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Gestational surrogacy under the legal systems of countries around the world and experiences for the improvement of the law in Vietnam

Thi Huyen Le Nguyen*, Thi Hoai Nguyen

University of Law, Hue University, Vietnam

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Abstract:

Recently, the fast development of science and technology has impacted many social relations. On which, giving birth with assisted reproductive technology in general and gestational surrogacy, in particular, is one of the countless legal issues being strongly influenced by different scientific, technological, medical, and/or biological factors. This is also a matter of concern in many legal systems across nations all over the world each with very different legal views. In fact, gestational surrogacy is a legal issue that attracts various opposing opinions and causes a lot of controversies. Within the scope of this article, the authors focus on analysing gestational surrogacy under the legislative views of nations representing groups of different outlooks. Thereby, based on assessments of the current provisions of countries around the world, the authors propose recommendations to improve the law on altruistic gestational surrogacy in Viet Nam.

Keywords: **assisted reproductive technology, gestational surrogacy, giving birth legislative views.**

Classification number: **6**

Introduction

The Law on Marriage and Family 2014 was passed on June 19, 2014, and took effect on January 1, 2015, with many important amendments. One of the most interesting pieces of content is the first time altruistic gestational surrogacy was recognized and permitted by law. This has created hope for couples who, despite applying other methods of assisted reproduction, still do not have parent rights to blood-related children. Currently, the regulation on surrogacy also limits disputes from surrogacy that are taking place due to the lack of both adjustments to the law and supervision mechanisms by the authorities. Surrogacy is just one matter related to many factors such as human rights, morality, humanity, customs, and habits, etc. Therefore, based on diverse perspectives on surrogacy, different countries have their own legislative views on this issue. Through arguments defending each country's legislative views, and the development of science and technology, there have been strong impacts on giving birth with assisted reproductive technology, and surrogacy has become a controversial issue in modern society.

In Vietnam, provisions on surrogacy were passed due to the influence of many different theoretical and practical factors. The actual implementation of the law over the past few years has proved that regulations on surrogacy have brought happiness to many families and have made a positive contribution to the stability and general development of society. This has shown that the construction of provisions of altruistic surrogacy is appropriate and headed in the right direction. However, an improvement of suitable provisions on surrogacy with objectivism, as well as learning from legislative experiences of other countries, are necessary to protect this legal relationship during inherent human development.

*Corresponding author: Email: ntlhuyen.dhl@hueuni.edu.vn.

Research purpose

This research aims to study legislative views of surrogacy from countries around the world and to compare the provisions of law in these countries to Vietnam. The research is used to analyse the limitations and inadequacies of the current Vietnamese law, thereby proposing some opinions in order to improve the provisions of Vietnamese law on altruistic gestational surrogacy through learning from international legislative experiences.

Research methods

This research uses a method called a "case study". A case study is used to learn about a complex instance, which is based on a comprehensive understanding of that instance obtained by an extensive description and analysis of that instance taken as a whole and in its context. By choosing typical countries that represent different views of jurisdictions on surrogacy, this research explains the opinions of allowing, allowing with conditions, or completely forbidding surrogacy in each representative country.

The legislative views and legal systems on surrogacy researched in this study can be divided into three groups of jurisdictions. *Firstly*, the group of jurisdictions that absolutely does not allow surrogacy includes France, Germany, Philippines, Spain, Switzerland, and Sweden. From this list, we chose the French Republic as a typical country to research because its legal system has strict provisions on banning surrogacy and express concerns about the risk of infringing on human rights. On the other hand, the French Republic has had real disputes related to surrogacy. This is the basis of learning about their experiences on setting legal consequences for illegal surrogacy in Vietnam. *Secondly*, the group of jurisdictions that only allow altruistic gestational surrogacy include countries such as Vietnam, the United Kingdom (UK), Canada, Australia, Denmark, Hungary, Netherlands, Belgium, Israel, South Africa, and Greece. The UK and Australia are chosen for further research as these two countries promulgated acts to separately and directly regulate surrogacy, and these provisions are similar to the provisions of Vietnam. However, UK and Australian law have more clear and different provisions than in Vietnam. According to our opinions, these experiences can be learned from to improve Vietnamese law. *Thirdly*, a small group of jurisdictions that recognizes both altruistic gestational surrogacy and commercial gestational surrogacy as a rightful service include the Russian Federation, Ukraine, South Africa, Cyprus, and some states of the United States. In recent times, Ukraine has become known as an ideal destination for international intended couples especially after Thailand and India - both "famous surrogacy places" - forbade commercial surrogacy. Because of their loose provisions, Ukraine has become faced with many legal issues and related consequences. Therefore, we choose Ukraine in this study to point out the negative impacts on society when commercial surrogacy is recognized in order to develop and improve Vietnamese law.

