Miroslav Mitlöhner

Surrogate Motherhood as a Way of Overcoming Childlessness

The Issue

Since ancient times the purpose of marriage has been to conceive, give birth to and raise children. The ethical, economic, and legal implications of this process are interconnected, (for instance parent responsibility witihn §858 Civil Code, or responsibility to nurture an infant §859 Civil Code) and so far has stemmed from the principle of maternal security and paternal insecurity.

Until recently, adoption has been the sole legally regulated approach to overcome childlessness. Its principles were long ago elaborated in precise details by the legal systems of ancient civilisations.

The book of Genesis recounts a story in which Abraham and Sarah, an infertile couple, decide to let Abraham procreate with the maids who thereafter gives birth to Ishmael, Jacob and Rachel. Fertilisation of a surrogate mother, followed by the subsequent adoption of that child by a non-biological mother, is the easiest and most common way of overcoming infertility in marriage, provided that the cause for infertility stems from the woman.

As time went on, the infertility of a married couple was resolved by adoption or by similar legal action which was fully

regulated by the norms of Roman private law. Later, they were adopted by European legal systems.

In exceptional cases, the law allowed the invalidation of infertile marriages. In contrast to Christian law, Islamic law was more benevolent and straightforward in this area.

The legal standing of the mother was determined in the Roman law by a generally held principle "mater semper certa est" ("The mother is always certain"), while the legal standing of the father was understood as "pater incertus est" ("The father is always uncertain"). As far as the mother's certainty is concerned, it has prevailed for ages until now and it will prevail in the future. So will the father's uncertainty.

Nevertheless, adoption is not a risk-free undertaking. We have to consider the genetic heritage of the adoptee and the fact that we are facing a critical lack of children qualified for adoption. It seems that the resources are exhausted.

We have no choice but to look for other modern, and socially acceptable, methods for overcoming childlessness.

The purpose of this paper is to explore this issue, to assess it and to offer possibilities for applying the current legal provisions leading to a proposal de lege ferenda.

The Causes and the Direction of Future Developments

While there are several causes for childlessness of married couples, either the biological (the medical) or the social causes are usually identified as the major ones. It appears that economic causes are secondary and occur only very rarely. The emphasis on women's career prospects and the fact that women increasingly occupy lucrative positions should be included with all seriousness among the social causes.

Recent years have witnessed a steady development of artificial insemination methods, particularly the insemination of a woman by her husband's sperm or by a different male donor. This method has helped dozens of thousands of couples

to overcome infertility and to start a functional family. It has nevertheless proved to be inefficient in cases when the woman's body is incapable of reproducing the germ cell or when she cannot bring her pregnancy to term.

The following development was easily predictable and involved the germ cell donation of another woman. In vitro fertilisation of one's own or donated germ cell soon became a completely common procedure executed in specialised institutions, and it has not caused any serious legal problems so far.

Nevertheless, serious problems occur when procedures related to surrogate motherhood have to be carried out. From the biological perspective, this entails the insertion of an inseminated germ cell, which almost always belongs to the female partner from the infertile couple, into the uterus of another woman who will carry the baby and give birth to it.

Despite being quite frequent in the Czech Republic, surrogate motherhood is not legally regulated but is not in conflict with any laws either. It is a grey area in which the ostensible purpose is fulfilled at the price of legal consequences which cannot be easily resolved.

The method of donating eggs in the treatment of infertility is considered legal. The egg donors are usually women who themselves are undergoing infertility treatment using the method of artificial insemination, or they may be voluntary donors who undergo hormonal interventions in order to produce eggs and donate them to other women.

From the legal standpoint, egg donation is regulated by provision §776 of the Civil Code (Provision no. 89/2012 Coll., Civil Code) which identifies the woman who gives birth as the mother.

The oocyte (germ cell, an egg) donation program assists the following women: women who are incapable of using their own eggs after stimulation, women after chemotherapy, women who lack ovaries or suffered ovarian failure, women who can use

their egg after stimulation but are incapable of getting pregnant and women with a genetic failing.

