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## THE ESSENCE OF THE SURROGACY CONTRACT AND ITS LEGAL FEATURES

The article examines the definition of the surrogacy contract, its essential and other conditions; disclosing the content of the subjective rights and legal obligations of the surrogate mother and spouses (customers); as well as substantiating the relevance of regulating relations between the surrogate mother and spouses (customers) on a contractual basis, as well as establishing the impact of this method of regulating these relations on the procedure for determining the origin of a child born as a result of the use of reproductive technologies.

With the development of science and innovative technologies, new problems arise, one of which is the problem of surrogacy. The foundations of legal regulation of surrogacy in Kazakhstan originate in 1998 with the adoption of the Law "On Marriage and Family", which provided for the right to use this method as assisted reproductive technologies (ART). In 2004, the Law of the Republic of Kazakhstan "On reproductive rights of citizens and guarantees of their implementation" was adopted. In 2009, the Code of the Republic of Kazakhstan "On the Health of the People and the healthcare system" was adopted, which provides for the basics of legal regulation of surrogacy. On December 26, 2011, the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" was adopted, in which Chapter 9 contains a section "Surrogacy and the use of assisted reproductive methods and technologies".

**Key words:** surrogate mother, family law, child, spouses.

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### Суррогат ана болу шартының мәні және оның құқықтық ерекшеліктері

Ғылыми мақалада суррогат ана болу шарты ұғымының, оның елеулі және өзге де шарттарының анықтамасы; суррогат ана мен ерлі-зайыптылардың (тапсырыс берушілердің) субъективті құқықтары мен заңды міндеттерінің мазмұнын ашу; сондай-ақ суррогат ана мен ерлі-зайыптылар (тапсырыс берушілер) арасындағы қатынастарды шарттық негізде реттеудің өзектілігін негіздеп, сондай-ақ осы қатынастарды реттеудің репродуктивтік тәсілді технологияларды қолдану нәтижесінде туған баланың шығу тегін анықтап тәртібіне әсерін белгілеу көзделеді.

Ғылымның, инновациялық технологиялардың дамуымен жаңа проблемалар туындайды, олардың бірі суррогат ана мәселесі болып табылады. Қазақстанда суррогат ана болуды құқықтық реттеудің негіздері 1998 жылы "Неке және отбасы туралы" Заңның қабылдануымен бастау алады, онда осы әдісті қосалқы репродуктивтік технологиялар ретінде пайдалану құқығы көзделген. 2004 жылы "азаматтардың репродуктивті құқықтары және оларды жүзеге асыру кепілдіктері туралы" ҚР Заңы қабылданды ([http://adilet.zan.kz/rus/docs/P020001410\\_info](http://adilet.zan.kz/rus/docs/P020001410_info)). 2009 жылы суррогат ана болуды құқықтық реттеудің негіздері көзделген "Халық денсаулығы және денсаулық сақтау жүйесі туралы" ҚР Кодексі қабылданды (ҚР кодексі 2020 жылдың 7 шілдесінен No 360-VI ЗРК). 2011 жылғы 26 желтоқсанда "Неке (ерлі-зайыптылық) және отбасы туралы" ҚР Кодексі қабылданды, онда 9-тарауда "суррогат ана болу және қосалқы репродуктивтік әдістер мен технологияларды қолдану" бөлімі бар.

**Түйін сөздер:** суррогат ана, отбасы құқығы, бала, ерлі-зайыптылар.

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### **Сущность договора суррогатного материнства и его правовые особенности**

В статье рассматривается определение понятия договора суррогатного материнства, его существенных и иных условий; раскрытие содержания субъективных прав и юридических обязанностей суррогатной матери и супругов (заказчиков); а также обоснование актуальности регулирования отношений между суррогатной матерью и супругами (заказчиками) на договорной основе, а также установление влияния такого способа регулирования этих отношений на порядок установления происхождения ребенка, родившегося в результате применения репродуктивных технологий.

