

LEGAL REGULATION OF THE IMPLEMENTATION AND PROTECTION OF THE RIGHTS OF PARTICIPANTS IN SURROGATE MOTHERHOOD LEGAL RELATIONS IN THE CONDITIONS OF WAR IN UKRAINE

Kovalenko Maryna

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Annotation. On February 24, 2022, a full-scale war is taking place on the territory of Ukraine. Millions of people lost their homes and jobs. Children, as the most vulnerable category of the population, were particularly affected. Thousands of children were left without parental care, and some were not handed over to their legal parents at all. These events necessitated the study of the chosen research topic. The article is devoted to the rights of children who became victims of martial law on the territory of Ukraine as a result of the attack of the Russian Federation. The article shows the number of children affected by the war. The general principles of protection of children's rights, defined by the international legislation are considered. An example of international experience in the protection of children in martial law is given. Particular attention is paid to the protection of the rights of children born to surrogate mothers during hostility in Ukraine. Problems of realization of the rights of participants of the specified legal relations are defined. It has been established that the fulfillment of the terms of the contract by the surrogate mother does not guarantee the protection of the interests of the child. The problems of the procedure of registration and documentation of the birth of children are mentioned. The provisions of the Family Code of Ukraine and other special legislation on the legal regulation of the procedure for registration of the birth of a child have been studied. It is noted that in conditions of martial law in the occupied territories, and in cities where hostilities continue, registration is impossible. Changes in the national legislation, introduction for the period of martial law in the field of the specified questions are considered. The author examines the possibility of adopting children born to surrogate mothers, as well as those left without care or evacuated to other countries. Conclusions were made about the impossibility of adopting these children under the accelerated procedure. Emphasis is placed on the need to comply with the adoption procedure established by national law. At the same time, it was noted about the need to strengthen the work of consulates in order to register children who are temporarily in another state. It is proposed in Ukraine to create appropriate registers of potential parents who apply to Ukrainian medical institutions for the birth of children from surrogate mothers. In order to record information about newborns and facilitate the search for biological parents of their own children, it is proposed to use the application "Diia". In addition to these conclusions, the author stressed the need for Ukraine to ratify the Rome Statute.

Key words: child's right, hostilities, constitutional restrictions, international legislation, protection of rights, surrogacy, adoption.

Introduction.

On February 24, 2022, martial law was imposed on the territory of Ukraine by the Decree of the President of Ukraine. Therefore, the constitutional rights and freedoms of human and citizen

provided by the provisions of the Constitution of Ukraine are subject to restriction. Restrictions include a special regime of entry and exit, as well as freedom of movement for citizens, foreigners and stateless persons. There are restrictions on the choice of location or place of residence of persons in the territory, the evacuation of the population. The internment of citizens of a foreign state that is carrying out aggression against Ukraine is possible (Prezydent Ukrainy, 2022).

As of March 13, 2022, according to the Office of the UN High Commissioner for Human Rights, 43 children have died in Ukraine since February 24, 2022, and as of March 22, their number has increased by more than a hundred. However, the real figures will be calculated after dismantling the debris caused by explosions and shelling by heavy artillery (OHCHR, 2022).

American publications report that as a result of hostilities on the territory of Ukraine, dozens of children born from surrogate mothers can not be transferred to their biological parents, who are citizens of Germany, France and Canada, from February 24, 2022 (Coles, 2022).

1. Protection of the rights of children born to surrogate mothers

Surrogacy programs, as in many other countries, have existed in Ukraine for many years. Today, the problem of surrogacy in terms of interstate importance has become particularly acute as a result of the invasion of Ukraine by Russian troops and the occupation of the state. In the conditions of hostilities, when human rights are generally ignored, the participants in the legal relationship of surrogate motherhood generally remained unprotected and outside the limits of any normative regulation.

All newborn children and their parents found themselves in difficult conditions, since, taking into account the specified restrictions, not only movement on the territory of the state, but also all possible registration actions, which are generally impossible in the occupied territories, are complicated.

