

OVERVIEW OF HOW THE HISTORY OF RUSSIAN LITERATURE ORIGINATED AND SPREAD

VISÃO GERAL DE COMO A HISTÓRIA DA LITERATURA RUSSA SE ORIGINOU E SE ESPALHOU

DESCRIPCIÓN GENERAL DE CÓMO SE ORIGINÓ Y SE EXTENDIÓ LA HISTORIA DE LA LITERATURA RUSA

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ABSTRACT: There was no record of government formation in Russia for a long time, until in 1892, while searching for medieval books in Bukhara, an orientalist found a manuscript in Persian that contained some very interesting information about Russia in the early ninth century. In the present article, we first study the history of the origin and development of Russian history. The history of Russian literature dates back to the late tenth century, the time of the adoption of Christianity as the official religion of Russia. Their themes are also examined. The prevalence of styles such as yearbook, essay writing, anecdote and travelogue is also mentioned, as well as the characteristics of works such as the stories of previous years and theology about Hengaur. The lack of description of personal life, lack of imagination and real names in the literary works of ancient Russia.

KEYWORDS: Russian literature. Stories. Literary works. Ancient Russia.

RESUMO: Não houve registro de formação de governo na Rússia por um longo tempo, até que em 1892, enquanto procurava por livros medievais em Bukhara, um orientalista encontrou um manuscrito em persa que continha algumas informações muito interessantes sobre a Rússia no início do século IX. No presente artigo, primeiro estudamos a história da origem e do desenvolvimento da história russa. A história da literatura russa remonta ao final do século X, época da adoção do cristianismo como religião oficial da Rússia. Seus temas também são examinados. A prevalência de estilos como anuário, redação, anedota e diário de viagem também é mencionada, bem como as características de obras como as histórias de anos

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anteriores e a teologia sobre Hengaur. A falta de descrição da vida pessoal, a falta de imaginação e nomes reais nas obras literárias da Rússia antiga.

PALAVRAS-CHAVE: *Literatura russa. Histórias. Obras literárias. Rússia antiga.*

RESUMEN: *No hubo registro de formación de gobierno en Rusia durante mucho tiempo, hasta que en 1892, mientras buscaba libros medievales en Bukhara, un orientalista encontró un manuscrito en persa que contenía información muy interesante sobre Rusia a principios del siglo IX. En el presente artículo, primero estudiamos la historia del origen y desarrollo de la historia rusa. La historia de la literatura rusa se remonta a finales del siglo X, época de la adopción del cristianismo como religión oficial de Rusia. También se examinan sus temas. También se menciona la prevalencia de estilos como el anuario, la redacción de ensayos, la anécdota y el diario de viaje, así como las características de obras como las historias de años anteriores y la teología sobre Hengaur. La falta de descripción de la vida personal, la falta de imaginación y los nombres reales en las obras literarias de la antigua Rusia.*

PALABRAS CLAVE: *Literatura rusa. Cuentos. Obras literárias. Rusia antigua.*

Introduction

The recognition of Ukraine as one of the centers of commercial surrogacy has already become established at the level of the world community.⁶ Similar publications appear periodically in the Ukrainian press, including with criticism and proposals to limit or ban surrogacy for foreigners. At the same time, official statistics on surrogacy are not maintained at the state level, experts estimate that more than 50 medical clinics provide medical services for surrogacy, almost 80% of patients are foreign nationals.⁷

Successful surrogacy practices originated in the United States in 1980, when a contract was signed and a surrogate mother was paid for.⁸ In Ukraine, the successful first use of the method of surrogacy dates back to 1995. At the same time, not all countries in the world have legalized and allow the use of surrogacy.

