

The subrogate maternity: «solidarity» or «exploitation»?

La maternidad subrogada: ¿«solidaridad» o «explotación»?

*Roberto Germán Zurriarain**

Abstract

In this article, the ethical and legal objections to surrogate motherhood are exposed.

Some believe that it is a matter of solidarity with infertile couples so it's a reproductive practice that is born from the autonomy of the pregnant woman and of the right that every human being has of being a parent.

Others think that the proponents of surrogate motherhood, in any of its two modalities: commercial and altruistic, forget the two most important subjects involved in it: the pregnant woman and her baby.

Consider that the surrogate motherhood discriminates and reifies the baby and the pregnant woman by commodifying and instrumentalizing her body. It uses the pregnant woman and the child as means at the service of fulfilling the wishes of others.

Then it seems that with the admission of surrogate motherhood it is evident that the dignity of women and motherhood are not seen as unavailable and worthy of protection. In addition, the baby has no value in himself, but he has it only if he is wanted, received, desired. Definitely, you cannot admit a reproductive practice that, in my opinion, aims to be a father or mother at any «price».

* Roberto Germán Zurriarain. University of La Rioja (Spain).

E-mail: roberto.german@unirioja.es

Received on September 04, 2019. Accepted on september 30, 2019.

Keywords: the right to be parents, babies, Spanish Law 14/2006 on Assisted Human Reproduction.

Surrogate motherhood¹ is an increasingly widespread practice that has also been given other names: «substitution pregnancy», «wombs, uterus or surrogate mothers», «surrogate pregnancy», «replacement motherhood», «Uterus rent», «custom maternity», «maternity carrier», «uterine subrogation»...²

It cannot be ignored that this topic is of great topical, not only because of the recent political proposals presented to legally regulate and legitimize this technique, but also and, above all, because some celebrities have managed to become fathers and mothers through this reproductive procedure.

Those who are in favor of surrogate motherhood, present it as a way to help couples who cannot have children,³ giving them the opportunity to be fathers or mothers. In particular, they argue that a contract, made with a «surrogate mother», is held between autonomous and responsible adults. She has the freedom to choose and exercise the right to autonomy of her will,⁴ so that each one is free to do with her body and her life whatever she prefers, and in such case, the law should not interfere. In fact, the supporters of this reproductive procedure claim that their legitimacy is based on the autonomy of the pregnant woman.

Definitely, those in favor of the gestation of rent argue that this practice does not harm third parties and necessarily results in the benefit of all the subjects involved.⁵

However, the reality is quite different. This naive and partial vision forgets the profound ethical and legal implications that surrogacy brings, and omits the most important subjects involved in it: the pregnant woman and her baby.

Therefore, first we must ask ourselves, what is surrogate motherhood?⁶ This assumes the birth of a child that is gestated by a

woman other than the one who wishes to have the child, be it a couple (heterosexual or homosexual), a single woman or a single male. For it, some of the alternatives offered by assisted human reproduction are used. Thus, the woman who is going to be pregnant can provide the ovum. In this case, artificial insemination is used, with the sperm of the father or donor (when the ovules of the biological mother are not optimal, or one only wants to be a father). Or else to be implanting an embryo produced by in vitro fertilization, whether or not the parents are going to adopt the child, that is, the genetic mother could be the woman who makes the contract, the pregnant woman or a donor outside the surrogacy contract.

In summary, a surrogate mother is a woman who accepts, by agreement (most of the cases for economic compensation), to become pregnant with the aim of engender and give birth to a child that will be raised by others. Therefore, in subrogation contracts⁷ the woman rents her body. In short, in this issue, there is a contract, some contractors, a woman hired and a «product» (the baby).

In addition, the maternity rent can be performed exclusively altruistic,⁸ that is, without any economic remuneration. Thus, a fertile woman can establish an agreement with another infertile woman, committing herself to carry out the pregnancy, with no economic compensation, which is called altruistic gestational surrogacy. This modality is the least frequent, but it is widely cited by those interested in promoting maternity by substitution.

However, surrogacy, in either of its two modalities, involves, from the ethical and legal point of view, many objections:

1. The woman is not treated as a person, but as an object

Subrogated maternity, involves the use of women as a reproduction machine and is regulated through a contract. In this contract,

in which the child, who is in the womb of that woman, is also seen as a purely commercial object. Nevertheless, a son and a woman can never be a product or a thing, as if they were objects of an assignment.

Therefore, one of the problems of all surrogacy is that it involves the instrumentalization and depersonalization of the pregnant mother's body, ignoring the basic distinction between people and things. People, obviously including their body (the woman's belly), cannot be traded. Thus, the freedom of individuals to establish contracts for mutual benefit has limits, especially when the reason for the contract is the same human being (there is no respect for the person without respect for their body dimension), so that the act of «selling» or offering the body involves a serious social and human problem.