It is worth noting that transnational surrogacy continues to be considered by scientists as exploitative, since this type of gestational surrogacy is found in countries with a low level, which, according to scientists, is exploitation of surrogate women. In order to solve this problem, scientists suggest taking measures to strengthen protection and expand the rights and opportunities of the transnational practice of gestational surrogate motherhood (Kirby, 2014)

However, the introduction of martial law, restrictions on movement, and active combat not only legally, but also physically complicates the crossing of the Ukrainian border. Although, this problem is the least compared to those faced by surrogate mothers.

Since the beginning of the war, women who have become surrogate mothers have found themselves in extremely difficult conditions: on the one hand, they must hand over the newborn child according to the terms of the contract, on the other hand, morally and ethically, they must take care of the child. As a result, they find themselves in a state of uncertainty between fulfilling their contractual and moral obligations.

The situation regarding the provision of medical services by medical facilities turned out to be no less difficult. A significant number of which were destroyed, as, for example, in Mariupol (Suspilni novyny, 2022).

These actions are an unprecedented aggression of our century and a direct violation of all international norms.

In order to ensure the necessary medical care, the Ukrainian authorities allowed pregnant women to be registered in any nearby hospital. A pregnant woman can contact an obstetrician-gynecologist without any referral (Uriadovyi portal, NSZU, 2022).

However, the problem is that the legal relations of surrogate motherhood are regulated on the basis of civil law contracts, which does not create an effective mechanism for the protection of the parties' rights during the war. In addition to the difficult political situation, the lack of special legislation led to this result.

If we simulate a situation in which, as a result of the death of a surrogate mother, a newborn child ends up in a medical institution, which does not contain any information about its origin, the biological parents will lose the opportunity not only to pick up, but also to find their child in general.



Despite the fact that some women managed to evacuate to countries neighboring Ukraine, another problem arises. Not all states that provide temporary protection and accept refugees allow the use of surrogate motherhood on the territory of their country (France, Austria, Germany, Norway, Sweden) (Borovenska, Kovalenko, 2021).

Therefore, the question arises regarding the registration of a born child. In the conditions of hostilities, the connection between the potential parents and the medical facilities and the surrogate mother is lost, and therefore, the further fate of the born child will remain unknown.

2. Registration of newborns in wartime.

According to the second part of Article 123 of the Family Code of Ukraine, in case of transfer to another woman of a human embryo conceived by a spouse (man and woman) as a result of the use of assisted reproductive technologies, the child's parents are spouses (Verkhovna Rada of Ukraine, 2002).

Part 1 of Article 144 of the Family Code of Ukraine stipulates that parents are obliged to immediately, but not later than one month from the date of birth of the child, to register the birth of a child in the state registration of civil status.

The procedure for the use of assisted reproductive technologies in Ukraine, approved by the order of the Ministry of Health of Ukraine from 09.09.2013 №787 stipulates that potential foreign parents must notify their temporary residence before registration and departure from the country for patronage by pediatricians and observation.

In the case of the birth of a child by a woman who has transferred a human embryo conceived by the spouses as a result of ART, the state registration of the birth of a child is carried out at the request of the spouse who agreed to such transfer.

Information about a child born to a surrogate mother on the day of discharge from the maternity hospital/ward by phone is provided to the children's clinic (at the child's place of residence).

Registration of a child born by surrogacy is carried out with a document confirming the birth of this woman, an application for her consent to the marriage of the child's parents, the authenticity of the signature on which must be notarized, as well as a certificate of genetic kinship parents (mother or father) with the fetus (Ministerstva okhorony zdorovia Ukrainy, 2013).

However, this procedure for registering a child in the temporarily occupied territories of Ukraine is impossible, including in cities where hostilities are taking place.

As a result of hostilities, the Government has simplified the form of registration of births of children and determined the procedure for martial registration of children during martial law to have a paper medical birth certificate in the appropriate form (Portal "Diya" (n.d.).

In accordance with the provisions of the order of the Ministry of Health of Ukraine of March 4, 2022 "On ensuring the registration of births in martial law" to register the birth of a child if the birth took place outside the health care institution can all health workers relations with licensees of medical practice (Ministerstva okhorony zdorovia Ukrainy, 2022).