Even in the United States, surrogacy is allowed in 30 states, but with some restrictions, and the total ban until 2021 was in four robes, of which New York legalized the procedure, but with the

⁶ Claire de La Hougue, Caroline Roux. Surrogate Motherhood and Human Rights. Analysis of Human, Legal and Ethical Issues. URL: <https://www.nomaternitytraffic.eu/wp-content/uploads/2015/09/2015-Contribution-HCCH-No-Maternity-Traffic-EN.pdf>

⁷ Vladimir Pautov, Yaroslav Tregubov. Children "for sale" - a scandal around the clinic. And what you need to know about surrogacy in Ukraine. URL: <https://www.radiosvoboda.org/a/29372579.html>

⁸ History of surrogacy in Ukraine. URL: <https://cpk.ua/en/publikatsiyi/statti-publikatsiyi/full/istoriya-surogatnogo-materinstva-v-ukrayini/>

right of a surrogate mother to terminate a pregnancy.⁹ In addition, surrogacy is prohibited by law in Sweden, Switzerland, Pakistan, Saudi Arabia, the UAE, Egypt and other countries.¹⁰

At the same time, in those states where surrogacy is allowed, there is a contract that defines the basic rights and responsibilities, as well as contains various restrictions on the application of such a procedure. That is why it is necessary to analyze the content and features of the conclusion of a surrogacy agreement under the laws of Ukraine, as well as to clarify the restrictions on its conclusion.

Normative principles of surrogacy

At the level of law in Ukraine, the application of the surrogacy procedure is not defined. Only the Family Code establishes the procedure for establishing the origin of a child born through the use of assisted reproductive technologies. According to Article 123 of that act, if an embryo conceived by another couple is transferred to a woman's body, they are considered parents.

At present, the surrogacy procedure itself is regulated by the Order of the Ministry of Health of September 9, 2013 № 787, which contains the conditions required for the use of surrogacy, in particular: the use of surrogacy is allowed only if there are appropriate medical indicators; the presence of the spouse (or one of them) of a genetic connection with the child and the absence of it in the surrogate mother and child; execution of all documents from the surrogate mother (statements, copies of her passport, marriage or divorce certificates, birth certificates of her own child (children) and her husband's consent to participate in the procedure); patients (applications for the use of assisted reproductive technologies, copies of passports and marriage certificates) and a notarized copy of a written agreement between the surrogate mother and the woman (husband) or spouse.¹¹

Researchers note that the procedure of surrogacy does not take into account the full interests of the child. In the first place, the interests of adults are satisfied, in particular, six adults (genetic mother and father (sperm donor), surrogate mother and her husband (in case of presumption of paternity), spouses who want to be parents can be in contact with the child and have a legal relationship with children (may not have a genetic link to the child if donor material

⁹ Bushkovska N. Surrogacy in Ukraine: what is wrong with it and whether it should be banned. Ukrainian truth. 2020. URL: <https://life.pravda.com.ua/society/2020/05/29/241146/>

¹⁰ Mendzhul M.V. Comparative analysis of the legal basis of surrogacy. *Comparative and analytical law*. 2019. № 2. pp. 77-78.

¹¹ On approval of the Procedure for the use of assisted reproductive technologies in Ukraine: Order of the Ministry of Health of Ukraine dated 09.09.2013 № 787. URL: <https://zakon.rada.gov.ua/laws/show/z1697-13>

was used). In the case of donor services, the child does not have complete information about his or her genetic background.¹² This position is rational given that everyone has the right to know about their genetic origin. The right to know one's origin is also considered in the context of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which Ukraine has a number of obligations.¹³ That is why it is time to discuss the possibility of disclosing information about donors.

The discussion of the need to ban surrogacy in Ukraine is caused not only by numerous facts about violations of children's rights, but also by the position that surrogacy is closely related to "child trafficking", as the vast majority of surrogate mothers use this ART procedure due to financial difficulties.

In Ukraine, only full (gestational) surrogacy is allowed, in which the surrogate mother has no genetic connection with the child she is carrying. In the absence of clear legal requirements, in practice in Ukraine, the procedure of surrogacy is regulated by treaties and there are many problems that are resolved in court, including when the surrogate mother does not want to transfer the child or future parents divorce before birth, etc.

