

## SURROGACY LEGAL ISSUES IN THE UK AND THE CZECH REPUBLIC<sup>1</sup>

Kateřina Bureřova\*

**Abstract:** *One of the basic meanings of the life of a human is to have a descendant. If the natural conception fails, people look for other options. One of them is surrogacy. Surrogacy stands for a long way with uncertain end and result. The only certain result is, some rules must change. One of them is “mater semper certa est”.*

*Legislation on surrogacy varies country to country. Some countries, like United Kingdom, recognize surrogacy on law basis for decades. Some countries, on the other hand, do not have legal bounds set. Although the surrogacy as a medical treatment is legal there. Czech Republic stands just for the country with no legislation. Comparism of these two systems may lead to the conclusion what are the challenges of surrogacy in the law field.*

**Keywords:** *surrogacy, parental rights, maternity, parenthood*

### INTRODUCTION

The theme of this article is very specific. Therefore it combines not only legal issues. Surrogacy is very delicate subject due to the ability of achieving pregnancy naturally by some people. This ability is decreasing proportionately to the increasing health care offered by the special clinics all over the world on the field of assisted reproduction. Ability of natural conception of the baby is the top topic for the countries mainly in the west Europe and the north America. The rest of the world is mainly responding to the requests made by the sterile couples or even singles as the latest phenomenon.

Surrogacy is a form of assisted reproductive technology. It is not based on achieving pregnancy of the woman that is being in care of the clinic such as other procedures of the assisted reproductive technology. These are, along with surrogacy, fertility medication, artificial insemination and in vitro fertilization (IVF). Surrogacy is being that delicate because it uses not only genetic material to achieve pregnancy, as the other procedures, but it combines genetic material with a human attribution. This means that pregnancy is not being achieved by the sterile woman as the *patient*, but is achieved by other woman as a *surrogate* and the subject of the medical treatment.

*Surrogate* stands for a woman who carries a baby for a couple (single) who is not able to achieve pregnancy themselves. Contribution of a third party makes surrogacy so delicate and special. Then some moral issues bring other important questions to be answered and solved. Only surrogacy among the assisted reproduction techniques makes so different legal arrangements. Other procedures of the assisted reproduction technology are not so legally complicated and do not varies country to country that much.

The act of becoming pregnant must predates by the special agreement between a surrogate and the intended couple (single). Such agreement contains the topic what tech-

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<sup>1</sup> This article was supported by the Grant “Selected Institutes of new legislation of private law and criminal law in the application practice – II” no. SGS-2016-025.

\* JUDr. Kateřina Bureřova, Faculty of Law, University of West Bohemia, Pilsen, Czech Republic

nique will be used to achieve pregnancy, how will be a baby delivered and the parental rights transfer to the intended couple (single). Some other issues are usually the part of the agreement due to the legislation that is being set for the whole procedure.

For the purpose of this article there is generally used the term *intended couple* also for the intended *single*. Only where it is necessary to explain the dissimilarity there will the term intended single stand for a single man or woman that is in the position of the intended couple.

The goal of this article is to compare two different legislations. First one, very traditional English legislation, deals with surrogacy for over 30 years. Special law on surrogacy makes the topic legal in the bounds that are set. Law in the United Kingdom is unique. On the contrary the Czech legislation does not recognize the legal issues of surrogacy even though surrogacy is a legal medical treatment. Such comparison of two systems is able to show what challenges<sup>2</sup> the surrogacy means on the law basis.

At first there will be described surrogacy in general. For an introduction to the topic description also contains from the legislations of the selected countries. These are specific representatives of the legal way concerning surrogacy. Other part of this article concerns on the English legislation as a traditional unique legislation and the problems that is facing in the present. On the contrary there is the Czech legislation with no special surrogacy law and rules.

## SURROGACY IN GENERAL

Surrogacy is mainly divided into two types according to the genetic material that is used. First type is called the *traditional surrogacy* and also is known as the *straight surrogacy*. The second one is *gestational* and is known as the *host surrogacy*.

