

## Some Issues of Determining Paternity of Children in Surrogacy

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**Annotation:** This article explores the complex legal and ethical issues surrounding the determination of paternity in surrogacy arrangements. It examines the implications of different legal frameworks, the roles of intended parents, surrogates, and biological contributors, and the potential conflicts that arise in establishing parental rights. The discussion highlights case studies and legal precedents, providing insights into how various jurisdictions handle paternity in surrogacy scenarios. The article aims to contribute to the ongoing discourse on family law and reproductive rights, emphasizing the need for clear regulations to protect all parties involved.

**Key words:** Surrogacy, Paternity, Family law, Reproductive rights, Legal frameworks, Parental rights, Intended parents, Surrogates.

Surrogacy has also changed the legal logic of personal descent. We know that genealogy underlies many civil rights, such as inheritance, property rights, and relationships arising from family ties. Therefore, Chapter 10 of the Family Code establishes the procedure for determining the descent of children, and according to it, birth and genetic kinship, as well as family unity, are necessary to establish descent. Surrogacy does not correspond to the content of these norms, in which paternity is recognized not only on the basis of the consequences of the surrogacy agreement, but also on the basis of genetic kinship. However, the issue of the child's descent is problematic here. And this conflict between biological kinship and the fact of birth also leads to a broader rethinking and revision of norms and cultural ideas about descent. So, in this case, the pedigree (as in Article 60 of the Family Code) is determined not in relation to the surrogate mother, but under Article 207 in relation to the potential parents.

In addition, genealogy has a cultural and moral content that cannot be regulated by simply changing the norms. Since descent in national legislation was based on traditional values of birth and genetic kinship, it did not contradict other cultural and moral norms (for example, Islamic ethics). If we look at the current legal content of surrogacy, it also creates moral conflicts.

That is, surrogacy can be provided not only to the person who gave birth to relatives and descendants, but also to persons who donated their seeds and sperm or organized (infected) them. This is clearly stated in Part 6 of Article 207 of the Family Code. In our opinion, it is precisely this cultural and moral conflict that causes misunderstandings such as “surrogacy is not allowed”, “not prohibited, but not allowed”. In fact, there is a regulatory framework that fully permits surrogacy and makes it possible to implement it (we discussed this in detail in the previous part of the study), but we believe that its inconsistency and lack of understanding is in conflict with social and moral norms in this society.

Surrogacy Agreements and Surrogacy Laws Laws often focus on the rights of the participants in surrogacy, but do not pay sufficient attention to the protection of the rights of the born child. Since the object of the institution of surrogacy is a child, the rights of this child are at the center of the legal regulation of this institution. The fact that the personality, privacy and other rights of children in surrogacy have important legal and moral significance in surrogacy is also reflected in legal literature and case law. Because the European Court of Human Rights [1], in addition, the Inter-American

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System of Human Rights (IASHHR) has emphasized the need to respect the child's individuality and privacy rights in surrogacy disputes [2].

First of all, let us clarify the above terms. The identity of the child is the complex of his rights and ideas about his origin, origin, belonging to a cultural or biological group, as well as facts identifying his person. Inviolability of privacy means that any information and facts about his person remain safe and inviolable, are not subject to distribution against his will and cannot be used for other purposes. At the same time, the specified rights of the child give rise to other civil rights, such as receiving material support from parents, receiving an inheritance, and in this regard are of great importance for our study. We also use these terms within the framework of the study in the above-mentioned broad sense.

The concept of identity in surrogacy includes the connection of the child with the surrogate mother, potential parents or other donors from a genetic, gestational or socio-legal point of view [3]. Particularly in transnational surrogacy, it is important to determine the identity, origin of children and protect their rights to this personal identity. Legal regulation of this requires a balance between the interests of the child and the rules of social justice. That is, when regulating these relations, it is necessary to determine the child's pedigree, establish mechanisms that ensure the child's interests in the recognition of parental rights. In this way, such rights of the child as citizenship, financial support, inheritance and the right to know one's identity are also protected.