In medical facilities that perform these operations, demands on egg donors and recipients are very strictly and accurately defined, and the husband or partner is obliged to undergo semen analysis.

Roman Catholic Church and its Attitude toward the Issue

As with all issues connected with human sexuality and reproduction, the attitude of the Roman Catholic Church to surrogate motherhood is severely conservative and has been expressed in official Vatican documents, as well as in speeches by its individual representatives, especially in Poland.

In 2008, the Congregation for the Doctrine of Faith published a document titled Dignitas Personae The Dignity of Man, which was approved by Pope Benedict XVI, and is intended to apply to all Catholic believers. It deals with the anthropological, theological and ethical aspects of human life and birth and new treatments which include embryo manipulation or manipulation of the genetic code. A considerable part of the document is devoted to the techniques used in aiding fertility.

According to Article 12, new techniques of healing infertility must respect: a) the right to life and the physical integrity of every human being from conception to natural death; b) the unity of marriage, which entails mutual respect of one another's right to become a father and mother, exclusively by means of the other person; c) the principle that specifically human values concerning sexuality require that the conception of a living person be the product of the act of the married couple, which is a an expression of mutual love between them.

By virtue of this unambiguously and categorically formulated standpoint, the Church excludes all the techniques of homologous or heterologous artificial insemination which substitute

the couple's copulation, and therefore also disapproves of the method of surrogate motherhood.

Nevertheless, in Article 13, the Church states that it does not oppose action which would overcome obstacles in pregnancy and simultaneously recommends positive encouragement of such action and facilitation of the adoption process through legal measures.

Finally, in Article 16, the church considers it ethically unacceptable to separate procreation from the integral private context of the marriage act. Human procreation is regarded as a private act between a man and a woman, which does not concede any type of substitution or delegation. Furthermore, the church warns that "calm acceptance of the high abortive rate of in-vitro fertilisations eloquently demonstrates that the substitution of a marriage act by a technical procedure is in conflict with the human dignity closely pertaining to procreation, which cannot be reduced to a mere dimension of reproduction". On top of that, it also contributes to the depreciation of respect, which is a right of every human being. The avowal of this respect is made easier through intimacy between the wife and the husband, which is replenished by love.

The Church acknowledges the legitimacy of the desire to have children and understands the couple's suffering when confronted with the problem of infertility. This desire, however, cannot be given priority to the dignity of every human life to such extent that it will seize it. "Desire for a child cannot justify its production just as desire not to have a child which has already been conceived cannot justify its abandonment or elimination".

With respect to its stance on freezing embryos, in Article 19 the Church considers it ethically unacceptable to provide frozen embryos to infertile couples in order to "treat infertility" for the same reasons for which it opposes heterologous artificial insemination, as well as any other form of surrogate motherhood.

This article expliclty excludes the application of the surrogate motherhood method, at least among Roman Catholics.

It is, however, questionable whether the opinions of a church in a state, where only 1082463 citizens, i.e. 10.3% of the population, refer to themselves as Catholics (Wikipedia entry Roman Catholic Church in the Czech Republic), should have more serious influence than an advisory one in the legislative process of devising a legal provision in the issue of surrogate motherhood.

It is appropriate to make a passing comment on the gradually increasing number of extramarital children, who are – according to the Catholic Church – not a product of "marital love".

In order to justify the assertion of the marginality or even irrelevance of the opinion held by the Church on the issue of artificial human reproduction, surrogate motherhood and work with human embryos, the following facts are presented.

According to Article 20, the cryoconservation of oocytes for the purpose of artificial insemination is to be considered morally unacceptable. Moreover, Article 21 states that from the ethical standpoint embryonic reduction is a deliberate, selective interruption, a calculated and direct elimination of one or more innocent beings in the initial phase of their existence which should be a serious moral offence by itself.

On the other hand, Czech law contains a quite solid legal provision concerning approaches for handling excessive embryos, meaning unused embryos and those that will not be used in connection with human reproduction.