Therefore, maternity by surrogacy or rental gestation is, unequivocally, a new form of exploitation of women. This is contradictory or divergent to their dignity. For using their body, and consequently their person⁹ as a negotiable object, or a human incubator, or a simple receptacle of a gestation in order to satisfy the wishes of others, thus: «Subrogated motherhood does not respect the dignity of the mother carrier, since it presupposes a dualistic conception of it that disintegrates: on one hand, situates their feelings, their emotions, her reason and her autonomy and, on the other, her corporal dimension. From this perspective, the body of the carrier woman is a “something”, an object available and susceptible of any transaction and is reduced to playing a purely instrumental role».¹⁰

On the other hand, it does not exist a «right to procreation», a «right to the child» that justifies a pretended individual right to surrogate motherhood. It is true that the desire of sterile couples should be heard by society, but not at any price. Desires, however praiseworthy they may be, are desires and should not be considered as rights, especially if this implies injury to the dignity and rights of other subjects involved, especially of the poorest or most vulnerable women and children.

Therefore, there is no right «to become a father» by virtue of the will of heterosexuals, nor of homosexuals, nor of individuals who have decided to remain single. A person cannot dispose of another one as a merchandise, for there is not right whatsoever that allows it. In any case, a right assists children to have parents. The desires of paternity are limited to the human dignity of the pregnant woman and the baby and the protection of their fundamental rights.

Our society has made human rights its basic pillars. In such a way, those citizens must be protected so that their actions in the field of these rights can be respected. However, this protection also extends to protecting the individual, even when confronted with himself, when he intends to violate his own human rights, such as not allowing someone to surrender voluntarily as a slave, or to be financially compensated for the donation of an organ, although decisions have been made autonomously.

In other words, not everything we want acquires a status of right. In order to satisfy the reproductive wish of some people to be fathers or mothers, (which is not a right), and that they cannot achieve it in a naturally way, there exists adoption (to facilitate it, it is necessary to prevent the adoption to be made through an undercover market. There is a need that the cost should not be a burden, also to accelerate as much as possible the procedures and that the deadlines do not dilate in time), which avoids the market of people and helps children who have no resources or family. Definitely, postnatal adoption prevails the right of children already born to be adopted to get a family. That is to say, the wellbeing of the child prevails over the desire of adults to be parents, since the end of postnatal adoption is to favor the wellbeing of the child, and, on the other hand, that of surrogate motherhood is to produce a child to satisfy the desire of adults.

In addition, personal autonomy does not mean accepting any decision as valid. In this sense, it is necessary to consider whether the freedom of decision of the great majority of women signato-

ries of surrogacy contracts, who are in a situation of special socio-economic vulnerability, is not vitiated by these vital circumstances, which generates an authentic reproductive exploitation.

On the other hand, surrogate motherhood assumes the rupture of the affective bond of the mother, which usually is generated with the child during her pregnancy. Besides the obligation of having to deliver it when giving birth, reason why the mother is psychologically pressured to assume from the beginning that the Baby is not hers and she cannot establish any contact with him.¹¹

Ultimately, surrogate motherhood reifies women, by using their bodies for a purpose other than their own good, by treating her as a commodity, as something that can be bought and sold, which is incompatible with the dignity of women and their own rights. It involves the purchase and sale of people, which is intended to be legalized under the heading of «right to exercise paternity» and «freedom to decide on one's own body». In the bottom line, pregnant women are used in this business as a mere factory that makes babies for others. Neither the payers nor the intermediaries care about the woman's situation or the bond that as a mother is generated during the nine months that the baby is in her womb.

2. The baby-child also used as a commodity

Subrogated motherhood, also converts the child conceived *in vitro* (from the gametes of the principal parents, from the ovum of the pregnant woman inseminated with the husband's sperm, or from the donor's gametes) into a commercial product with quality control. Nevertheless, a baby is a human being, not an object of consumption to hide needs of those who own him and that can be acquired through a purchase.

Indeed, with surrogate motherhood, the baby becomes a mere commercial product to satisfy the desire of adults to be parents or

an adult to be a father or mother, and as such they can demand quality standards and their return in case of not meeting them.¹²

If the wish of the parents were admitted, the baby would be denied the consideration of absolute good in itself and by itself. It would become an available object, something instrumentalizable, that is, it would be reified.

For all these reasons, in the rental gestation the baby is treated as an object of sale and in many contracts it is established that the surrogate mother must return the money if she fails to give birth or the baby does not have the established health conditions. This accentuates the insecurity that affects both the surrogate mother and the child. Therefore, commercial surrogacy implies commodification of the filiation, since this will depend on the conclusion of a contract with a strong economic content.