Traditional surrogacy is a technique using the eggs of the surrogate and sperm of the man from the intended couple or donated by some other man. It makes a genetic connection between surrogate and the child and is usually considered as not steady. The reason lies just in the genetic connection. Some surrogates may change their minds due to the fact they give birth to the child of their own. In most countries there is no legal procedure to force the surrogate to give up the baby she gave birth to.

More often in the real life is the host surrogacy. The surrogate is being use as a carrier of the baby that is not genetically related to this woman. The method that is being usually used is the IVF. IVF stands for *in vitro fertilization* that means a technique of letting fertilization of the sperm and eggs occur outside of the human body. Sperm and eggs are called a male and a female *gametes*. Host surrogacy use the IVF because there is no other technique that would be possible for a fertilization of a donated female gametes. Male gametes may be used by the man that is a part of the intended couple. This makes the easiest legal way to adopt the child that will be born to the surrogate. If the donated sperm is used, there is no genetic relation to the intended couple nor to the surrogate.

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<sup>2</sup> For more see APPLETON, T. C. Special topics (third-party reproduction: 5.4 Surrogacy. *ESHRE monographs*. 2002, No. 1, pp. 37–38.

It is obvious there is no simple way how to describe surrogacy and its consequences. There is no general legal definition that would be useful and able to cover all techniques and possibilities that are related to the all kinds of surrogacy. Mostly it depends on the genetic material that is used. If it is possible, due to the health assumptions of the intended couple, there is usually a mixture of the genetic material becoming from the intended couple. That makes the child to be born genetically connected to the intended couple. Legal issues are then simpler because it is almost a rule own in every legislation that protects mostly genetic contexture.

Using donated genetic material makes surrogacy legally more complicated. The final decision of the surrogate must be to surrender to the motherhood. This is very delicate act and must be done sooner before the surrogate relates to the child and may refuse to fulfill the agreement set with the intended couple. On the other hand there are usually some rules that makes such an act invalid if is made shortly after birth.

There are known only two types of surrogacy according to the cause that makes a woman to carry a baby for some other person. The first type, and most common, is the *altruistic* surrogacy. The second one, more questionable, is an *economic* surrogacy. Altruistic surrogacy is very often recognized in wider family. The surrogate may be, and often is, a mother or a sister of the sterile woman. Fulfilment of the altruistic surrogacy is then obvious. From the legal point of view the altruistic surrogacy is not forbidden in the most countries because it is considered to be a part of the medical treatment. Also there are no criminal consequences if there is no financial refund between the surrogate and the intended couple.

The economic surrogacy is considered as illegal in most countries. The reason is very simple. The law protects its citizens from the *baby trade* that is so close and tide up with this type of surrogacy. There are countries like Thailand, Ukraine or India where economic surrogacy is considered legal and there are special laws containing the related issues. In these countries usually operate unique agencies that are offering special services for both sides. They associate women willing to be a surrogate for the intended couples. They declare to provide these women with the examination of their physical and psychical condition. These women have to meet some criteria to become surrogates. The intended couple in such agency finds the correct surrogate that meets not only the general criteria but also the conditions of this couple that are set for the surrogate. Agencies then provides also the medical treatment leading to the pregnancy of the surrogate.

Ukraine is considered as a surrogacy friendly state.<sup>3</sup> Some advantage for Ukraine is that this country is a part of Europe that makes the false impression of a legally safe country. It has to be clear that when surrogacy is usually illegal, some people in places where it is legal, are exploiting from the huge amount of the requesting ones coming to fulfill they hope. It is not only the Ukraine's problem that some individuals are misusing the system.

Ukraine is one of that few countries that has very special law dealing with surrogacy issues and what is more important, dealing with *maternity* and *paternity* in case of baby

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<sup>3</sup> For more see f.e. KINDREGAN, CH. P., WHITE, D. International fertility tourism: the potential for stateless children in cross-border commercial surrogacy arrangements. *Suffolk transnational law review*. 2013, Vol. 36, No. 1, pp. 527–627.

being born to the surrogate. *The Family Code* of Ukraine contains the Article 123 that is called “*Establishing Maternal and Paternal Affiliation in Case of Medically Assisted Procreation and Ovum Implantation.*” The first paragraph solves the paternity in case of fertilization by procreation technique. The second paragraph makes clear that parents of the child are spouses that conceived the ovum to be implanted to another woman. In the third paragraph Article 123 says that an ovum conceived by the husband with another woman is implanted to the wife of his, a child is considered to be affiliated to the spouses.