Provision no. 227/2006 allows the use of embryos for research purposes only if they are considered redundant according to the aforementioned definition and provided by a centre for assisted reproduction, as well if they are not older than seven days. This period does not include the time after cryoconservation. Research on human embryos can be carried out only with the permission of The Ministry of Education, Youth and Sports

and exclusively on embryo cell lines obtained from redundant embryos in centres for assisted reproduction, or alternatively, from imported cell lines obtained from embryos in a way that does not conflict with Czech law and the law of the country of their origin, and if their importation was permitted by the Ministry of Education, Youth and Sports. The limitations on research on embryonic stem cells are also defined in the statement of reasons attached to provision no. 227/2006 Coll. in the stipulation that "the law prohibits the creation of embryos for research purposes, embryo research, as well as the research on human embryonic stem cells, if it was not sufficiently proved that embryonic stem cells were obtained from redundant embryos".

Provision no. 296/2008 Coll., concerning human tissue and cells, tightens the protections on human tissue and cells not only in the general context of handling these tissues and cells according to the transplantation law, but also in the specific sense of handling embryonic stem cells in the context of infertility treatment and their research. This norm is an implementation of the Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards for quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells. Furthermore, it defines the sphere of responsibilities beyond the scope of the existing provision, with which the so-called "tissue establishments" and diagnostic laboratories handling human embryos must comply, establishing regulations for the import and export of human tissue, thus also embryonic stem cells.

A decision can be found in the judicature of the European Court of Human Rights overruling a complaint against a decision made by British courts. This decision upheld the ruling that the embryo's right to life, stipulated by Article 2 of the European Convention on Human Rights, was violated ("Conven-

tion"), and upheld the complainant's right to a private family life, as stipulated in Article 8 of the Convention and Article 14 of the Convention and prohibiting any form of discrimination. Concerning the violation of Article 2 of the Convention, ECHR followed up on its decision history when it stated that in the case of "non-existence of any consensus between the European states concerning the scientific and legal definition of the beginning of life; in this instance, the individual states are granted a margin of appreciation by the ECHR".

The embryo does not have individual rights in the UK and therefore cannot claim the right to life according to Article 2 of the Convention. Not even the violation of Articles 8 and 14 of the Convention was found legitimate by the court. Due to the absence of a common regulation, the signatory countries of the Convention are granted the margin of appreciation in their decision whether to regulate the area of IVF treatment (in vitro fertilisation by embryo transfer) or not, or whether to enact detailed norms which would determine how to reach a balance between the mutually competing public and private interests on the issue of artificial insemination.

According to the divergent opinions of two judges, the interests of one party, which revokes consent and demands the destruction of embryos, should prevail if the second party either: a) does not lack the capability to conceive a biological child, b) does not have any children or **c) is not considering the assistance of a surrogate mother in the embryo implementation process**. According to the judges, this approach would secure a just balance between the public and private interests and also between the competing interests of two individuals.

Possible Solutions

In the case of the infertile couple that decides to resolve its situation via surrogate motherhood, a sui generis purchaser-provider relationship arises in which a specifically modified

genetic material is inserted into the uterus of a surrogate mother, resulting in the birth of a human being. However, at the same time a question of "who is who" arises, which is not addressed with sufficient pragmatism by the law as it refuses to respond flexibly to everyday reality and practice.

Even in the resulting legal vacuum, solid solutions exist which allows the purpose of the intervention to be met from the legal perspective.

What is pivotal for further development is whether the surrogate mother is married or not, divorced or widowed. Meaning, whether she is legally unattached at the moment.

According to the provision §778 of the Civil Code, if a child conceived in artificial insemination is born to an unmarried woman, the father of the child is deemed to be the man who gave consent to the insemination.

It is an open secret that selected medical institutions dedicated to interventions in the field of human reproduction in the Czech Republic carry out an unknown number of interventions in which surrogate mothers play the main role. Each intervention presents a legal problem, and it is therefore high time to abandon the principle "mater semper certa" and its wording in the Civil Code. It is necessary to establish solid legal grounds for surrogate motherhood and provide solutions for cases in which a woman carries and ultimately gives birth to a child in other woman's interest if this woman does not want or cannot successfully carry the foetus to term and give birth. These solutions arise due to the egg donor's incapability of reproduction or reproduction reluctance or the egg recipient's incapability of reproduction.

