

UNIVERSITY OF MISKOLC
FACULTY OF LAW AND POLITICAL SCIENCES
DEÁK FERENC DOCTORAL SCHOOL IN LAW AND
POLITICAL SCIENCES

Zsófia Nagy

**Surrogacy and its legal circumstances in the legislation
and case law of selected states and ECHR**

Theses of the PhD dissertation

MISKOLC 2025

Table of Contents

I. The Subject and aim of the dissertation.....	3
II. Structure of the dissertation.....	5
III. Methods used in the research and evaluation of the topic in the literature.....	7
IV. Summary of the research results and its utilization	9
V. List of publications related to the dissertation	12

I. The Subject and aim of the dissertation

The progress of reproductive medicine has fundamentally transformed human procreation. Once considered a purely natural process, reproduction today is increasingly shaped by advanced medical technologies such as in vitro fertilization (IVF), gamete donation, embryo transfer, and surrogacy. Among these techniques, surrogacy remains the most controversial, as it challenges the legal, ethical, and social norms surrounding parenthood, family structures, and human dignity.

Surrogacy arrangements create a unique triangular relationship between the surrogate mother, the intended parents, and the child born through the process. This triangularity generates nuanced dilemmas: Who is the true mother in legal terms? The genetic mother, the gestational carrier, or the intended parent? How should children's rights to identity, nationality, and family ties be protected when birth circumstances differ radically from traditional models of kinship? And to what extent should private agreements between adults determine the legal status of a child? Is parenthood to be understood as an entitlement or a gift received? Where should we draw the moral boundary in the journey of having a child, to have a child? To which lengths can we morally acceptably go through to have a child? How far can we legitimately go?

The dissertation explores surrogacy as a global and European legal issue. While some jurisdictions permit surrogacy under regulated frameworks, others prohibit it. These distinctive approaches create opportunities for „reproductive tourism” as intending parents travel abroad to circumvent domestic prohibitions. Cross-border surrogacy raises complex challenges of private international law, human rights, and child protection.

The research utilizes multiple methodologies, including historical analysis of surrogacy's development, comparative examination of different jurisdictions' approaches, and doctrinal analysis of relevant international instruments and case law. Primary sources include legal instruments at international, European, and national levels, court decisions, reports from international bodies, and academic literature. The dissertation aims to contribute to developing a more coherent regulatory framework that balances reproductive autonomy with protecting the rights of all parties involved, especially children.

The central aim of the dissertation is to evaluate the legal frameworks governing surrogacy in selected European states and to assess their compatibility with the human rights standards

developed by the European Court of Human Rights (ECtHR). The research adopts a child-centered perspective, arguing that the rights of children, in particular their rights to identity, nationality, family life, and protection against exploitation, must be prioritized in all regulatory approaches.

In order to achieve a comprehensive outline the dissertation examines the legal framework surrounding surrogacy, focusing on cross-border arrangements and their implications under the European human rights system, with particular attention to children's rights. It established three core hypotheses:

- 1) *Children are especially at risk of having their rights compromised due to being conceived and born through international surrogacy;*
- 2) *The European human rights system's approach to surrogacy focuses primarily on protecting children's interests, potentially undermining national legislation based on public order considerations;*
- 3) *The legal frameworks of Slovakia, Hungary, and the Czech Republic either oppose or refrain from legalizing surrogacy.*

II. Structure of the dissertation

The dissertation is divided into four main parts, each addressing a different dimension of surrogacy.

Chapter I: Introduction to ART and Surrogacy

This section establishes the medical and conceptual foundations to the researched topic. It defines the terminology of assisted reproduction and categorizes surrogacy into traditional, gestational, commercial, and altruistic models. It is necessary, to offer the reader clear introduction of the terminology in relation to the topic, thus this chapter distinguishes the medical and legal terminologies to reach coherent application. A historical overview traces back surrogacy from biblical times, through early medical experiments, to contemporary IVF practices. The most common ethical debates are introduced, particularly concerning human dignity, autonomy, commercialization, and exploitation.

