. Therefore, she cannot refuse to give custody of the child after birth. If penalties for such violations are stipulated in the contract, the surrogate mother may also be held civilly liable.[55]

53 Art. 149(3), Art. 366(1) of the Criminal Code of Ukraine.
54 Haro et al., 2020, p. 54.
55 Nakaz MOZ, 09.09.2013, No. 787.

A significant novelty is that, under Clause 14, Part 1, Section II of the Rules, in the case of the introduction of martial law in Ukraine or some of its localities, under the Law of Ukraine 'On the Legal Regime of Martial Law',[56] any state body carries out state registration of civil status records at the request of the applicant. Thus, currently a birth certificate in Ukraine may be obtained, not necessarily based on the territorial affiliation of the maternity hospital to the civil status registration authority, but in any department of the civil status registration authority in a settlement where there are no active hostilities.

In addition, on 4th March 2022, the Ukrainian Ministry of Health approved the Ordinance 'Concerning the Registration of Newborns under Martial Law'.[57] The decision allows a child's birth to be registered if the birth took place outside a health institution. In this case, the document on the child's birth in the form of a medical certificate of birth[58] can be issued by the health workers who were present at the time of the birth or who performed the first examination of the newborn.

3.6. Contract Between the Spouses and the Surrogate Mother

The Family Code of Ukraine does not stipulate the surrogacy procedure or the essence of the contract between the spouses and the surrogate mother. In practice, surrogacy in Ukraine is regulated by contracts.[59] Talanov defines a surrogacy contract as a contract under which a surrogate mother (the contractor), following the implantation or transplantation into her body (without using her biological material) of an embryo of a married couple who have provided their genetic material (the customers), undertakes to bear, give birth and deliver a child to the customers.

The customers undertake to pay the contractor the actual costs associated with the performance of the contract and remuneration, unless otherwise provided by the contract.[60] Private law theorists consider surrogacy to be carried out by mutual contract between the persons who have the right to use this ART method, the implantation of an embryo, which is the property of the couple and has been created as a result of *in vitro* fertilisation, to carry and give birth to a child, with its subsequent transfer to the persons concerned.[61]

The decision of the Kharkiv Regional Court of Appeal in case No. 645/9412/14 on 25th June 2015[62] states that the surrogacy relationship is contractual. It consists of a type of reproductive technology whereby some or all the stages of conception and embryo development are performed outside the body of the biological mother:

56 *Pro pravovyi rezhym voiennoho stanu*, 12.05.2015, No. 389-VIII.
57 Nakaz MOZ, 04.03.2022, No. 407.
58 Form No. 103/o.
59 Mendzhul, 2019, pp. 78–79.
60 Talanov, 2012, pp. 360–368.
61 Basai, 2014, p. 60
62 Sprava No. 645/9412/14-ц, 25.06.2015.

> According to the official definition, surrogacy is the process of ART, gestation and delivery of a child by a woman (surrogate mother) to entrust the newborn child to the intended parents, under the contract with or without payment. A surrogate mother is a woman who has voluntarily agreed to undertake gestation on behalf of others, to carry and give birth to a genetically unrelated child, who will be entrusted to other persons – the biological parents – for growth and upbringing.

The surrogacy contract provides for the transfer of the child to its parents after birth; however, in the event of armed aggression, the safe crossing of the border by the genetic parents and the transport of the child abroad is a separate issue.[63] In the new wartime circumstances, when all flights to Ukraine were cancelled and governments around the world advised their citizens to leave Ukraine, parents could no longer enter the country as normal to pick up their children, as this would mean entering the war zone. At the same time, since the use of DRT for surrogacy usually involves the creation of 'spare' embryos, there is a need to legally export reproductive cells, reproductive tissue, and embryos of foreign clients, as well as Ukrainian citizens, outside the territory of Ukraine. Often, the national legislation of persons requesting surrogacy services in Ukraine prohibits or does not regulate the issue of commercial surrogacy. Thus, such parents face legal obstacles that must be resolved at the Ministry of Foreign Affairs of Ukraine, the State Migration Service of Ukraine, and the Ministry of Justice of Ukraine.[64] Therefore, the surrogacy agreement is an unnamed civil law contract under which one party (the surrogate mother) provides services for the gestation and birth of a child and transfers the newborn child to the other party (the intended parents). The surrogacy contract has the following characteristics: it is a risky (aleatory) contract; this contract can be either paid or gratuitous; the surrogacy contract is a type of service contract; this contract is bilateral and, as a rule, real. Contingent conditions that should be stipulated in the surrogacy contract are: the settlement of the situation of multiple births, the divorce of the future parents, or cases when the surrogate mother does not become pregnant, etc.

If genetic parents will not venture to Ukraine in person, following their government's advice on the risks of travelling during martial law, there is the possibility of obtaining a birth certificate from their duly authorised representative in Ukraine. To do this, after the birth of a child, the spouses of the genetic parents must take the following steps at their place of residence or stay: issue notarised copies of their passports, give power of attorney for a representative and an application for registration of the child's birth; submit these documents to the competent authorities of the state where they were signed, for apostille, or to pass the consular legalisation procedure; send the original documents to Ukraine.

63 Kramer and Varenikova, 2022.
64 Ostrovska, 2022, p. 77

The world's first official contract on surrogacy was signed in 1976.[65] This was a traditional surrogacy, which means that the surrogate mother carrying the child was also the biological mother. The woman received no compensation for the pregnancy. In 1980, a woman first received compensation of $11,500.[66] In practice, the use of surrogacy in Ukraine is regulated by treaties. Women are paid between 20 and 27,000 euros. When multiple pregnancies occur, the rate increases by another 3,000. During the transportation of the child, the surrogate mother also receives $400 per month. This amount should cover board, lodging, travel to the clinic chosen by the agency, and other small things.[67] Homosexual couples or stateless persons cannot use the surrogacy method in Ukraine.

The surrogacy contract is a service contract. This carries risks because the result can be unpredictable (miscarriage, death of the *foetus*, birth defects, etc.).[68] According to the Decree No. 787, the contract between the surrogate mother and the parents must be notarised, which provides an additional guarantee of its proper execution, as there have been cases of the surrogate mother not fulfilling her duties (refusal to give the child to the biological parents, or requesting additional remuneration) and likewise with the genetic parents (refusing to take the child). But one author[69] says that if the parties fail to comply with the law on notarisation of an agreement, such an agreement will be deemed null and void, as the law provides for the possibility of recognising such an agreement as valid in court. For example, the legislation in Croatia clearly prohibits surrogacy, gestational motherhood, and any agreements related to bearing children for another, as noted by A. Korać Graovac, contracts, agreements, and other legal transactions of bearing children for another (surrogacy, gestational motherhood) and handing over a child after a fertility treatment, with or without pecuniary remuneration, are null and void.[70] This strict stance aims to protect the rights of both the surrogate mother and the child involved in such arrangements.

If the surrogate mother is married, her husband's consent (written and notarised) to this procedure is required before a contract between the surrogate mother and the biological parents can be signed. Only after the contract between the surrogate mother and the spouses has been signed can the subsequent medical procedures be carried out in a medical institution accredited by the Ministry of Health. The type, form, and essential terms of the contract between the agency (medical institution) and the genetic parents are not laid down by law, which requires the conclusion of such a contract in simple written form without notarisation. The unresolved problem is the lack of legal regulation covering a unilateral withdrawal from the surrogacy contract. It is stated that unilateral refusal is only possible until the embryo is

65 The History of Surrogacy, 2021.
66 Ibid.
67 Surrogacy, 2023
68 Dziubenko, 2020, pp. 141–152; Holovashchuk, 2017, pp. 66–71; Buletsa, 2014, pp. 129–134.
69 Hofeld, 2024, p. 97.
70 Korać Graovac, 2024, p. 114.

implanted in the surrogate mother's body. Early termination of the contract is possible by mutual contract between the parties before the embryo is introduced into the woman's body; and due to unforeseen circumstances (e.g., termination of the pregnancy for reasons not attributable to the parties or due to threat to the surrogate mother's life, the death of the surrogate mother, etc.).

In the event of the death of one of the spouses, the contract remains valid. The intervening death of a biological parent does not affect the parties' obligations. In the event of the death of both biological parents, they are registered as parents of the newborn child, and custody is decided under the provisions of Ukrainian law.