The solution can consist precisely in the purpose, motive or sense of the performed intervention.

Provision no. 373/2011 Coll., concerning specific medical services in §3 specifies two forms of artificial insemination of a woman: 1) the insertion of sperm into woman's sexual or-

gans, and 2) the transfer of a human embryo produced by the egg's insemination extracorporeally into the woman's sexual organs. Furthermore, prior to the artificial insemination of a woman, it must be determined which of the following is applicable: 1) eggs obtained from this woman, 2) sperm obtained from a man who is undergoing infertility treatment together with the woman, 3) germ cells of an anonymous donor, who has to meet the age specifications and cannot be stripped of legal capacity or be limited in it. He cannot be in a police cell, in custody, or sentenced to imprisonment or to security detention. It is unclear whether a man could be an anonymous sperm donor in the period between being detained for interrogation and being taken into custody.

Due to the fact that one method of artificial insemination, in vitro fertilisation, which is carried out in a laboratory when a mother's egg is removed from her body, fertilised extracorporeally and then inserted into the uterus – whereas the regulation does not state whether the fertilized egg has to be inserted in the uterus of the same woman from which it came – it cannot be excluded or deemed illegal if the "donor" is a different woman than she, whose uterus the egg is inserted into after the insemination.

If the recipient of the egg is unmarried and the sperm donor is a man who gave consent to the artificial insemination, the question of paternity is clearly resolved in full compliance with the law.

Because the egg "donor" is the woman married to the man who is the sperm donor, the following procedure of determining the parentage of the child is substantially simplified. The child will be claimed by the husband's wife (§800 of the Civil Code).

There are several obstacles in the way, which have to be overcome with due sincerity, irrespective of religious opinions on the one hand, and of how this or that deviates from current

moral standards on the other. It is also necessary to respect European law and the accepted international treaties and pacts, especially the Convention of the Rights of the Child. However, prohibition is no the solution.

Let us deal with the situation in which the transfer of human embryo produced by in vitro fertilisation into the sexual organs of the woman poses the question of that woman's reproductive organs.

The insertion of sperm into the female sexual organs or the transfer of a human embryo produced by in vitro fertilisation, as a result of which a woman gives birth, also does not pose any legal complications.

If it is possible to transfer into the sexual organs of a woman from an infertile couple a germ cell obtained from an anonymous donor, who incidentally, in the moment of this child's birth becomes his or her biological mother without any legal, moral, ethical or other consequences, demands, and relations, then the same procedure concerning a woman in the role of surrogate mother brings with it myriads of problems.

Because the purpose of human reproduction intervention is to eliminate infertility by way of medical preventative action, it is not possible to oppose such action convincingly by relying on moral principles. On the contrary, it is necessary to take this alternative into account and resolve both its medical and legal complications. The more frequently these interventions happen, the more urgently should this issue be dealt with.

As already stated, Czech law does not distinguish between a child born as a result of artificial insemination and a child born as a result of natural copulation.

By contrast, a child born as a result of a embryo transfer into the sexual organs of a woman in the role of surrogate mother finds him or herself in a very strange legal situation. The law in effect does not provide norms expressly regulating this situation.

Family law is a component of Private law, which means that what is not forbidden is allowed. It has never been mentioned in the literature that it is possible to transfer the human embryo produced by in vitro fertilisation into the sexual organs of only that woman, who wants or is capable of carrying the child to term. An analogy then?

Furthermore, it is necessary to consider the sexual intercourse of a certain person with another person always as an act of both partners' will, and therefore to devise a concept according to which it is not the actual union of the sperm with the egg but the shared will of both partners that carries decisive significance for the desired conception of a child. The logical consequence of accepting this concept is the identification of the concept of "copulation" with the will of the man who agrees to the insemination of his partner by the sperm of another man, or through the implantation of an embryo developed from an egg of his partner or another woman inseminated with another man's sperm.