Features of the surrogacy agreement

As for the legal nature of the surrogacy agreement, scholars rightly point out that it is a service agreement.¹⁴ In our opinion, it should be clarified that it is about the provision of medical services with a risky nature, as the medical institution cannot guarantee the expected result (there may be an unpredictable pregnancy that will end in miscarriage, nor can guarantee the health and absence of the child's defects).

Onishchenko O.V. and Kozina P.Yu. consider that in Ukraine it is necessary to establish at the level of law: specific requirements for a couple planning to become parents (regarding health, age and legal capacity); an exhaustive list of essential terms of the contract (on the subject, term, price of the contract, liability parties and possible unforeseen circumstances). Among the restrictions and prohibitions, scientists propose to prohibit the recognition of foreigners as parents of a child born to a surrogate mother, if in their country of citizenship

¹² Claire de La Hougue, Caroline Roux. Surrogate Motherhood and Human Rights. Analysis of Human, Legal and Ethical Issues. URL: <https://www.nomaternitytraffic.eu/wp-content/uploads/2015/09/2015-Contribution-HCCH-No-Maternity-Traffic-EN.pdf>

¹³ Davydova, N.O., Dashkovska, O.R.; Mendzhul, M.V.; Yavor, O.A., Khokhlova, T.S. The Right To Respect For Family Life: Legal Basis For State Interference. REVISTA SAN GREGORIO.2021. Issue: 44 Pages: 1-10.

¹⁴ Natalia Fedorchenko. Features of concluding an agreement on surrogacy. Entrepreneurship, economy and law. 2016. № 12. S. 66.

surrogacy is illegal, and to prohibit appeals against paternity (maternity) of a child born to a surrogate mother, except when the child and the mother have a genetic link.¹⁵ We do not agree with the proposal of Onishchenko O.V. and Kozina P.Yu. on the prohibition of recognizing foreigners as the parents of a child born to a surrogate mother if surrogacy is illegal in their country of nationality. In our opinion, it is correct to establish a general ban on the use of surrogacy by foreigners in whose state of citizenship surrogacy is not allowed.

The draft Law on Assisted Reproductive Technologies № 8629 was submitted to the Verkhovna Rada of Ukraine three years ago. On the positive side of the draft law, Article 9 provided between the genetic parents and the surrogate mother; the consent of a man who is married to a surrogate mother to the use of a notarized procedure; it is necessary to have a genetic relationship between the child and the future parents or with one of them; lack of genetic link between the child and the surrogate mother; the presence of a woman who will be the mother of the child has medical indications that make it impossible for her to bear a child; the child's future parents (husband and wife) must be married to each other.¹⁶

Thus, according to the bill, persons of the same sex or stateless persons cannot use the method of surrogacy in Ukraine. At the same time in the specified bill it is necessary to change the requirement concerning stay of future parents in marriage, providing it only for foreigners. At the same time, to give the right to a single person who is a citizen of Ukraine to use the services of a surrogate mother.

The existing order of the Ministry of Health of September 9, 2013 № 787 does not provide for the mandatory notarization of the surrogacy agreement. That is why the case law is composed in such a way that a simple written form without a notarization is enough for such agreements to be valid. In order to prevent various practical problems and conflicts between the surrogate mother and the child's parents, we recommend notarizing such agreements.

In addition, it is important in the contract to carefully define the rights and responsibilities of the surrogate mother and parents of the child as during pregnancy (how often there are contacts between the surrogate mother and parents, the procedure for providing housing and maintenance, daily routine and nutrition of the surrogate mother, the possibility parents to be present at medical examinations during pregnancy, etc.), as well as during and after the birth of the child (the right of parents to be present at childbirth, to establish the moment

¹⁵ Onyschenko O.V., Kozyna P. Yu. Surrogacy in Ukraine and abroad: comparative legal aspect. Legal Bulletin. 2015. № 3 (36). S. 107.

¹⁶ Draft Law on Assisted Reproductive Technologies № 8629 dated July 19, 2018. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64477

of transfer of the child, restriction or prohibition of contact of the surrogate mother with the child after childbirth). It is also important that the contract prohibits one of the parties from unilaterally withdrawing from the contract. In our opinion, the waiver of the surrogacy agreement is possible only until the transfer of the embryo into the uterine cavity of the surrogate mother.

