



SURROGATE MOTHERHOOD

ETHICAL IMPLICATIONS & PROPOSALS FOR LEGISLATION JANUARY 2016

SURROGACY THREATS HUMAN DIGNITY

Surrogacy, or Surrogate Motherhood is a practice that entails several serious problems:

The woman's body and organs are exploited.

The child becomes a commodity.

Poor women and their families are exploited.

Young women who sell their eggs run risks for their own health and fertility.

Only one solution is available to fight this exploitation, namely a total ban on any form of Surrogacy.

Surrogacy and the role of the Council of Europe in defending human dignity

In 2005, FAFCE invited the Members of the PACE to reflect in depth on the problems that may arise in surrogacy arrangements and on other objections to surrogacyⁱ.

Whilst recognising the natural desire of every person to have children, we continue to stress that the practice of surrogacy engenders a number of ethical issues, undermining the **human dignity** of all involved parties and the dignity of human procreation.

Besides describing this practice and its dangers, FAFCE wishes to contribute to the ongoing debate, giving a glimpse of the actions taken by European institutions and present **possible ways forward**.

The practice of surrogacy

As described in a *Glossary*ⁱⁱ prepared by the Hague Conference on Private International Law (HCCH), the practice of surrogacy often involves a number of cross-border issues and international actors. It can involve one or two commissioning persons resident in one State and a **surrogate mother** resident (or sometimes merely present) in a different State. Such an arrangement may well involve **gamete donors** in the State where the surrogate resides (or is present), or even in a third State. A surrogacy arrangement can be defined as **traditional**, when the surrogate mother provides her own oocytes (egg, and thus the **child** born is genetically related to her) or **gestational** surrogacy, when there is no genetic material provided by the surrogate mother. Normally in both cases the child born through surrogacy will be conceived through an **In Vitro Fertilization (IVF)**, using the gametes of the commissioning persons - of one of them, or neither – and in the case of traditional surrogacy the gametes of the surrogate mother. In theory, the number of persons involved in the

surrogacy arrangements can be **as high as seven**, counting the commissioning adults, the surrogate mother and her husband if she's married, and the two gamete donors (three in the case of mitochondrial donation, i.e. so called "three parent embryos", a practice recently legalised in the United Kingdom). Concerning IVF it's worth recalling that this creates in itself a number of ethical issues, firstly because of the creation and destruction of human embryos.

"The number of persons involved in the surrogacy arrangements can be as high as seven"

The consequences of the practice of surrogacy

Surrogacy arrangements, traditional or gestational, may also be referred to as **altruistic** or **for-profit** (commercial). **The so-called altruistic arrangement is never completely free**, as surrogate mother and/or doctors receive a payment for the "reasonable expenses" which occurred prior, during and after the pregnancy: it is impossible to draw the line between what could be considered as an altruistic surrogacy arrangement and what is a for-profit arrangement. Even if only "reasonable expenses" are quantified, as it seems that would be in the framework of "altruistic" surrogacy, how can all the "**reasonable expenses**" and the risks taken by the surrogate woman be actually quantified? How can the adjective "reasonable" be defined? What about **psychological bonds, emotional pressure and financial inducement** which can diminish personal freedom? Is it legitimate to use other people's bodies to accomplish one's own desires? What about the **linkages formed**

between the baby and the gestational mother during nine months and whom she's obliged to leave by contract? This is just a short list of direct consequences of the practice of surrogacy, without counting **abuses, ethical and psychological** consequences for the mother and the child, **deliberately deprived of his or her gestational mother and treated as an object which can be delivered or even sold.**

Surrogacy should be banned through an international convention

The practice of surrogacy is spreading throughout the world, creating a slippery slope to the right to a childⁱⁱⁱ, without any respect for human rights and fundamental ethical principles. An international petition^{iv}, with more than 110,000 signatures, is asking the Council of Europe to stand clearly in defence of human rights, and work towards an international abolition of surrogacy. In fact, surrogacy violates International and European law, in particular the **Charter of Fundamental Rights of the European Union (2000)**^v, the **Convention on the Rights of the Child (1989)**^{vi} and its **Protocol on the Sale of Children (2000)**^{vii}, the Conventions on the **Elimination of all Forms of Discrimination Against Women (1979)**^{viii}, on the **Adoption of Children (1967 and 1993)**^{ix}, on **Human Trafficking (2005)**^x and on **Human Rights and Biomedicine (1997)**^{xi}. As the promoters of this campaign affirm, "*The defence of human rights must adapt to new threats on humans. Europe must set an example for the universal abolition of surrogacy*". According to a contribution published on FAFCE's website^{xii}, one additional sentence to article 3 of the *Charter of Fundamental Rights of the European Union* would be sufficient to clarify the principle of **the inalienability of the human person and the non-commercialisation of the human body. An additional protocol to the International Convention of**

the rights of the Child or a specific international convention on the prohibition of surrogacy could also be proposed.