In spite of provision §775 of the Civil Code expressly stating that the woman giving birth is the mother, it might be difficult to determine whether the egg donor or the woman who carries the baby and gives birth should be the mother. Meaning, if the woman in the role of the surrogate mother is the mother not only in the legal sense.

Irrespective of the provision in effect, there is no unanimous opinion on these questions. It appears, however, that opinions which support the motherhood of she who gives birth, predominate. Nevertheless, this stance cannot encompass all possible circumstances and may not always be the right in accordance with the purpose of the whole medical procedure. Dwelling on this principle has necessarily led to complications, including lengthy court proceedings, in which following consent of the woman giving birth, the child was adopted by the woman who provided the egg. At the same time, the possibility that a woman

who gave birth would ultimately refuse for any reason to agree to the adoption or that the woman who provided the egg would refuse the adoption or would not be able to agree to it for any reason, cannot be excluded.

Bearing these thoughts in mind, I omit the discussion of the legal standing of the husbands of both wives, without whose consent it would not even be possible to adopt the child or give consent to the adoption.

The difficulty of the process of denying someone the paternity and adoption is well-known and there is no need to deal with it at this point.

By abandoning the principle "mater semper certa est" (the mother is always certain) as the fundamental principle of establishing motherhood and birth as the proof of motherhood, problematic legal situations following the birth of a child via surrogacy might easily be eliminated.

Essentially, it is practically a solution of two situations in which it is improbable or impossible for a woman to conceive either in a natural way or to carry to term a foetus which will be capable of life (§3 par. 1 Act No. 373/2011 Coll., No. 373/2011 Sb.).

This dual situation, however, also demands two approaches and two legal solutions, while the solution can be concerned with nothing else than the motive or purpose of the performed intervention, which is not at all a simple or a free-risk enterprise from the medical perspective.

As mentioned in the introduction, it is a measure which aim is to overcome partners' childlessness, caused by infertility of one or both. It is purely this intention and this aim of the infertile couple which makes them undergo such a procedure. This same intention drives the woman to commit her egg to another woman to carry it to term. For the same reason, a woman decides to donate her egg to a woman whose medical status prevents her from conceiving using her own egg for

insemination, carrying to term and giving birth to it. Only in this second case it is possible to speak about a woman as an egg donor in the right sense of the word, while the first case concerns only the possibility of carrying a foetus to term and giving birth.

At the moment of birth, the woman who gave birth, i.e. the mother is endowed with rights and obligations which are specified by family law. This woman is awarded parental responsibility as specified in §858 of the Civil law. Any agreements which would stipulate anything else, would be invalid. According to the current legal provision, the only way the child can be handed over to the intended parents, the registered parents, is through adoption.

It is only through adoption that the woman – the genetic mother, who did not deliver the child, can become a mother legally. This situation should be respected with all due sincerity in mind. Especially, as far as the surrogate mother is concerned, she should not be married, lest the adoption should get complicated by the presumption of paternity, upon satisfaction of which requirements, the husband of the mother would be established as the father.

On the contrary, if the surrogate mother is not married, the biological father's paternity may already be confirmed during the surrogate mother's pregnancy. A statement of agreement regulation §16 par. 3 letter b of Act. no. 301/2000 Coll. concerning the registry also allows a subsequent entry of the father in the register. In case paternity should emerge as a result of a man's consent of the artificial insemination of a woman with another man's sperm, according to §778 of the Civil law, a statement of agreement would have to be delivered or a court decision establishing paternity would have to be made in order to make a registry entry. Following the child's birth, the biological mother issues a request for adoption from the surrogate mother. Alternatively, if the conditions of §818

of the Civil law are met, the surrogate mother's consent may not be needed.

This way of resolving surrogate motherhood entails, or rather demands, some limitations. The adopters should be a married couple despite the fact that family law does not expressly rule out the option of adoption by an unmarried couple or an individual woman. On the contrary, the registered partnership act expressly denies the registered couple the possibility of adoption. The current adoption provision also does not permit the existence of any family relationship between the surrogate mother and the biological mother, who pursues adoption (with the exception of mother-in-law – daughter-in-law relationship), which may mean for future parents a radical decrease in the number of women willing to act as surrogate mothers.