Thus, we can note that a surrogacy contract is a contract between a surrogate mother, her husband and an infertile couple (genetic parents) in which a woman allows the implantation or transplantation of an embryo into her uterus of a married couple who have provided their genetic material for carrying their child, the surrogate mother undertakes to inform the parents about her health and the health of the child after implantation, follow all the doctor's advice aimed at giving birth to a healthy child, bear, give birth and immediately hand over the child after its birth to the genetic parents. The genetic parents undertake to accept the child regardless of gender, pay the surrogate mother the actual expenses related to the performance of the contract and remuneration, unless otherwise provided for in the contract. The parties must undergo a psychological examination to determine whether they are psychologically capable of fulfilling the required terms of the contract.[71] The creation and further use of embryos for any purpose other than reproduction is illegal and should be prohibited by law with the imposition of appropriate criminal penalties. The right to dispose of embryos for research purposes may be granted by the woman and the man for whom the embryo was created, subject to informed consent and personal data processing consent.[72]

Current Ukrainian legislation does not fully protect the rights and legitimate interests of surrogacy programme participants. At the same time, children born through surrogacy require the greatest protection and restoration of violated rights, especially when it comes to, for example, the need to confirm the legality of their origin (mainly in cases where surrogate programmes are run by foreigners) or to prevent the risk of child trafficking. Children born to surrogate mothers are often subject to human trafficking, and thus the Concept of the State Targeted Social Programme for Combating Human Trafficking for the period up to 2025 has been developed.[73] On the day of discharge from the maternity hospital/department, the children's polyclinic (at the child's house) receives the surrogate mother's child's information via phone. A surrogate mother's parents may be foreigners. They must

71 Buletsa, 2014, pp. 129–134.
72 Kvit, Buletsa and Kopcha, 2021.
73 Rozporiadzhennia Kabinetu Ministriv Ukrainy, 14.07.2021, No. 800-p.

notify the child's temporary domicile until the documents are completed and the child leaves the country for medical care and supervision.[74]

3.7. Sanctions for Malpractice or Violations of ART

Sanctions for malpractice or violations of ART regulations are detailed in Ukrainian legislation, including penalties, license revocations, and criminal liability for violations such as unauthorised procedures, the misuse of donor material, or a breach of consent. Overall, Ukrainian regulation of ART seeks to balance technological advancement, ethical standards, and the protection of the individual's rights within a legal framework that is continuously evolving to address emerging challenges. Ukraine's legal framework for assisted reproductive technologies (ART) combines progressive medical access with strict ethical safeguards, though gaps remain in enforcement and inclusivity. The system, anchored by Ministry of Health Decree No. 787 and supported by civil and criminal codes, establishes clear protocols for IVF, surrogacy, and gamete donation while imposing severe penalties for violations, including fines of up to 170,000 *grivnya*, clinic license revocations, and imprisonment of up to 15 years for trafficking-related offenses. Regulatory oversight falls to multiple agencies, including the MoH and State Service on Medicines, with bioethics committees providing additional review. While Ukraine has become a regional leader in reproductive medicine, particularly in gestational surrogacy services, challenges persist around unregulated 'reproductive tourism', the lack of a centralised donor registry, and the exclusion of LGBTQ+ individuals from accessing ART services. Recent legislative developments like 2023's Draft Law No. 8254 aim to strengthen protections against exploitation while maintaining Ukraine's position as an ART destination. The legal landscape continues evolving to balance technological advancement with patient rights, though reforms are still needed to ensure full compliance with constitutional equality principles and international human rights standards, particularly regarding access for single men and same-sex couples. Ongoing modernisation efforts are focussing on improving data protection, increasing transparency in surrogacy arrangements, and aligning with EU medical regulations while preserving Ukraine's competitive advantages in reproductive healthcare.

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4. The Establishment of Parentage in Assisted Reproductive Technologies Under Ukrainian Family Law

According to Part 2 of Art. 3 of the Family Code of Ukraine, a family consists of spouses and persons living together, connected by everyday life and having mutual

74 Nakaz MOZ Ukrainy, 09.09.2013, No. 787.

rights and obligations. The current legislation of Ukraine clearly defines marriage as a family union between a woman and a man, so same-sex marriage in Ukraine has no legal consequences. It has been proposed to expand the legislative regulation of the circle of entities entitled to use assisted reproductive technologies in Ukraine. Thus, the list of such subjects is proposed to include married couples who are not classified as discordant, that is, in which one partner is HIV-positive and the other is HIV-negative, in order to avoid possible discrimination against certain members of society in the context of the latter's exercise of their reproductive rights.[75]

According to the Family Code of Ukraine, women are guaranteed the right to motherhood, and men are guaranteed the right to fatherhood.[76] The Law of Ukraine Basics of the Legislation of Ukraine on Health Care,[77] Art. 48 stipulates that artificial insemination and the implantation of an embryo shall take place by the medical indications of the adult woman with whom the operation is carried out, provided that there is the written consent from the spouses, guaranteeing the anonymity of the donor and maintaining medical confidentiality. Clause 10 of Sec. 3 of the Decree of the Ministry of Justice of Ukraine[78] establishes the procedure for the registration of children born as a result of reproductive programmes:

> In the case where a child is born to a woman to whom an embryo conceived by a spouse has been implanted, the registration of the birth is carried out at the request of the spouses, who have given their consent to the implantation. In this case, at the same time as the document attesting to this woman's birth of a child, her written consent to the spouses' registration by the child's parents, certified by a notary public, is presented.

This specific provision (likely from the Rules for State Registration of Births approved by Order of the Ministry of Justice of Ukraine No. 52/5 of October 18th 2000, with amendments) primarily addresses surrogacy arrangements. So to break it down: (1) 'A child is born to a woman to whom an embryo conceived by a spouse has been implanted': This refers to the surrogate mother. The 'embryo conceived by a spouse' can mean either an embryo created from the genetic material of the commissioning spouses (homologous for them) or an embryo created using donor gametes but intended for the commissioning spouses. The key is that the embryo belongs to the commissioning spouses, not the surrogate. (2) 'The registration of the birth is carried out at the request of the spouses, who have given their consent to the implantation': 'The spouses' here refer to the commissioning parents (intended parents), not the surrogate and her husband. They are the ones whose request initiates the birth registration, based on their prior consent to the ART procedure involving the

75 Yakubenko, 2023, p. 240.
76 Art. 4, para. 1; Art. 49, para. 1; Art. 50.
77 Law of Ukraine, 19.11.1992, No. 2801-XII.
78 Decree of the Ministry of Justice of Ukraine, 26.02.2022, No. 606/5.

surrogate. (3) 'At the same time as the document attesting to this woman's birth of a child, her written consent to the spouses' registration by the child's parents, certified by a notary public, is presented'. 'This woman' refers to the surrogate mother. This critically confirms that for surrogacy, the surrogate mother, despite giving birth, must provide her written, notarised consent for the commissioning spouses to be registered as the legal parents. This is a crucial step to transferring legal parentage from the birth mother (surrogate) to the intended parents.

Therefore, this provision indeed resolves affiliation in cases of surrogacy, ensuring that the intended parents are registered directly on the birth certificate. It is not for donor-conceived children born to the intended mother, but specifically for situations where a gestational carrier (surrogate) is used.

If the commissioning spouses would not request the registration, it would create a significant legal lacuna and potential dispute. In practice, the contract with the surrogate and the clinic usually mandates this. If they fail to request it, the child's legal status would be uncertain, and the surrogate (the birth mother) would technically remain the legal mother, potentially leading to court proceedings to determine parentage and the child's best interests. This is an extreme and highly problematic scenario.

A situation may arise when a man who was not married to a woman wants to challenge his paternity and demand the exclusion of information about him as a father if he has consented to the use of ART, on this point the Supreme Court in case No. 520/12514/18[79] stated that a person registered as the child's father, if at the time of registration as the child's father knew that he was not the child's father, as well as being a person who consented to the use of ART, would have no right to challenge paternity. Such legal guarantees for the protection of children's rights are quite logical and reasonable. If a man voluntarily acknowledges his paternity, knowing that he is not the biological father, his rights are not considered violated. By analogy, it can be concluded that the emergence of legal relations regarding the use of ART between spouses or unmarried persons should not give rise to grounds for the denial of paternity, since the issue of consent was agreed upon by the person registered as the child's father.

Ukrainian legislation does not regulate the surrogacy procedure in detail. Only Art. 123[80] of the Family Code sets out the rules for determining the origin of a child born as a result of the use of assisted reproductive technologies. In this country in particular, if an embryo conceived by a married couple is transferred into the body of another woman, they are recognised as the child's parents. Individuals (a man or a woman) or couples living in a civil marriage are deprived of this possibility. Therefore, only spouses registered in accordance with the procedure established by law may participate in surrogacy relationships. In Ukraine, there is a presumption of the paternity of biological parents who are the clients of a surrogacy programme.