Ukraine has a unique legal view on the maternity and paternity. It has to be admitted that so great legislatures with huge history usually stand on its roots and deals with maternity and paternity the same way for hundreds of the years. It is not recognized that a woman who gives birth to a child does not have to be its mother according to the law. Well, she may not be a mother according to the missing genetic connection.

In India became surrogacy into a big problem. Due to the not existing legislature, India became known as surrogacy friendly and stands for the destiny of many intended couples desiring for a baby.<sup>4</sup> India then deals with a modern form of slavery. Lots of very poor women are willing to be surrogate for economic reasons. Therefore local government starting to make changes with deep believe that Indian women are being exploited. The draft of a new law is called *Assisted Reproductive Technology Bill*. This law still did not pass and right now it is not clear if surrogacy is legal or not in India.<sup>5</sup> This law will probably make difference and there will not be allowed for foreigners to look for a surrogate in India. This kind of service will be achievable only for Indian citizens.<sup>6</sup>

The same way there are changes in Thailand.<sup>7</sup> Thailand was well-known as surrogate friendly country and many tourists were looking for a surrogate in there. Since 2015 when the new act on assisted reproduction has passed and it is no more legal to become a surrogate for foreign intended couple. The law has changed due to the controversy incident occurred. Thai woman as a surrogate for an Australian couple gave birth to the twins. A girl was taken by the intended couple to the Australia as a part of the deal. A boy was left by the intended couple in the Thailand. The reason was that the boy was diagnosed with the Down Syndrome. He was diagnosed in the seventh month of the pregnancy and the surrogate refused the abortion of the boy that was suggested by the Australian couple due to her beliefs. Surrogate woman kept her son and opted to raise money for his care. Later on media took out the story. Ethical issues resulted into a new law called Protection of children Born from Assisted Reproductive Technologies Act.

Most jurisdictions are based on traditional Roman principle *mater semper certa est*. This principle has a simple meaning coming from the presumption that a woman who

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<sup>4</sup> FRANKFORD, D. L., BENNINGTON, L. K., RYAN, J. G. Womb Outsourcing: Commercial Surrogacy in India. *MCN, The American Journal of Maternal/Child Nursing*. 2015, Vol. 40, No. 5. DOI: 10.1097/NMC.0000000000000163.

<sup>5</sup> SUGDEN, J. Indian Surrogacy Clinics Scramble to Reassure Foreigners. India realtime [online]. 2015-10-30 [cit. 2015-10-31], <http://blogs.wsj.com/indiarealtime/2015/10/30/indian-surrogacy-clinics-scramble-to-reassure-foreigners/>.

<sup>6</sup> KANNAN, S. Regulators eye India's surrogacy sector. India business report [online]. BBC WORLD, 2009, 2009-03-18 [cit. 2015-12-28]. Available from: <http://news.bbc.co.uk/2/hi/business/7935768.stm>.

<sup>7</sup> Thailand bans commercial surrogacy for foreigners. BBC NEWS [online]. 2015, 2015-02-20 [cit. 2016-01-06]. See: <http://www.bbc.com/news/world-asia-31546717>.

gives birth to a baby is the mother to this baby. Well, this does not apply in all cases in real life since the medical research made a huge step forward. Medical treatment can result into a baby being born to a woman that has no genetic connection to the baby. And that is the heart of the problem. A woman that has all the rights to be a mother does not have to be actual, real mother to a child. And on the other hand the real genetic mother does not have her parental rights if she does not give birth to a baby. Even more complicated this becomes if the genetic mother was a donor of the genetic material.