However, the legislation does not currently contain any legal regulations on the possible further actions of surrogate mothers in the event of their birth in the occupied territories, the territory of another state or the inability to inform potential parents about the birth of a child.

The Ministry of Social Policy of Ukraine has established a coordination headquarters for the protection of children's rights in martial law. The main task of the headquarters was to create safe conditions for orphans, children deprived of parental care, children with disabilities; children who do not have this status, but live or are enrolled in various types of institutions, including children with disabilities; children brought up in family forms of education; children who are placed with foster families (Uriadovi portal, 2022).

Despite the fact that the legal status of children born to surrogate mothers is not defined, in our opinion, such children should be subject to all the rules defined in national law for all children in general.

The legislation does not contain a standard surrogacy agreement. The parties may, at their discretion, agree on its main provisions and the rights and obligations of the parties. Usually, the surrogate mother's contract may specify the following conditions: place of fertilization, place of residence of the surrogate mother during pregnancy, surrogate mother's consent to the marriage of the child's parents, mother's obligation to transfer the child, surrogate mother's remuneration, woman's duty follow the recommendations of doctors, conditions of confidentiality, the obligation of potential parents to pick up the child and pay the costs associated with the birth of a child, the right of spouses to information about the health of the surrogate mother, penalties for breach of contract.

Thus, a woman who is a surrogate mother does not acquire parental rights and is obliged to transfer the child to medical staff immediately after birth. In addition, surrogacy agreements usually also contain provisions prohibiting the disclosure of information about and meeting with biological parents after childbirth.

Under the terms of the surrogacy agreement, it is possible to list a number of other restrictions on the surrogate mother's rights to the child, however, during the war such restrictions may not help to protect the interests of the child. Potential parents' concerns about the possible further adoption of such children may be justified.

3. Adoption in wartime.

It should be noted that Ukrainian legislation is critical of the issue of adoption under martial law in Ukraine.

The UN High Commissioner for Refugees stressed that thousands of children had been evacuated to other countries as a result of the hostilities. Many were granted refugee status. However, the presence of these facts does not mean that children can be adopted, as most of them do not have orphan status and there is no official documentary evidence Protect unaccompanied children fleeing Ukraine: UN agency chiefs (Moskaliuk, 2022).

In accordance with the provisions of Ukrainian legislation, the National Social Service approves the adoption of a child citizen of Ukraine by foreigners or citizens of Ukraine living abroad (Kabinet Ministriv Ukrainy, 2020).

Given the fact that in martial law its activities are not implemented, there is no possibility of verifying documents of foreign nationals who have expressed a desire to adopt a child, no. In addition, it is not possible to carry out all the relevant adoption procedures required by law: establishing the status of an orphan, ensuring contact between potential adoptive parents and the child, finding out the child's opinion, obtaining the opinions and consents of stakeholders. The fact of adoption is established by the court, which in the conditions of hostilities also takes a long time.

Moreover, in accordance with the provisions of family law, priority for adoption is given to relatives, as all measures must be taken to maintain the child's ties with the family. Thus, the law does not provide for an accelerated adoption procedure, so potential parents will have time to find their child.

In addition to the established headquarters and the simplification of the procedure for registering the birth of children, a telegram chatbot "Child is not alone" @dytyna_ne_sama_bot was created. This method of communication allowed to quickly search for children who were lost or left unaccompanied. In addition, it is possible to leave an application to protect the child.

4. Experience of international states.

The analysis of international experience shows that the problem of protecting the rights of children in the conditions of hostilities has affected different countries of the world. For example, according to UNICEF, almost 5.8 million Syrian children are in need of assistance as of today. International organizations organize aid in the form of humanitarian and psychological support. Introducing inclusive education for children with disabilities (Belal, 2022).

Therefore, in order to protect the rights of children, UNICEF has implemented various programs of "justice for children", ADAP, Education, Social Protection, WASH i Health and Nutrition (UNICEF, 2018).