Moreover, this research uses comparative and analytical methods to evaluate the provisions of Vietnamese law in comparison with the laws of countries represented by the groups that allow surrogacy, prohibit surrogacy, or only allow altruistic gestational surrogacy thereby pointing out inadequacies and drawing lessons to improve Vietnamese law.

Gestational surrogacy under legislative views of some nations in the world

There are many opposing views on surrogacy among nations around the world. According to a survey of The International Federation of Fertility Societies (IFFS), gestational surrogacy was carried out in 105 countries in 2013, and there were 62 countries having responses. Of which, 19 countries had clear provisions of laws on surrogacy; 24 countries following Mohammedanism and Christianism strictly forbade surrogacy; and 14 countries did not have concrete provisions of law but allowed surrogacy on relevant laws. It can be assessed that, although they may all share the same view on human rights, each country has a different view on surrogacy. However, surrogacy is still one social relation that has caused a lot of controversy, especially the issue of whether or not to allow surrogacy.

Legislative view of some countries in favour of allowing surrogacy

Currently, Ukraine, some states of the United States of America, the Russian Federation, and Georgia are typical representatives of the group of countries that allow surrogacy including commercial gestational surrogacy. Surrogacy is a one good solution for incurable infertility cases. On the other hand, surrogacy provides a link between couples who greatly desire to become parents with poor women wishing to get rid of the economic burden. Because of their open view, many couples chose these countries as destinations to give birth through a route called "birth tourism". For example, Ukraine is one typical place in Europe chosen by intended couples [1]. These couples can easily find a sperm or egg donor in Ukraine at an affordable price, and this is one of the main reasons that people from European countries come to Ukraine for surrogacy [1]. This is partly responsible for worrying legal problems such as not recognizing children after they are born, which eventually become a burden to society and directly affect the lawful rights of children as well as the birth registration and identification of the child's nationality when the child is transferred to the intended couple; and the risk of turning pregnant women into international "surrogates tools". In particular, allowing egg and sperm donation like Ukrainian law means that the child may not be of blood relation to the intended couple due to the risk of children's rights being infringed upon. Therefore, our point of view is not in favour of the commercial gestational surrogacy. It is the fact that some countries, which were ideal destinations to ask for commercial gestational surrogacy such as India and Thailand, also faced huge consequences that negatively affected not only the surrogate mother, but also the intended couple, the child born, and social order [2]. These consequences have forced the governments of these countries to amend surrogacy law by promulgating legal documents prohibiting commercial gestational surrogacy in order to protect citizens and stabilize social relations. This is demonstrated as follows:

In 2019, The Surrogacy (Regulation) Bill in India was introduced and passed by the Indian Ministry of Health and Family Welfare in Lok Sabha (House of the People) - the lower house of India's bicameral Parliament with the upper house being the Rajya Sabha. Under this Law, India has also implemented a ban on commercial surrogacy: "No person, other than a close relative of the intended couple, shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act; No person including a relative or husband of a surrogate mother or intended couple shall seek or encourage to conduct any surrogacy or surrogacy procedures on her except for the altruistic surrogacy purposes; Those who do not have an Indian passport, single parents and gay people will be prohibited from having children through using this method..." [3].

The reason given to explain this change is that after a period of complying with the regulation of surrogacy in India, it was found that with the loose and open regulation, quite a lot of women considered surrogacy as a profession and repeated the act many times [4]. This is very dangerous and shows that surrogacy has not been able to change their lives. On the other hand, even though they are not of the same blood relation, many mothers feel hurt by separation from the child. Thus, it is clear that the opinion on surrogacy in this country has also gradually reached a consensus with the common opinion of many countries around the world: that commercial surrogacy is inhumane and should be prohibited absolutely.