С развитием науки, инновационных технологий возникают и новые проблемы, одной из которых является проблема суррогатного материнства. Своё начало основы правового регулирования суррогатного материнства в Казахстане берут в 1998 году с принятием Закона «О браке и семье», который предусмотрел право на использование этого метода в качестве вспомогательных репродуктивных технологий (ВРТ). В 2004 году был принят Закон РК «О репродуктивных правах граждан и гарантиях их осуществления». В 2009 году был принят Кодекс РК «О здоровье народа и системе здравоохранения», в котором предусмотрены основы правового регулирования суррогатного материнства. 26 декабря 2011 года был принят Кодекс РК «О браке (супружестве) и семье», в котором в главе 9 имеется раздел «Суррогатное материнство и применение вспомогательных репродуктивных методов и технологий».

**Ключевые слова:** суррогатная мать, семейное право, ребенок, супруги.

#### **Introduction**

Reproductive rights are an integral part of human rights and are recognized by international legal instruments, for example, the UN Convention on the elimination of all forms of discrimination against women of December 18, 1979, the Republic of Kazakhstan became a member of it after the adoption of the Law No. 248 of June 29, 1998 «on accession of the Republic of Kazakhstan to the convention on the elimination of all forms of discrimination against women». Article 27 of the Constitution of the Republic of Kazakhstan, as the Basic Law, stipulates that «marriage and family, motherhood, fatherhood and childhood are protected by the state». In addition, the address of the president of the Republic of Kazakhstan N. A. Nazarbayev «Strategy-2050» clearly defines the directions of state policy in the field of protecting the rights of women and children (<http://www.akorda.kz/ru>).

The study of the dynamics of family and legal regulation in the Republic of Kazakhstan allows us to draw conclusions about new trends in the development of marriage and family legislation, changes in the structure of marriage and family legislation, the emergence of new institutions and sub-spheres.

In Paragraph 1 of Article 34 of the marriage and family legislation of the Republic of Kazakhstan,

surrogacy is defined as «raising and giving birth to a child (children), including cases of preterm birth, under a contract between a surrogate mother and a spouse with payment of remuneration».

In the scientific research of Russian lawyers, other options for defining the concept of surrogacy are proposed. So, Mitryakova E.C. defines surrogacy as «a legal relationship between the surrogate mother and the spouses (customers) arising in connection with the implantation of an embryo genetically alien to the surrogate mother's body for its reproduction, childbirth and subsequent transfer to customers» ([https://online.zakon.kz/Document/?doc\\_id=31553451#pos=5;-89](https://online.zakon.kz/Document/?doc_id=31553451#pos=5;-89)). As a note, it should be noted that in the work we use two alternative (within the framework of the issue under consideration) terms «spouses (customers)» and «potential parents», since the first term is used in the marriage and family legislation of the Republic of Kazakhstan, and the second-in Russian legislation.

#### **Materials and methods**

The theoretical and methodological basis of the article is based on an organic combination of the requirements of general scientific and individual scientific methodology. In the course of the study, the general scientific dialectical method of cognition was used, as well as individual scientific methods:

comparative legal, system analysis, formal-legal, logical, historical-legal.

The specifics of the tasks facing us, the problems arising from the conditions in the system of the institution of protection and protection of the family, which includes the norms of constitutional, civil and family law, have led to the use of the method of comparative legal analysis in the study of relevant legal acts and a comprehensive approach to the study of legal acts.

The theoretical basis of the article was the scientific works of domestic and foreign authors in the fields of law theory, constitutional law, Family Law, Civil Law, international law, etc.

### Results and discussions

It should be noted that the surrogate mother private arrangement is based on a contract. Despite the legislative regulation of auxiliary reproductive technologies, in general, the method of surrogacy, the contract is actually the only way to fully regulate the legal relations of the parties to surrogacy, since the contract, as an agreement of the parties, allows to solve many problems and prevent complications, ambiguities and consolidate the status of its participants.