On the other hand, the child remains in a very vulnerable position in surrogate motherhood, given that her situation depends on the clauses established in such contract, which does not guarantee, at all, the protection of her interests and rights. Then, the rental gestation highlights the nonsense, which is to consider the baby as a right that impels to possess it in any way.

Likewise, surrogate motherhood prevents the child from knowing its biological origin and identity.¹³ Such is the case, in which up to six adults can claim the paternity of each baby born of a «surrogate mother» as in the following cases. The genetic or biological mother (donor of the ovules), the pregnant mother (the «surrogate mother»), the woman who has ordered the baby, the genetic father (the sperm donor), the husband or partner of the pregnant mother (who has the presumption of paternity), and the man who has ordered the baby.

In the end, the child becomes a market product that is ordered, bought and sold. The principle's parents goal is not the good of the pregnant woman, nor the child or the best interests of the child, but to satisfy the desire of adults to be parents at any price.

3. The serious psychological consequences that remain for children and mothers

Modern medicine has provided evidence that demonstrates the decisive impact of the prenatal period for the subsequent development of the human being and the links that are created between the pregnant mother and the child during pregnancy.¹⁴ Link that, unfortunately, is broken after the birth of the baby.

This natural maternal bond is reflected in the physiology of the mother's brain during pregnancy. The mother adapts her body to this new situation through changes in her neuroendocrine system, under the influence of pregnancy hormones.¹⁵

It can be assumed that a pregnancy considered as a business and the relationship with a child who is renounced in advance and considered as a product and a source of income, may affect the child's psychological development, especially when he knows why he has been conceived, gestated and born.

However, surrogacy also psychologically affects the mother who has gestated the baby, given birth to her and has to separate from her. These ties of the mother are biological, therefore, unrelated to the intentions for which that pregnancy is promoted so they also affect surrogate altruistic motherhood. In addition, it has recently been found that the genome of the mother can influence, modifying, the genome of the child.¹⁶ This would add one more reason for the links between the two. Therefore, if additionally it were known that the genomic modifications of the child could be transmitted to his offspring, the genome of the surrogate mother would still be present, in some way, in the offspring of the pregnant child.

Then, the bonds between mother and baby are not only affective or psychological, but also biological, specifically, physiological and genomic.

4. The economic business of surrogate motherhood

The use of surrogate mothers has become a global business that moves millions of euros per year. At this time, surrogacy, on average, costs about € 90,000.¹⁷

Every year this business moves hundreds of millions of euros or dollars. In fact, surrogacy is a commercial activity in which business agencies profit from the suffering of infertile parents and the vulnerability of women, especially those who live in disadvantaged situations, developing a whole business of women's selection and of future children.

That is right; the business agencies select the candidate as «rent belly». They offer through the Internet a catalog of candidates (who meet the necessary requirements) willing to rent their belly and with the intention of submitting to the demands, conditions¹⁸ or imposed clauses, which they will have to compulsorily follow during pregnancy.

The objective, like that of any business, is that the production is good and that the pregnant woman fulfills her part of the contract, so that the product is just what was hired. To this end, such contract begins with the selection processes of the surrogate mothers, which include endless tests and personal requirements to guarantee that «quality» of the ovules and the belly that will lead to the future child. Therefore, we are talking about the absolute control that is exercised over the pregnant mother, both physically and psychically, in determining the conditions that may be required to be an eligible candidate, which is a form of reification of the surrogate mother, an intrusion into her privacy.

Thus, also, these business agencies have programs that include services and expenses. Namely, the financial compensation to the surrogate mother, services of artificial insemination, pregnancy-planning service in the area of residence of the surrogate mother. Moreover a complete medical examination, feeding for the period of stay in the center and interpreter service for the entire duration

of the program. A preparation and signing of the agreement between the parents and the biological mother, legal services, declaration of the surrogate mother of the absence of lawsuits against the biological parents, assistance in the formalization and obtaining the birth certificate of the child.

However, one can conclude by saying that motherhood by non-altruistic subrogation is a very lucrative business, based on the commodification of women's bodies. A use and exploitation of the most vulnerable women, for the benefit of individuals or couples or rich. This is so, that many women from underdeveloped or developing countries have made surrogacy a life practice, because the economic benefits they obtain are much higher than the wages that are perceived in those countries.

Nor can we overlook the multitude of unforeseen or complicated situations that may appear, such as the possibility of a pregnancy at high risk to the health of the pregnant mother.¹⁹

5. Legal disadvantages

Until now, for the law, it was unquestionable that the woman who conceives and gives birth to a child was the true and only mother. However, it is a fact that, in surrogate motherhood or rental gestation, commercial or altruistic, the maternal function can be divided among several women, the biological mother, the one who created and gave birth to the child, and the one who will raise as its only mother, with a genetic link or not, and sometimes an eventual donor of oocytes.

Another legal drawback is that the fate of babies born due to surrogacy may be uncertain, due to the breach of contract and the anonymity of their genetic origin.