Thailand is a similar case. Thailand had once allowed both commercial surrogacy and altruistic surrogacy. However, The National Legislative Council of Thailand passed the Surrogacy Bill in November 2014. In February 2015, The National Legislative Assembly of Thailand enacted the Act banning commercial surrogacy called The Protection for Children Born through Assisted Reproductive Technologies Act (ART Act) (BE2558) [2]. By enacting this Act, Thailand made a clear change of their views on surrogacy. The Act contains seven prohibition articles including: sex selection; trading eggs/sperm; commercial gestational surrogacy; advertising for commercial

gestational surrogacy; cloning; intermediary for commercial surrogacy; and prohibiting commercial gestational surrogacy for foreigners [5]. This change is explained by the fact that the provisions of the Act related to surrogacy were not clear or strict enough. Therefore, foreigners were seeking a surrogacy agreement through the ART Act in Thailand because of the advantage of low cost. However, they would be willing to give up their child if it was born with a birth defect, which creates a burden for the surrogate mother and negative impacts on Thai society [6]. Thus, through the practice of Thailand and India, which have certain socio-cultural similarities with Viet Nam, it can be seen that the current prohibition of commercial surrogacy is very necessary. Besides the prohibition regulations, the construction of strong sanctions to prevent commercial surrogacy also needs attention and constant improvement.

The legislative view of some countries strictly prohibiting surrogacy

Typical countries represented in this group are Germany, France, Austria, Spain, Switzerland, and Italy, in Europe; or Taiwan and Japan in Asia. To explain the "strict" regulations of not accepting surrogacy for any purpose, most of these countries have put forward legislative views that surrogacy is an infringing act to human rights because surrogacy can cause physical impairment to the surrogate mother, create psychological damage to them and even to the child born. At the same time, surrogacy is an act that can infringe on the body and human dignity even if it is done for any purpose. If surrogacy is allowed, it also easily creates risks for the exploitation and commercialization of the surrogate mother.

The French Republic was the first country in the world to consider surrogacy as an illegal activity and to completely prohibit it. From a different perspective on human rights, surrogacy for any purpose, whether paid or unpaid, also represents the use and exploitation of a woman's body to give birth thus turning the woman into a "birth machine" for intended couples because of their needs for a child. Therefore, French law prescribes: "All agreements relating to procreation or gestation on account of a third party are void" [7]. In order to create a legal framework for the development of sanctions to be applied in a violation of surrogacy, the French Penal Code provided that it is possible to punish any person who participates as an intermediary in a transaction involving surrogacy.

Accordingly, Article 227-12, paragraph 3, of the French Republic Penal Code stipulates that "Acting for pecuniary gain as an intermediary between a person desiring to adopt a child and a parent desiring to abandon its born or unborn child is punished by one year's imprisonment and a fine of €15,000" [8]. In particular, the most recent move of the French Government was the Controversial Bioethics Bill, which was considered by the Senate for the second time in early February 2021 confirming the ban on surrogacy. However, surrogacy still attracts attention in France with a series of legal issues raised, especially surrogacy that French citizens carry out abroad and notably the identification of the parent-child relationship for the child. These controversies began with a matter involving an intended couple who were French citizens asking a woman in California (USA) for gestational surrogacy. After birth, the child was registered for birth in San Diego County (California). However, when they returned to France, the couple requested a birth record for the child in France, but it was refused. Therefore, they initiated a lawsuit in the French Court, but this request was also denied on the grounds that the surrogacy agreement in California violated Articles 16-7 of the French Civil Code and the child was not recognized as a child of this couple because it was contrary to the public order of the country. When the request was denied, the couple appealed to the European Court of Human Rights [9]. In a judgement on June 26, 2014, the European Court of Human Rights held that the previous French court judgement violated Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms related to the right to private and family life and the French state must pay a sum to the two applicants for damages. This long and complicated case was finally resolved