Since there is no approved model contract for surrogacy in Kazakhstan, notaries issue these contracts based on the legislation of the Republic of Kazakhstan and personal professional experience. Unfortunately, statistics on the conclusion of surrogacy contracts in the country are not maintained by any body, including the Republican Chamber of notaries. In this regard, it was not possible to determine the number of concluded contracts and their dynamics. At the same time, there is no generalization of judicial practice on this issue. According to judge of the Supreme Court of the Republic of Kazakhstan Galiya AK-kuova, the lack of judicial practice in considering cases related to the dispute of surrogacy contracts is due to the high-quality work of notaries who conclude contracts that do not cause any judicial disputes (Mukhamedzhanov E., 2013: 15-17). It is difficult to say whether this corresponds to reality, since surrogacy contracts, including information about their terms, are confidential, and there is no public information about the practice of concluding, executing, and terminating surrogacy contracts.

Family values, which in this case are understood as the desire of spouses to have their own child, we note in the framework of this study as the driving force behind the appeal to a surrogate mother who is

outside the sphere of Legal Regulation. In addition, E. Mukhamedzhanov and S. Nugmanov noted that «the internal desire of customers to have a child or a child can lead to a number of legal problems...» (Lozovsky A.V., 1999: 63-68)

The fact that the parties conclude a contract implies the emergence of a legal relationship in accordance with their will, which is expressed in the presence of rights and obligations between its participants. It should also be remembered that to some extent surrogacy is a type of medical services.

Regarding the contract for the provision of medical services, Lozovsky A.V. and Tikhomirov A.V. noted that this is an agreement that allows us to combine legal and ethical approaches to relations. The agreement allows us to build a strict model of mutual behavior of the parties, which corresponds to specific conditions and conditions of medical care, without reducing the rights and freedoms of each of them (<http://nauka-rastudent.ru/19/2784.html>). the surrogate mother agreement, which follows from the legislative structure of this definition, is bilateral:»... by agreement between the surrogate mother and the spouses...».

Article 56 of the Marriage and Family Code of the Republic of Kazakhstan provides for the requirements for a surrogate mother:

1. A woman wishing to become a surrogate mother must have satisfactory physical health, mental and reproductive health, as well as her own healthy child at the age of twenty to thirty-five years, confirmed by the conclusion of a medical organization.

2. If a surrogate mother is married (matrimony), when entering into a surrogacy agreement, it is necessary to provide the written consent of the spouse, which must be notarized.

However, these duties cannot be considered only as the duties of one of the parties to the surrogacy agreement.

Russian scientist O.V. Gridneva:” the surrogacy agreement is Bilateral, the parties to the surrogacy agreement are surrogate mothers and customer spouses “ (Chaplygin A.N. 2015: 64-69).

The appeal of the views of Russian legal scholars in this paragraph is due to the proximity of this legal structure in the family legislation of the Republic of Kazakhstan and the Russian Federation.

We believe that the opinion that surrogacy and spouses (customers) are, respectively, subjects of the surrogacy agreement and are subjects of the legal relationship of surrogacy is not in doubt.

At the same time, the question of the possibility or even the need to appoint other participants in this

legal relationship to the subjects of the surrogacy contract is disputed in the legal environment.

Some scientists believe that an increase in the number of parties to a surrogacy agreement does not contribute to an increase in the quality of its Legal Regulation, which leads to new legal complications.

E. S. Mitryakova, on the other hand, says that a surrogate mother contract should be concluded between people who want to have a child, a surrogate mother, and a medical institution (Mitryakova E. S. 2009: 176).

D.K. Rashidkhanova does not limit the parties to the studied type of contract to these entities, including more participants: “the subjects of the contract for the provision of paid medical services are the patient, a medical organization licensed to provide relevant services, and third parties (spouse of a surrogate mother, donors of reproductive tissues, etc.)” (Tokmambetova I. Sh. 2005: 178-185).

Having studied this issue and highlighted the most important aspects of this legal design, we note the following. As mentioned above, the purpose of a surrogate mother contract is to give birth to a child (infertility treatment) for spouses (clients). Therefore, the surrogate mother and the spouses (clients), expressing their will to perform individual medical manipulations, ultimately express their consent to participate in the process of infertility treatment by the surrogate mother method. However, it is obvious that neither the surrogate mother nor the spouses (customers) can perform the necessary medical manipulations themselves, and the participation of a medical organization that can perform the necessary actions is necessary for their implementation.