From the legal point of view, surrogate motherhood is allowed only in some countries around the world. Therefore, many people, who resort to this procedure to have children, must do so abroad.

5.1. Countries where the law allows the two types of surrogate motherhood: the altruistic and the economically or commercially remunerated

At present, the commercial and altruistic surrogacy is legalized in Georgia, Israel, Kazakhstan, Ukraine, Russia and in some states of the United States.

In Russia and Ukraine, the law only allows the completion of this procedure under medical justification of inability to gestate. For this reason, only heterosexual couples or single women who cannot have children by themselves are allowed access to this procedure, leaving aside single men and homosexual couples.

Georgia allows surrogate gestation since the 90s, although it is only possible for married heterosexual couples with incapacity to gestate.

Homosexual couples and single men have limited access to surrogate pregnancy; only the legislation of the aforementioned US states allows this procedure for this group.

5.2. Countries in which altruistic gestation with conditions is allowed, but not the commercial one

They allow altruistic surrogate motherhood, not commercial, in Holland, Canada, Belgium, Portugal, Thailand, India, Greece, Mexico, United Kingdom, Israel, Luxembourg, Denmark, New Zealand, and some states of the United States.

Portugal, for example, legalized altruistic subrogation, only, to heterosexual or unmarried couples, whose women have no uterus or for some medical reason did not have the possibility of gestation.

In Thailand, all types of surrogate motherhood were legalized, but in August 2015, a law prohibiting the commercial one came into force, admitting it only in the case that the pregnant mother was the sister of one of the contracting parents. In the case that the members of the couple were only children or do not have

sisters, it is allowed to resort to a surrogate mother who is not related to the family. In addition, the law of that country allows rental mothers only for nationalized heterosexual couples (couples composed of a Thai woman and a foreigner must wait three years from the wedding to be candidates for surrogacy). The law prohibits surrogacy to unmarried and homosexual couples.

In India, commercial surrogacy was legalized in 2002, but its government announced in September 2016, its intention to prohibit surrogacy for commercial purposes. Since then, only Indian heterosexual couples legally married for at least five years, could resort to the altruistically form of surrogacy. Those couples must justify medically their infertility and that there is a kinship bond between the pregnant woman and the clients. Therefore, foreign couples, homosexual couples and singles cannot accede to surrogacy, nor the couples that already have a biological or adopted child.

In Greece, since July 2014, gestation by subrogation is allowed only in its altruistic mode to Greeks and EU citizens, if they are heterosexual marriages or single people. The woman must not be over 50 years old; although the expectant mother can receive financial compensation for the inconvenience that may have, a bonus that should not exceed 10,000 euros.

In Mexico, the new law of 2016 prohibits surrogate pregnancy for anyone who is a foreigner or who does not meet the strict requirements established, that is, only Mexican citizens can access surrogacy. Specifically, in the state of Tabasco only altruistic surrogate gestation is allowed to Mexican heterosexual couples incapable of gestating, the mother must be younger than 40 years old, on the other hand, the pregnant woman must be between 25 and 30 years old, have medical insurance, and approved by the Ministry of Health. In the state of Sinaloa, the law only allows surrogate motherhood to Mexican heterosexual couples whenever there is a medical disability. On the other hand, in the state of Coahuila,

rental gestation is prohibited. In the state of Querétaro, as in the previous case, it is not allowed.

Therefore, at this time, the surrogate pregnancy in Mexico is not available to foreigners.

5.3. Countries in which surrogacy is expressly prohibited

Germany, France, Spain, Italy, Switzerland, Austria, Norway, Sweden, Iceland, Andorra, Bulgaria, Finland, Malta, Montenegro, Serbia, Slovenia, Turkey, Estonia and Moldova prohibit any modality, commercial or altruistic, of surrogate motherhood.

Other countries that legally have banned the surrogate pregnancy are Saudi Arabia, Pakistan, China and Japan. The same happens with some states of the United States.

In this direction, the European Parliament, in 2011, adopted a resolution against the legalization of surrogacy, «for constituting an exploitation of the body of women and reproductive organs», based on the *Convention on Rights of the Child*, which in its art. 7.1, stipulates, «Every child has the right to know and be cared for by his parents».

More recently, the plenary session of the European Parliament, of November 30, 2015, in its *Annual Report on Human Rights and Democracy in the World 2014* and the European Union's policy on the matter, states «We condemn the practice of the maternity rent, since it undermines the human dignity of the woman, her body and her reproductive functions. Since she is used as a commodity. Therefore, she states that the practice of gestational surrogacy, which implies the exploitation of the reproduction and use of the human body for profit or otherwise, especially in the case of vulnerable women in developing countries, should be prohibited and treated as a matter of urgency in human rights documents» (twenty).