The main idea of these programs was to increase the capacity of national authorities to protect children children Protection.

5. International legislation in the field of protection of children's rights.

International law includes a wide range of international acts on the protection of children's rights. UN Convention on the Rights of the Child, ratified by Ukraine in 1991, which guarantees the protection and inviolability of children's rights (United Nations, 1989).

This Convention contains provisions that impose on the member states the obligation to ensure that institutions, services and bodies responsible for the care of children or their protection meet the standards established by the competent authorities, in particular, in the field of safety and health care and in terms of the number and suitability of their personnel, as well as competent supervision.

In 2004, Ukraine ratified the Optional Protocol to the Convention on the Rights of the Child on the Participation of Children in Armed Conflict, which emphasizes that children's rights need special protection and condemns the encroachment of children in armed conflict (United Nations, 2000).

The provisions of the protocol determine that in all actions regarding children, primary attention should be paid to the best interests of the child.

One of the international acts aimed at protecting victims of hostilities are the Geneva Conventions for the Protection of Victims of War and the Additional Protocols to the Geneva Conventions, which condemn the killing of civilians and deal with the fate of the wounded and prisoners of war (**Gardam**, 2021).

The provisions of this Convention protect children from some of the consequences of war as a full-fledged part of the population, that is, without assigning them to a separate category. Article 14 provides for the right, after the start of hostilities, for the parties to the conflict to create sanitary and safe zones and localities on their territory and, if necessary, on the occupied territories, organized in such a way as to protect children under the age of fifteen from the consequences of war. At the same time, Article 17 specifies that agreements must be concluded for the evacuation of children from besieged or surrounded areas.

An example of violations of these acts is the shelling of the "Ohmadyt" children's hospital in Ukraine, where there were children of various ages, as well as medical personnel who treated children.

Important for Ukraine today is the ratification of the Rome Statute of the International Criminal Court, which was signed in 2000. The specified international act defines the legal qualification of such crimes as genocide, crimes against humanity, war crimes, crimes of aggression (International Criminal Court, 1998).

Ratification of the specified legal act will allow the application of the mechanism of prosecution at the international level.

Despite the broad international legal framework, there remain categories of children whose status is beyond the attention of the international community and the national legislature, which violates these children's right to parental care. We are talking about children born as a result of surrogacy.

Conclusions.

During the war in Ukraine, millions of people were restricted and oppressed their constitutional rights. The most vulnerable category of which are children. Thousands of children found themselves in different countries, left homeless, parents and any relatives. In such conditions, ensuring and guarantee the safety of children should be the main task not only of Ukraine but also of the international community as a whole.

Supporting the activities of public authorities, we believe that in times of war it is necessary to depart from the generally accepted principles of confidentiality and take all measures aimed at preserving and protecting children.

Thus, in order to preserve any information about the newborn child and its subsequent transmission to parents, official supporting documents and records are required.

In order to create and preserve such records, it was necessary to use the application “Diia”, to create appropriate electronic registration forms for surrogate mothers, which would make it easier for parents to find their own child in case of loss of documents or death of parents or surrogate mother. .

Issues related to the protection of children born as a result of the use of reproductive technologies should also be transferred to the control of the Presidential Commissioner for Children’s Rights and Child Rehabilitation.

At the same time, when deciding on the protection of this category of children, it would be worthwhile to create a register and keep records of biological parents who use these medical services in Ukraine, so that in the future you can keep in touch with them and give children.

In addition, in the context of the war in Ukraine, in order to protect the rights of displaced children and refugees, it is important to pay attention to the Ukrainian consulates, which are obliged to keep a list of such children. Create programs aimed at financial and psychological support, ensure the right to housing and education, regardless of the child’s location.

An obvious necessary step for Ukraine is also the ratification of the Rome Statute, which will allow fruitful cooperation with international organizations, in order to bring to justice those guilty of violating the rights of all Ukrainian citizens.

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Maryna Kovalenko,
Ph.D. in Law, Lawyer
ORCID: 0000-0003-0153-4613