### **Informing customers about the course of pregnancy**

Also, a necessary and important condition for a surrogate mother contract is the awareness of the spouses (customers) about the course of pregnancy. Undoubtedly, the most complete information about the course of surrogacy and the state of health of the surrogate mother will be obtained by a medical organization that has completed the basic program of extracorporeal fertilization for the surrogate mother and will accompany her further pregnancy. Therefore, in order to achieve the goal of notifying the spouses (customers), the obstetrician must get a job as a doctor of a medical organization that directly performs all medical manipulations and is directly involved in the provision of services for the spouses (customers) and the surrogate mother.

Therefore, the participation of a medical organization in the contract of surrogacy will be inevitable from the very beginning, since it will be necessary to agree on the identity of a particular doctor involved in all procedures.

Thus, a medical organization that meets all the criteria presented to it, in our opinion, is a mandatory participant in the contract of surrogacy, it is tasked with providing a set of services necessary for the implementation of surrogacy. At the same time, it is clear that no medical organization will agree to carry out such complex medical services without proper formalization of its relationship with the patient.

The current legislation of the Republic of Kazakhstan considers the contract of surrogacy as bilateral and provides for the conclusion of a separate contract between spouses (customers) and a medical organization providing relevant services using assisted reproductive methods and technologies simultaneously with the contract of surrogacy only in paragraph 3 of Article 54 of the marriage and Family Code of the Republic of Kazakhstan. (Code of the Republic of Kazakhstan dated December 26, 2011 No. 518-IV).

In addition to this paragraph, the marriage and Family Code of the Republic of Kazakhstan does not contain any other regulation of the contract between spouses (customers) and a medical organization; the conclusion and execution of this contract is carried out only in accordance with the general principles of civil law, without taking into account the specifics of family law. At the same time, relations between a surrogate mother and a medical organization remain unregulated. In this regard, we consider it necessary to amend the marriage and Family Code of the Republic of Kazakhstan and establish a tripartite nature for the contract of surrogacy: surrogate mother, spouses (customers) and a medical organization. In addition to confirming the stated proposal, we consider the situation when, after the conclusion of a surrogacy agreement, a contract is not concluded between the spouses (customers) and the surrogate mother for any reason (for example, we did not agree on the price of the contract) between the spouses (customers) and the medical organization. The question arises about the legal fate of the surrogacy contract. After all, without the participation of a medical organization, the contract of surrogacy loses its meaning and is practically not fulfilled. Therefore, the proposed contractual structure, in our opinion, will allow us to simultaneously establish contractual legal relations between all participants in the procedure for the use of assisted reproductive technologies, more

fully reflect the rights and obligations of all parties, including legal relations between the currently absent surrogate mother and a medical organization, which should ultimately contribute to the proper fulfillment of the obligations of all participants in the procedure for the use of assisted reproductive technologies.

The moment of emergence of the legal relationship of surrogacy will coincide with the time of conclusion of the contract between the surrogate mother and the spouses (customers). At the same time, it should be noted that in accordance with the current marriage and Family Code of the Republic of Kazakhstan, the contract of surrogacy, which is the basis for the emergence of legal relations of surrogacy, can be concluded only with persons who meet the following requirements:

1) a woman meets all the requirements established by Article 56 of the marriage and Family Code of the Republic of Kazakhstan;

2) spouses (clients) need infertility treatment by surrogate motherhood.

At the same time, surrogacy as a multidimensional socio-legal phenomenon should be considered as a legal relationship between surrogate mothers, spouses (customers) and a medical organization on the issue of treating infertility of spouses (customers) and giving birth to a child in the interests of their family.

Marriage and family legislation sets out in detail the rights and obligations of the parties to the surrogacy agreement. In accordance with paragraph 1 of Article 57 of the marriage and Family Code of the Republic of Kazakhstan, spouses (customers) are required to enter into a surrogacy agreement:

1) to bear material costs associated with the passage of a surrogate mother's medical examination;

2) bear material costs related to the use of auxiliary reproductive methods and technologies;

3) issue a medical report on health, mental health, as well as the results of a medical and genetic examination specific to medical organizations that use assisted reproductive methods and technologies;

4) pay the costs of medical care for the period of pregnancy, childbirth and within fifty-six days after delivery of the surrogate mother, and in case of complications related to pregnancy and childbirth, pay the costs within seventy days after delivery.