For its part, the European Court of Human Rights, in the Judgment of January 24, 2017, recognizes that surrogate motherhood violates human rights.²¹

On the other hand, the Committee of Social Affairs, Health and Sustainable Development of the Parliamentary Assembly of the Council of Europe, meeting in Paris, on November 23, 2016, discussed the problem of «Human Rights and Ethical Aspects Related to Subrogation», for the possible approval of this practice. It rejected surrogacy when it «considered that it valued women and children as merchandise that could be exploited».

However, as it has been said, in most of these countries they consider the contracts of both commercial and altruistic surrogate motherhood without effect. In many of these countries, there is the possibility, as in Spain, that prohibited by its legal system, it becomes a consensual practice, when it is performed in a foreign country, where it is considered a valid contract that can be endowed with registration effects in the country of origin of the principals.²²

That is right, in the case of Spain, the Spanish legislation²³ does not allow the rental gestation, that is, the pregnancy contracts by substitution in any of its two modalities are null. If it is allowed to perform them in another country where this reproductive procedure is legal, as long as the local laws of the country of origin are respected, a Spaniard can sign a contract abroad for this purpose and return with his baby to Spain after childbirth. Children born by surrogate motherhood abroad can be registered in the Spanish consulate of the country where they were born in accordance with article number 8 of the «European Convention for the Protection of Fundamental Rights and Freedoms». Afterwards they must be registered in Spain, under the protection of Instruction number 5 of the General Directorate of Registries and Notaries of 2010.²⁴ Then, in Spain, surrogate motherhood, is not strictly prohibited, it simply has no effect.

Precisely, in Spain, Law 14/2006 on Techniques of Assisted Human Reproduction prohibits pregnancy contracts by substitution.²⁵ For the Spanish Civil Code, the determination of filiation is based on biological truth (childbirth), with the possibility of clai-

ming paternity by the biological father.²⁶ In other words, although there is a formal contract between the parents who have contracted the services, the surrogate mother can claim the power. If it claims the baby, according to Spanish law, the contract will be invalidated and the surrogate mother, who has gestated the baby, would exercise motherhood.

Faced with this complex social and legal problem, couples who hire surrogate mothers are requesting recognition of their rights to be parents of the child born. If this happens, motherhood would no longer be linked to the physical fact of the woman who gestated the child and who gave birth to it. It would be recognized that the desire to be a father and mother is sufficient to grant the right of paternity and would open the doors, not only to infertile couples, but also to single individuals, same-sex couples, etc., who could enroll children in the Civil Registry and thus legalize their paternity. Motherhood would no longer be linked to physical realities (gestation and giving birth), but to the desire or intention to be parents.

Nevertheless, the Spanish legal situation is incoherent, because an organ of the State Administration, such as the General Directorate of Registries and Notaries (continues to register the filiations of children obtained by rental gestation abroad in favor of the principals) is acting against the current legality of its own country. (It disregards the provisions of the *Assisted Human Reproduction Techniques Act* of 2006, the judgments of the *Spanish Supreme Court* of February 6, 2014, and that of the *European Court of Human Rights*. Then, the General Directorate of Registries and Notaries, under the Spanish Ministry of the Interior, is acting against the current legal framework and the interpretation that has been made by the highest judicial authority in Spain endorsed, in turn, by the European Court of Human Rights.

It is, at least, paradoxical to declare null and void surrogacy contracts, as in Spain and in other countries, to protect local women

from exploitation and commodification, and simultaneously to allow the employment of surrogacy abroad, that is to say, recognize the most significant effect of the same: the determination of the child's affiliation.

5.4. Countries where surrogacy is not legally regulated

Argentina does not have a law that regulates surrogate motherhood, as in Brazil, Chile, Cyprus, and Guatemala. Ireland does not have a law on general assisted reproduction. Therefore, the subrogation contract is not binding and this can lead to problems.

In Panama, the Czech Republic, Peru, Hungary, Latvia, Lithuania, Malta, Monaco, Romania, San Marino, Bosnia-Herzegovina and Poland, there is no national law that allows surrogate pregnancy, but neither does it prohibit it, so that It is done in some territories.

In short, the International Treaties, the Recommendations of International Organizations, the jurisprudence of the European Court of Human Rights..., show concern about the risks posed by the legalization of pregnancy by substitution.

Conclusion

The basic issue, from the ethical point of view, to the objections about surrogate motherhood does not lie in the occasional occurrence of medical malpractice. Nor that there are companies or clinics that can traffic with babies (which is a criminal offense), but with surrogate motherhood, the baby and the pregnant woman are discriminated and reified by commodifying and instrumentalizing their bodies.

Therefore, the rental gestation, in any of its modalities, commercial or altruistic, supposes a use of women, because it treats

the pregnant woman and the child as means at the service of the fulfillment of the desires of the clients, and not as ends in themselves, but as means at the service of satisfying the desire of others.