Legal and moral-cultural problems of child origin. In fact, the origin of a child is traditionally determined by its parents. It has long been based on blood-biological ties. The development of surrogacy has also changed the traditions of the child's personality, i.e. pedigree, language or cultural affiliation. After all, in surrogacy, the surrogate mother who gave birth to the child may not be genetically related to the child (gestational surrogacy). However, in the case where the surrogate mother takes the child with her and refuses to hand it over to the future parents, the recognition of the child by the mother is determined by Part Six of Article 207 of the Family Code and the rules for the legalization of birth. Here, the origin of the child is: the mother is the surrogate mother, and the father is the husband of the surrogate mother, or is determined by the instructions of the surrogate mother.

Theory and models. In legal literature, as well as in the legal positions of various countries and extraterritorial courts, two legal models or concepts are predominantly distinguished.

According to the theory of genetic descent, descent is legally based on the genetic link between the child and its biological parents. In surrogacy, especially gestational surrogacy, the child's genetic material must be obtained from the intended parents or donors. In the event of a dispute later, the child's paternity and parental rights will be determined by the genetic link.

The gestational theory, on the other hand, emphasizes the importance of the gestational relationship between the surrogate mother and the child. Although there is no genetic link between the child and the surrogate mother, the law considers the surrogate mother to be the child's mother. Judging by the content of Article 207 of the Family Code, one can see the same importance of pregnancy and childbirth as the presumption of motherhood.

The theory of intentions, on the other hand, focuses on the intentions and decisions of the future parents. According to him, it is correct that the child's pedigree is determined based on the words of the parents who organized this surrogacy.

Let us examine the rights of a child born through surrogacy in Uzbekistan, regarding genealogy and personality in several variants. When conducting surrogacy in accordance with Part Six of Article 207 of the Family Code, there is no big problem if the embryo is transferred from the potential parents' own genetic material and they are listed as parents. Because the legal parent is the biological parent of the child. According to this norm and the national legal doctrine, the genetic parent is defined as the parent after the consent of the surrogate mother. Therefore, the child's pedigree is mutually compatible both in the genetic and family law sense. In addition, this norm also puts an end to the dispute over the establishment of paternity, since the parent's consent to the embryo transfer is a condition for establishing paternity, and this consent requires recognition of the fact of paternity. However, if the



child is a product of the genetic material of the surrogate mother and the future father (traditional surrogacy), the situation becomes confusing. The legal father of the child will be the biological father, and the surrogate mother will be the biological mother. In this situation, the child has the right to know that his biological mother is a surrogate mother, even if the future parents are recognized as the child's parents. However, this does not solve the problem, his rights, such as inheritance, financial support, etc., arise in relation to his legal parents. The surrogate mother has no rights to the child. So, the pedigree at this point is biologically different and legally dependent on the possible parents.

If the embryo was created using the genetic material (sperm or egg) of one of the future parents and another donor and transferred to the surrogate mother, then it will be more difficult to legally formalize the child's pedigree in such a situation. Naturally, the rights and obligations of paternity or maternity cannot be imposed on the donor. After all, the person who wanted the child to be born and made efforts for this is not him, but the potential father or mother, as well as the surrogate mother. Thus, with the consent of the surrogate mother, the persons recognized as the child's parents are considered his legal and biological parents. The biological status of the surrogate mother can be recognized as the biological mother of the child if her eggs are used (traditional surrogacy).

If an embryo created from the genetic material of the intended parent is transferred to a surrogate mother, and the surrogate mother refuses to give up the child after its birth, she remains the child's mother according to the current Family Code. But what happens if he goes to court to establish the alleged father as the father of the child? According to the current legislation, the request to establish paternity in relation to the genetic father must be rejected. Because in this case, the intended father, when concluding the surrogacy agreement, sought to see his wife as a mother and the legal father of the child. And the surrogate mother refused to give up the child, the purpose of surrogacy was not fulfilled, and now the father can be accepted as a donor [4]. If you accept the father as a donor, everything will fall into place, just as a person who donates blood does not become a relative, there are also opinions that this also cancels the obligation to establish paternity for the child [5]. It should be taken into account that the basis of the national law doctrine is the genetic-biological connection in family relations. Given the legal and moral significance of genealogy for society, it can be determined based on the legal traditions prevailing in society.