79 Decree of the Supreme Court, 28.04.2020 in the case of No. 520/12514/18.
80 Family Code of Ukraine, 10.01.2002, No. 2947-III.

The spouse, together with the document confirming the birth of the child from a surrogate mother, submits the surrogate mother's declaration of consent to the registration of the child's biological parents, the authenticity of whose signatures must be certified by a notary public, as well as a certificate of genetic link. In the 'For annotations' column of the civil status register of registration bodies, the following is entered: 'The mother of the child according to the medical certificate of birth is the citizen (surname, first name)'. The name of the institution that issued the certificate, the date of issue and the number, the notary's details (surname and initials, notary district or state notary's office), the date, the registration number of the woman's signature on the request for consent, and the marriage certificate of the child's biological parents are indicated. This annotation is not present in the birth certificate. This contains, in fact, only information on the biological parents. The rationale here is to preserve the secrecy of the birth through the surrogacy method. Foreign citizens apply to embassies to bring their children to their own country of origin. If surrogacy is prohibited in the biological parents' country of origin, there is a risk that the paternity of a child born to a surrogate mother will not be recognised. In other cases, such as Germany, Spain, and the United Kingdom, national law requires that family ties be confirmed through a court decision regarding the child's country of birth. Without such a measure, the biological parents will not be able to regularise their parenthood in the state of which they are nationals. The Unified State Register of Judgments in Ukraine contains many examples of judgments in favour of biological parents establishing the existence of family ties with a child born by surrogacy. These proceedings take a long time, sometimes more than a month, which results in additional costs for foreign citizens, both for court fees and transport costs.

The Supreme Court of Ukraine has recognised that paternity can be recognised, and changes made to a child's birth record even if no genetic testing was carried out in the case,[81] concluding that there were grounds to satisfy the claim for recognition of paternity and amendments to the child's birth record. The Supreme Court has taken into account the following evidence to confirm the child's descent from the father: the defendant's written consent to the use of assisted reproductive technologies for the birth of a child with the plaintiff; the parties' cohabitation without marriage registration before and at the time of the child's birth in the plaintiff's apartment; and the defendant's acknowledgement of his biological paternity in the court of first instance.

On 3rd September 2019, the Svjatoshyn District Court of Kyiv heard Case No. 759/10945/19[82] on establishing family ties following surrogacy. A German citizen seized the Ukrainian court. The grounds for the decision state that the applicant and her husband had a child in Ukraine through the surrogacy method and that the child was genetically related to the spouses, who were thus the biological parents. This was also confirmed by a certificate of genetic parentage of the parents (mother

81 *Postanova Verkhovnoho Sudu u spravi*, No. 742/2669/21, 05.04.2023.
82 *Rishennia Sudu*, No. 759/10945/19.

and father), issued by the Medical Centre LLC BIOTEXCOM. The surrogate mother, who gave birth to the child, also gave her consent to the couple's registration as parents. Since the applicant and her husband were German citizens and permanently resided in Germany, a court decision had to legally register the filiation relationship in Germany. Under German law, the mother of the child is considered the one who gave birth to the child. For this reason, a birth certificate issued by the competent Ukrainian body alone is not recognised in Germany and does not change the legal situation regarding parenthood.

The Supreme Court of the Federal Republic of Germany had not recognised the registration certificate issued by the competent Ukrainian body. This refusal was justified because the recognition was applied for following an administrative act and not a court decision, so part 1 of Section 108 of the Act 'On proceedings in family affairs and matters of voluntary jurisdiction' had been violated.[83] The Ukrainian court concluded that the refusal of the authorities of the Federal Republic of Germany to recognise the applicant as the mother of the child violated her rights and the rights of the newborn child, as the status of mother is associated with several rights and duties towards the child, in particular financial support and care, rights and responsibilities that she acquired under Ukrainian law. Taking into account decision XII ZB 320/17 of 20th March 2019 of the Supreme Federal Court of Germany,[84] the Ukrainian court stated that this violation of rights could be remedied by a court decision of the child's place of birth in which the filiation relationship between the child and the biological parents was recognised. After examining the circumstances of the case and the evidence provided, the Ukrainian court satisfied the applicant's request, establishing the filiation relationship between the applicant and the child born in the surrogacy programme.

On 22nd April 2019, the Kupiansk City District Court of Kharkiv Region considered a similar case, namely No. 628/828/19. The applicant was the mother of a child born in a surrogacy programme, a citizen of the United Kingdom of Great Britain and Northern Ireland. The child's father was a citizen of the Republic of the Philippines. When the Kharkiv City Department of State Registration of Civil Status Acts registered the child's birth, the couple was listed as the child's parents. They applied to the court to establish the relationship between the biological parents and the child. The couple intended to leave Ukraine and return home. In February 2019, they applied to the Embassy of the United Kingdom of Great Britain and Northern Ireland in Ukraine for a passport for their child but were told that in addition to the child's birth certificate issued in Ukraine, they had to provide a court decision on the relationship between their spouses and the child. The reason for the refusal to accept the documents and issue a passport for the child was due the fact that under the legislation of the United Kingdom of Great Britain and Northern Ireland, in order to register and issue a passport for a child born through the use of assisted reproductive

83 Bundesministerium der Justiz und für Verbraucherschutz, 2008.
84 Bundesgerichtshof, 2019.

technologies, it is necessary to obtain a UK court order on the degree of kinship in accordance with the UK Human Fertilisation and Embryology Act (2008), despite the fact that the child's birth certificate was issued in Ukraine. As a result of the case, the court decided to satisfy the application.[85]

The Civil Code of Ukraine,[86] para. 7 of Art. 281 states that an adult woman or man has the right, based on medical indications, to carry out treatment programmes using assisted reproductive technologies under the procedure and conditions established by law. Para. 1 of Art. 290 of the Civil Code of Ukraine also states that an adult with legal capacity has the right to be a donor of blood, its components, internal organs, other anatomical materials, and reproductive cells. Para. 2 of Art. 139 of the Civil Code of Ukraine prohibits contesting maternity in cases where the procedure of transferring a human embryo conceived by the couple as a result of the use of assisted reproductive technologies into the body of another woman has been carried out. Also, in the Ruling of the High Specialised Court of Ukraine for Civil and Criminal Cases of 18th November 2015 in case No. 6-27563ск15[87] It is stated that there is no need to obtain repeated consent from the husband for multiple attempts at artificial insemination, as the husband has been explained the procedure for IVF treatment and is aware of the possibility of needing more than one attempt before pregnancy occurs. To avoid numerous lawsuits challenging paternity and maternity, there are clear restrictions that exist in the law. According to para. 11 of the Decision of the Plenum of the Supreme Court of Ukraine No. 3 dated 15th May 2006 'On the application by courts of certain provisions of the Family Code of Ukraine in cases concerning paternity, maternity or recovery of alimony',[88] a person who has consented to the artificial insemination of his wife has no right to contest paternity. Similarly, under para. 2 of Art. 139 of the Family Code of Ukraine, denial of maternity is not allowed in cases provided for in paras. 2 and 3 of Art. 123 of the Family Code. This provision is regulated by law based on moral principles. It provides for the possibility that a woman who has carried a child (surrogate mother) may develop maternal feelings towards a child who is biologically alien to her. In such a case, the rights and interests of the biological mother (and, accordingly, the child) are protected by law.

In this context, it is essential to consider the national legislation of the state of citizenship of the genetic parents, specifically whether surrogacy is permitted and what formalities must be fulfilled to legalise the status of genetic parents concerning a child born to a surrogate mother. The ECtHR's case law indicates that Art. 8 does not obligate governments to legalise surrogacy, and such matters are adjudicated based on national legislation. In *D v. France*,[89] the ECtHR stated that the requirement

85 Decision of Court No. 628/828/19, 22.04.2019.

86 The Civil Code of Ukraine, 16.01.2003, No. 435-IV.

87 *Ukhvala Vyshchoho spetsializovanoho sudu Ukrainy z rozghliadu tsyvilnykh i kryminalnykh sprav*, 18.11.2015, No. 6-27563ск15.

88 *Postanova plenumu Verkhovnoho Sudu Ukrainy*, No. 3, 15.05.2006.