With the admission of surrogate motherhood, it is evident that the dignity of women and motherhood are not seen as unavailable and worthy of protection, but that woman can be used to satisfy a desire.

That being addressed, babies are required to have quality guidelines and are deprived of fundamental rights, apart from their «self-understanding» of the child in the future. In this sense, the rental gestation leads to abortions or «returns» of «imperfect» children or the abandonment of the baby purchased at the end of the couple's relationship before their birth.

In addition, the baby, a human being, is not available, but is used as a means to fulfill a desire for another or others. Therefore, the child has no value in himself, but only if he is wanted, received, and desired.

The most effective way to dissuade potential parents from going to rented maternity and thus reduce the business and exploitation that this entails is the prohibition to non-biological parents to enroll children who have obtained them by national and international subrogation in the Civil Registry, that is, the woman, who has given birth, would be the only mother.

Finally, on the issue of surrogate motherhood, there are several questions to ask who will really benefit from this practice? Perhaps, the business agencies? Who is harmed in the rental gestation? What happens? With the surrogate women and the babies?

You cannot accept a practice that aims to be a father or mother at any «price», without thinking about the biological mother and the child and trading with him and the women's bodies.

A world where money and individual desire prevails over all is a world destined to corruption and inequality.

Therefore, for these reasons all decisions and measures related to the gestation of rent, commercial or altruistic, in my opinion, should, be directed to prohibit this practice.

Bibliographic notes

¹ Talking about surrogate motherhood is one more of the various euphemisms that are used in bioethics, because neither is maternity, nor what is legally understood by subrogation. On this matter, see SERRANO RUIZ-CALDERÓN, JOSÉ MIGUEL. «Manipulation of language, surrogate motherhood and altruism», Cuadernos de Bioética. 2017; , 27: pp. 219-228.

² Not all of these terms indicate exactly the same thing, but they have in common «*the will to withdraw the condition of mother to whom she has given birth to a baby and to attribute it to another, another or others*», BELLVER CAPELLA, VICENTE. «New technologies? Old exploitations. The case of international surrogacy», SCIO. *Revista de Filosofía*. 2015; 11: pp. 23-27.

³ The main cause of the use of surrogate motherhood is the lack of a woman's uterus. This deficiency can be congenital or due to diseases of such organ that require its extirpation. In addition, when there are functional alterations that do not make it useful for pregnancy.

⁴ Cf. VAN ZYL, LIEZL, VAN NIEKERK, ANTÓN «Interpretations, perspectives and intentions in surrogate motherhood», *Journal of Medical Ethics*, 26. (2000), pp. 404-409.

⁵ Cf. MARTÍN CAMACHO, J. [Online publication] «Surrogate motherhood: a morally acceptable practice. Critical analysis of the arguments of its detractors». 2009; 1-18. <http://www.fundacionforo.com.ar/pdfs/maternidadsubrogada.pdf>. Query: 8/09/2018.

⁶ «The noun maternity and the surrogate qualifier evoke, when one hears it, something irrational. How it is possible to subrogate something as intimate and personal as is motherhood?», PASTOR GARCÍA, LUIS MIGUEL, «Motherhood, its value and meaning as the core of the bioethical debate on surrogate motherhood», Cuadernos de Bioética. 2017; 27: p. 151; JOUVE DE LA BARREDA, NICOLÁS, (ed.) *Surrogacy. What it is and what are its consequences*, Sekotia, Madrid, 2018; AZNAR, FAIR. TUDELA, JULIO, «Gestacional surrogacy. Ethical aspects», *Medicina e Morale*. 2018; 67: pp. 277-290; BIOETHICS COMMITTEE OF SPAIN, *Report on the ethical and legal aspects of surrogacy*, 2017. This Report indicates that motherhood affects the dignity and physical and moral integrity of expectant mothers.

⁷ Cf. GALBRAITH, MHAIRI, MCLACHLAN, HUGH V., SWALES, J. KIM. «Commercial Agencies and surrogate motherhood: a transaction cost approach», *Health Care Analysis*. 2005; 13(1): pp. 11-31.