It becomes obvious there are more than legal issues to be discussed. Carrying a baby is a long time journey and so many things may occur on such a long way. And there is a baby involved that makes the situation even more complicated and delicate. Economic surrogacy may be considered to be wrong but on the other hand it may help some poor woman to make money for living. The intended couples desire for healthy baby and are willing to support surrogate. They usually provide her with money to eat regularly and they pay the medical costs. This makes them feel they did the best for the baby. It should be said that woman who is willing to be surrogate usually do has her own child [children] and is in a bad economic or/and social situation when there is no possibilities how to make money to take care of a baby. Therefore these women welcome to be surrogate. They usually do it only once. Clinics nor the intended couples do not seek a woman to be surrogate repeatedly.

International commissions are also dealing with surrogacy. The regular statement was held by the The International Federation of Gynecology and Obstetrics (FIGO)<sup>8</sup> and European Society of Human Reproduction and Embryology.<sup>9</sup> The special committees do agree with surrogacy itself as a medical treatment in case of woman's fertility. They recognize the surrogacy to be ethical and they recommend to use such delicate treatment only in occasional cases. The committees highly recommend to treat well the rights of the surrogate woman, a child and the intended couple. They see the slack of the agreement as the point of the potential problems and issues in the future.

## SURROGACY IN THE UK

The United Kingdom of Great Britain and Northern Ireland (UK) has a special law on surrogacy. It should be pointed out the UK accepted the actual law on surrogacy yet in 1985 (!).<sup>10</sup> *Surrogacy Arrangements Act 1985* was actually a reaction to a real case known as “baby Cotton” that occurred much earlier, in 1980.<sup>11</sup> In that case a woman agreed to

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<sup>8</sup> Committee for The Study of Ethical Aspects of Human Reproduction and Women's Health. *Ethical Issues in Obstetrics and Gynecology*. 2006, pp. 43–44.

<sup>9</sup> Task Force on Ethics and Law. *ESHRE Task Force on Ethics and Law 10: Surrogacy*. 2005, No. 10, pp. 2705–2707.

<sup>10</sup> See more in: ČÍSAŘOVÁ, D., BROJÁČ, J., ROUBÍČKOVÁ, N. Parenthood and Homosexuality Within the Context of Assisted Reproduction - Are We Ready For Homoparental Families? *The Lawyer Quarterly*. 2015, Vol. 5, No. 4, pp. 289–299.

<sup>11</sup> MERCER, D. Britain's first surrogate mother still longs for Baby Cotton 30 years on. *Express: Home of the Daily and Sunday Express* [online]. 2015, 4. 1. 2015 [cit. 2015-12-28], <http://www.express.co.uk/life-style/life/550033/Kim-Cotton-first-surrogate-mother-UK-misses-baby-30-years-on>.

carry a baby for a Swedish couple. They used the egg from surrogate and sperm of the man from the intended couple. The surrogate agreed never to look for the baby and the intended couple remained in secret. Arrangement was set up by an American special agency therefore the surrogate and the intended couple never met each other. After the case went public the *Committee of Inquiry into Human Fertilisation and Embryology* included the surrogate into its report.<sup>12</sup> This Committee recommended “that legislation be introduced to render criminal the creation or the operation in the United Kingdom of agencies whose purposes include the recruitment of women for surrogate pregnancy or making arrangements for individuals or couples who wish to utilise the services of a carrying mother; such legislation should be wide enough to include both profit and non-profit making organisations. We further recommend that the legislation be sufficiently wide to render criminally liable the actions of professionals and others who knowingly assist in the establishment of a surrogate pregnancy.”<sup>13</sup> The Committee also recommended to make all and every agreements on surrogacy illegal. Then the report became an impuls to Surrogacy Arrangements Act that rushed thru the Government.

Surrogacy Arrangements Act 1985 made prohibited commercial form of surrogacy. Also it made prohibited to advertise that someone is looking for a surrogate [a woman willing to be a surrogate] or that any person may be willing to enter into surrogacy arrangement. According to the Surrogacy Arrangements Act 1985 surrogate mother means a woman who carries a child in pursuance of an arrangement made before she conceived pregnancy and made with a view to any child being handed over to, and the parental rights being exercised by another person.