by Judgment No. 648 of October 4, 2019 (10-19053) of The Plenary Assembly - French Court of Cassation - ECLI: FR: CCASS: 2019: AP00648. Accordingly, the French Court of Cassation made the following judgment: pursuant to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which was interpreted by the European Court of Human Rights to have good interest of the child, while the child being born abroad as a result of the surrogacy agreement is prohibited under articles 16-7 and 16-9 of the Civil Code, it cannot be invoked to cause inequalities to the child and infringe upon the right to respect private and family life, thus preventing competent State agencies abroad from copying of birth certificates for the child's biological father and mother. According to this judgement, the Court of Cassation accepted a copy of the birth certificate and determined that the intended couple is the legal parent only if this couple is blood related to the child. If they are not related by blood, they can only adopt that child [10]. We believe this judgement is extremely valuable as a reference to the identification of parent-child relationships in cases of commercial gestational surrogacy in Viet Nam. There is a similarity in the resolution of the authorities of the previous French Republic and the current Vietnamese Court that does not recognize parent-child relationships between the child born and intended couple in case commercial surrogacy because this agreement is prohibited by law. However, this method of dispute resolution will lead to the risk of serious violations of children's rights because children face the possibility of being abandoned or not cared for. Therefore, we find that the failure to recognize the parent- child relationship between the intended couple and the unborn child will turn the child into a "victim" of an illegal agreement by the signed parent. Our view, in any circumstance, is that children should always be the object of priority and maximum protection. Thus, this principle needs to be codified: "In all cases, the interests of the child born always come first and must be considered paramount". Therefore, even though it was a result of a commercial surrogacy, the child who is determined to be blood relative of the intended couple should still be identified as the child of this couple to ensure that the child receives love and caring. Despite the prohibition under the law, it is also necessary to build provisions to prevent couples from continuing to perform commercial surrogacy by regulating that intended couples and the surrogate mother must bear strong enough sanctions for their violations to ensure deterrence and strictness of the law.

Legislative view of some countries only allowing altruistic gestational surrogacy

Typical countries for this group are UK, Australia, and Viet Nam. From a humanistic perspective, the main point of view is approached from the direction of allowing altruistic surrogacy for the following reasons: firstly, altruistic gestational surrogacy will create opportunities for couples who are unable to conceive and give birth to satisfy their desire to be parent because this is a unique opportunity to realize the desire to have children of infertile couples. Secondly, the clear regulation that only allows altruistic gestational surrogacy will create a legal basis to protect the birth mother from the risk of being commercialized and becoming a "surrogacy tool" for others and protecting them against the negative effects of commercial abortion and to ensure that a child is born in the happiness of parents and relatives, and not born by arrangements dominated by material factors. Thirdly, altruistic surrogacy also creates a legal corridor to better control illegal surrogacy with many consequences if the law does not allow it. If there are no specific regulations, couples still find solutions including asking someone else to have a baby in one way or another. Therefore, the illegal surrogacy market was formed with hidden risks for the parties, which negatively impacts individuals, families, and society. These legislative positions are reflected in the laws of some typical countries given below.

The UK Law:

The Surrogacy Arrangements Act 1985 of the UK does not recognize surrogacy contracts as completely legal but recognizes it as a practice in

society. This means that this Act does not prohibit surrogacy, but affected parties cannot, in pursuant to civil agreement, claim the exercise of rights such as parenthood. Because, under this Act, the mother is the one who gives birth, and the father is the mother's husband during the marriage regardless of the origin of the foetus, whose sperm, and the woman's eggs, may come from a third party. However, The Surrogacy Arrangements Act 1985 of the UK accepts that intended couples must reimburse the "reasonable" costs and does not accept the commercialization of this service, that is, not to pay rent for this service. In cases where surrogacy leads to the birth of a child, parenthood can be accepted through a parentage order and through an adoption process. In other words, parents who provide their own sperm and eggs for conception must "adopt" (their biological child) from the surrogate mother. In the case that the father cannot be identified in the surrogacy agreement, the law automatically considers the husband or partner of the surrogate mother giving birth as the father of the baby. If the dispute cannot be resolved, The Surrogacy Arrangements Act 1985 of the UK still considers the surrogate mother as the mother of the baby, even though they are not related by blood. In disputes, this woman is considered as the first parent, and motherhood will only be transferred to the "real" mother (second parent) after the proceedings are completed in a legal procedure. Thus, this Act recognizes the legality of transferring parenthood from surrogate mother to intended couple, and the parent-child relationship is established by the decision of the Court after the child is born. Even though an artificially inseminated child has only the bloodline of one of the intended couple, the surrogate mother is still recognized as the child's mother. After six weeks from the birth of the child, the intended couple have the right to apply for a "parental order" to the Court. Only at this time will the intended couple have full rights as a father and mother to the child [11].