⁸ That surrogate motherhood is altruistic does not modify the ethical objections that present any modality of it. Jouve de la Barreda states: «Cases of maternity by agreement (almost always for reasons of family ties or friendship), without a contract, are exceptional and are not properly» surrogate motherhood. Altruistic motherhood, «agreement of altruistic gestation should be considered as cases of heterologous *in vitro* fertilization», JOUVE DE LA BARREDA, NICOLÁS, «Biomedical Perspectives of Surrogate Motherhood», *Cuadernos de Bioética*, 27, (2017), pp. 153 and 155. Some justify gestation by altruistic substitution equating it with the donation of Inter Vivos Organs. However, on the other hand, Bellver points out six differences between these two practices. Therefore, they maintain, «*in view of the differences pointed out, it is difficult to recognize a true analogy between inter vivos donation and surrogate motherhood*», BELLVER CAPELLA, VICENTE, «Taking surrogate altruistic motherhood seriously», *Cuadernos de Bioética*. 2017; 27: pp. 234-236. Altruistic subrogation means that a woman goes through the same process as in commercial subrogation, but gets nothing in return. See EKMAN, KAISA EKIS. [Online publication] «All surrogacy is exploitation», *The Guardian*, 25 february, 2016. <https://www.theguardian.com/commentisfree/2016/feb/25/surrogacy-sweden-ban>. Query: 8/09/2018.

⁹ «To become pregnant, as its name suggests, implies an implication of all the woman with the person of the child that develops in her guts... Surrogate motherhood considers the woman's body as an instrumental reality to use. Such is the good that is at stake, that should refrain from asking a woman to perform this type of maternity or accept their willingness to do so», PASTOR GARCÍA, LUIS MIGUEL, «Motherhood, its value and meaning as the core of the Bioethical debate on surrogate motherhood», *Cuadernos de Bioética*. 2017; 27: pp. 151 and 152; LÓPEZ MORATALLA, NATALIA. «The zygote of our species is a human body», *Persona y bioética*, 14, 2, (2010); Montero, E. «The maternity rent before the *summa divisio iuris* between people and things», *Persona y Derecho*. 2015; 27: pp. 229-230.

¹⁰ APARISI, ÁNGELA, «Surrogate motherhood and dignity of women», *Cuadernos de Bioética*. 2017; 27: p. 172; Cf. CASCIANO, ANTONIO, «Subrogation in motherhood. Phenomenology of a depersonalizing human interaction», *Cuadernos de Bioética*. 2018; 29: pp. 39-56. This modality does not vary in many ethical objections.

¹¹ «The uterine mother must live her pregnancy in indifference, in the perspective of abandonment, with the thought that it is not her son. It has prohibited, psychically and contractually, the formation of any sentimental bond with the child that carries in her», APARISI, ÁNGELA, op. cit., pp. 169-170.

¹² In the event that the fetus presents sex that is not «adequate» or some type of disability during pregnancy or after birth, the contracting parents may not assume the disability of the fetus and that the responsibility is transferred to the pregnant mother, trying to solve it by encouraging him to abort. In any case, this problem is usually solved in the subrogation contract. There are even agencies that guarantee in writing the obtaining of a healthy child. Then, in most cases, the contracting parents are those who make that decision, so that the pregnant woman can be

imposed an abortion that may or may not wish. Furthermore, what would happen to the baby if the contracting couple divorced? In addition, if in the pregnancy the contracting parents do not accept twins or triple and all the babies. Would we not be before a case of abandonment of children in the event that the number of fetuses has exceeded what was desired by the contractors; or by the mere fact that the child does not turn out to be of the desired sex, or is born with some kind of disease?

¹³ «Surrogate pregnancy is also depriving the child of the right that he has to have a continuity between his genetic origin and his biological gestation, between upbringing and education... Therefore, the child is not something that can be donated by the surrogate mother, because, it would mean not only to re-betray the essence of motherhood, which leads to the begotten son, but not to protect him from third parties who have no rights over him». PASTOR GARCÍA, LUIS MIGUEL, «Motherhood, its value and meaning as the core of the bioethical debate on surrogate motherhood», *Cuadernos de Bioética*. 2017; 27: p. 152; GARIBO PEYRO, ANA PAZ, «The best interest of the child in cases of surrogacy», *Cuadernos de Bioética*. 2017; 27: pp. 245-259.

¹⁴ A molecular dialogue between the embryo and the mother takes place in the maternal cloister and during pregnancy. From this molecular dialogue depends the harmonious development of the new being, Cf. LÓPEZ MORATALLA, NATALIA, «Maternal-fetal communication in pregnancy». *Bioethics notebooks* XX. 2009; 3: pp. 303-315.

¹⁵ Cf. BRUNTOM, PAULA J. RUSSELL, JOHN A., «The expectant brain: adapting for motherhood», *Nature Reviews Neuroscience*. 2008; 9: p. 11-25. In this regard, Jouve de la Barreda claims, «The fetus' stem cells will be dispersed throughout her mother's body throughout her life, as a reminder of pregnancy and an insurance for her own health. This, together with the effects on the development of the brain, reinforces the affirmation of the indelible psychological relationship established between the pregnant mother and the child», JOUVE DE LA BARREDA, NICOLÁS, «Biomedical Perspectives of Surrogate Motherhood», *Bioethics Notebooks*. 2017; 27: p. 159.