It is obvious from the meaning of the surrogate woman, that there exists a presumption of the arrangement to be set. Strictly without any agency or other person who would get paid for that. The arrangement is set between the woman who is willing to carry a baby and the intended couple. These people are able to negotiate and also compile the necessary informations to make surrogacy agreement. The economic surrogacy is also prohibited according to the law therefore there are not allowed any payments to be set in the agreements. Unless these payments include only and not exclusively the real costs that are contexted with the pregnancy and childbirth.<sup>14</sup> Usually such costs include medical care, special diet, necessary clothes and so on.

Since 2008 there is a *Human Fertilisation And Embryology Act 2008* which contains integrated legal treatment for all types of assisted reproductive techniques and its repercussions on the parental rights as well as rights of the issued children. This act makes clear

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<sup>12</sup> Department of Health & Social Security. *REPORT OF THE COMMITTEE OF INQUIRY INTO HUMAN FERTILISATION AND EMBRYOLOGY*. July 1984. London: HER MAJESTY'S STATIONERY OFFICE, 1984. Available from: [http://www.hfea.gov.uk/docs/Warnock\\_Report\\_of\\_the\\_Committee\\_of\\_Inquiry\\_into\\_Human\\_Fertilisation\\_and\\_Embryology\\_1984.pdf](http://www.hfea.gov.uk/docs/Warnock_Report_of_the_Committee_of_Inquiry_into_Human_Fertilisation_and_Embryology_1984.pdf).

<sup>13</sup> Department of Health & Social Security. *REPORT OF THE COMMITTEE OF INQUIRY INTO HUMAN FERTILISATION AND EMBRYOLOGY*. July 1984. London: HER MAJESTY'S STATIONERY OFFICE, 1984, page 47. Available from: [http://www.hfea.gov.uk/docs/Warnock\\_Report\\_of\\_the\\_Committee\\_of\\_Inquiry\\_into\\_Human\\_Fertilisation\\_and\\_Embryology\\_1984.pdf](http://www.hfea.gov.uk/docs/Warnock_Report_of_the_Committee_of_Inquiry_into_Human_Fertilisation_and_Embryology_1984.pdf).

<sup>14</sup> Fe. see NAKASH, A., HERDIMAN, J. Surrogacy. *Journal of obstetrics and gynaecology*. 2007, No. 27, pp. 246–251.



who the father and mother is in certain events. It also provides the right of the child to get some information about the donors in case of a child that has been adopted or parental rights are exercised by someone else from a birth mother or father.

The Human Fertilisation And Embryology Act 2008 makes a very special treatment even for same-sex partners. This comes only 4 years after the *Civil Partnership Act 2004* became effective. From the legislative technique point of view, the law maker in the United Kingdom did not make the easy form of equality meaning equalizing rights of opposite sex marriage with the same sex partnership rights. Even though this act makes such a statement in the Chapter 50, there are other parts devoted to only the civil partnership in the Human Fertilisation And Embryology Act 2008 and these are very special. Like the Chapter 42 called *Woman in civil partnership at time of treatment*. This section makes clear that the partner of a woman who is provided with the special treatment is to be the second parent of the child unless the partner did not consent the treatment.

Surrogacy in the United Kingdom has no legal bounds set up definitely. There are always many issues to be solved.<sup>15</sup> For example *maternity leave*. A group of parents were persuading the Government since 2008 to entitle the parents of babies born to a surrogate to maternity leave.<sup>16</sup> In accordance to few people to get advantage from such a law the Government rejected at first. Later on the Delhi High Court was dealing with the case where a female employee became a mother of twins by the way of surrogacy. This woman was denied 180-day maternity leave according to the fact she was no biological mother of her babies. Due to this case after all the private Member's Bill passed thru the Parliament and became effective at the end of 2015. From now on there is a special treatment for parents of babies that were born to surrogate women.

It was mentioned above the special commercial agencies are prohibited in the United Kingdom. This does not include non-profit agencies that operate on the bases of the law. They provide both parties [the intended couple and the surrogate] with informations, legal bounds, they help to make an arrangement and they help with the medical care. Very often such an agency is run by surrogates themselves to support each other.