89 Case *ECtHR D v. France*, 16.7.2020.

to adopt a child born via surrogacy to acknowledge the bond between the genetic mother and the child does not infringe upon her right to a private life. Regrettably, the case law of the ECHR predominantly examines the rights of genetic parents or those who have utilised the services of a surrogate mother, rather than the rights of the surrogate mother herself. The handling of information on the surrogate mother, including its disclosure or concealment from the child, as well as the parameters of her privacy in decision-making during pregnancy, is typically omitted and is generally governed by the contract between the genetic parents and the surrogate mother. In particular, in its judgments of 26th June 2014 in the case of *Mennesson v. France*[90] and *Labasse v. France*,[91] the European Court of Human Rights specifically stated that each country has the right to prohibit surrogacy on its territory. However, the Court also recognised that the prohibition of surrogacy cannot adversely affect children born in this way abroad. The court ruled that countries that ban surrogacy must recognise the family relationship between children born to surrogate mothers abroad and their biological parents, or violate the children's rights to respect for private and family life under Art. 8 of the Convention. All ECtHR cases are evaluated using proportionality criteria for state interference with private interests. However, the Court does not always state the limits of private interference with women. The ECtHR evaluates each case against its specific circumstances and national legislation; therefore, if a state prohibits or limits reproductive rights, it may not infringe Art. 8. The ECtHR recognises that countries can allow or regulate reproductive health care treatments. States have ratified the Istanbul Convention to protect women's reproductive rights. The Istanbul Convention regulates reproductive rights and upholds women's rights. Additionally, national legislation must balance public interest and private rights, minimise intrusion into women's privacy, and consider WHO recommendations to ensure access to safe medicine and women's autonomy in sexual and reproductive health decisions. The ECtHR case law protects spouses' ability to have a child and use medically available means and make family planning decisions without interference. The Court found that the lack of embryo screening, but the availability of a permit for medical abortion if the foetus has the same condition, showed legislative inconsistency and disproportionate private interference.

Respect for privacy requires that every person has an opportunity to establish the details of their background, which is important because it shapes their identity. Establishing ancestry requires obtaining information about parents.[92]

The issue of the child's right to know his or her parents also arises when a child is born to a surrogate mother. According to para. 2.2 of the Decree of the Ministry of Justice No. 140/5 of 18th November 2003 'On Amendments and Additions to the Rules for Registration of Civil Status Acts in Ukraine',[93] and also, according to

90 Case ECtHR *Mennesson v. France*, 26.09.2014.
91 Case ECtHR *Labassee v. France*, 26.06.2014.
92 Case of *Călin v. Romania*, Application No. 54491/14, 05.07.2022.
93 *Nakaz Miniustu Ukrainy*, 18.11.2003, No. 140/5.

Art. 155 of the Family Code of Ukraine, the parents' exercise of rights and duties must be based on respect for the child's rights and human dignity. The registration of a child's birth is carried out with the simultaneous determination of its origin and assignment of a surname, name, and patronymic. In the case of the birth of a child by a woman who has had a human embryo transferred into her body as a result of the use of assisted reproductive technologies, state registration of birth is carried out at the request of the spouses who have consented to such a transfer. In this case, along with the document confirming the fact of the child's birth by this woman, a statement of her consent to the registration of the spouses as the child's parents, the authenticity of the signature which must be notarised, as well as a certificate of genetic relationship between the parents (mother or father) and the *foetus*, must be submitted. At the same time, one of the following entries is made in the 'For notes' column of the birth certificate: 'The mother of the child, identified by the electronic healthcare system according to the application for consent to record the spouses as the child's parents, is a citizen (surname, first name, patronymic)' or 'The mother of the child, according to the medical birth certificate, is a citizen (surname, first name, patronymic)', the name of the institution(s) that issued the certificate, the date of its issuance and number, the notary's data (surname and initials, notary district or state notary office), the date and the registration number of the authenticity of the woman's signature on the application for her consent to the registration of the spouses as the child's parents.[94] The state registration of the child's birth must be carried out within one month of the birth. As can be seen, when using assisted reproductive technologies, the parents of a child are the spouses, although the birth record also includes information about the mother who gave birth to the child.

Disputing maternity is not allowed in cases of ART of a wife carried out with the written consent of her husband, where he is recorded as the father of the child born to his wife. If an embryo conceived by a married couple is implanted into the body of another woman, the parents of the child are the spouses. If an embryo conceived by a married man and another woman is implanted in the body of his wife, the child is considered to have been born to the spouses. In this case, there is no doubt that the child is descended from the persons registered as his or her parents. Still, his or her biological data, in particular genetic origin, will be different. Here we see a negative legal consequence that may arise in the future when entering into marriage, as it can be presumed that the future spouses will have a common biological origin.

In a few words, we explain how legal filiation is established for children born via homologous and heterologous ART for both married and unmarried couples.

General Principles of Filiation in Ukraine (Family Code):

(1) Child born to married parents: According to Art. 122 of the Family Code of Ukraine, a child born to spouses is presumed to be the child of the spouses. The origin of the child from the mother is determined by the fact of birth.

94 *Pro zatverdzhennia Pravyl derzhavnoi reiestratsii aktiv tsyvilnoho stanu v Ukraini*, 18.10.2000, No. 52/5.

The origin of the child from the father is determined by the marriage between the mother and the father. No further special acknowledgment is needed. This applies to homologous ART (using gametes of both spouses) as well.

(2) Child born to unmarried parents: Mother: The origin of the child from the mother is always determined by the fact of birth.[95] Father: If the parents are not married, the origin of the child from the father can be determined by: voluntary acknowledgment of paternity.[96] The father submits a joint application with the mother (or a separate application if the mother is deceased/incapable) to the state civil registration body. This is a common method for unmarried couples. In the absence of a statement, the right to submit, paternity of a child may be recognised by a court decision.[97] If the father refuses to acknowledge paternity, it can be established by a court decision based on an application from the mother, guardian, or the child themselves.

(3) Homologous ART (using gametes of both married spouses): Married Couple: If a wife gives birth to a child conceived as a result of ART using the gametes of her husband, the husband is recognised as the father of the child. This falls under the general presumption of paternity for married couples[98] and is confirmed by Art. 130 of the Family Code, which states that a 'spouse who has given consent in writing to the use of assisted reproductive technologies is considered the father of a child born by his wife as a result of these technologies'. No special form or acknowledgment is usually needed beyond the general birth registration based on the marriage. Heterologous ART (using donor gametes/embryos): By Married Couple: Using donor sperm: If a child is born by the wife of a married couple using donor sperm, and with the written consent of the husband to this procedure, the husband is recorded as the father. The donor has no parental rights or obligations. Art. 130 of the Family Code states: 'a spouse who has given consent in writing to the use of assisted reproductive technologies is considered the father of a child born by his wife as a result of these technologies'. Using donor egg/embryo (and the wife carries the pregnancy): If a child is born by the wife of a married couple using a donor egg or donor embryo, and with the written consent of both spouses to this procedure, the wife is recorded as the mother and the husband as the father. The donor has no parental rights or obligations. The birth mother

95 Art. 125, Family Code.
96 Art. 126, Family Code.
97 Art. 128, Family Code.
98 Art. 122, Family Code.

is always the legal mother.[99] A husband's consent makes him the legal father.[100]

(4) By Unmarried Couple (concerning fathers): This is where Ukrainian law has historically been more restrictive regarding ART. Unmarried woman using donor sperm: An unmarried woman can undergo ART using donor sperm. In this case, she is registered as the sole parent (mother). If she is in a factual cohabitation relationship, her male partner is not automatically recognised as the father. He would need to establish paternity through voluntary acknowledgment[101] or a court decision,[102] similar to children conceived naturally outside of marriage. There is no special provision in Art. 130 of the Family Code that automatically grants paternity to an unmarried male partner in cases of ART. Unmarried couple (female partner carries, male partner's gametes used): If an unmarried woman carries a pregnancy using her partner's gametes (homologous for them as a couple), the mother is established by birth. The father would need to acknowledge paternity voluntarily.[103] Unmarried couple (donor gametes used): If donor gametes are used, the birth mother is established by birth. The male partner would need to establish paternity via voluntary acknowledgment or court decision.