Paragraph 2 of this article imposes the following obligations on the surrogate mother::

1) provide customers with a medical report on their physical health, mental and reproductive health;

2) be under the constant supervision of a doctor and strictly follow his recommendations and appointments;

3) inform the persons with whom the contract is concluded about the course of pregnancy with the frequency specified in the contract of surrogacy;

4) transfer the child born to persons who have concluded a surrogacy agreement with him.

In accordance with paragraph 3 of this article, a surrogate mother does not have the right to transfer a child to other persons, and in accordance with paragraph 4, she is obliged to exclude the possibility of a natural pregnancy.

In addition, we believe that special attention should be paid to such a point as the liability of the parties in the contract, since the responsibility of the surrogate mother and the spouses (customers) is a guarantee that the terms of the contract will be maintained for a long period of pregnancy and after its completion.

Responsibility of the parties to the surrogacy agreement

The liability of the parties to the surrogacy agreement must be regulated by civil legislation. The contract of surrogacy falls under the influence of both the Civil Code of the Republic of Kazakhstan and the marriage and Family Code of the Republic of Kazakhstan and thus goes beyond the generally accepted family relations.

Since the surrogacy agreement requires each party to fulfill its obligations, sanctions should apply to all parties for improper performance. Thus, both the surrogate mother and the spouses (customers) must be responsible for improper performance or non-performance of their obligations under the contract.

Penalties, collection of expenses from an unfair party, compensation for non-pecuniary damage and other material compensation should be significant in order to discipline the parties to the agreement.

In case of detection by the parties of facts of improper performance of their duties enshrined in the contract, deliberately providing false information or concealing significant information for the contract before the onset of pregnancy of the surrogate mother, it is appropriate to consolidate the right of the bona fide party to terminate the contract prematurely and oblige the guilty party to compensate for the losses caused to it within the established time frame, as well as other payments defined by the contract and current legislation. In order to protect the rights and legitimate interests of the child and the surrogate mother, the law should establish a ban on termination of the contract of

surrogacy (both in case of termination of the contract and in case of conscientious performance by the surrogate mother) on the initiative of the spouses (customers) after the beginning of the pregnancy of the surrogate mother. This restriction is based on Paragraph 1 of Article 39 of the Constitution of the Republic of Kazakhstan, according to which “human and civil rights and freedoms may be restricted by law only to the extent necessary for the protection of the constitutional order, public order, human rights and freedoms, health and morality of the population”. The proposed unlimited spouses (clients) will be a less burdensome party than the pregnant surrogate mother. They are not responsible for carrying and giving birth to children. The spouses (customers) must clearly express the consequences of their actions before concluding the contract. Such a restriction reduces the risk of a frivolous attitude on the part of biological parents to the conclusion of a surrogacy contract, because, according to I. Sh. Tokmambetova, if genetic parents refuse the services of a surrogate mother at a late stage of pregnancy, when it is impossible to have an abortion, the child will not be needed by anyone. (Gusev M. A. 2020: 146)

Based on the above, we believe that the legislator should imperative establish the presumption of parental relations between spouses (customers) in relation to a child born as a result of the use of assisted reproductive methods and technologies on the basis of a surrogacy agreement. Otherwise, the interests of the child will not be properly protected, because there may be a situation where the surrogate mother is ready and willing to give the child to the spouses (customers), and they have changed their minds and do not want to become a mother and father in the birth certificate of the child. As a result, the newborn may be left without parents. In this case, the” customers “ who have entered into an agreement to become parents of a child born to a surrogate mother do not have any obligations to him.

Thus, the child’s rights to live and be raised in the family, to know his parents, to live with them, to communicate with parents and other relatives, and so on are violated.