Chapter II: Human Rights Approach To Surrogacy: A Child-Centered Perspective

The second part puts surrogacy within international human rights law system. It examines the UN Convention on the Rights of the Child (UN CRC), its Optional Protocols, and the interpretive work of the UN Committee on the Rights of the Child. Some key rights at stake, more precisely the right to identity, nationality, best interests, and freedom from sale or trafficking are analyzed. The chapter then turns to the Council of Europe and the jurisprudence of the ECtHR, highlighting how children's rights have been weighed against state sovereignty and public policy concerns, in order to outline the European human rights jurisprudence's answers to the legal and ethical controversies to surrogacy cases.

Part III: The CoE and ECtHR and the Surrogacy Debate

This chapter offers a systematic review of ECtHR jurisprudence on surrogacy, including landmark cases such as *Mennesson v. France*, *Labassee v. France*, *Paradiso and Campanelli v. Italy*, *Foulon and Bouvet v. France*, *Valdís Fjölnisdóttir v. Iceland*, and others. The analysis identifies recurring themes such as the margin of appreciation afforded to states, the role of genetic links in establishing parenthood, and the ECtHR's gradual shift toward prioritizing children's rights to legal recognition

and identity. The critical remarks on the ECtHR's decision-making tendency in surrogacy cases offers future key arguments and elaborations to consider.

Part IV: Comparative Approach to Surrogacy

The comparative chapter of the dissertation analyzes national legislation and case law in Hungary, Slovakia, and the Czech Republic, while mapping out the global approaches to surrogacy. A more detailed analysis is devoted to these three countries, given their shared legal history, geographical proximity, and political alliance within the Visegrád Group. This comparison provides a unique opportunity to explore how states with similar historical-legal traditions and regional ties have nonetheless developed distinct approaches to surrogacy. The analyses is provided in regards to these countries in sub-chapters about the legal framework on ART and surrogacy, private law considerations highlighting parentage and legal recognition of children born via surrogacy arrangements, the child's right to identity, as well as public law considerations, incorporating constitutional law and criminal law implications. Their overall restrictive approaches are contrasted with Ukraine's liberal regulation of commercial surrogacy and the United Kingdom's framework for altruistic surrogacy. EU law and initiatives are also examined, particularly in relation to cross-border family law and recognition of parenthood. The final chapter synthesizes findings and formulates recommendations for a more coherent and child-centered regulatory framework at both national and European levels.

III. Methods used in the research and evaluation of the topic in the literature

The complexity of surrogacy as both a legal and ethical phenomenon required the application of multiple research methods, each of which contributed to a comprehensive and interdisciplinary approach. A multifaceted methodological approach is applied, including historical method, interdisciplinary approach, comparative method, doctrinal and normative legal analysis, case law analysis.

Through this multifaceted methodological approach, the dissertation aims to provide a comprehensive analysis of the complex legal challenges posed by surrogacy arrangements, with particular attention to the protection of children's rights in cross-border scenarios, accompanied by the analyses of legal circumstances of the selected Central European states.

The historical method, made it possible to trace the gradual evolution of assisted reproduction and surrogacy. From the biblical narratives of substitute motherhood through early experiments with artificial insemination in the Middle Ages, to the revolutionary achievements of in vitro fertilization in the late twentieth century, the historical perspective illustrates how human societies have repeatedly searched for solutions to infertility. This journey also triggered the „reinvention” of basic the meaning of family, motherhood, and human dignity. The historical background was necessary to include in order to substantiate, that why the concept of surrogacy constantly provokes fundamental legal and ethical debates to this day.

The comparative method played a central role to discover how a specific region with distinct bioethical traditions and environment shapes the national laws, while also being part of the European human rights acquis through being members of the CoE and the EU. Particular attention was given to Hungary, Slovakia, and the Czech Republic, while an overview of the where Ukraine's and the United Kingdom's legal solutions where examined. By contrasting these approaches, it became possible to identify both the shared cultural and legal features of Central Europe and the distinctive legal paths shaped by differing ethical values, political priorities, and social contexts. The comparative analysis revealed not only the diversity of regulatory frameworks but also the legal uncertainty and practical problems generated by prohibitionist models, which is the core reason intended parent's recourse to cross-border solutions, even facing the most legal and factual risks.