The Australian Law:

The point of view on surrogacy in Australia varies from state to state. However, most states in Australia allow altruistic gestational surrogacy such as Queensland, New South Wales, the Australian Capital Territory, South Australia, and, recently, Tasmania [12]. Of which, it is noteworthy that the Surrogacy Act 2010 No 102 in New South Wales strictly prohibits commercial surrogacy with strict regulations on conditions and procedures for identifying parent-child relationships, rights, and obligations of affected parties. Accordingly, the intended couple must be someone who cannot conceive; or if it is possible to conceive, there is a possibility of not being able to conceive a child on medical grounds, or likely to be unable, on medical grounds, to carry a pregnancy or to give birth, unlikely to survive a pregnancy or birth, or likely to have her health significantly affected by a pregnancy or birth, or affected by a genetic condition or disorder, the cause of which is attributable to the woman, or likely to conceive a child who is unlikely to survive the pregnancy or birth, or whose health would be significantly affected by the pregnancy or birth. In addition, the birth mother must be at least 25 years old, and, in case they are under 25 years old, it must be approved by the Court. Thus, in addition to some similar provisions, the Surrogacy Act of New South Wales also has different provisions compared to the Vietnamese Law as mentioned above. It is particularly interesting in the New South Wales Law on altruistic surrogacy that the interests of children born from this technique are always put first and must be considered as a priority and paramount. This can be considered as the basic principle for the establishment of legal relationships in a surrogacy agreement. It is also the principle for the settlement of disputes about surrogacy by the Court. Under the provisions of this Act, parentage is ordered according to the principle of law, however, if the dispute may affect the interests of the child, the Court still has the power to decide without following the established order.

International experience in improving Vietnamese legislation on surrogacy

Through analysis of the views of some typical countries representing the three different groups on surrogacy, it can be seen that this is one matter that legislators are quite concerned about. Although each country has different provisions, we find some issues that are really valuable for reference in developing and perfecting Vietnam's law on surrogacy, as follows:

Regarding identification of parent-child relationship: firstly, the provisions on the time of identifying the parent-child relationship. Identifying the parent-child relationship is an important content in the institution of surrogacy. This is the basis for determining the rights and obligations towards the child born and also for dispute resolution if it happens. The provisions of Vietnam's Article 94 of the Law on Marriage and Family 2014 provide that if "Child was born in the case of altruistic surrogacy is the common child of intended couple from the time the child is born". Thus, under this article, the child born from surrogacy will be identified as the child of the intended couple. However, regarding the time to identify children, we still need to consider more because there is a risk of affecting the interests of the parties, especially the legitimate rights of children, and causing negative impacts on the intended couple in many different legal relationships.

For example, when the surrogate mother has not transferred the child for various subjective or objective reasons, the surrogate's husband only have "the same rights and obligations as parents in taking care of the reproductive health of their children" and take care of and raise the child until the time of handing over the child to intended couple; and must hand over the child to the intended couple. Therefore, when the child has not been transferred, not only problems of care and nurturing arise, but a series of other legal issues are also raised such as the right to life of the foetus and the child born; civil rights or some rights related to the criminal field, and rights in the field of social insurance of the surrogate. Therefore, if the surrogate mother is only considered as a parent in the upbringing and care, it is clearly not appropriate and comprehensive.