From what has been said so far, it may be inferred that surrogate motherhood does not conflict with Czech law as the law does not prohibit surrogate motherhood and it can be practised by virtue of the fact that no law dealing with surrogate motherhood exists.

The first time surrogate motherhood was debated on an international legal level was at the World Congress of medicine law in Gent in 1985, where the conclusion was reached that only the woman who gave birth to a child should be considered its mother. Nevertheless, this rule was violated by the institution of adoption.

The only mention of surrogate motherhood appears in the provision §804 of the Civil law, which does not rule out the possibility of adoption between people related by direct descent, or between siblings in the case of surrogate motherhood.

Thereby, a dilema occurs when something is not permitted, but simultaneously is not prohibited etiher. In spite of this, certain rules exist which are obligatory and equally very difficult to comply with and difficult to enforce. Moreover, they can be completely legally bypassed.

For instance, surrogate motherhood may not entail any financial transactions. It violates the principle that the human body and its organs are non-marketable objects. Therefore, something like the rental of a uterus is ruled out. On the contrary, the mother, and therefore even the surrogate mother, has the right to compensation for the expenses related to pregnancy and birth that are paid by the child's father. The law does not address the amount of these expenses, which of course differentiate from person to person, and also does not rule out the possibility of paying this de facto agreed reimbursement in a lump sum. It is completely irrelevant whether an agreement has been made between the purchaser and the provider, be it spoken or written, as it is not legally enforceable.

If a father acknowledges his paternity in the course of a pregnancy and the surrogate mother relinquishes the child, the child is passed over to the father's care, upon which the father's partner adopts the child with his consent.

At first sight, everything seems feasible so far. Nevertheless, complications can arise for the requesting couple as well as for the female provider. Let us not investigate the motives now. A man from the requesting couple will not acknowledge his paternity, the female provider will not give her consent to the paternity, the female provider will refuse to relinquish the child, the child is born with a handicap, the requesting couple dies.

Alternatively, in case the father dies after acknowledging his paternity, the child will become the rightful heir, the surrogate mother will keep the child and the bereaved partner will lose half of her inheritance.

Several similar situations may occur and none of them are implausible.

Legal uncertainty, which affects both parties on the issue of surrogate motherhood, cannot be understood merely as a business risk.

For the sake of legal certainty, it is time to acknowledge the factual state of matters and to establish solid legal grounds for surrogate motherhood.

Surrogate motherhood operates on the principle that the surrogate mother relinquishes her parental responsibilities for the child after the birth and enables the biological parents ("the intended parents") to adopt the child. Alternatively, if the biological father is already indicated on the child's birth certificate, the child is adopted only by the biological mother. It is important to ask ourselves the following questions, namely, what will happen if the surrogate mother refuses to relinquish the child, or on the other hand, if the intended parents refuse to accept him or her? Paradoxically, if the surrogate mother refuses to relinquish the child, the biological father will have to pay child support for a child who lives away from him in a completely different family. What if a situation occurs in which a child is born disabled and is not wanted by either the biological parents or the surrogate mother? What happens to such child at that point? Based on the current legal provision in effect (§775 of the Civil law), the surrogate mother will remain the child's mother and the intended father is assumed the father based on the presumption of paternity. Therefore, both of them would have rights and obligations toward the child. If an emotional bond between the surrogate mother or the intended parents and the child is not formed, a situation may occur in which the child is placed in institutional care facility.

De Lege Ferenda

Opinions advanced by legal and medical studies on the execution of surrogate motherhood are almost always positive.

Such a consensus, however, does not exist on the issue of how to legally approach this institution, and even less concord occurs in the discussion of which legal provision to choose from.

Moreover, the commercialisation of the institute of surrogate motherhood is an issue that substantially contributes to the inactivity of the provision. Due to the fact that time has written the rules for the existing practice of surrogate motherhood, fundamental legal questions concern the legality, the reimbursement amount and the guarantee of the fulfilment of the agreed result.

