

TRANSFORMATION OF LEGAL REGULATION OF FAMILY RELATIONS UNDER THE IMPACT OF SCIENTIFIC PROGRESS

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Abstract: *The actuality of the problem is conditioned by the fact that in the conditions of growing scientific and technological progress and the strengthening of the role of the individual in public life there is an acute problem of the legal status of the family in modern human life. The achievements of science and technology and social changes in the society inevitably affect marriage and family relations. The purpose of this article is determining the changes in the family legislation under the impact of scientific progress, in particular, concerning the legal regulation of the issues of determining the child's origin when using artificial insemination technology, the responsibility of the surrogate mother in case of refusal to hand over the born child to the spouses, the regulation of cases related to such legally significant circumstances as changing the sex of a person and so on. The leading methods of research are the methods of analysis and synthesis used for structuring and analysis of the available information as well as the comparative method as a special-scientific method of research that allows to consider this problem by finding and comparing common and different legal phenomena in the regulation of these issues. The results of the undertaken study is determining the drawbacks in the legal regulation of doctrinal provisions on the legal assessment of certain legally significant circumstances which have the status of legal facts for the purposes of legal regulation, in particular, the wide spread of methods of vitro fertilization, cloning, sex change, surrogacy, among other things, in solving the matter of the child's origin. The practical significance of the obtained results lies in the possibility of implementing a number of international legal acts in the national legislation of Ukraine at the level of international legal acts by imposing the obligations on the states parties of the conventions of the quality protection and protection of human rights.*

Keywords: Same-Sex Marriages; Surrogacy; Reproductive Technology of Artificial Insemination; Cloning; Legalized Abortion.

The most important problem of demographic policy and a necessary condition for ensuring the national security of Ukraine is increase of the reproductive potential and health preserving of the generation that is born.

At the same time, the state of reproductive health, which is an integral part of the health of the nation as a whole and is of strategic importance for the sustainable development of society, is of particular concern. Currently, the state of reproductive health of the nation is far beyond international standards and is characterized by a low birth rate at the background of a high level of the main components of the threat of

human reproduction – infertility, stillbirth, spontaneous abortions, congenital malformations, maternal, perinatal and infant mortality¹.

Family law is the branch of law which is formed by the legislative bodies least.

The essence of the concept of morality and ethics is constantly changing. What was impossible to imagine even 50 years ago is a normal phenomenon today or at least sets no wondering. Impressive are not only the achievements of science and technology during the XXth century, but also the social changes that inevitably affect marriage and family relations. For example, in 1900, it was impossible to imagine a computer, the Internet or an airplane, and it was impossible to predict same-sex marriages, surrogacy, the use of modern reproductive technology of artificial insemination, cloning, legalized abortion and the like. The achievements in medicine affect the essence of a person. This fact makes the jurisprudence respond clearly to the changing reality by establishing permits and prohibitions, guarantees of abuse prevention and the like. The world community admits that traditional norms and legal mechanisms are becoming insufficient. The latest medical technology often touches upon the issues which are at the interface with medicine, law, theology, philosophy and the like. The conflicts can also be possible when solving these issues.

The scientific and technological progress seriously expands human capabilities as for impact on certain natural phenomena what sets the task before legal science regarding the reconsideration of the doctrinal provisions on the legal evaluation of certain legally significant circumstances that have the status of legal facts for the purposes of legal regulation. Thus, artificial insemination of a woman the result of which is her pregnancy, is, of course, a legal act, namely a legal action. However, this does not change the fact that it is the pregnancy occurrence with which the law relates certain legal consequences that is a legal event. Thus, the child's birth acquires the characteristics of the legal event regardless of whether the birth occurred naturally or, for example, in the result of a cesarean section. In this case, the cesarean section itself will be considered as a legal act².

¹ *“Ministry of Health of Ukraine. Annual Report on the State of Public Health, Sanitary and Epidemic Situation and the Results of the Health Protection System of Ukraine”*, 2016. Available at: www.uiph.kiev.ua.