Doctrinal and normative legal methods applied extensively introduced the international instruments such as the European Convention on Human Rights, the United Nations Convention on the Rights of the Child, the Oviedo Convention on Human Rights and Biomedicine, and related Optional Protocols. The systematic overview of international soft and hard law sources was intended to indicate possible future directions for assisted reproduction, particularly concerning children's rights and the desires of adults involved. In addition, European Union primary and secondary law was examined, alongside constitutional and statutory provisions of the selected national jurisdictions. This normative analysis allowed the dissertation to clarify the legal concepts at stake, in particular parenthood, identity, nationality, dignity. This enabled to identify the normative gaps in existing legal frameworks.

Another crucial methodological element was the systematic analysis of case law, with particular emphasis on the jurisprudence of the European Court of Human Rights. Landmark cases such as *Mennesson v. France*, *Labassee v. France*, *Paradiso and Campanelli v. Italy*, and more recent judgments were studied in depth, with a view to identifying the Court's evolving approach to surrogacy, the scope of the margin of appreciation granted to states, and the increasing weight attached to the rights of the child. National court decisions were also reviewed where they provided relevant insights into the domestic application of surrogacy law.

Although, the primary focus of the dissertation is legal, the research has been consciously interdisciplinary. Insights from bioethics, philosophy, sociology, and feminist theory were integrated into the legal analysis in order to capture a wider spectrum of issues raised by surrogacy.

The literature evaluated for the dissertation is wide-ranging, encompassing academic publications in English, Hungarian, Slovak, and Czech, as well as reports and working documents produced by international organizations such as the Council of Europe, the Hague Conference on Private International Law, and the United Nations. The review of literature revealed a deeply divided scholarly landscape, as while some authors advocate for prohibition on grounds of human dignity and the risk of exploitation, others argue that regulated surrogacy can constitute a legitimate exercise of reproductive autonomy.

IV. Summary of the research results and its utilization

The dissertation reaches several important conclusions that collectively underline the complexity of surrogacy and the urgent need for coherent regulation. The most important among these is the recognition is, that children's rights *must* be the decisive factor in any assessment of surrogacy arrangements. The research demonstrates, that children born through surrogacy are placed in a highly vulnerable position, particularly in relation to their right to identity, nationality and the recognition of family relations. Cross-border surrogacy frequently results in statelessness, difficulties in establishing legal parenthood, and prolonged uncertainty about the child's status in law. These risks are compounded by the fact that children cannot advocate for their own interests, making it essential that legal systems prioritize their protection. The jurisprudence of the European Court of Human Rights increasingly reflects this finding, as case law has shifted the focus toward the best interests of the child, treating these as the cornerstone of any legitimate resolution even at the expense of disregarding general national public policy concerns on ART regulation and family law.

The comparative legal analysis further reveals that prohibition or legislative silence, as practiced in Hungary, Slovakia, does not prevent surrogacy but instead drives the practice abroad. Citizens of these countries frequently engage in reproductive tourism, arranging surrogacy in jurisdictions where it is legal and accessible. Upon return, however, they are confronted with the problem of registering foreign birth certificates or parentage orders, which often results in prolonged legal battles or even the denial of recognition. The approach of the Czech Republic can be defined as implicitly recognized although not encouraged. This under-regulation eventuates in a legal environment, that the practice is tolerated and can flourish. The study contrasts the more restrictive Central European frameworks with the permissive model in Ukraine, where commercial surrogacy has developed into an industry. Although this openness provides a solution for many intending parents, it raises profound concerns about exploitation, commodification of the human body, and inadequate safeguards for the dignity of women and children. The United Kingdom, by contrast, has developed a system that permits only altruistic surrogacy under regulated conditions. This framework demonstrates that regulation can mitigate many of the risks associated with surrogacy, although it cannot entirely eliminate the ethical dilemmas at the heart of the practice.