5. The Rights of the Child and ART in Ukraine

Ukrainian legislation ensures 'the best interests of the child'. Art. 1 of the Ukrainian Law 'On the Protection of Children' stipulates that actions and decisions must consider a child's age, gender, health, development, life experiences, familial, cultural, and ethnic backgrounds, to safeguard the child's best interests. The regulations stipulate that the best interests of the child must always be prioritised in any choice about the child, including surrogacy. Moreover, the child's opinion must be seriously considered if he or she has reached an age and level of development at which it can be expressed. Reproductive procedure laws, policies, and practices must adhere to non-discrimination, prioritise the child's best interests, uphold the child's right to life and development, and accommodate the expression of diverse perspectives. The European Court of Human Rights notes that the best interests of the child are of utmost importance. In determining the best interests of the child in

99 Art. 122, Family Code.
100 Art. 130, Family Code.
101 Art. 126, Family Code.
102 Art. 128, Family Code.
103 Art. 126, Family Code.

each case, two conditions must be taken into account: first, it is in the best interests of the child to maintain his or her family ties, unless the family is particularly unsuitable or manifestly dysfunctional; second, it is in the best interests of the child to ensure that he or she develops in a safe, secure and stable environment that is not dysfunctional.[104] Ukrainian legislation, Art. 1 of the Law of Ukraine 'On the Prevention of Human Reproductive Cloning',[105] designates an embryo as a human embryo at the stage of development of up to 8 weeks. Such a definition is overtly undetectable and slanderous; looking back at the appearance of the indications of the initial moment, for which the embryo is the germ of a person. It is interesting that the legislator sets the upper time limit of the concept – eight weeks, i.e., two months.[106] This line is important for the completion of the processes of organ formation in the embryo, and at that moment in time it is already important for the *foetus*, and not the embryo. However, the current legislation also defines the concept of '*foetus*' as an intrauterine product of conception, starting from the full 12th week of pregnancy until expulsion/removal from the mother's body. It is fixed, in particular in clause 1.4. Decree of the Ministry of Health of Ukraine dated March 29th 2006, No. 179 'On the approval of the Instructions for determining the criteria for the perinatal period, live births and stillbirths, the Procedure for registering live births and stillbirths'. Therefore, the status of a conceived but unborn child in the period between eight and 12 weeks of pregnancy remains unsettled. In addition, the current Ukrainian legislation is characterised by a lack of unified terminology, since in addition to the above-mentioned terms '*embryo*' and '*foetus*', it also uses the terms 'conceived but not yet born child',[107] 'conceived child',[108] without their definition. In the literature, it is proposed to eliminate this problem by unifying the terminology and introducing a single term 'unborn child' into legal circulation, which is proposed to be defined as 'a human individual from the moment of conception (fertilisation of an egg by a sperm) to the moment of birth'.[109] Such a definition fully covers all stages of the development of a human being from the moment of fertilisation to the moment of birth, which will also cover embryos existing outside the mother's body (*in vitro*). It seems that such an approach will ensure the protection of the human embryo regardless of the form of its existence (implanted or non-implanted) and the stage of its development (*embryo or foetus*). For example, in the cases '*Vo v. France*' and *A, B and C v. Ireland*, the European Court of Human Rights' confirmed that 'an unborn child is not considered a 'person' whose rights are directly protected by Art. 2 of the Convention'. The Court noted that the 1950 Convention does not define the term 'human being' ('person'). At the same time, he noted that there is no consensus on the status of the embryo and/or *foetus* at the European level,

104 *Mamchur v. Ukraine*, No. 10383/09, § 100, ECHR, 16.07.2015.
105 Pro zaboronu reproduktyvnoho klonuvannia liudyny Zakon Ukrainy, No. 2231-IV., 14.12.2004.
106 Buletsa, Kvit and Mendzhul, 2022.
107 Part 2 of Art. 1298 of the Civil Code of Ukraine.
108 Part 3 of Art. 110 of the Family Code of Ukraine.
109 Lyubych, 2015, p. 263

but he recognised that the *embryo/foetus* belongs to the human race ('the human race').[110]

Moreover, the norms of the Civil Code of Ukraine disclose which interests of the unborn child are protected, in particular: (1) by Part 1 of Art. Art. 1200 of the Civil Code of Ukraine states that a child born after the death of the victim has the right to compensation; (2) if a child was conceived during the life of the testator, but was born alive after his death, he or she is recognised as the heir both by will and by law. He or she belongs to the priority.[111]

The analysis of the indicated rules allows us to conclude that at the basis of any decision concerning the child, even in the case of the birth of a child through surrogacy, the best interests of the child should always be paramount. And it is for these reasons that it is essential to ensure that laws, policies, and practices in the field of reproductive procedures comply with the principles of non-discrimination, the best interests of the child, the child's right to life and development, as well as the expression of opinions.

The anonymity of donation is also related to the right of a person to know about his or her genetic consent. At the same time, there are cases in the ECHR case-law on protecting the rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms regarding the establishment of biological paternity and the right of a person to know who his or her parents are.[112] Scientists note that it is necessary to establish the rights of a person to receive information about his or her genetic origin in the case of ART, including by disclosing the anonymity of the donor.[113] It should be noted that the surrogate mother may remain anonymous.

According to A.P. Holovashchuk, when deciding on the right of a child to information about genetic origin, it is necessary to take into account the psychological aspect, namely, it is difficult to predict the child's reaction to the fact that his or her genetic father (or mother) were donors. Such information can lead to a deterioration in family relationships and cause difficulties in raising a child. For these reasons, A.P. Holovashchuk concludes that it is the parents who have the right to determine whether to provide the child with information about his or her genetic origin and such information can be provided only after the child reaches the age of majority.[114] An effective tool for protecting the interests of a child born as a result of ART (surrogacy), when the parents are citizens of a foreign country, is the establishment of 'feedback' with the official bodies of that country, which is responsible for protecting children's rights. Such a tool can be introduced through the conclusion of international agreements and cooperation with international organisations. The legal concept of protecting the interests of a child born as a result of assisted reproductive

110 Case *Vo v. France* (Application No. 53924/00, Judgment of 8 July 2004) and case *A, B and C v. Ireland* (Application No. 25579/05, Judgment of 16 December 2010).

111 Part 1 of Art. 1222; Part 2 of Art. 1261; Art. 1298 of the Civil Code of Ukraine.

112 Case *Mikulic v. Croatia*, 7.02.2002; Case of *Odièvre v. France*, 13.02.2003.

113 Boldizhar, 2019, p. 15.

114 Holovashchuk, 2013, p. 296; Boldizhar, 2019, p. 15.

technologies (surrogacy) provides for the principle of the double liability of each capable subject of these legal relations. Thus, positive (prospective) responsibility consists in understanding the idea of the value of a new life, respect for the best interests of the child, and the faithful fulfilment of their duties to other participants in the programme, the state, and the child born. Negative (retrospective) legal liability is a violation of the law, the terms of the contract, the rights of other programme participants and involves suffering adverse personal, property, and organisational consequences. The practical value of the legal concept of protecting the interests of a child born as a result of assisted reproductive technologies (surrogacy) is not only in the implementation of tools, methods and responsibilities at the state level, but also in the promotion of the idea of the right of every child to a happy and carefree childhood and the priority of the best interests of the child at an international level.[115]

There were also special rules for children crossing Ukraine's state border during periods of martial law. According to the Resolution of the Cabinet of Ministers of Ukraine of 27th January 1995 No. 57 'Approval of Rules for the Crossing of the State Border by Ukrainian Citizens',[116] children under the age of 16 can leave Ukraine if they have a passport of a Ukrainian citizen or a birth certificate (in the absence of a passport of a Ukrainian citizen) / documents containing information about the person, based on which the State Border Service will allow them to cross the state border. That is, the issuance of a foreign passport is currently not a mandatory condition for a child to cross Ukraine's state border. And although this rule was written for the crossing of the state border by Ukrainian citizen children, representatives of the State Border Service of Ukraine in practice apply it during martial law by analogy to children born in Ukraine to foreigners as a result of using the surrogacy method, which allows them to cross the state border of Ukraine only based on a birth certificate. However, it is essential to remember that in the classical form, according to Art. 15 of the Law 'On the Legal Status of Foreigners and Stateless Persons', the entry into and exit from Ukraine of foreigners is carried out using a passport document with a corresponding visa, unless another procedure for entry and exit is established by legislation or an international treaty of Ukraine.