² O.V. Zashchirinskaya, E.I. Nikolaeva, V.Y. Rybnikov, V.M. Byzova, “The influence of family communication on the specificity of the gestures perception by children of primary school age with mild mental retardation”, in *Novosibirsk State Pedagogical University Bulletin*, 2017, vol. 7, no. 5, p. 81-93.

It should be noted that 30 years ago the birth of a girl in the result of artificial insemination was considered something revolutionary, but, to date, sometimes one can even find proposals to solve this way the demographic problems of individual states. The number of children born after the vitro fertilization of the egg cell is growing rapidly. For example, in Iceland, France and Denmark, it is 3-4% of the total number of babies born. Now more than 3 million children around the world were born after conception "in vitro". Now assisted reproductive technology makes it possible to have children for almost everyone. The couples who have recently been considered completely infertile and had no chance for procreation can become happy fathers and mothers of their own completely healthy babies. It is difficult to remain indifferent to the recognition that humanity has overcome the so-called "absolute infertility"³.

Legal regulation of surrogacy

It should be noted that in Ukraine the legal regulation of surrogacy is imperfect. Only some provisions on this issue are provided in the Family Code of Ukraine, the Civil Code of Ukraine, the Act of Ukraine On Fundamentals of Legislation of Ukraine on Health Care⁴ and the Act of Ukraine of 16.07.1999. No. 1007-XIV On Transplantation of Organs and Other Anatomical Materials of Human⁵, in the Rules of the state registration of acts of civil status of Ukraine amended by the order of the Ministry of Justice Ukraine dated 24.12.2010, No. No. 787 3307/5, the Order of Applying the Assisted Reproductive Technology approved by the order of the Ministry of Health of Ukraine of September 9th, 2013. and explanation of the Ministry of Justice of Ukraine of May 11th, 2012. "Determination of the child's origin from the parents in the state registration of birth" and the like. There is no comprehensive legal regulation of relations arising from the use of surrogacy⁶.

As for the problem of applying the assisted reproductive technology of artificial insemination on the determination of the child's origin was

³ V. Hryshenko, "Reproduction of Family Happiness", in *Journal of NAS of Ukraine*, 2010, vol. 12, p. 66-68

⁴ "Act of Ukraine "On Fundamentals of Legislation of Ukraine on Health Care" of 19.11.1992, No. 2801-XII", 1992. Available at: www.zakon.rada.gov.ua.

⁵ "Act of Ukraine "On Transplantation of Human Organs and Other Anatomical Materials" of 16.07.1999 No 1007-XIV", 1999. Available at: www.zakon.rada.gov.ua.

⁶ I.Ya. Veres, "Problems of Legal Regulation of Surrogacy", in *Attorney*, 2003, no. 3, p. 27-31.

previously determined solely on the basis of such a legal event as birth⁷. The widespread applying the modern medical technology does not allow to connect the child's origin, which is attached legal importance, only with biological origin (blood relationship). The rules of Art. 123 of the Family Code of Ukraine⁸ are based on the principle of recognition according to which it is not the biological moment of the child's birth, but the social one is becoming of legal importance, that is, the intention of a person to recognize the child as his own.

Thus, the determining factor is not a legal event – the child's birth, but a legal act – the parents' recognition of their child. This recognition occurs before the child's birth – at the time of consent to applying this or that reproductive technology. A person who knows that the born child will have no genetical relationship with him nevertheless expresses a desire to establish a parental relationship with this child. The donors, on the contrary, despite entering into a genetical relationship with the child have no right to demand a legal link establishment, and genetical relationship is not recognized by law as a sufficient basis for this.

In order to protect the personal non-property and property rights of the child, first of all, it is necessary to regulate the issue of responsibility of a surrogate mother in case of refusal to hand over the born child to the spouses (future parents). Special attention should be paid to the responsibility of the spouses-customers in case of unilateral refusal of the contract for the provision of services of surrogacy at the stage when the pregnancy of a surrogate mother occurred as well as in case when the spouses-customers refuse a born child and refuse to enroll themselves as his parents.