The huge problem to be solved soon is *parental rights*. The legal bounds are not satisfying the real needs of the children that are born to surrogates. These babies very soon comes to the care of the intended couple but the parental rights are not transferred at the same time. Mother of a child is the woman who gave birth to the child. No matter what the genetical connections are, no matter what agreement was set up. The intended parents must first apply after the baby is born. There is a time of uncertainty between the application and the parental rights are granted. That brings some dangerous issues because the surrogate can change her mind meanwhile. And at this point we are back on the beginning of the delicate issue that can make the dream come true as well as disappointment due to the weak legislature.<sup>17</sup>

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<sup>15</sup> Committee for the Ethical Aspects of Human Reproduction and Women's Health. *Cover image International Journal of Gynecology & Obstetrics International Journal of Gynecology & Obstetrics*. 2008, Vol. 102, No. 3, pp. 312–313.

<sup>16</sup> See also <http://www.brilliantbeginnings.co.uk/campaigning/our-past-successes>.

<sup>17</sup> HORSEY, K. Surrogacy in the UK: Myth busting and reform. Report of the Surrogacy UK Working Group on Surrogacy Law Reform (Surrogacy UK, November 2015).

Also very important topic is the *agreement*. The agreement should be set between intended couple and the surrogate at the very beginning of the long way. It serves the future needs. After baby is born and some of the involved changes his mind, there is no way to set the rights and obligations but the court hearing.<sup>18</sup> As the 25 % of all surrogacy arrangements take place outside the United Kingdom, English courts deal specific and very variable questions<sup>19</sup> concerning the welfare and best interest of the children that were born to a surrogate woman.

## SURROGACY IN THE CZECH REPUBLIC

The Czech Republic stands for those countries that do not deal with the surrogacy on legal matter. As described above, the United Kingdom recognize the surrogacy and its special law treatment for over 30 years. The Czech Republic still does have no legislative bounds on surrogacy and pretends there is no such a problem in real life. It is just a matter of time when a big case will come out and start the society discussion about the surrogacy also in the Czech Republic. Until then there is no clear view of the society in the country on topics concerning surrogacy.

Surrogacy itself is not allowed expressly in any Czech law act. As well as it is not expressly forbidden. There should be mentioned that the new Civil Code ( law act no. 89/2012 Coll.) was expected to deal with surrogacy.<sup>20</sup> Even the professional public was expecting the new rules for surrogacy. Although the new Civil Code did not fulfill any of the expectations. There is only one mention about surrogacy.<sup>21</sup> That is considered to be a sign the Czech law recognizes surrogacy and knows it does exist and that it is really happening in real life. The only mention in the new Civil Code deals with the barrier where a birth mother is also a mother of the fertile woman which means that this woman cannot become a mother of the child. In fact that would be a sibling of the woman. In case of surrogacy the prohibition from adopting such a baby is broken.

There is also a very special act adjusting the assisted reproduction and its issues. The Act on Specific Health Services No. 373/2011 Coll. only recognize and specify some terms and medical treatment. It does not include the issues containing the rights of the parents in specific cases.

The real cases of surrogacy deal with a vague law rules.<sup>22</sup> Therefore there is no treatment for woman that is willing to carry a baby for others. The intended couples usually undergo the medical care in clinics of reproductive medicine. After the woman from the intended couple is diagnosed with the fertility the clinic may suggest the couple to find a woman willing to be the surrogate. Since there is no clear legislature these clinics do not play any

<sup>18</sup> F.e. [2015] EWFC 36, Case No. FD14P00262, Royal Courts of Justice, London.

<sup>19</sup> See FENTON-GLYNN, C. The difficulty of enforcing surrogacy regulations. *Cambridge law journal*. 2015, Vol. 74, No. 1, pp. 34–37.

<sup>20</sup> See also: ČÍSAŘOVÁ, D., SOVOVÁ, O. Náhradní mateřství v právní praxi. *Časopis zdravotnického práva a bioetiky*. 2015, Vol. 5, No. 2, pp. 13–24.

<sup>21</sup> See par. 804 of the law act no. 89/2012 Coll., civil code.