The issue of determining the subjectivity of the parties in the period from pregnancy to child transfer is extremely important and has a great impact on the humanistic element of this institution. One international experience we find valuable for reference is the provisions of Article 4 and Article 39 of the Surrogacy Act 2010 of New South Wales (Australia). In this case, the birth parent of a child means a person (other than an intended parent) who is recognized by law as being a parent of the child at the time when the child is born, and, on the making of the parentage order in relation to a child, the child becomes a child of the intended parent or parents named in the order and they become the parents of the child, and the child stops being a child of a birth parent and the birth parent stops being the parent of the child. Under this provision, the birth mother and even her partner are attached with the responsibility and obligation to take care of and raise the baby as their own child to ensure the best conditions for the baby. Clearly identifying the legal parent has both a legal impact and raises awareness of the birth mother about binding themselves to the child. They must be truly aware that they are the legal parents of the child that the wife/woman is carrying, and not merely acting as a surrogate parent for someone. When this perception changes, the birth mother is also more aware of its responsibility to let the child, recognized by the law as theirs, be born in the best conditions, thus, avoiding the mentality of just being "as" the father/mother, which could easily lead to neglect in their obligations to nurture and care for the foetus, which adversely affects the health and comprehensive development of the foetus. On the other hand, the provisions of Article 4 and Article 39 of The Surrogacy Act of New South Wales (Australia) mentioned above will solve many relevant legal issues such as, during the time when the child has not been transferred, the birth mother can enjoy legitimate benefits such as maternity or sickness leave and relevant issues from a criminal perspective such as determining

the subject of the crime of killing or aborting a new born child. This is humane for both the birth mother and the child born and is also appropriate with relevant legal documents.

Identification of parent-child relationship in case of commercial gestational surrogacy: commercial gestational surrogacy is a prohibited act, but these cases still occur in fact. Therefore, when there is a dispute over the identification of the parent-child relationship in these cases, that agreement will be declared invalid. However, the problem is how the legal consequences of these invalid surrogacy agreements will be resolved. Current Vietnamese law does not have specific guidelines on this issue. Through the settlement method in Judgment No. 648 dated October 4, 2019 (10-19053) of the Court of Cassation - Plenary Assembly - ECLI: FR: CCASS: 2019: AP00648 of the French Republic that was mentioned above, we think that this issue should be adjusted such that if in the case that the subject has violations of regulations on surrogacy including the implementation of commercial surrogacy, it should be resolved that the child born related by blood to the intended couple is still identified as the child of the couple to ensure maximum benefits for the child. This method of settlement may take the opposite side that couples will defy the provisions of the law to have children, but, placed in the "balance" of interests, the lawful rights of children always have to be put first. In all circumstances, children are always the object to be protected from the illegal acts of adults and they should not have to bear adverse consequences. Therefore, in order to prevent violations of surrogacy, it is necessary that the provisions of the law be strict enough that the subjects, no matter how much they desire to have children, cannot violate and disregard the law, or be irresponsible in the assessment leading to illegal acts.

Regarding the age conditions of the surrogate mother: Point c, Clause 3, of Article 95 of the Law on Marriage and Family 2014 stipulates that the surrogate woman must be "at a suitable age". However, the current law does not have any provisions on what is deemed "suitable". Therefore, the matter of age should be specified and considered on the basis of social practice, as well as medical research results, to ensure that the legal corridor on surrogacy is still maintained and too "strict". Above all, the health benefits, the safety of surrogate the mother, and especially the comprehensive development of the foetus, are still a top priority. Therefore, the suitable age is significant in increasing the possibility of conception, saving costs, limiting damage caused by failure for the intended couple, and to ensure the health and safety of pregnant women and children. The Surrogacy Act 2010 of the State of New South Wales (Australia) provides that "The birth mother must have been at least 25 years old when she entered into the surrogacy arrangement". We believe that a regulation of the minimum eligible age limit of the birth mother is very necessary. If the birth mother is too young, it could lead to negatively effects on many psychological and physiological factors of the birth mother, as well as an effect on the development of the child. On the other hand, the provision on age limit creates a clear legal framework for the application of the law instead of the general provision of "suitable age" like the current Vietnamese law. The provision of a suitable age limit for childbearing does not create legal disturbances because the stability and sustainability of the biological characteristics of people are unchanged. However, we think that the provision of the age of 25 is quite strict because it is very difficult for couples today to find a suitable surrogate mother due to different conditions. Therefore, we think that it is appropriate to limit the age but widen the gap from 20 to 40 years old. The above-mentioned age is not too young nor too old to be pregnant and give birth, so it can ensure health and safety issues for surrogate mother as well as the child born.