In this case, the child stays without parents, and the spouses-customers will bear no parental duties in respect of this child. So, if this issue is not regulated by law, the child will be deprived of the personal non-property rights provided by the Family Code of Ukraine such as the right to live and be brought up in the family, the right to live with parents, the right to the name, patronymic and surname of their parents and, etc. In addition, the child does not acquire the right to alimony and support from the side of his (her) biological parents. The above indicates the necessity to establish at the legislative level alimony debt for spouses who

⁷ B. Stark, “Transnational Surrogacy and International Human Rights”, in *ILSA Journal of International & Comparative Law*, 2012, vol. 18, no. 2, p. 3–19.

⁸ “Family Code of Ukraine of 10.01.2002 No 2947-III”, 2002. Available at: www.zakon2.rada.gov.ua.

used the service of a surrogate mother, but after the child's birth they refused him (her).

Using the analogy of the law, the grounds for changing or terminating the contract on surrogacy can be the grounds provided by the Articles 651, 652 of the Civil Code of Ukraine⁹. According to the Civil Code of Ukraine the breach of the contract on the provision of services for a fee provides compensation for losses in full in the presence of fault of the contractor. If to consider the contract on surrogacy as a paid contract for the provision of services by a surrogate mother where the customers are the spouses who provided their genetic material for implantation then based on the content of Art. 906 of the Civil Code of Ukraine, the amount of damages for breach of the contract will depend on the moment when the surrogate mother-contractor under the contract violated its essential terms (for example, termination of pregnancy without medical grounds for this; intentional harm to health of the child related to non-compliance with the doctor's instructions; refusal to hand over the child to the spouses; and abuse of alcohol, drugs that led to abnormalities in the development of the fetus, etc.).

The contract on the provision of services of surrogacy should establish the amount of penalties that can be imposed on the unfair party of the contract as well as the obligation to compensate for moral damage.

The following circumstances are subjected to clear regulation: the child's loss (because of both miscarriage and intentional pregnancy termination by a surrogate mother), contract renunciation by genetic parents or by a surrogate mother, the death of future parents to the birth of a child and so on. Also, it is necessary to provide for the responsibility of the medical institution including the risks related to applying the artificial insemination technology, disclosure of information, etc.

As the analysis of judicial practice, shows, difficult situations arise in cases where a person who is not married uses the biological material of the donor with simultaneous turning to the services of a surrogate mother. If such a person is a husband, then because of a gap in the current legislation of Ukraine, the state registration of the child's birth occurs with the indication of the surrogate mother as the mother of the child after that the child's father turns to the court with a claim to challenge motherhood and the obligation to perform certain actions¹⁰.

⁹ "Civil Code of Ukraine No. 435-IV of January 16th, 2003", 2003. Available at: www.zakon.rada.gov.ua.

¹⁰ "Decision of Nova Kakhovka Town Court of Kherson Region of 04.11.2014 in Case No. 661/4534/14-ts", 2014, Available at: www.reyestr.court.gov.ua.

As noted by the researchers of this issue, the problem is that in Ukraine at the legislative level there is no definition of surrogacy. Modern medical science distinguishes two types of surrogacy¹¹: 1) full or gestational surrogacy – transfer to the surrogate mother's body of a human embryo conceived by spouses, wife and donor or donors. At the same time, the surrogate mother has no genetic relationship with the child; 2) partial or gender surrogacy which involves a genetic relationship with the child since the egg cell of the surrogate mother is used. Taking into account the norm of Part 2 of 123 Art. of Family Code of Ukraine, the method of surrogacy involves the transfer to the surrogate mother's body of a human embryo conceived by spouses (genetic parents). Thus, the Ukrainian legislation provides for only one method – complete (gestational) surrogacy and the cases of applying the other types are not regulated by the norms on surrogacy. This is evidenced by judicial practice as well¹². For example, domestic judicial practice knows the cases when, with the availability of true information that a person is the biological father of the child who at the time of conception, which was made applying artificial insemination technology, was the husband of the mother of such a child, but did not give his written consent to the use of assisted reproductive technology, as required by Art. 123 of the Family Code of Ukraine, the claim to challenge paternity is satisfied¹³.

