

ABOVE THE LAW

Ukraine Considers Surrogacy Regulations In Wartime

Despite the war in Ukraine, surrogacy continues.

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In April 2023, as Ukraine continued to suffer from regular military attacks from Russia, the Ukrainian parliament introduced and considered a piece of legislation to regulate surrogacy arrangements in the country. Specifically, the proposed law was designed to regulate those arrangements where a Ukrainian woman is impregnated through in vitro fertilization (IVF) with an embryo, often from a couple in a foreign country, and carries to birth the resulting child for that couple.

Spoilers! I'll spoil the ending and tell you that the bill has failed this session. But read on to learn more about the timing of its introduction, what it said, and what Ukrainian legal professionals think of the proposed legislation.

Timing. Ukraine has long been a hot spot for hopeful international intended parents seeking parenthood by surrogacy. For those desiring to be genetic parents to a child but unable to carry a pregnancy on their own, Ukraine has, for many years, presented itself as an attractive option. At least, that is, for married heterosexual couples. Single and same-sex intended parents are not permitted to enter into a surrogacy arrangement in Ukraine.

By contrast, most European countries either completely ban surrogacy or prohibit compensated surrogacy, limiting the availability of women able to take the required time out of their lives to help others become parents. While the United States has a thriving and legally supported surrogacy industry, the cost differential between Ukraine and United States has led even U.S. intended parents to travel to Ukraine for surrogacy. (Check out this [podcast interview](#) on one U.S. couple's surrogacy journey in Ukraine, before COVID-19 and the Russian invasion.)

But the war changed all of that, right?

The attacks by Russia — which forced Ukraine to declare martial law — created a terrifying situation for all those who were in the middle of their surrogacy journeys. International parents feared broadly for the people of Ukraine but also specifically for the surrogate carrying their child and the dangerous situation their future offspring was in.

Since the war began, Canadian journalist [Alison Motluk](#) of the online newsletter [Hey Reprotech](#) has documented the surrogacy situation in Ukraine. She writes from an international perspective in a series, entitled [Ukraine Surrogacy Dispatches](#), which is focused on international intended parents in surrogacy arrangements in Ukraine during the war. I spoke with Motluk about what surprised her the most. She described recently interviewing a surrogate who was in her first trimester of pregnancy for an international couple, despite the war being in progress for over a year without an end in sight. Motluk is still seeing international intended parents actively starting new surrogacy arrangements and traveling to Ukraine. It appears that surrogacy is carrying on despite the wartime backdrop.

So maybe it isn't such a crazy time to introduce surrogacy regulation.

The proposed law. The surrogacy bill is long and touches on a number of issues. Among those are:

Qualifications for Intended Parents. They must be a heterosexual couple, married for at least two years.

Medical Qualification. Intended parents must have a medical reason to qualify for surrogacy. This concern echoes a [debate](#) in the United States as to whether “social surrogacy” should be permitted.

Genetic Connection to Child. At least one of the intended parents is required to be genetically related to the child. That means that it is impermissible to use a donated embryo, or both donor egg and donor sperm.

Qualifications of the Surrogate. She must be between the ages of 21 and 35 and have previously given birth to her own healthy child, with exceptions to the maximum age for a surrogate who is a relative of the intended parents, such as a mother, sister, aunt, or niece.

Surrogate Must Have Legal Capacity. A woman cannot qualify as a surrogate if she has been recognized by a court as legally incompetent or with limited legal capacity, has been deprived by a court of parental rights, convicted for crimes against “the rights and freedoms” of a child, prosecuted for domestic violence, or has been registered as a person receiving treatment in a psychoneurological or narcological dispensary. Makes sense!

No Traditional (Genetic) Surrogacy. A surrogate is not permitted to also be an egg donor to the intended parents. In other words, the surrogate cannot be directly genetically related to the child that she is carrying as part of the surrogacy arrangement — known as traditional surrogacy or genetic surrogacy.

State Regulation and Bureaucracy. The bill proposes to develop a list of medical indications and contraindications to determine whether intended parents should qualify for surrogacy. Foreign intended parents are required to register as to their intent to use surrogacy with a government registry and must obtain a certificate from the government confirming that there are no grounds for their refusal.

No foreign intended parents during wartime plus three years. Probably the most extreme part of the proposed regulation is the prohibition of foreign (non-Ukrainian) intended parents in surrogacy arrangements in Ukraine during the time of martial law plus three years after martial law has ended. Ukraine wouldn't be the first country to shut down surrogacy tourism within its borders (see India), and given the current situation, it is not surprising that the country is trying to press the pause button on medical fertility procedures for non-Ukrainians.

The proposed law also includes regulations less specific to surrogacy, concerning in vitro fertilization and donor gametes generally. A few of those include:

No Sex Selection. Patients going through in vitro fertilization are not permitted to select an embryo for transfer based on the sex of the embryo, with the exception of cases, to be approved by the competent authority, where there is an inheritable disease at issue that is tied to the sex of the embryo. This is a common legal restriction in much of Europe.

No Embryo Donation. The transfer of unused embryos created as a result of assisted reproductive technologies to another patient or spouse is prohibited.

What do Ukrainian legal experts think? I had the opportunity to connect with Ukrainian attorneys at the prestigious law firm of [Integrites](#). The Integrites team and, in particular, attorney Anna Kozyrieva, provide legal assistance in the surrogacy space in addition to the firm's complex dispute resolution practice. The Integrites team shared that in practical terms, the firm's surrogacy cases have significantly dropped since Russia invaded Ukraine. While some surrogacy arrangements may still be starting, they are at a fraction of the prewar level. They also shared that this proposed law was one of several bills regulating assisted reproductive technologies that have been introduced in the Ukrainian parliament since January.

The Integrites team was supportive of reasonable surrogacy legislation, noting that while surrogacy arrangements generally are without legal complications in Ukraine,

there are holes in the law that could use more statutory clarity, and areas where reasonable regulation of assisted reproduction are welcome.

Despite the continuing difficult situation, it appears that the Ukrainian legislature is, in many areas, conducting business as usual, including the consideration of the significant issues that all countries struggle with when it comes to human reproduction. I expect further proposed legislation to come. And hope, sooner, rather than later, for the people of Ukraine as well as the rest of the world, that the wartime classification will be a thing of the past.



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