In this regard, to travel with an infant outside Ukraine, the genetic parents should have a travel document for the child issued by the diplomatic representation of the foreign country in Ukraine, and the child's birth certificate. Without this document, the border guards show great vigilance and often require the presentation of additional documents to monitor the implementation of the surrogacy programme under the current Ukrainian legislation: e.g. a contract on the provision of surrogacy services concluded between the spouses of the genetic parents and the surrogate mother; certificate of genetic parentage; a notarised statement of the surrogate

115 Mykhalchuk et al., 2019.
116 *Postanova Kabinetu Ministriv Ukrainy*, 27.01.1995, No. 57.

mother on the consent to the registration of the genetic parents by the parents of the child; newborn exchange card, etc.[117]

6. Conclusions

Legal relations arising in the field of assisted reproductive technologies (ART) are characterised by several specific features. These legal relationships emerge between clearly defined parties, primarily individuals, both women and men, who are patients, and healthcare institutions that offer ART services. Typically, ART-related legal relations involve at least two parties; two-party relations are common in procedures such as sperm donation, where the interaction is limited to the donor and the recipient or the healthcare institution. More complex processes, like surrogacy, involve multiple parties, including the intended parents, the surrogate, medical professionals, and potentially legal guardians or agencies. A mandatory subject in these relations is the healthcare institution providing ART services, acting as a key actor responsible for initiating and maintaining the legal process. The regulatory framework governing these relations is mixed, combining statutory legal norms and contractual agreements, which highlights a dual regulatory structure. These legal relations are inherently dynamic, often evolving as new obligations and rights emerge; for example, after a successful IVF and childbirth, the initial relationship between patients and the healthcare institution may develop into new legal relations concerning the donation of unused cryopreserved embryos to other recipients such as infertile couples or single women. They are marked by binding legal force, characterised by the reciprocity of rights and duties, which is fundamental to legal relationships. Establishing these relations involves dual layers of intent: public will, expressed through state legislation regulating ART procedures, and private will, demonstrated by individuals through consent and contractual agreements. Additionally, legal relations in ART are technologically dependent, closely tied to ongoing medical and biotechnological advancements such as gene editing, embryo screening, and artificial wombs, requiring legal frameworks to evolve accordingly. These relationships often have temporal complexity, lasting months or years, as seen in surrogacy or embryo storage contracts, which necessitate considerations of long-term commitments, including issues like posthumous reproduction or custody of cryopreserved embryos. Due to the international nature of ART, cross-border implications are significant; patients may travel abroad for procedures, raising questions about the recognition of contracts, parental rights, and citizenship across jurisdictions.[118] Confidentiality and data protection are also critical, given the sensitive personal and

117 Danchenko, 2022.
118 Korać Graovac, 2024, pp. 101–121.

genetic information involved, necessitating compliance with laws such as the GDPR. Ethical and public interest limitations often restrict ART procedures, reflecting societal values, including bans on sex selection or embryo research limitations. Consent and informed decision-making are central, with laws requiring full, voluntary, and informed consent, especially regarding gamete donation, embryo use, or surrogacy, including rules about withdrawal of consent. Determining legal parenthood can be complex, particularly in cases of donor conception or surrogacy, requiring clear legal definitions of who is recognised as the parent or parents under specific conditions. Finally, the legal framework must address vulnerability and inequality considerations, protecting parties from exploitation, such as low-income surrogates or egg donors, and ensuring non-discrimination and equitable access to ART services.

In addition, given the complex combination of medical, ethical, and legal aspects, developing the relevant legal act requires a balanced approach from the legislator. We hope that such a document will balance the interests of the surrogate mother, the genetic parents, and the child.[119] In addition, it is advisable to establish appropriate liability for persons who use the surrogacy programme for enrichment, turning childbirth into a business.

The current gaps in Ukraine's legal framework regarding assisted reproductive technologies include unresolved issues concerning the legal status of reproductive cells and embryos, the absence of defined legal forms for a person's will to permit posthumous use of reproductive materials, unclear criteria regarding who has access to reproductive cells after a person's death, and the lack of regulations concerning inheritance rights for children born posthumously.

As practice shows, the current legislative regulation of foreign motherhood does not fully protect the rights and legitimate interests of students of foreign motherhood programmes. At the same time, children born through such programmes require the greatest protection and redress of violated rights, especially when the mother leaves, for example, the need to confirm the legitimacy of their placement (especially in the case of foreign students in advanced programmes) or to prevent risks of child trafficking. Children's best interests in Ukraine require clear legal protections for their rights and status, especially in ART contexts, including posthumous and foreign programs. There is a need to establish legal standards that prioritise the child's well-being, protect against exploitation, and provide clarity on parental rights, inheritance, and identity. Children born through ART must have their rights recognised to prevent violations and ensure access to support and legal recognition, regardless of complex procedures. The main principles in defence of children include prioritising their best interests, ensuring non-discrimination, protecting them from exploitation and abuse, providing legal certainty and recognition of parental rights, safeguarding privacy and confidentiality, and promoting equitable access to ART services. Overall, Ukraine must develop comprehensive legislation aligned with

119 Garayová, 2024, pp. 69–84.

international standards to protect and uphold the rights and well-being of children born through ART.

References

Bibliography

Basai, N.M. (2014) 'Poniattia surohatnoho materynstva', *Prykarpatskyi yurydychnyi visnyk*, 3(6), pp. 58–64 [Online]. Available at: http://www.pjv.nuoua.od.ua/v3_2014/06.pdf (Accessed: 15 February 2025).

Bizonia V.V., Atamanchuk, I.V. (2021) 'Instytut surohatnoho materynstva v ukraini ta zarubizhnykh krainakh', *Visnyk studentskoho naukovoho tovarystva DonNU imeni Vasylia Stusa*, 2(13), pp. 83–88 [Online]. Available at: https://jvestnik-sss.donnu.edu.ua/Art./view/11237 (Accessed: 15 February 2025).

Boldizhar, S.O. (2019a) 'Pravove rehuliuvannia donorstva pry zastosuvanni reproduktyvnykh tekhnolohii', *Prykarpatskyi yurydychnyi visnyk,* 1(26), pp. 13–16 [Online]. Available at: http://pjv.nuoua.od.ua/v1-3_2019/5.pdf (Accessed: 15 February 2025).

Boldizhar, S.O. (2019b) 'Surohatne materynstvo: spivvidnoshennia medychnoi ta pravovoi vyznachenosti', *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu, Seriia PRAVO*, 58(1) [Online]. Available at: https://surl.li/yhzdnk (Accessed: 15 February 2025).

Buletsa, C.B. (2014) 'Istotni ta vypadkovi umovy dohovoru surohatnoho materynstva', *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia: Pravo*, 27(1), pp. 129–134 [Online]. Available at: http://nbuv.gov.ua/UJRN/nvuzhpr_2014_27(1)__34 (Accessed: 15 February 2025).

Buletsa, S., Kvit, N., Mendzhul, M. (2022) 'Legal regulation of donating embryos for scientific research and for infertility treatment in Ukraine', Medical Research Archives, 10(8), pp. 1–15 [Online]. Available at: https://doi.org/10.18103/mra.v10i8.3070 (Accessed: 15 February 2025).

Bundesgerichtshof (2019) 'Beschluss XII ZB 320/17 vom 20. März 2019 in der Personenstandssache' [Online]. Available at: https://surl.gd/pekriq (Accessed: 15 February 2025).

Bundesministerium der Justiz und für Verbraucherschutz (2008) 'Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) § 108 Anerkennung anderer ausländischer Entscheidungen' [Online]. Available at: https://www.gesetze-im-internet.de/famfg/__108.html (Accessed: 15 February 2025).

Danchenko, O. (2022) 'Surohatne materynstvo dlia inozemtsiv v ukraini pid chas viiny: pohliad yurysta' [Online]. Available at: https://pravo.ua/surohatne-materynstvo-dlia-inozemtsiv-v-ukraini-pid-chas-viiny-pohliad-iurysta/ (Accessed: 15 February 2025).

Dzhochka O.P. (2007) 'Zahalnoteoretychnyi aspekt pravovoho rehuliuvannia reproduktyvnoi funktsii. Medychne pravo Ukrainy: problemy stanovlennia ta rozvytku' *Materialy I Vseukrainskoi naukovo-praktychnoi konferentsii,* 19-20.04.2007, Lviv [Online]. Available at: https://medicallaw.org.ua/uploads/media/01_127_04.pdf (Accessed: 15 February 2025).

Dziubenko, O.L. (2020) 'Pravova pryroda ta istotni umovy dohovoru pro surohatne materynstvo', *Ekspert: paradyhmy yurydychnykh nauk i derzhavnoho upravlinnia*, 1(7), pp. 141–152 [Online]. Available at: https://doi.org/10.32689/2617-9660-2020-1(7)-141-152 (Accessed: 15 February 2025).

Garayova, L. (2024) 'The Best Interest of the Intended Child – Children's Rights in Assisted Reproduction and Surrogacy', *Law, Identity and Values*, 4(2), pp. 69–84 [Online]. Available at: https://doi.org/10.55073/2024.2.69-84 (Accessed: 15 February 2025).

Government Portal (2024) 'Likuvannia bezpliddia u Prohrami medychnykh harantii Natsionalna sluzhba zdorovia Ukrainy, opublikovano', 06 January 2024 [Online]. Available at: https://www.kmu.gov.ua/news/likuvannia-bezpliddia-u-pmh (Accessed: 15 February 2025).