For the illustration one can also give an example from the English family law in the regulation of the issue of the emergence of parental rights and responsibilities arising in relation to children born thanks to medical achievements, in particular, by applying artificial insemination or in the result of surrogacy. Speaking about the child's father, the UK law distinguishes between a genetic and a legal father who do not always coincide in one person. In cases where a man is a donor whose genetic material is used by a licensed medical institution and whose consent to its use is obtained under the Act On Human Fertilization and Embryology of 1990 as well as if the man's genetic material is used after his death, the genetic father prevails. In any case, in order to use and preserve sperm, the donor-man should give his written consent as such a man is not the legal father of the child born in the result of the use of this material. The other situation is when a man is regarded as the legal father of a child even

¹¹ Dakhno, F.V. “The Surrogacy”, *Female doctor*, 2007, no. 3, p. 27-31.

¹² I.Ya. Veres, “Problems of Legal Regulation of Surrogacy”, in *Attorney*, 2003, no. 3, p. 27–31.

¹³ “Decision of Solomianskyi District Court of Kyiv of 31.03.2011 in Case No. 2-381\11”, 2011. Available at: www.reyestr.court.gov.ua.

despite the fact that he is not a genetic father. Thus, according to Art. 28 (2) under the above Act, the man is the father of the child carried by his wife in the result of artificial insemination or embryo implantation when he proves that he did not give her his written consent. Persons who are married and gave their consent in the written form to the use of artificial insemination or to the embryo implantation, in case of the child's birth in the result of these methods, are enrolled as his parents and the child is considered to be the legitimate child of these parents. The basis for the emergence of parental rights and duties of such persons shall be the issuance of writ on parents, that is, an order on the basis of which the child will be considered a legitimate child from their marriage. For issuing such a writ, a number of conditions must be met, namely: a man and a woman must be married to each other, and the gametes (sex cells) of one or both of them must be used for conceiving the embryo; the application that they are the parents of the child must be filed with the court within 6 months from the date of the child's birth; during the period preceding the application's submission, the child must live with the applicants; the mother of the child (if necessary her husband as well) must express full consent to the publication of a decree of judicial parents. If the issue concerns the surrogacy agreement, the court must make sure that the funds paid to the surrogate mother were reasonable, there was no additional material compensation when the child was handed over to his future parents for the purpose of obtaining a writ¹⁴.

Some scientists in the legal regulation of the use of treatment programs of assisted reproductive technology see inappropriate resolution of the situation when the persons whose blood relationship is certified by the act of civil status are not actually relatives and the persons who are actually relatives are not such by law.

Thus, when using assisted reproductive technology, one of the forms of infertility treatment is intrauterine insemination of spermatozooids into the uterine cavity during ovulation. This method of infertility treatment can be applied in accordance with the Procedure for Applying the Assisted Reproductive Technology in Ukraine approved by the Order of the Ministry of Health of Ukraine from 09.09.2013. No.

¹⁴ O.A. Yavor, "Legal Aspects of Surrogacy", in *University Research Notes: Chronicle*, 2012, vol. 4, p. 127-133; O.A. Yavor, "Problematic issues in the relations regarding surrogacy", in *Modern problems of civil law: materials of the "round table" dedicated to the memory of Prof. Ch. N. Azimov*, January 12. Kharkiv, 2019, p. 56-61.

787¹⁵, both using the sperm of the man and the sperm of the donor (p. 3.6). According to the specified Instruction, when applying the treatment programs of assisted reproductive technology, it is possible to use donor reproductive cells of both women and men.