However, parts one and three of Article 207 of the Family Code deny this content and require that the surrogate mother's husband or another person be designated as the father. Such an appointment without the consent of the biological father will inevitably cause problems in the future [6]. And in this case it cannot be said that this problem will be resolved fairly in court. If the genetic examination confirms the paternity of the possible father, he should be recognized as the father of the child. However, paternity is not only a biological, but also a moral and legal status, and as we said above, in this situation he entered into a surrogacy agreement, and his will is aimed at using his biological material for this purpose (as opposed to traditional sexual relations).

In our opinion, in order to prevent these problems, in addition to Article 207 of the Family Code, a separate rule should be included concerning the details of the case of the surrogate mother's refusal to transfer the child to potential parents in surrogacy. In this rule, it would be appropriate to reflect the reasons for the surrogate mother's refusal of the child, factors taking into account the mental and socio-economic status of the surrogate mother when deciding the fate of the child, as well as the legal status of the biological child. the father of the child when the child remains with the surrogate mother.

That is, in this case, combining the above approaches and models, we propose to determine and record the child's pedigree in the following order:

the person who gave birth to the child - the surrogate mother has the right to keep the child;

the paternity of the child can be based on genetic kinship, and this requires establishing the father of the child on the basis of clear evidence;

but the child is not transferred to the biological parents without the consent of the surrogate mother, there may be such exceptional cases;



even without the consent of the surrogate mother, the transfer of parental rights to the child to the future parents can be carried out by the court only in the best interests of the child, that is, when the court finds evidence that the mental, social and economic state of the surrogate mother cannot provide for the life of the child in normal conditions. In this case, the conditions and consequences of deprivation of parental rights can be used as an analogy, unless a special procedure is established.

Thus, in national legislation and generally in all traditional legal systems, the lineage of a child is understood to be his or her biological parents. However, in the case of surrogacy, who is the surrogate mother and what rights does the child have? There is no clear legal and ethical answer to questions such as what happens to the child's lineage if the genetic material is obtained from other people. It is determined by each legal system based on its own values, views and the needs of society. There are also different approaches in the legal literature to questions such as whether it is a biological relationship, or whether the biological mother determines the original offspring, or whether the father provided the genetic material or the person who entered into the contract, trying to give birth to him [7].

In our opinion, taking into account national legislation and the values of society, as well as ensuring that people suffering from infertility achieve their goals, taking into account the rights and interests of the child, the goal of determining the origin of the child in surrogacy is primarily based on clear biological facts: genetic relationship and the fact of birth according to data. However, this is not an absolute idea, and it should be recognized that family members determine the ancestry according to other values or do not determine it at all.

The right of a child to know his or her origins and identity. The question of whether a child has the right to know about his or her biological (genetic) parents (pedigree) is currently becoming a topic of debate in Western legal literature [8]. Of course, according to Article 8 of the Convention on the Rights of the Child, the child has the right to know his or her identity (including origin, name, nationality, etc.). However, this convention does not define the term "identity". However, legal literature argues that such recognition of personhood and identity is broader than legal descent, and therefore the child has the right to know his or her biological parents, origins, and other information [9]. Accordingly, a child born through surrogacy has the right to be informed about his or her identity, personality, genetics and biological parents. This gives rise to rights such as meeting and participating in the lives of their biological parents. A 2022 UNICEF statement stated that Member States' civil registration systems should register and store information confirming the identity of each child born through surrogacy. It was suggested that this gives children access to and supports them in knowing their identity and origins. According to these recommendations, in particular, the identity of the surrogate mother and the donor(s) should be known [10]. An agreement on the exchange of information confirming the identity of children born as a result of a surrogacy agreement must be concluded before the conclusion of the surrogacy agreement. It is clear from this that the legislation regulating surrogacy in the Republic of Uzbekistan cannot guarantee the opportunity for children born as a result of surrogacy to learn their identity, personality and thereby exercise their other rights. In our opinion, the rules for using the ERT, the Cadastral Rules and the provisions on birth registration must be supplemented by mechanisms that ensure the rights of this child. In this regard, we consider it appropriate to specify in the surrogacy agreement the obligation to provide this truthful information to the registry office, to record in the registry office information about the surrogate mother, donors and possible parents, and also to provide the child with the opportunity to receive this information. After all, the right to receive information about the person (origin, personality) is one of the fundamental rights of children defined in the international convention, and the legislation must ensure these rights.