<sup>22</sup> See also: KRÁLÍČKOVÁ, Z. Mater semper certa est! O náhradním a kulhajícímateřství. *Právní rozhledy*. 2015, Vol. 23, No. 21, pp. 725–732.



role in the process of finding a surrogate by the intended couple. They only treat the surrogate to achieve pregnancy and they are far away from any agreement set between the surrogate and the intended couple.

The intended couples are usually looking for a surrogate through the advertisement. It is the only option in the case there is no woman willing to carry a baby among relatives and friends. The advertisement is not expressly forbidden in the Czech Republic. Although it may also be the way to track people who are making a business out of the left out matter.

According to the criminal law [the Criminal Act no. 40/2009 Coll.] it is prohibited to pay any money for passing parental rights.<sup>23</sup> The merits deal with adoption that is prohibited to provide for any kind of payments. In other words a child cannot become an object of the transaction connected with the award. The surrogate is not allowed to receive any payment from the intended couple in case she gives up her motherhood right and let the intended couple to adopt her child. If she does so, she breaks the criminal law. There has to be pointed the payments are not including the real costs the surrogate has have in accordance to her pregnancy and the child birth. These costs are the same as in the United Kingdom and also includes loss of profits or loss of wage if the surrogate is unable to work during her pregnancy. Allowed payment means the compensation for some extra expenses because of pregnancy.

The Czech law defines a mother as a woman who gave birth to the child [see par. 775 Civil Code Act No. 89/2012 Coll.]. The fatherhood is more complicated and is more connected with the genetic connection with the child. The fatherhood is always a matter of the presumption. That is what matters in case of the assumption of the fatherhood. In case of motherhood there is no way to deny a baby by a woman who gave birth to him just for no genetic connection to the baby. The Czech law stands for this premise since the modern Czech law became into efficiency.

If the intended couple is diagnosed as fertile and needs to use the surrogate services there has to be some arrangement set up. First the intended couple must find the right woman. It is so hard to imagine the intended couple will satisfy just any woman willing to carry a baby. There is no doubt the woman must meet some expectations of the intended couple. At least it would be good health and some predisposition to carry a baby.

If such a woman does have a child of her own it might be a positive circumstance. Assumption is that this woman will keep the agreement and pass the parental rights according to the word that was given at the very beginning. If the surrogate is married there would be her husband considered the father of the baby. Therefore married woman is not a right choice to be surrogate in the Czech law framework. Even though it cannot be eliminated that this woman will get marry after being pregnant. If husband of the surrogate is considered to be father of the baby that is born, it is very difficult to pass the parental rights to another couple. Much easier situation is if there is a single woman as a surrogate and she makes the declaration of the fatherhood with the man from the intended couple. Such a declaration keeps the intended couple close to the baby and the full motherhood

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<sup>23</sup> See more ŠÁMAL, P. a kol. *Trestní zákoník II. Zvláštní část. § 140–421*. 2. vyd. Praha: C. H. Beck, 2012, p. 1703.

is passed to the woman from the intended couple after baby is born. The surrogate gives up her mother rights and agrees the wife of baby's father will adopt the baby. Also it is very important the intended couple remains married. If this condition is not accomplished there is no way how to adopt the baby by the woman from the intended couple.

Short time ago the Supreme Court of the Czech Republic in the Judgement Pl. US 10/15 rejected petition of one of its chambers proposing declaration of unconstitutionality of one of the provisions of the former Family Act. This provision now is the part of the New Civil Code (par. 833). According to the Czech law adoption of the child by a partner of the parent is allowed only if they are married. The adoption result (according to the par. 833 of the New Civil Code) is the loss of the family connection between the child and its former parent. The Constitutional Court held the provision does not violate the Charter of Fundamental Rights and Freedoms nor the Convention. The reason for only married couple to have the privilege to adopt is the stability of the marriage. The Supreme Court yet use the statistic data about the marriage although there is no statistic data about cohabitation couples to be compared with. The Supreme Court then stated there is more in the interest of the children. In case of divorce the court needs to decide on the child's custody, its support and alimony.

As described above the Czech law on surrogacy is missing. Intended couples and also surrogates are acting in the grey zone and face the threat of the breaking the law on the criminal bases. So Czech law is not challenging some special topics on surrogacy. It is challenging some huge case to go public after the weak arrangement between the intended couple and the surrogate will break down.