Haro, H., Mykhalchuk, O., Bobak, O., Popika, I., Babishena, M. (2020) 'Naikrashchi interesy dytyny vs zakonodavstvo u sferi zastosuvannia drt (surohatne materynstvo)', *Visnyk, liutyi*, 60(1–2), pp. 49–56 [Online]. Available at: https://surl.li/qhgqtw (Accessed: 15 February 2025).

Hofeld H.S. (2024) 'Certain Aspects of Conclusion of a Surrogate Maternity Agreement in Ukraine', *Yurydychnyi naukovyi elektronnyi zhurnal*, 2024/7, pp. 94–97 [Online]. Available at: https://doi.org/10.32782/2524-0374/2024-7/20 (Accessed: 15 February 2025).

Holovashchuk, A.P. (2013) 'Tsyvilno-pravovi aspekty donorstva reproduktyvnykh klityn. Derzhava i pravo', *Yurydychni i politychni nauky,* 2013/59, pp. 293–298.

Holovashchuk, A.P. (2017) 'Deiaki aspekty dohovoru surohatnoho materynstva', *Visegrad Journal on Human Rights*, 2(2), pp. 66–71.

Iakubenko, D. (2023) 'Osoblyvosti zakonodavchoho rehuliuvannia zastosuvannia dopomizhnykh reproduktyvnykh tekhnolohii', *Yurydychnyi Visnyk*, 2023/3, pp. 235–242 [Online]. Available at: https://doi.org/10.32782/yuv.v3.2023.29 (Accessed: 15 February 2025).

Korać Graovac, A. (2024) 'Legal Regulation of Medically Assisted Reproduction in Croatia: Is the Grass Green Enough on Our Side?', *Law, Identity and Values*, 4(2), pp. 101–121 [Online]. Available at: https://doi.org/10.55073/2024.2.101-121 (Accessed: 15 February 2025).

Kramer, A.E., Varenikova, M. (2022) 'In a Kyiv Basement, 19 Surrogate Babies Are Trapped by War but Kept Alive by Nannies', *The New York Times*, 12 March 2022 [Online]. Available at: https://www.nytimes.com/2022/03/12/world/europe/ukraine-surrogate-mothers-babies.html (Accessed: 15 February 2025).

Kvit, N.M., Buletsa, S.B., Kopcha, V.V. (2021) 'Research use of human *in vitro* embryos: legal boundaries', *Wiad Lek*, 74(11) pp. 3060–3066 [Online]. Available at: https://doi.org/10.36740/WLek202111234 (Accessed: 15 February 2025).

Lyubych, L.D. (2015) 'Pravovyy status nenarodzhenoyi dytyny u pravovidnosynakh shchodo realizatsiyi reproduktyvnykh prav lyudyny', *Administratyvne pravo i protses*, 2(12), pp. 262–273.

Mendzhul, M.V. (2019a) 'Porivnialnyi analiz pravovykh zasad surohatnoho materynstva', *Porivnialno-analitychne parvo*, 2019/2, pp. 78–79.

Mendzhul, M.V. (2019b) 'Pravovi zasady surohatnoho materynstva: okremi aspekty. Zabezpechennia prav liudyny chetvertoho pokolinnia u systemi okhorony zdorovia: materialy' in Buletsy, S.B., Lazura, Y.V., Mendzhul, M.V. (eds.) *Mizhnarodnoi naukovo-praktychnoi konferentsii.* Uzhhorod: Vydavnytstvo Oleksandry Harkushi.

Mendzhul, M.V. (2023) 'Pravove rehuliuvannia zastosuvannia tekhnolohii surohatnoho materynstva v ukraini pid chas povnomasshtabnoi viiny', *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia: PRAVO,* 77(1), pp. 154–158 [Online]. Available at: https://doi.org/10.24144/2307-3322.2023.77.1.24 (Accessed: 15 February 2025).

Ombudsman of Ukraine (2022) 'Druhyi raund dialohu Ukrainy ta Komitetu OON z prav dytyny' [Online]. Available at: https://surl.lt/qtpwpa (Accessed: 15 February 2025).

Ostrovska B.V. (2022b) 'Dity *in vitro*: ukrainski realii pryvatnopravovoho rehuliuvannia', *Nove ukrainske parvo,* 2022/1, pp. 66–69 [Online]. Available at: https://doi.org/10,51989/nul.2022.1.9 (Accessed: 15 February 2025).

Ostrovska, B.V. (2022a) 'Dity viiny: problemy surohatnoho materynstva pid chas viiskovoi ahresii rosiiskoi federatsii proty Ukrainy', *Nove ukrainske pravo,* 2022/2, pp. 73–79 [Online]. Available at: https://doi.org/10.51989/NUL.2022.2.10 (Accessed: 15 February 2025).

Ostrovska, B.V. (2024a) *Zbirnyk materialiv Vseukrainskoi naukovo-praktychnoi konferentsii, pryurochenoi do 28-oi richnytsi pryiniattia Konstytutsii Ukrainy.* Odesa: Vydavnytstvo iurydyka.

Ostrovska, B.V. (2024b) 'Prava hromadian Ukrainy ta inozemtsiv u sferi reproduktyvnoho zdorovia pid chas dii voiennoho stanu v Ukraini', *Nove ukrainske pravo,* 2024/4, pp. 73–79 [Online]. Available at: https://doi.org/10.51989/nul.2024.4.8 c.77 (Accessed: 15 February 2025).

Ostrovska, B.V. (2024c) *Zberezhennia henofondu Ukrainy: natsionalna stratehiia zakhystu. Pravova paradyhma vidnovlennia Ukrainy: problemy ta perspektyvy: materialy XIV Mizhnarodnoi naukovo-praktychnoi konferentsii, m. Kyiv, Natsionalnyi aviatsiinyi universytet, 23 liutoho 2024 r.* Ternopil: Vektor, pp. 107–110.

Paramonov, N.V. (2023) 'Reproduktyvni prava v Ukraini ta susidnikh derzhavakh: konstytutsiine doslidzhennia. – Kvalifikatsiina naukova pratsia na pravakh rukopysu', Dysertatsiia na zdobuttia naukovoho stupenia doktora filosofii zaspetsialnistiu.

Seniuta, I. (2017) 'Tsyvilni pravovidnosyny u sferi reproduktyvnykh tekhnolohii', *Prava liudyny: filosofski, teoretyko-yurydychni ta politolohichni vymiry: Statti uchasnykiv I Mizhnarodnoho kruhloho stolu,* Lviv, 28–29 October 2016 [Online]. Available at: https://surl.li/lcclxw (Accessed: 15 February 2025).

Surohatne Materynstvo (2023) 'Istoriia' [Online]. Available at: https://surogatnoematerinstvo.com.ua/statti/surogatne-materynstvo-istoriya/ (Accessed 15 February 2025).

Surohatne materynstvo v Ukraini (2009) 'Pravovyi tyzhden', *Hazeta*, 10 November 2009 (in Ukrainian) [Online]. Available at: http://legalweekly.com.ua/index.php?id=16061&show=news&&newsid=121633 (Accessed: 15 February 2025).

Surohatne materynstvo v Ukraini (2023) 'Pravovi aspekty', *DLF Attorneys-at-law* [Online]. Available at: https://dlf.ua/ua/surogatne-materinstvo-v-ukrayini-pravovi-aspekti/ (Accessed: 15 February 2025).

Surrogacy (2023) 'Vartist posluh surohatnoi mamy' [Online]. Available at: https://surrogacy.com.ua/vartist-poslug-surogatnoyi-mamy/ (Accessed: 15 February 2025).

Sydorenko, M. (2009) 'Istotni umovy dohovoru shchodo vynoshuvannia dytyny (surohatne materynstvo)' [Online]. Available at: http://sidorenko.at.ua/publ/1- (Accessed: 15 February 2025).

Talanov, Y.I. (2012) 'Aktualni problemy surohatnoho materynstva v zakonodavstvi Ukrainy', *Visnyk Kharkivskoho natsionalnoho universytetu vnutrishnikh sprav*, 2012/1, pp. 360–368. [Online]. Available at: http://nbuv.gov.ua/UJRN/VKhnuvs_2012_1_56 (Accessed: 15 February 2025).

The History of Surrogacy (2021) 'A Legal Timeline' [Online]. Available at: https://www.worldwidesurrogacy.org/blog/the-history-of-surrogacy-a-legal-timeline (Accessed: 15 February 2025).

Trynova, Y.O. (2022) 'Ohliad zakonodavstva v sferi dopomizhnykh reproduktyvnykh tekhnolohii v Ukraini. Protokol' [Online]. Available at: https://surl.li/qyhdso (Accessed 15 February 2025).