The role of the Council of Europe

In 2005, the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe (PACE) decided not to pursue its work on a report “*For recognition and supervision of surrogacy as an alternative to sterility*”. At this time, the Committee concluded that “*it was unable for the time being to submit proposals on the matter to the Assembly*”^{xiii}. On the contrary, in recent years, courts across Europe and, in particular, the European Court of Human Rights have followed a trend facilitating surrogacy, on the ground of the alleged *child's best interests*. FAFCE considers that it is not in the child's best interest to be born through a practice that deliberately deprives a child of his or her gestational mother and that it is not in the interest of a woman to be used for giving birth to a child for someone else. Thus, recognising the problems of surrogacy arrangements, everything should be done to prevent couples and individuals to resort to this practice. It is in the primary and best interest of the child not to be born following a surrogacy arrangement, which is for-profit in most cases and which, in either case, deprives the child of his/her gestational mother. **To prevent this violation of Human Rights, the Council of Europe, should use all its powers to defend Human Rights of women and children involved in this practice.** FAFCE calls on the PACE Members to consider this serious issue at length with a due time of reflection, in order to protect the human dignity and the physical and mental integrity of children, whose identity is undermined, and of women whose freedom is often limited.

The role of the European Union

The European Parliament has clearly condemned the practice of surrogacy, without distinction between “altruistic” and “for-profit” surrogacy. On 5 April 2011 the European Parliament adopted a resolution, asking *“Member States to acknowledge the serious problem of surrogacy which constitutes an exploitation of the female body and her reproductive organs”^{xiv}*. This resolution also emphasised *“that women and children are subject to the same forms of exploitation and both can be regarded as commodities on the international reproductive market, and that these new reproductive arrangements, such as surrogacy, augment the trafficking of women and children and illegal adoption across national borders”^{xv}*.

More recently, the *Annual report on human rights and democracy in the world 2014 and the EU policy on the matter*, as adopted by European Parliament Plenary on 30 November 2015, “Condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity; considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments”^{xvi}.

FAFCE hopes that all the European Union institutions will go forward on this path. In fact, this Resolution can be the beginning of a proactive EU action in favour of Human Rights in this area: in fact, the EU could contribute to the elaboration of an international convention on private international law aspects to tackle cross-border surrogacy in close cooperation with Member States and the Council of Europe, to prevent the Human Rights abuses of both mother and

child. On the same grounds, as an European Parliament's Directorate-General for Internal Policies Report suggested in 2010^{xvii}, the EU could positively contribute to the work of the Hague Conference for Private International Law.^{xviii} A ban and a strong disincentive for this practice should be promoted in all Member States, discouraging reproductive tourism which also fuels human trafficking and exploitation, without any respect for human dignity.

ⁱ *Memo on the preliminary Draft report AS/Soc (2005) 9 revised*, 6 June 2005

ⁱⁱ HCCH, Prel. Doc. No 3 B, March 2014, Annexe A

ⁱⁱⁱ Rocio Franch Oviedo, *Surrogacy: the slippery slope towards 'the right to a child'*, http://fafce.org/index.php?option=com_content&view=article&id=252:surrogacy-the-slippery-slope-towards-the-right-to-a-child&catid=53&Itemid=234&lang=en (21/01/2016)

^{iv} *No Maternity Traffic*, <http://www.nomaternitytraffic.eu/wordpress/?lang=en> (21/01/2016)

^v Cf. Namely Articles 1 and 3

^{vi} Cf. Namely art. 7 and 3

^{vii} Cf. Art. 2

^{viii} Cf. Art. 6

^{ix} Cf. Art. 4 (c) (3)

^x Cf. Art. 4; cf. also the Palermo Protocol (2000), art. 3 and Directive 2011/36/EC on preventing and combating trafficking in human beings and protecting its victims (2011), art. 2.

^{xi} Cf. Art. 21

^{xii} Jean Paillot, *What European Perspectives for Surrogacy?*, http://fafce.org/index.php?option=com_content&view=article&id=175:what-european-perspectives-for-surrogacy&catid=53&Itemid=234&lang=en (21/01/2016)

^{xiii} PACE Social, Health and Family Affairs Committee, *Surrogate motherhood: Social Affairs Committee not to go ahead with report*, <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=846&lang=2&cat=>

^{xiv} *European Parliament resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women*, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0127+0+DOC+XML+V0//EN> (21/01/2016), §20

^{xv} *Ibidem*, §21

^{xvi} *European Parliament resolution of 30 November 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter*, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0470&language=EN&ring=A8-2015-0344> (21/01/2016), §115

^{xvii} European Parliament's Directorate-General for Internal Policies, *Recognition of parental responsibility: biological parenthood v. legal parenthood, i.e. mutual recognition of surrogacy agreements: What is the current situation in the MS? Need for EU action?*, October 2010, [http://www.europarl.europa.eu/RegData/etudes/note/join/2010/432738/IPOL-JURI_NT\(2010\)432738_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2010/432738/IPOL-JURI_NT(2010)432738_EN.pdf) (21/01/2016), p. 30

^{xviii} HCCH, *The private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements*, <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy> (21/01/2016).



FAFCE

*FEDERATION DES ASSOCIATIONS
FAMILIALES CATHOLIQUES EN EUROPE*

*FÖDERATION DER KATHOLISCHEN
FAMILIENVERÄNDE IN EUROPA*

*FEDERATION OF CATHOLIC FAMILY
ASSOCIATIONS IN EUROPE*

Founded in 1997, the European Federation of Catholic Family Associations – FAFCE has a participatory status with the Council of Europe since 2001, is entitled to file collective complaints with the European Social Rights Committee, and is a member of the EU Fundamental Rights Platform.

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