In addition, a surrogate mother who has fulfilled her obligations under the contract will be obliged to pay alimony in relation to her, even in the event of refusal of the child in the Maternity Hospital.

A slightly different situation occurs when the spouses (customers) leave the child with the consent of the surrogate mother and agree to keep the child for themselves. Clause 3 of Article 59 of

the marriage and Family Code of the Republic of Kazakhstan: “the refusal of spouses (customers) of a child is issued in accordance with the established procedure after registration of his birth with the Registration Authority. In case of refusal of the child by the spouses (customers) who have concluded a contract with the surrogate mother, the right to motherhood remains with the surrogate mother at her own discretion, and in case of her refusal, the child is transferred to the custody of the state.”

Thus, the legislator allows the spouses (customers) to refuse the child only after its registration with the Registration Authority and, if they wish, then transfer it to the surrogate mother. However, the legislator does not specify exactly how this program will be created: adoption from a surrogate mother or registration of origin

Based on Paragraph 3 of Article 59 of the marriage and Family Code of the Republic of Kazakhstan, it can be assumed that first the spouses are indicated as the parents of the child, from which the refusal is issued, and then only the surrogate mother adopts the child. However, this is only a guess, so to clarify this situation, in our opinion, this issue requires a legislative solution. First of all, it is necessary to start with the interests of the child.

In this matter, we fully cooperate with M. A. Gusev, who proposes to establish the principle of priority of ensuring the interests of children as the main one, which defines the essence and main purpose of parental and parental rights and obligations and is one of the first in Article 2 of the marriage and Family Code of the Republic of Kazakhstan (Prudnikova M. Yu., 2006: 176-182).

In the scientific literature, it should be noted that in the contract, the amount of remuneration of a surrogate mother may change in the event of birth under circumstances independent of the parties (for example, as a result of a birth injury), and this (<http://nauka-rastudent.ru/19/2784.html>).

In the event of the birth of a dead or incomplete child (disabled child) not through the fault of a surrogate mother, as well as, if not through the fault of a surrogate mother, an abortion or termination of pregnancy for medical reasons, this is confirmed by the conclusion of the medical institution conducting the surrogate mother program, due to the conditional nature of the surrogate motherhood contract, the spouses (customers) are obliged to pay the surrogate mother a remuneration in an amount equivalent to 100% of the amount stipulated in the agreement. As well as payment of expenses for the necessary medical intervention and compensation to the surrogate mother for the restoration of health after

pregnancy and childbirth in the amount previously established in the contract.

This is the most correct decision, because even the beginning of pregnancy does not guarantee that the pregnant woman will successfully end with the birth of a healthy child without harming her health, and there is no guarantee that such a situation will not develop if the child is carried by another woman. In this case, the only possible measure to take into account the interests of the spouses (customers) is to establish the possibility of reducing the remuneration of the surrogate mother in accordance with the number of months of pregnancy.

If the failure is the result of the surrogate mother's violation of her obligations under the contract (for example, if she did not arrive at the appointed time to undergo the fertilization procedure, as a result of which the implanted embryo died), she should be obliged to pay the spouses (customers) of the child the amount of money that covers the costs incurred under the contract. In this case, it is worth considering a fine. As a measure of liability for violating the obligation of a surrogate mother to comply with all the instructions and requirements of specialist doctors, she may be deprived of part of the remuneration agreed by the parties in the contract.

In case of non-fulfillment by spouses (customers) of obligations to provide assistance to the surrogate mother in the amount and in accordance with the procedure specified in the contract, including cases of untimely provision of funds for the necessary expenses arising from the contract, the surrogate mother must be granted the right to demand compensation for damages caused by its termination or an increase in remuneration specified in the contract. The liability of the spouses (customers) for violation of the terms of payment for the services provided by the surrogate mother must comply with the general regulation on violation of monetary obligations. To do this, it is necessary to set the amount of the penalty, which is calculated from the day following the day of termination of the obligation to the day of its execution.

A surrogate mother who has not timely notified the spouses (customers) about the need for additional costs or about the circumstances known to her that threaten the planned and safe passage of pregnancy or the health of the worn-out child is subject to deprivation of the right to claim for reimbursement of expenses incurred in this regard.