At the same time, the current family legislation of Ukraine contains a norm that regulates the procedure of determining the origin of the child born in the result of the use of assisted reproductive technology. The general rule in this case is that the parents of the child are considered to be the spouses for whom a certain assisted reproductive technology was applied, regardless of whose genetic material – either these spouses or donors – is used. Therefore, when applying the assisted reproductive technology, one of the child's biological parents may not coincide with his (her) “social” father. In addition, the procedure of embryo implantation is carried out for medical reasons of an adult woman with whom such an action is carried out, subject to the written consent of patients, ensuring the anonymity of the donor and maintaining medical confidentiality.

Thus, the child's parents, and in the future the child himself (herself), are deprived of the possibility to obtain information about real blood relationship of the child that can subsequently lead to the marriage between close relatives. Given this problem, the literature sometimes suggests that “the right of an adopted child to obtain information about his (her) biological parents can be extended to children born with the help of the assisted reproductive technology”¹⁶. Even more: in this regard there appear proposals in order to make amendments of the Art. 123 of the Family Code of Ukraine by Part 4 of the following content: “A person who was born in the result of applying the programmes of assisted reproductive technology treatment is entitled to be informed of his birth at achieving the age of fourteen.” Such information can be obtained in the form of an extract from the State Register of Acts of Civil Status of Citizens. However, as noted by the supporters of this approach, such a possibility shall exist only in case if a person was born by the woman in whose organism there was transferred a human embryo conceived by the spouses in the result of applying the assisted reproductive technology since in accordance with clause.

¹⁵ “Approving the Procedure for Applying the Assisted Reproductive Technology in Ukraine endorsed by the Order of the Ministry of Health of Ukraine of 09.09.2013 No 787”, 2013. Available at: www.zakon.rada.gov.ua.

¹⁶ V.Yu. Yevko, “Family Relations as the Basis of Marriage Invalidity”, in *Law Forum*, 2010, no. 1, p. 93-99.

10 subsection 1 of Section III of the Rules of Civil Registration approved by the Order of the Ministry of Justice of Ukraine No 52/5 of 18.10.2000 (as amended by the Order of the Ministry of Justice of 24.12.2010 No 3307/5), in this case, when making a vital record on the child's birth in the column "for marks", the following record is made: the mother of the child according to the medical birth certificate is a citizen (surname, first name, and patronymic). If the child was born in the result of applying another form of assisted reproductive technology to his(her) parents in this case the information about it is not specified in the vital record about the child birth. In this case, it would be advisable to contact the health institution where the procedure was carried out. And in this regard, it is also proposed to amend the Procedure for Applying the Assisted Reproductive Technology, having set a period during which the information on donors of oocytes, sperm and embryos is to be preserved for during 70 years¹⁷.

We cannot agree with such proposals. Of course, the ban on marriages between close relatives is due to the care of the health of the future generation. However, the probability that in the future a marriage between a person who was born with the help of reproductive technology using the donor's biological material and his (her) close relative is low enough to give priority to keeping this information confidential.

The case which made it possible to reveal such a problematic point is of interest as well: the domestic legislation of Ukraine does not provide for the necessity to obtain from the man, whose biological material was used, a re-consent to fertilization, if the previous attempt was unsuccessful. In the case under hearing, the husband learned after the divorce with his wife that she had given a birth to three children using his biomaterial. For the court, the decisive moment was that the man did not take any action to withdraw his initial application on consent to the use of his biological material¹⁸.

Settlement of sex change cases

The current family legislation of Ukraine regulates the cases related to such a legally significant circumstance as a change of sex of a person in the contradictory way. Thus, according to Art. 51 of the Fundamentals of

¹⁷ V.Yu. Yevko, "Family Relations as the Basis of Marriage Invalidity", in *Law Forum*, 2010, no. 1, p. 93-99.