Regarding the application of sanctions to violations of surrogacy: violations of the law on surrogacy have been prescribed in a number of important legal documents in Viet Nam such as the Code of Criminal Law 2015, Decree 82/2020/ND-CP that provides the sanction of administrative violations in the field of judicial assistance; judicial administration; marriage

and family; civil enforcement; and bankruptcy of enterprises and cooperatives, which creates a basis for the application of the law to handle violations of the subjects. However, it can be seen that many issues have not been regulated such as referrals, advertisements, violations of the prescribed obligations of intended couple, surrogate mother, and medical facilities. Currently, advertising activities for commercial surrogacy in Vietnam are still relatively common. Meanwhile, Article 60, Decree 82/2020/ND-CP stated above just stopped at stipulating administrative sanctions for violations of regulations on childbirth such as: Article 60 of Decree 82/2020/ND-CP providing that "A fine of between 5,000,000 VND and 10,000,000 VND for the act of giving birth by assisted reproductive technology for commercial purposes, asexual reproduction, and commercial surrogacy". This has generally created certain difficulties for the authorities in handling the current surrogacy advertising practices. Therefore, in our opinion, the sanctions set out in the laws of some countries such as Thailand and Australia are very valuable for reference. For example, Article 10 of the Surrogacy Act 2010 of the state of New South Wales (Australia) does "Prohibit advertising of surrogacy agreements". With clear provisions on prohibited acts such as advertising and brokerage, there will be contributions to raising people's awareness and a creation of a legal basis for the handling of violations by the authorities is accurate. On the other hand, the application of criminal sanctions to violations in Viet Nam shows that, it is still not really strong enough or a deterrent. The only provision to criminal prosecution for violations of the law on surrogacy is Article 187 of the Penal Code 2015 on the crime about "organizing commercial surrogacy". Accordingly, the highest penalty frame applied is imprisonment from 1 to 5 years and a fine ranging from 50,000,000 to 200,000,000 VND. With successful agreements to organize commercial surrogacy, organizers can receive hundreds of millions of VND, while the penalty frame specified in Article 187 of the 2015 Penal Code is not strict, so there is no matching. This can lead to the subject to defy the implementation because of a much higher profit. Also on this issue, Indian law stipulates that the level of criminal punishment for violations of the law on commercial surrogacy is quite high. Accordingly: "violators will be sentenced with imprisonment for a term which may extend to ten years and with fine which may extend to ten lakh rupees equivalent to USD 15,000" [4]. We believe that, in order to effectively prevent violators of the law on surrogacy in practice, when there are conditions for amending and supplementing, the Vietnamese law should have more strict sanctions. For example, violators will be sentenced with imprisonment for a term which may extend to 5 years and with a fine depending on the level of seriousness of the violation ranging from 100,000,000 to 300,000,000 VND.

Conclusions

Through an assessment of legislative and provisions of law of some typical countries representing three different groups of views on surrogacy in the recent period, it can be seen that this is one matter that has received considerable interest from legislators. In each country, governments have different measures to protect their legislative positions. The view of surrogacy has been approached in different ways, but they all have the common goal of building legislation on the basis of ensuring the legitimate rights and interests of citizens and human rights. It can be seen from a legal perspective that surrogacy is a really complex and highly sensitive matter. After more than 5 years of implementation, these provisions of surrogacy have made an important contribution to the protection of the rights of subjects participating in this legal relationship. Because surrogacy is one of the new legal relations without practical experience, it is understandable that an amendment of this issue should always be considered carefully. Therefore, it is necessary to evaluate and learn the legislative experience of countries around the world. Each group of countries representing different legislative points of view

provides valuable perspectives in the development and improvement of Vietnamese law. For example, the legislative views of countries that completely prohibit surrogacy demonstrate experiences we can refer to on how to deal with legal consequences for surrogacy agreements that violate the law, especially when identifying the parent-child relationship. The group of countries that only recognize altruistic surrogacy provides important legislative experiences in adjusting regulations on conditions, rights, and obligations of affected parties thereby creating the basis for improvement of Vietnamese law. Even countries that allow commercial surrogacy reveal legal problems and exist so that Viet Nam can consider expanding or narrowing the provisions on surrogacy today. From the above analysis and assessment, we find that the development of the law on altruistic gestational surrogacy in Viet Nam has basically protected the legitimate interests of the subjects, however, it is still necessary to make appropriate amendments to improve the effectiveness of provisions on this issue and avoid the risks of negatively affecting the legitimate interests of individuals, families, and society.

COMPETING INTERESTS

The authors declare that there is no conflict of interest regarding the publication of this article.

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