¹⁶ Cf. VILELLA, FELIPE. MORENO-MOYA, JUAN M. BALAGUER, NURIA. GRASSO, ALESSIA. HERRERO, MARÍA. MARTÍNEZ, SEBASTIÁN. MARCILLA, ANTONIO. SIMÓN, CARLOS. «Hsa-miR-30d, secreted by the human endometrium, is taken up by the pre-implantation embryo and might modify its transcriptome», *Development*. 2015; 142: pp. 3210-3221.

¹⁷ The figures range between 120,000 euros if the subrogation is carried out in the United States, and 40,000 if it is carried out in Ukraine, Georgia, Mexico, Thailand, Kazakhstan, India or Nepal, passing through the 80,000 of Russia or Greece.

¹⁸ One of the requirements is the medical and social standards for the selection of the women who are going to give birth to the child. The conditions to fulfill the candidates to surrogate pregnant mothers have a relationship, with their psycho-social condition, that is to say, a clinical history related to the psychic evaluation of women, a complete evaluation of their health. To check that they do not suffer

from sexually transmitted diseases, and that they do not use drugs; to a complete laboratory examination to exclude HIV infections or other sexually transmitted diseases.

¹⁹ Cf. LÓPEZ GUZMÁN, JOSÉ, «Economic dimension of surrogate motherhood («rooms for rent»), *Cuadernos de Bioética*. 2017; 27: pp. 199-218.

²⁰ Resolution 2015/2229 (INI), paragraph 115.

²¹ <http://www.biodiritto.org/index.php/item/875-paradiso-campanell-grand-chambre>. Query: 9/7/2018. The Final Judgment of the Paradiso and Campanelli Case c. Italy (Case Number 25358/12, Grand Chamber, January 24, 2017) grades cases of surrogate motherhood where there is no biological link, between the principals and the baby, as trafficking in human beings. Affirms on the right of reproduction that, there is no duty of the State to protect the mere «desire» to constitute a family, with independence. In addition, the judges maintain that surrogacy, in all its forms, is contrary to human dignity because it treats the pregnant woman and the child as means at the service of fulfilling the wishes of the contracting parties, and not as ends in themselves.

²² Cf. ALBERT, MARTA, «The reproductive exploitation of women and the myth of altruistic subrogation: A global view of the phenomenon of gestation by substitution», *Cuadernos de Bioética*. 2017; 27: p. 186. For a more in-depth study of the Spanish case, see pp. 189-190.

²³ The Spanish Supreme Court has declared that the contracts for replacement gestation are invalid. Specifically, on February 6, 2014, the Supreme Court judged the claim of a marriage formed by two Spanish men that the birth of two twin children through surrogacy was to be registered in the Spanish Consular Registry of Los Angeles (California). The filiation of the minors had been determined in their favor by a judgment of a Californian court in accordance with their Civil Family Code. The marriage sought to recognize such filiation in Spain, but the Spanish Consular Registry denied the registration under the nullity of the contract of gestation by substitution in Spain.

When the case reached the highest court in Spain, the Supreme Court said that registering the birth of the twins in the Civil Registry infringed the Spanish public international order, which includes values as important as the autonomy and dignity of the pregnant mother and respect for her physical and moral integrity.

The alleged parents aspired to recognize in their favor the paternity of minors by virtue of their best interests, which otherwise would be, in their opinion, in a situation of lack of protection. However, the Supreme Court stated that the satisfaction of the best interests of minors is not a principle that can be achieved in violation of the law because it protects other fundamental legal rights that are also involved, such as respect for the dignity and moral integrity of the child. As far as pregnant women, to avoid exploitation of the state of need in which you can find poor women, or to prevent the commodification of gestation and filiation.

In addition, it indicated as alternative measures to avoid the lack of protection of the minors, the possibility to claim the paternity, that member of the couple who

had provided his genes to the pregnancy and, in the case that none of them was a biological parent, the option of the welcome family or adoption.

²⁴ The Spanish Council of Ministers approved, on December 12, 2014, that children born to surrogate mothers could be registered in the Civil Registry. All of this is in accordance with the ruling of the European Court of Human Rights in 2014; (in clear conflict with what was said by the Spanish Supreme Court in 2014 and the European Court of Human Rights itself, in the Judgment of January 24 2017). In those instances it is recognized the child's right, to be registered in the Civil Registry by the contracting parents. The foregone because it violates Article 8 on the Right to Respect for Private and Family Life of *the Convention for the Protection of Human Rights and Freedoms Fundamentals (CEDH)*.

²⁵ «1. The contract for which the pregnancy is agreed, with or without a price, by a woman who renounces maternal filiation in favor of the contractor or a third party shall be null and void. 2. The filiation of the children born by gestation of substitution will be determined by the birth». Art. 10.

²⁶ The biological father can always determine the child's affiliation in his / her favor, leaving the possibility that his / her spouse adopts it.