This question may be partly resolved by the so-called surrogacy agreement drafted analogously to a contract for work. No matter how unethical and dehumanised this approach may appear, it is pragmatic and it rules out a whole range of problems that may arise in a situation when the relationships between the parties of this unusual undertaking are defined only orally or in writing, for they are not enforceable.

The principle of the surrogacy agreement was established in Great Britain and it may serve to some extent as an inspiration for the Czech legal provision.

It should clearly define the conditions under which surrogate motherhood will be realised, including the potential financial compensation of expenses connected with pregnancy and the reimbursement of the surrogate mother.

Both women should probably be the residents of the Czech Republic and should meet certain medical conditions. The sperm donor should be designated as the father and would have to express his consent with the medical intervention itself, as with the subsequent adoption.

The enforceability of this agreement's fulfilment would have to be guaranteed by the Civil Code.

It is disputable whether the method of surrogate motherhood should be available only on the grounds of medical diagnosis (e.g. congenital uterus damage; or heart disease which may threaten the health of the expectant mother or the foetus in the course of the pregnancy; etc.) or whether surrogate motherhood should be provided even to women who have elected it

for the reason that they, for instance, suffer from fear of giving birth, unwillingness to suspend their careers or for other non-medical reasons.

The potential Czech legal provision could stem from and be inspired by, but not copy, the British surrogacy agreement, which neither states that the surrogate mother has to hand over the child to the intended parents in all cases, nor stipulates that the woman who gave birth remains the mother. The actual handing over of the child can happen at any time, while the legal handover must be validated by a court decision after the specified conditions are met. The law stipulates the following conditions for the surrogate agreement in the Great Britain:

– The application must be submitted to the court within six months of the child's birth.
– The applicants must be a married couple and older than 18 years.
– At least one of them must be the biological parent of the child.
– The treatment which led to the pregnancy of the surrogate mother must be carried out at a public clinic which has a licence to treat infertility.
– The child must live with his biological parents.
– All parties have expressed their full and unconditional consent with the procedure, whereas the surrogate mother can express her consent 6 weeks after the child's birth at the earliest.
– The surrogate mother has not been provided any financial reward, with the exception of provable expenses which have arisen in connection with the pregnancy.

If the court acknowledges that these conditions were met, it will issue the so-called parental order, on the basis of which the intended parents turn into parents even from the legal perspective, while the surrogate mother loses the legal status of mother towards the child. Surrogate motherhood has been practised in the UK since 1984.

Nevertheless, despite potential inspiration from the UK, the implementation of the surrogacy agreement would be very difficult in the Czech Republic. In the Czech legal environment, the risk that the child – the object of the agreement – would be "degraded" to a mere thing should be taken into cosideration. According to the introductory provisions of the Civil Code, only things can qualify as the objects of civil relations, or if nature allows, laws and other property values. A human being is therefore excluded from the possibility of being an object of civil relations. If we conceded to the possibility of agreement, we would have to construct the rights and obligations of the individual subjects, the object of agreement etc. We would have to concern ourselves with the origin, change and the termination of the legal relation, which is a consequence of the existence of a legal norm and also the assumption of legal reality presupposed by the legal norm. This is unfortunately impossible, as it is impossible to construct rights and obligations to a child as if it were a thing, an object of an agreement.

Despite the obvious commercialisation of the institution of surrogate motherhood, it is necessary to retain the understanding of surrogacy as a form of help, one of the methods of assisted reproduction, in which only the conditions for the intended parents and the surrogate mother will have to be defined legally and will be understood as contractual relations.

Decision regarding the legal provisions for surrogate motherhood are crucial and require thorough discussion. That is, however, difficult and complicated due to the current upsurge of the medical perception of surrogate motherhood. If doctors identify the legal ambiguities as the main obstacles, the arguments for discussion should be sought out not only in law, but also in other scientific disciplines (psychology, sociology, ethics). The potential legal provision falls under the authority of the Ministry of Health of the Czech Republic, which should exempt surrogate motherhood from the group of other assisted

reproduction techniques and enable all parties to receive social-psychological counselling and then to receive advice from the Ministry of Justice of the Czech Republic. ■