From a human rights perspective, the rights of the child must be ensured regardless of his or her origin and background. Article 78 of the Constitution of Uzbekistan protects childhood, ensures equality before the law and protection of its rights and freedoms regardless of origin and citizenship.

In addition, legal literature also emphasizes that the establishment of biological ties and the regulation of family relations in accordance with these ties is not an absolute value, in which case the concept of



ancestral origin may be limited based on the need to protect the rights and well-being of the child and family [11].

Although the family (biological) connection between a parent and a child is considered a traditional value, neither the Constitution nor the laws consider family tree as the highest value that can be accepted unconditionally (human rights are higher than it). And in our opinion, the values of the family should not compete with the values of human (child) rights. Because all values change and they should work only for the rights and interests of a person. Since in this doctrine of national law such institutions as adoption of a child and deprivation of parental rights confirm our stated opinion, and any legal problems related to family rights should be resolved in the interests of family members, including the rights and freedoms of the child. Also, according to Article 10 of the Family Code, the disposal of family rights is a sovereign right of the individual, and these rights are realized at his or her discretion. In this case, it is necessary to abandon the paternalistic approach, that is, state interference in the family rights of an individual, and stop imposing restrictions on the implementation of other rights in favor of genealogical traditions. But it must be balanced, for example, family law relations must be a private matter for individuals, while one must not forget about the protection of the weaker party by the state. As for genealogy, based on a legal model that meets the best interests of the child, we believe it is appropriate to create a mechanism that does not compete with the rights and interests of the child.

In surrogacy, the consanguinity and marital status of the future parents do not depend on the origin. The essence of this marital requirement is that the institution of surrogacy should be considered as a cure for infertility or various other causes of infertility, in which the woman and man should be considered as trying to conceive a child in a natural and traditional way. The law supports this action and introduces such a restriction, thereby preventing any person from abusing the institution of surrogacy, using and exploiting the surrogate mother as a factory for producing children, and trying to ensure the rights and interests of future children. Genealogy is important for the law only as the will of people, based on their personal moral views.

In conclusion, it can be said that the child's interests and rights are the most important rule in determining the origin of the child in surrogacy. It also implies a biological link, which establishes the origin of the child by establishing it in recognition of paternity. If another rule is used to determine the origin, paternity will be determined accordingly (for example, if the probable mother is chosen as the mother of the child, even if there is no biological possibility). However, the child's right to know his origin, established by international law, is guaranteed, and the child has the right to receive full information about the surrogacy and his biological link.

Although the ancestral (biological) relationship between a parent and a child is considered a traditional value, neither the Constitution nor the laws consider ancestry as the highest value that can be accepted unconditionally (human rights are higher than it). And in our opinion, the values of the ancestry should not compete with the values of human (child) rights. Because all values change and they should work only for the rights and interests of a person. Since in this doctrine of national law such institutions as adoption of a child and deprivation of parental rights also confirm our stated opinion, and any legal problems related to family law should be resolved in the interests of family members, including the rights and freedoms of the child. Based on a legal model that meets the best interests of the child, we consider it appropriate to create a mechanism that does not compete with the rights and interests of the child.



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