¹⁸ "Decision of High Specialized Court for Civil and Criminal Cases in Case No 6-27563sk15 of 18.11.2015", 2015. Available at: www.reyestr.court.gov.ua.

the Ukrainian legislation on health care at the request of the patient in accordance with biomedical and socio-psychological indications which are established by the central executive authority that ensures the formation of the state policy in health protection sphere, a person can be carried out the change (correction) of his (her) sex by medical intervention in the healthcare institutions. The person, who underwent a change of sex procedure, is issued a medical certificate, on the basis of which the matters of the relevant changes in his (her) legal status are subsequently settled. In this regard, in the family law questions can arise about the possibility of saving the marital relations between persons, one of whom has changed sex as well as regarding other legal relations. At this stage, the legislator does not give the necessary answers. However, they are provided under the law. Thus, according to clause 3 Medico-biological and socio-psychological indications for change (correction) of sex approved by the Order of the Ministry of Health of Ukraine of 03.02.2011 No 60 contraindications for change (correction) of sex, in particular, are: the presence of children under the age of 18; the patient's stay in marriage at the time of the Commission's consideration of his application; gross violations of social adaptation (absence of work or permanent residence, alcoholism, drug addiction, antisocial behaviour, etc.)¹⁹.

The stated under law act was appealed to the District Administrative Court of Kyiv City. The plaintiff, in particular, pointed out that sex correction was an implementation form of the right to identity which is a component of the right to respect for personal (private) life that is stipulated in Art. 8 Convention on the Protection of Human rights and Fundamental Freedoms²⁰ and Art. 32 of the Constitution of Ukraine²¹, and therefore interference of the state in the right implementation to identity by establishing prohibitions (contraindications) in clause 3 of medico-biological and socio-psychological indications for the change (correction) of sex that is not a law, is the excess of the central state body in the health protection sphere of its own powers.

¹⁹ “Medical-biological and socio-psychological indications for change (correction) of gender approved by the Order of the Ministry of Health of Ukraine of 03.02.2011. No 60”, 2011. Available at: www.zakon.rada.gov.ua.

²⁰ “Convention for the Protection of Human Rights and Dignity regarding Applying the Biology and Medicine Achievements (Convention for Human Rights and Biomedicine) (ETS-164)”, 1997. Available at: www.aau.edu.ua.

²¹ “Constitution of Ukraine of 28.06.1996”, 1996. Available at: www.zakon.rada.gov.ua.

The court in its judgement of January 19th, 2015 in case No. 826/16044/14²² proceeded from the following. According to Art. 23 of the Constitution of Ukraine everyone has the right to the free development of his (her) personality provided that the rights and freedoms of the others are not violated, and has obligations to the society in which the free and full development of his(her) personality is ensured. According to Art. 32 No one can be subjected to interference in his(her) private and family life under the fundamental law of the state, except in cases provided for by the Constitution of Ukraine. The content of these articles corresponds with Ukraine's obligations arising in respect with Ukraine's ratification of the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms to protect human rights and fundamental freedoms which are, according to Art. 9 of the Constitution of Ukraine, a part of the national legislation of Ukraine.

According to Part 1 of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to respect for his (her) private and family life, his (her) home and correspondence. Part 2 of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms clearly indicates the boundaries of state intervention in the right implementation to respect for private (personal) life, that is, the establishment of restrictions. This article stipulates that public authorities may not interfere in this right implementation except the cases where the intervention is made according to the law and is necessary in the democratic society in the interests of the national and public security or economic welfare of the country, for disorder or crime prevention, for health or morals protection or for protection of the rights and freedoms of the others²³.

The restriction of human and civil rights and freedoms is possible only on the basis of the Constitution of Ukraine, Laws of Ukraine and international legal acts. In the result, the court concluded that the state's establishment of contraindications for the change (correction) of sex, such

²² “Decision of the District Administrative Court of Kyiv of 19.01.2015 in Case No. 826/16044/14”, 2015. Available at: www.reyestr.court.gov.ua.