UNHCR (1995) 'Report of the International Conference on Population and Development, Cairo, 5-13 September 1994' [Online]. Available at: https://www.refworld.org/reference/themreport/unfpa/1995/en/68255 (Accessed: 15 February 2025).

Vpershe v Ukraini (2025) 'U Lvivskomu perynatalnomu tsentri zavdiaky zastosuvanniu dopomizhnykh reproduktyvnykh tekhnolohii za Prohramoiu medychnykh harantii na svit ziavylas dviinia' [Online]. Available at: https://surl.li/qhgqtw (Accessed: 15 February 2025).

Legal sources

Case of the European Court of Human Rights of *D v. France*, 16.7.2020, Application No. 11288/18.

Case of the European Court of Human Rights of *Lia v. Malta* (Application No. 8709/20) 05.08.2022.

Case of the European Court of Human Rights of *Mamchur v. Ukraine,* 16.10.2015 Application No. 10383/09.

Case of the European Court of Human Rights of *Mennesson v. France*, 26.09.2014, Application No. 65192/11.

Case of the European Court of Human Rights of *Mikulic v. Croatia*, 7.02.2002, Application No. 53176/99.

Case of the European Court of Human Rights of *Odièvre v. France*, 13.02.2003, Application No. 42326/98.

Case of the European Court of Human Rights, *Labassee v. France*, 26.6.2014, Application No. 65941/11.

Case of the European Court of Human Rights, *Călin v. Romania*, Application No. 54491/14, 05.07.2022.

Decision of the Kyiv District Court of Odessa in case No. 947/7597/24 of 18 June 2024.

Deiaki pytannia orhanizatsii spromozhnoi merezhi zakladiv okhorony zdorovia: Postanova Kabinetu Ministriv Ukrainy No. 174 vid 28.02.2023 r.

Deiaki pytannia realizatsii prohramy derzhavnykh harantii medychnoho obsluhovuvannia naselennia u 2025 rotsi. Postanova Kabinetu Ministriv Ukrainy vid 24.12.2024 No.1503.

International Covenant on Civil and Political Rights.

Osnovy zakonodavstva Ukrainy pro okhoronu zdorovia: Zakon Ukrainy vid 19.11.1992 No. 2801-XII.

Perelik dokumentiv, shcho stvoriuiutsia u sferi derzhavnoi reiestratsii aktiv tsyvilnoho stanu, zi strokamy yikh zberihannia. Nakaz Ministerstva yustytsii Ukrainy vid 30.12.2013. No. 2804/5.

Poriadok akredytatsii zakladu okhorony zdorovia: Postanova Kabinetu Ministriv Ukrainy No. 765 vid 15.07.1997 r.

Poriadok provedennia konkursu na zainiattia posady kerivnyka derzhavnoho, komunalnoho zakladu okhorony zdorovia: Postanova Kabinetu Ministriv Ukrainy No. 1094 vid 27.12.2017 r.

Postanova Kyivskoho apeliatsiinoho sudu u spravi No. 760/20309/20 vid 22.12.2022.

Postanova Verkhovnoho Sudu Ukrainy vid 03.08.2022 u spravi No. 344/1962/19.

Postanova Verkhovnoho Sudu Ukrainy vid 05.04.2023 u spravi No. 742/2669/21.

Postanova Verkhovnoho Sudu Ukrainy vid 28.04.2020 u spravi No.520/12514/18.

Pro dopomizhni reproduktyvni tekhnolohii: proekt Zakonu Ukrainy vid 27.07.2021 No. 1607.

Pro pravovyi rezhym voiennoho stanu: Zakon Ukrainy vid 12.05.2015 No. 389-VIII.

Pro skhvalennia Kontseptsii Derzhavnoi tsilovoi sotsialnoi prohramy protydii torhivli liudmy na period do 2025 roku. Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 14.07.2021 No. 800-r.

Pro udoskonalennia orhanizatsii nadannia medychnoi dopomohy ditiam pidlitkam ta molodi. Nakaz MOZ Ukrainy vid 02.06.2009 No. 383.

Pro vnesennia zmin do deiakykh zakoniv Ukrainy shchodo zabezpechennia prava viiskovosluzhbovtsiv ta inshykh osib na biolohichne batkivstvo (materynstvo): Zakon Ukrainy vid 22.11.2023 No. 3496-IX.

Pro vnesennia zmin do Pravyl derzhavnoi reiestratsii aktiv tsyvilnoho stanu v Ukraini Nakaz Ministerstva yustytsii Ukrainy vid 26.02.2022 No. 606/5.

Pro zabezpechennia reiestratsii novonarodzhenoi dytyny v umovakh voiennoho stanu MOZ Ukrainy: Nakaz vid 04.03.2022 No. 407.

Pro zaboronu reproduktyvnoho klonuvannia liudyny: Zakon Ukrainy vid 14.12.2004 No. 2231-IV.

Pro zastosuvannia sudamy okremykh norm Simeinoho kodeksu Ukrainy pry rozghliadi sprav shchodo batkivstva, materynstva ta stiahnennia alimentiv. Postanova plenumu Verkhovnoho Sudu Ukrainy No. 3 vid 15.05.2006.

Pro zatverdzhennia Poriadku napravlennia zhinok dlia provedennia pershoho kursu likuvannia bezplidnosti metodamy dopomizhnykh reproduktyvnykh tekhnolohii za absoliutnymy pokazanniamy za biudzhetni koshty. Nakaz MOZ Ukrainy vid 29.11.2004 No. 579.

Pro zatverdzhennia Poriadku ukladennia kontraktu z kerivnykom derzhavnoho, komunalnoho zakladu okhorony zdorovia ta typovykh form kontraktu z kerivnykom derzhavnoho, komunalnoho zakladu okhorony zdorovia: Postanova Kabinetu Ministriv Ukrainy No. 792 vid 21.08.2019 r.

Pro zatverdzhennia Poriadku zastosuvannia dopomizhnykh reproduktyvnykh tekhnolohii v Ukraini. Nakaz MOZ Ukrainy vid 09.09.2013 No. 787.

Pro zatverdzhennia Poriadku zdiisnennia zaboru, kriokonservatsii ta zberihannia reproduktyvnykh klityn viiskovosluzhbovtsiv ta inshykh osib na vypadok vtraty reproduktyvnoi funktsii pid chas vykonannia oboviazkiv iz oborony derzhavy, zakhystu Vitchyzny ta inshykh pokladenykh na nykh oboviazkiv vidpovidno do zakonodavstva: Postanova Kabinet Ministriv Ukrainy vid 24.01.2025 r. No. 78.

Pro zatverdzhennia Pravyl derzhavnoi reiestratsii aktiv tsyvilnoho stanu v Ukraini: Nakaz Ministerstva yustytsii Ukrainy vid 18.10.2000 No. 52/5.

Pro zatverdzhennia Pravyl peretynannia derzhavnoho kordonu hromadianamy Ukrainy Postanova Kabinetu Ministriv Ukrainy. Pravyla vid 27.01.1995 No. 57.

Pro zatverdzhennia ta vprovadzhennia medyko-tekhnolohichnykh dokumentiv zi standartyzatsii medychnoi dopomohy z pytan planuvanni simi. Nakaz MOZ Ukrainy vid 21.01.2014. No. 59.

Proekt Zakonu pro Dopomizhni reproduktyvni tekhnolohii No. 6475 vid 24.12.2022 r.

Proekt Zakonu pro zastosuvannia dopomizhnykh reproduktyvnykh tekhnolohii ta zaminne materynstvo No. 6475-2 vid 13.01.2022.

Rishennia Imenem Ukrainy Solomianskoho raionnoho sudu m. Kyieva vid 06.10.2010 r. No. 2-2283-1/10.

Rishennia Imenem Ukrainy Kupianskyi miskraionnyi sud Kharkivskoi oblasti vid 22.04.2019 r. No.628/828/19.

Rishennia Imenem Ukrainy Sviatoshynskyi raisud m. Kyieva vid 03.09.2019 r. No. 759/10945/19

Simeinyi kodeks Ukrainy: Zakon vid 10.01.2002, No. 2947-III 53.

Sprava: No. 645/9412/14-ts 25.06.2015 r., m. Kharkiv.

Tsyvilnyi kodeks Ukrainy: Zakon vid 16.01.2003 No. 435-IV.

Ukhvala Imenem Ukrainy Pecherskoho raionnoho sudu m. Kyieva No. 757/53402/18-k vid 02.11.2018 r.

Ukhvala Vyshchoho spetsializovanoho sudu Ukrainy z rozghliadu tsyvilnykh i kryminalnykh sprav vid 18.11.2015 r. u spravi No. 6-27563sk15.