It is important to set restrictions and requirements for women who want to be surrogate mothers. The bill proposes the following: age (from 18 to 55 years), medical (no contraindications); social (the presence of at least one living healthy child born to her). In addition, the bill proposes to legalize the possibility of commercial surrogacy, which is already widespread in Ukraine.

When concluding a surrogacy agreement, it is also necessary to regulate: the number of embryos that will be transferred to the uterus of the surrogate mother; the duty of the surrogate mother to follow the instructions of doctors, follow the daily routine and healthy diet; the period during which the surrogate mother must transfer the child to the parents and the procedure for such transfer; differentiate between the legal consequences for the parties in the case of singleton and multiple pregnancies, as well as in the case of the birth of a child with a genetic disease or defect; the procedure and amount of compensation payments and remuneration for the surrogate mother or the establishment that the contract is free (this practice is common among relatives).

After concluding a surrogacy agreement, the parties may, by mutual consent, make changes to it that may not contradict the law and moral principles, as well as not violate the rights of the parties.

Usually, the surrogacy agreement must be terminated by its proper performance and receipt by the parties of the desired result. Early termination is also possible due to various circumstances: due to unforeseen circumstances (for example, death of a surrogate mother, abortion due to miscarriage or medical indications, etc.); rupture by mutual consent (however, such rupture can only be until the transfer of embryos to the uterine cavity of the surrogate mother). Therefore, it is appropriate to propose that the law prohibits the termination of a surrogacy contract after a pregnancy.¹⁷¹² In our opinion, such a legislative ban on termination of the contract should not be from the moment of pregnancy, but from the moment of transfer of embryos into the uterine cavity of a surrogate woman. This will be an effective preventive measure to guarantee the best interests of the child and the rights of the surrogate mother.

¹⁷ Korenga Yu. V. Contract of surrogacy in family law of Ukraine: monograph. Lutsk.: Tower Print, 2015. S. 110.

The analysis of the concluded agreements on surrogacy shows that agreements on joint activity on realization of auxiliary reproductive technology by the method of surrogacy are widespread. Such an agreement is tripartite, concluded by the health care institution, the child's future parents and the surrogate mother. Unfortunately, in the absence of clear legislation requirements, the issue of early termination is not settled in the specified agreements. Unforeseen circumstances such as the death of one or both spouses are common. At the same time, if only one of the future parents dies, the contract remains valid, and in case of death of both parents, they are still registered as parents of the child, over which the issue of guardianship under Ukrainian law is resolved.

Conclusions

Thus, the provisions of the law and the practice of concluding agreements on surrogacy in Ukraine allow us to distinguish the following conditions of agreements: **mandatory** (*the subject of the agreement*, namely the services of a surrogate mother for childbirth and childbirth, and its transfer to parents, at least one of which has genetic connection with the child; *the rights and responsibilities of the parties*, including the obligation of the parents to provide the surrogate mother with housing and maintenance, as well as medical support for the pregnancy; *the procedure for settlements between the parties or the establishment that the contract is free*, while also allowed compensation for the costs during pregnancy and childbirth of the surrogate mother for medical care, insurance, food and other household and transportation costs; *liability of the parties* for non-performance or improper performance of the terms of the contract; *unforeseen circumstances* and consequences of their occurrence) and **additional conditions** (the presence of which does not affect the validity of the contract, for example, regarding additional medical examinations for the surrogate mother, confidentiality of the contract conditions, etc.).

The unresolved problem in Ukraine remains the unresolved at the level of legislation grounds and consequences of unilateral withdrawal from the surrogacy agreement. Even the bill submitted to the parliament does not define this issue. In our opinion, unilateral waiver of the surrogacy agreement is possible only before the transfer of the embryo to the uterine cavity of the surrogate mother. After such a transfer, the law should prohibit unilateral withdrawal from the contract.