²³ A.V. Kostruba, “Right deprivation in the legal regulation mechanism of civil property relations”, in *Journal of Legal, Ethical and Regulatory Issues*, 2018, vol. 21, no. 1, p. 1-15; A.V. Kostruba, “The place and role of right depriving legal facts in the legal regulation mechanism of civil property relations”, in *Utopia y Praxis Latinoamericana*, 2018, vol. 23, no. 82, p. 171-183; A.V. Kostruba, “Aspects of civil rights and their integration into international social and environmental legislation”, in *Journal of Environmental Management and Tourism*, 2018, vol. 9, no. 5, p. 995-1002.

as the presence of children under the age of 18, gross violations of social adaptation (absence of work or permanent residence), etc., did not correspond to Part 2 of Art. 8 the Convention for the Protection of Human Rights and Fundamental Freedoms as no one can be subjected to interference with his (her) private and family life, except the cases provided for by the Constitution of Ukraine.

The above judgement is also of interest regarding the question raised in it about the necessity to find a balance between the child's interest (reference to which the sex change prohibition is justified) and the right of the child's father to sexual identity. As noted by the court, the contested restriction in the form of "contraindications" to have children under the age of 18 interferes not only in the sphere of private, but also family life, protected by the Constitution of Ukraine, Convention for the Protection of Human Rights and Fundamental Freedoms and international and national law-making instruments. In accordance with the Family Code of Ukraine, the existence of family relations (family ties) between a father and a child is not a ground for restriction of the right implementation to identity by sex correction. The passage of the sex correction procedure does not deprive the child of the duties provided for in Part 1 of Art. 15; Art. 141; Art. 150-151 of the Family Code of Ukraine. At the same time, it should be noted that the rights and interests of the child are not violated because between the parent and the child there remains family relationship, rights and obligations under the current legislation. Besides, in the court session the plaintiff specified that he did not live together with the family, the court judgement on recovery of alimony is absent. Unfortunately, by the judgement of Kyiv Administrative Court of Appeal of June 30th, 2015 in Case No. 826/16044/14 the above judgement was reversed²⁴.

One of the grounds of the state policy in the sphere of education and upbringing according to Ukraine's international obligations is to bring to the child the information about the diversity of people and human behaviour and the formation of a tolerant attitude to the rights of the others including parents. The child's upbringing should be directed to the development of his (her) personality, respect for rights and freedoms of man and citizen, language, national historical and cultural values of the Ukrainian and other peoples, the child's preparation for adult and conscious life in the society in the spirit of mutual understanding, peace, benevolence, ensuring equality of all society members, harmony and

²⁴ "Decision of Kyiv Administrative Court of Appeal of 30.06.2015 in Case No. 826/16044/14", 2015. Available at: www.reyestr.court.gov.ua.

friendship between peoples, ethnic, national and religious groups²⁵. So, a legislator places the education of the child in the spirit of respect for human rights and freedoms, conscious life in the society, mutual understanding, peace, mercy, ensuring equality of all society members to educational institutions, established in accordance with the current legislation, and parents. In this regard, the moral or psychological trauma of the child, who was accordingly brought up and educated, can not be caused by the implementation of one of the parents of his (her) right to identity by correction of his (her) own gender.

The court, having taken into consideration the necessity of a balance between the interests of the child and the right of parents to respect for personal life, concluded that freedom to change sex was a form of the right implementation to identity which is an integral part of the right to respect for private (personal) life, provided for by the Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Cases of responsibility for “illegal sparing one's life”

The scientific and technological progress raises complex biotic issues. Thus, in particular, it comes to so-called responsibility for "illegal sparing one's life". In Western Europe countries, Australia and the United States there appeared the whole number of claims of parents and children for harm caused in the result of child's birth. Such lawsuits have given rise to a new concept of donors – "life that causes harm". Medical practice knows many examples when a woman has an abortion, but, despite this, the pregnancy continues and ends with the child's birth. For example, Stacy Doe sued the Health Department of Tayside Region (UK) for the fact that "the daughter's upbringing is now connected with excessive financial costs for her". Stacy Doe decided to have an abortion as soon as she found out about her pregnancy. The procedure was carried out the same week at Royal Perth Hospital in January 2001, but it was unsuccessful. This fact became clear when having the abortion was impossible²⁶.