In case of violation by the surrogate mother of the obligation to spend money provided by the spouses (customers) during the performance of the contract, it is necessary to provide for the right of the

spouses (customers) to withhold the corresponding amount of money from the remuneration of the surrogate mother in accordance with their purpose. We believe that in such a situation, it is unlikely that the surrogate mother will have a desire to violate the rules of the contract.

Often, the parties to the contract provide for the obligation to maintain the confidentiality of these relations (including after the performance of the contract). In case of violation by one of the parties of the agreement on the confidentiality of the relationship arising from the contract, the bona fide party should be granted the right to demand compensation, which will cover the costs of maintaining the confidentiality of the relationship (this means the funds spent in the process of modeling their own pregnancy in parallel with this pregnancy of a surrogate mother, which, the guilty party must pay as compensation for non-pecuniary damage.

The parties are subject to exemption from liability for partial or complete non-fulfillment of obligations under the surrogacy agreement, if this non-fulfillment occurs after its conclusion in cases of emergency circumstances, including military actions, natural disasters, accidents, epidemics, etc., which the parties to the agreement could not foresee or prevent.

The need to comply with all the rights and legitimate interests of the child borne by a surrogate mother, the preservation of her health requires clear legislative regulation of each aspect of these legal relations, including the careful development of measures of liability of the parties for non-performance or improper performance of their obligations under the contract.

Continuing the topic of legal relations of surrogacy, we note that they arise only on the basis of a contract of surrogacy, which is the only legal form of surrogacy relations regulated by the norms of civil and family law. It is also necessary to remember about the intended purpose of surrogacy, in particular, surrogacy is a method of assisted reproductive technologies aimed at the birth of a child in the interests of spouses (customers) in order to establish child-parent relations in the future, so this idea can also be traced in the contractual relations of the parties.

This contract should be classified as aleatory contracts, since at the time of its conclusion there is no guarantee of the birth of a healthy child (and, in principle, a guarantee of the birth of a child), even if the parties properly fulfill their obligations under the contract. In the event that a surrogate mother has

undergone an embryo implantation procedure on behalf of customers, it should be considered that the condition has been fulfilled and the service has been provided, even if the program has failed, and there are no violations (civil rights.2006: 298)

The need to conclude a surrogacy contract is explained by two theses:

- the contract of surrogacy is the only basis for the emergence of legal relations of surrogacy;

- the presence of a contract is a necessary condition for compliance with the rights and legitimate interests of all participants in these legal relations.

When analyzing the essence of a surrogacy contract, we can conclude that it is necessary to allocate it to an independent type of contract with the need to develop a special approach to its regulation. The need for a special approach is expressed in the fact that the current legal norms and concepts are not able to adequately protect the rights and legitimate interests of the parties to the legal relationship under consideration.

Taking into account the above, the contract of surrogacy can be defined as an agreement of civil and family law, according to which the surrogate mother undertakes to produce and give birth to a child who is genetically alien to her and give it to her spouses (customers) for the purpose of infertility treatment through the establishment of child-parent relations,

they undertake to state registration of the birth of the child and register themselves as its parents, and the medical organization undertakes to provide the entire complex of medical services necessary for the treatment of infertility.

### Conclusion

In conclusion, as a single solution to the above-mentioned issues, we propose to include in the contract of surrogacy a medical organization that, along with spouses (customers) and surrogate mothers, ensures the implementation of surrogacy in order to establish mutual obligations between all persons involved in the process of using assisted reproductive methods and technologies.

In addition, in order to protect the interests of the child and surrogate mother, paragraph 1 of Article 54 of the marriage and Family Code of the Republic of Kazakhstan should read as follows: “the contract of surrogacy is concluded in writing in compliance with the requirements of the civil legislation of the Republic of Kazakhstan and is subject to mandatory notarization. Termination of the surrogacy agreement on the initiative of the spouses (customers) after the onset of pregnancy of a surrogate mother is not allowed, except in cases stipulated by the legislation of the Republic of Kazakhstan.”

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