The research also confirms the pivotal role of the ECtHR as a driver of change in this field. Through landmark cases such as *Mennesson v. France* and *Labassee v. France*, the ECtHR established that children's rights to identity and family life must be protected, even where domestic law prohibits surrogacy. Later cases refined this position by granting states a margin of appreciation in determining their policies on assisted reproduction, while nevertheless insisting that children cannot be left in legal limbo. By requiring recognition of parent-child relationships when children's rights are at stake, the ECtHR has become one of the most influential actors shaping Europe's fragmented surrogacy landscape. Its evolving jurisprudence illustrates both the difficulties and the possibilities of balancing national sovereignty with the imperative to safeguard fundamental rights.

A further conclusion of the dissertation is the identification of a significant regulatory vacuum at the international level. While existing instruments such as the UN Convention on the Rights of the Child and initiatives of the Hague Conference on Private International Law provide important general safeguards, they do not specifically address surrogacy. This absence of binding international norms creates inconsistencies, encourages forum shopping, and leaves children vulnerable to exploitation and denial of their rights. The result is a patchwork of national laws and judicial decisions that fail to provide predictability, legal certainty, or equal protection for children born through surrogacy.

Against this background, the dissertation advances a set of recommendations for reform. It argues that national legislatures should adopt clearer rules regarding the recognition of foreign surrogacy arrangements, so that children are not left without legal identity or family ties. At the European level, greater coordination is required to harmonize recognition standards and close existing gaps. The future regulation shall incorporate affirmative guarantees for children's fundamental rights, particularly their rights to identity, nationality, and family life. Commercial surrogacy, given its potential for commodification and exploitation, should remain subject to strict scrutiny, whereas altruistic surrogacy may, under carefully regulated conditions, offer a more ethically defensible path.

In terms of scientific contribution, the dissertation offers a comprehensive integration of children's rights into the legal analysis of surrogacy, which has often been dominated by debates about parental autonomy and public policy. By combining doctrinal, comparative, and case law analysis,

it enriches understanding of ECtHR jurisprudence and presents a systematic evaluation of Central European approaches. Its findings provide a coherent framework for evaluating surrogacy through a child-centered lens. Beyond the legal domain, the research also speaks to bioethical debates by clarifying how autonomy, human dignity, and protection from exploitation intersect in the context of reproductive technologies. The findings of the dissertation perhaps could provide an insight to the wider debate about surrogacy and its ethical boundaries as well as legal responses, and reshape the objective of reproductive medicine.

V. List of publications related to the dissertation

Nagy, Zsófia. “Comparison of Surrogacy Laws of Austria, Slovakia and Ukraine.” *Hope of Legal Science 2022 Conference Paper*, 25.783. <https://otik.uk.zcu.cz/bitstream/11025/55475/1/978-80-261-1217-4-1uvod.pdf>.

Nagy, Zsófia. “An Overview of Ethical and Legal Considerations of Assisted Reproductive Techniques.” *Central European Academy Law Review* 1, no. 2 (2023): 173–201. <https://doi.org/10.62733/2023.2.173-201>.

Nagy, Zsófia, and Andrea Erdősová. “Surrogacy in Wartime.” *Prawo i Więź – Law and Social Bonds* 2 (49) (2024). <https://doi.org/10.36128/PRIW.VI49.595>.

Nagy, Zsófia. “A Children’s Rights Approach to Surrogacy.” *Acta Universitatis Sapientiae – Legal Studies* 2 (2024). Forthcoming February 2025.

Nagy, Zsófia, and Andrea Erdősová. “The Issue of Informed Consent of the Surrogate Mother in Context of Surrogacy Arrangements – Autonomy and Dignity.” *Studia Iuridica Cassoviensia* 13, no. 1 (2025). <https://doi.org/10.33542/SIC2025-1-10>.