## SUMMARY

This article contains the general information about surrogacy as a special societal issue. The main goal was describing legislation concerning surrogacy in the United Kingdom and the Czech Republic. As it is impossible to compare two very different legal systems. It is also impossible to make any conclusion on each surrogacy legislation. And the aim of this article was not only comparison of law on surrogacy in two countries. The goal that was reached was describing how two countries with different legislation and law system deals with such an issue concerning the wealth and the best interest of the child.

First thing to be point out is the timeline. In the United Kingdom there is the public discussion on surrogacy on for over thirty years. In the Czech Republic there is no public discussion going on at all. From time to time some media makes a short report on surrogacy and it usually does not start any societal discussion.<sup>24</sup> That means the legislator is not pushed into any decision about surrogacy for no request coming from the voters. And the

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<sup>24</sup> Surrogate mothers gave birth to dozens children even at us. On-line magazine Denik pravo & Seznam.cz [online]. [Cit. 2013-18-04]. Available at: <http://www.novinky.cz/zena/vztahy-a-sex/205714-nahradni-matky-porodily-uz-i-u-nas-desitky-deti.html> or The end of tabu. Hundreds of children in Czech Republic were born to surrogate mothers. The oldest child is already 21. Lidovky.cz [online]. [Cit. 2014-22-07]. Available at: [http://relax.lidovky.cz/ja-nahradni-matka-0e2-/zdravi.aspx?c=A140721\\_204119\\_in-zdravi\\_jzl](http://relax.lidovky.cz/ja-nahradni-matka-0e2-/zdravi.aspx?c=A140721_204119_in-zdravi_jzl) or Disabled surrogate woman gave birth to a disabled child. Nobody wants the child, that ended at institutional care. Blesk on-line. [Cit. 2015-12-08]. Dostupné z: <http://www.blesk.cz/clanek/zpravy-krimi/336468/postizena-nahradni-matka-porodila-nemocne-dite-nikdo-ho-nechce-skoncilo-v-ustavu.html>.

history on this is so clear. If the problem is not publicly discussed there is no need to change the existing law. This may be the only parallel to the United Kingdom where the public indignation made the legislator to include the issue into the special report on assisted reproduction and its consequences.

Even though there is no special law that would cover the legal issues on surrogacy in the Czech Republic, there are other adjustments that are in fact the bounds for the correct behavior of the man. Therefore it could not be correct to pronounce the Czech law does not concern the surrogacy at all. Also that is one of the problems because the addressees should know their rights and obligations as well as the correct behavior. And no special legislation makes so thin border of the correct behavior.

In the United Kingdom the legislation on surrogacy is still discussing. There is big amount of surrogacy cases and the surrogates are trying themselves to make the legislators to change the law. The goal is to protect the children and the surrogates. It also should be clear who is given the parental rights including all the profits that are given to any other parent in the United Kingdom. Even though the surrogacy is very delicate, the law in the United Kingdom is not ignoring the real life problems that are the consequences of the surrogacy.

In the contrary the Czech law is missing the engine to be changed. There may be an accepted assumption there is no need of the special legislature on the surrogacy because this is happening only between relatives. The real grey zone where the intended couples are seeking for the surrogate is simply ignored. Real cases are not public. Nor the surrogate or the intended couples are willing to describe their problems on public. Mainly because there is the danger of the prosecution. The very thin line between the legal and illegal behavior in the real life makes the problem on surrogacy more actual. If the number of fertile couples is increasing, the more cases on surrogacy will occur in the Czech Republic.

At the very end it should be summarized that the law must be flexible in any modern country. By that means the law must run with the progress and be able to respond the needs of the citizens coming from the real life. In the UK there are still some issues to be questioned and regulated by the law. Even though there is a special law for surrogacy placed for so many years. The Czech Republic is missing the proper regulation even though there is legal to provide fertile couples with such a treatment using the surrogate. The law on surrogacy in both countries has to be changed and has to be adjust to correspond the real needs of its citizens.