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## ETHICAL ASPECTS OF LEGAL REGULATION OF SURROGACY IN KAZAKHSTAN

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The importance of the family in our life, in the life of society and the state occupies an important and high position. The institution of marriage and family has traditionally pursued the goal of procreation at all times. However, some couples of reproductive age are not able to conceive. Even taking into account the achievements and level of development of today's medicine, not every woman's health allows her to conceive and give birth to a healthy child of her own. And the reasons for over just 15% of married couples not having children are very different [6] Most often future parents face problems of reproductive character due to their health conditions, and in some cases medicine is powerless. Such circumstances push spouses to resort to surrogacy. Surrogate motherhood then comes to occupy a special place in the issues of reproductive medicine. In fact, surrogacy is legally established in the Republic of Kazakhstan. However, the issue it contentious. The aim of this article is to address some of the moral and ethical dimensions of surrogacy.

Surrogacy has become a reality in Kazakhstan since 1998 after the definition of "surrogate motherhood" was introduced into the Law "On Marriage and Family" [1]. In 2004, the Law of the Republic of Kazakhstan dated 16.06.2004 N565-2 "On the reproductive rights of citizens and guarantees of their implementation" was published [2], which consolidated in more detail the legal regulation of relations related to auxiliary methods of conception and secured the rights to a child for genetic parents.

The legislation clearly regulates the relations between the parties involved in surrogacy. Chapter 1 of the Code of the Republic of Kazakhstan dated December 26, 2011 "On Marriage (Matrimony) and family" defines surrogacy, surrogate mother and surrogacy contract as following: surrogate mother - a woman carrying a fetus after the use of assisted reproductive methods and technologies and giving birth to a child (children) for customers according to the surrogacy agreement; surrogate motherhood – carrying and giving birth to a child (children) including cases of premature birth, under an agreement between the surrogate mother and the spouses with payment of remuneration; surrogacy contract is a notarized written agreement between persons who are married and want to have a child, and a woman who has given her consent to bear and give birth to a child through the use of assisted reproductive methods and technologies [4]. Also, article 146 of the Code of the Republic of Kazakhstan "On the Health of the people and the healthcare system" (September 18, 2009) is devoted to assisted reproductive methods and technologies, which states that a woman and a man who are married have the right to use assisted reproductive methods and technologies if there is mutual informed consent for medical intervention. [3]

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While the law clearly defines the relations, modern society holds diametrically opposed opinions in relation to surrogacy. Representatives of one opinion have a positive attitude to the method of reproduction under consideration. The advantage of the existence of surrogacy is that for some couples it is the only chance to have their own child. In such circumstances, the chance of a healthy baby being born is much higher. Being so fixated on having their own children, the couples with means and opportunities, often do not consider taking a child from an orphanage. After all, there is an expectation within a society to have a child of your own. Surrogacy also solves a different problem. It is an alternative to expensive infertility treatment, which, as medical practice shows, is not always effective.

Pro surrogacy views are not shared by everyone. Surrogacy can have a negative impact on the psyche of the child himself, as well as on the psyche of the surrogate mother and genetic parents. If a child learns about the story of the childbirth, then the situation can negatively affect his formation as a person. It can worsen family relations. In turn, the surrogate mother makes a difficult moral decision. She can live the rest of her life under the yoke of the decision to give up the child she has been carrying for 9 months. It could be the case that genetic parents will prolonged time to get used to their child, since they lack a physical and psychological connection with it.

Opponents of surrogacy also argue that surrogacy turns children into a form of commodity, creating a situation in which rich people can hire women to carry their children. Adversaries also argue that motherhood becomes a contractual work in this case, hence the desire for profit may prevail here over considerations of benefit for the contracting parties.

Despite the detailed legal regulation of the institute of surrogacy in our country, contradictory issues arise in the practice of applying current norms. These problems are of an ethical and moral character. Firstly, the legislative consolidation of surrogacy has led to the legalization of a new "service" for bearing and giving birth to children, which is absolutely contrary to family regulations. In this situation, there is a materialization and devaluation of the relationship, by virtue of which the future child becomes a commodity that is carried primarily for material remuneration.

Secondly, according to the Marriage (Matrimony) and Family Code of the Republic of Kazakhstan, a surrogate mother does not have the right to refuse to transfer a child born by her to persons who have concluded a contract with her, as well as to transfer the child to other persons [4]. Such provision does not consider the complexity of the relationship. It might be the case that a surrogate mother will come to develop maternal feelings towards her own fetus as there is a biological connection between the child and the mother. During childbirth, her maternal feelings may manifest themselves, which can completely change her attitude to the child and to the agreement she has concluded.

There may also be a situation when a married couple decides to divorce during the period when the surrogate mother is carrying their common child. After divorce, the genetic parents may refuse to have the fetus on sale. And a surrogate mother who signed a contract for a material reason is highly likely to refuse to take the child under her care. In that case, the state would step in and take it under its care [4].

In accordance with paragraph 3 of Article 59 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and family, if the spouses (customers) reject the child and when the child is adopted by a surrogate mother, these persons are obliged to pay compensation to the surrogate mother in the amount and in the manner established by the contract [4]. However, it seems to me that in addition to paying compensation to the surrogate mother, it would

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be right in the case of such a refusal to oblige the parents (customers) to pay alimony to the child until adulthood, and to pay for studies if the child decides to pursue further education. The interests of the child can not be ignored. They should be taken into account.