The most notorious in this aspect was “the Perruchot case” in France, when parents brought an action against a healthcare institution

²⁵ O.V. Zashchirinskaia, A.V. Lapteva, E.I. Nikolaeva, N.A. Medina Bracamonte, E.V. Zmanovskaya, “Concepts of friendship among primary school children with intellectual disability”, in *Novosibirsk State Pedagogical University Bulletin*, 2018, vol. 8, no. 2, p. 26-42.

²⁶ “Trust Sued Over Twin Born after Abortion”. Available at: www.theguardian.com.

which later named "the claim about life that causes harm". The Cassational Court of France by its judgement, which to date has a mixed evaluation, satisfied the claims for damage compensation to the child, having indirectly admitted that abortion would be more appropriate than the birth of a handicapped child²⁷. At the same time, the Supreme court of Kassel Land (Germany) on January 17th, 1984 dismissed the claim for damage compensation caused by abortion in connection with the birth of one of the conceived twins. The reason for that was that the artificial termination of pregnancy on other grounds that do not relate to the grounds of health protection is illegal, therefore the result of the operation proved to be unsuccessful, the aim is not achieved, and this can not be the ground for the claim for damage compensation. Similar cases have other continuation: children file lawsuits in medical institutions "for negligent performance of duty which resulted in their lives, but not deaths". In Australia, in particular, two girls with disabilities filed a lawsuit alleging that health workers had not consulted their parents about the consequences of having children and that their lives caused them suffering.

Another debatable issue raised by scientific and technological progress is cloning. Today, by science are recognized: a person can be the object of genetic manipulation. However, at the level of legal regulation there is a ban on reproductive cloning: Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Convention for the Protection of Human Rights and Dignity in connection with applying the biology and medicine achievements²⁸, the UN Declaration on Human Cloning of March 8th, 2005²⁹.

Besides, the success of geneticists give a new breath to "eugenics". Some authors propose to use the success of cloning in the specific way: to create a sexless person, to replace the current method of getting sexual pleasure with other, more civilized forms and types of it, and from the social side – to free from the features-ballasts such as stupidity, laziness, passivity, uncontrollability and so on. "What will remain of the axiom of equality, if the intellectual and even moral qualities of some individuals will be repeatedly enhanced in the artificial way as compared with what the others are endowed with," said on this occasion Zb. Bzhezinskiy³⁰.

²⁷ J. Sainte-Rose, "The Right for Life", in *Journal of Lomonosov Moscow State University. Part 11. Legal Science*, 2003, no. 6, p. 56-69.

²⁸ "Convention for the Protection of Human Rights and Fundamental Freedoms", 1997. Available at: http://zakon.rada.gov.ua/laws/show/995_004

²⁹ "UN Declaration on Human Cloning", 2005. Available at: www.zakon.rada.gov.ua.

³⁰ Bzhezinskiy, Z. "The Choice Global Domination or Global Leadership", in *International Relations*, Moscow, 2004.

Conclusion

So, based on the above one should draw a general conclusion. Most of the problems related to family relations arise from the fact of insufficient regulation at the legislative level. However, in terms of the spread of scientific and technological progress in all spheres of social relations, including family relations, there is observed a transformation of legal forms of regulation of individual relations, in particular, child support obligations of parents towards children a surrogate mother gave birth to; refusal of parents from children a surrogate mother gave a birth to; the death of an unborn child due to the negligence of a surrogate mother or professional error of the medical institution where the surrogate mother gave a birth and so on. The most effective form of settlement of such relations is the conclusion of a contract, no matter if it is nominal or not, as a treaty aimed at achieving a certain result with detailed regulation of the rights, obligations and responsibilities of the parties concerned. It is by the conclusion of the contract that the parties independently resolve all disputes that can potentially arise in family legal relations without turning to the current legislation.

The above list of “challenges of our time”, due to the development of scientific and technological progress, can be the basis for the revision of the established norms in the family law field.