Touching upon this problem, it is also impossible not to mention the religious aspects of the Republic of Kazakhstan. In 2017, the Spiritual Administration of Muslims of Kazakhstan issued a fatwa on surrogacy, where it was said that according to Sharia, surrogacy is prohibited for a number of reasons. First, there was no nikah between the alleged father and the surrogate mother. According to Sharia, in order for a legitimate child to be born in marriage, it is necessary that his parents conclude a marriage in compliance with all Sharia requirements and obligations. Secondly, the female womb is not subject to the category of mubah, that is, it is not subject to sale, replacement, according to the decision of the Ulema Council. The Spiritual Administration of Muslims of Kazakhstan gave an explanation that carrying a woman's child is not equivalent to selling, exchanging or giving. Such an act is strictly unacceptable in Sharia. For example, a woman's physiological needs can only be met by her legal spouse. A man cannot impose his marital obligations on another man. Also, a woman has no right to sell, give, change what belongs only to her spouse. A woman's body, including female organs, is haram for men other than her husband, so it is not allowed to sell her body and organs [5].

Christianity also has an extremely negative attitude to the issue of surrogacy. The Orthodox Church puts it in the category of a grave sin. This religion argues that surrogacy can destroy the union of spouses, their spiritual connection, since, despite all scientific aspects, the mother is considered to be the one who carried the child.

Nonetheless, the legislation of the Republic of Kazakhstan in relation to surrogacy is indeed quite clearly regulated. The Marriage (Matrimony) and Family Code regulated in detail the rights and obligations of the parties to the surrogate motherhood agreement, taking into account all life circumstances; surrogate mother medical examination and so on. In a number of states, the process of surrogacy in the legislation does not have relevant provisions, which leads to problems of a moral, ethical and legal nature and is not properly regulated. I believe that in our country, from a legal point of view, the rights and obligations of both parties are protected, but it seems to me that the legislator secured the surrogacy agreement from a conservative standpoint, while not protecting the wishes of the surrogate mother. I think that this issue can be approached not only from the point of view of contract law, but also from the ethical side, taking into account the interests of the surrogate mother. For example, in the Russian Federation, the Family Code stipulates that a surrogate mother can keep the child for herself: "Persons who are married to each other and who have given their written consent to implantation of an embryo to another woman for the purpose of carrying it, can be registered by the parents a child only with the consent of the woman who gave birth to the child (surrogate mother) "[7]. I think that in this case the legislator gave the surrogate mother the right to compete for the child she was carrying, possibly referring to the maternal feelings that she had arisen. If the surrogate mother refused to transfer the child, under certain conditions, the parents can resolve the issue through the courts in accordance with paragraph 31 of the Resolution of the Plenum of the RF Armed Forces No. 16 of May 16, 2017 [8]. Of course, all factual circumstances will be considered and taken into account here: was there an agreement on surrogacy, on what conditions, are the parents really genetic and for what reasons the surrogate mother did not agree to record them as parents. Thus, in the legislation

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of the Russian Federation, the priority of the parental rights of a surrogate mother was quite specifically designated.

The decision to become a surrogate mother, as well as to decide on the services of a surrogate mother, is a very serious step, because this relationship is deeply personal, spiritual and emotional. It is important for every person to feel like a parent, to become a father or mother for their child, but unfortunately, not everyone has health and other important reasons to have their own children. The provision of surrogate mother services is based on the goodwill of both parties. At the same time, the surrogate mother receives material rewards, and the biological parents receive a guaranteed healthy child. Despite all the complexities of the surrogacy process, I believe that it is the solution to the problems of many couples to overcome infertility. Every day, new technologies are developing that present new opportunities and help humanity to exist both on the global and private levels, because everyone has the right to their own personal happiness.

List of used literature:

1. The Law of the Republic of Kazakhstan dated December 17, 1998 "On Marriage and Family" No. 321. Became invalid by the Code of the Republic of Kazakhstan dated December 26, 2011 No. 518-IV.

2. The Law of the Republic of Kazakhstan dated June 16, 2004 N 565. "On reproductive rights of citizens and guarantees of their implementation" Became invalid by the Code of the Republic of Kazakhstan dated September 18, 2009 N 193-IV

3. Code of the Republic of Kazakhstan dated September 18, 2009 No. 193-IV. "About the health of the people and the healthcare system." It became invalid by the Code of the Republic of Kazakhstan No. 360-VI dated July 7, 2020.

4. Code of the Republic of Kazakhstan No. 518-IV dated December 26, 2011. "About marriage (matrimony) and family"

5. <https://zakon.kz/4841155-surrogatnoe-materinstvo-po-shariatu.html>

6. <https://zakon.kz/4585080-v-kazakhstane-15-supruzheskikh-par-ne.html>

7. Family Code of the Russian Federation of December 29, 1995 No. 223-FZ

8. Resolution of the Plenum of the RF Armed Forces No. 16 of May 16, 2017

## **SUPERVISION OF THE ACTIVITIES OF ISLAMIC BANKS AND FEATURES OF LEGAL SUPPORT AT THE PRESENT STAGE**

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Islamic finance is one of the priorities for the development of the financial system of the Republic of Kazakhstan. With the opportunity to introduce alternative financing instruments to Kazakhstani financial market participants, investors with projects in need of financing, as