

DOSSIER. OVERVIEW AND STANDPOINT OF SURROGACY IN THE ARGENTINE REPUBLIC

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A. Introduction

Surrogacy or gestational surrogacy can only be approached by understanding its complexity. It is a practice that requires a multidisciplinary and cross-sectoral perspective with an eye on the factors and actors involved.

Public agendas of the different States debate different bills, either encouraging regulations or proposing its prohibition. There are many factors that come into play: professionals involved, fertility clinics, law firms, psychologists, social workers, health care social workers, Registry Offices, Consulates, Family Courts, medical tourism companies, and social, gender, age, cultural, political, ethical, religious, ideological factors.

It is important to focus on the human persons involved: the surrogates, the gamete donors, the intended parents (male couples, female couples - married or not -, single men with single-parent projects, single women with single-parent projects and/or persons of other non-binary genders and/or transgender persons) and the best interest of the unborn child.

This dossier accepts the challenge of providing a pragmatic guide to the overview from an accessible, simple point of view, with the advantages and disadvantages so as to weight the potential that the Argentine Republic has in the evolution of this phenomenon, whose growth, due to various factors, is irreversible and offers unprecedented opportunities.

Surrogacy is a unique and very special agreement within family law, whose framework depends on the irrevocable nature of the consent and the relinquishment of the filiation rights from the onset - *mother is the one who gives birth* -, the express assumption also irrevocable of the intended parents' procreative intent and the irrevocable evidence of the lack of procreative intent of the gestational carrier.

The problem, solution, and action, of how to live up to the protection and dignity of the system will be undertaking that everyone will face the situation with professionalism and plans for its success, if not, you may get lost in the process of improvisation and disorder; consequently, neglecting those who, in the pursuit of their desires and rights, placed their trust in a structure that should respect their sensitivity and vulnerability. Intended parents have the project of expanding their family and gestational carriers have their own individual projects - their projects do not lie in having a child.

B. Legal Background

There is no national regulation for gestational surrogacy, although it is collaterally mentioned and included through referrals and interpretations.

There are other rules that are applicable to surrogacy procedures, such as the principle of procreative intent established in the Argentine Civil and Commercial Code, international conventions on Human Rights, Regulation 93/2017, as amended, only for the Autonomous City of Buenos Aires, the informed consent forms issued by the Ministry of Health, and even the Argentine Constitution itself.

The fact that there are no specific laws does not mean that surrogacy is prohibited. Quite the contrary. There is a constitutional principle which clearly states that everything that is not forbidden is allowed. It would be a legal aberration to consider that the absence of the rule of law in the matter means prohibition.

There is not a single national, provincial or municipal norm, law, decree or regulation, prohibiting the use of gestational surrogacy. Furthermore, there are no regulations that prohibit non-residents of Argentina from accessing complex fertility treatments as surrogacy. In the Argentine territory, foreigners enjoy all the civil rights of the Argentine citizen (Argentine Constitution, article 20).

- Regulations in the Autonomous City of Buenos Aires. Regulation 93/DGRC/17¹ as amended by Regulation 103/2017² and Regulation 122/DGRC/20³

In the Autonomous City of Buenos Aires, the Registry Office, a governmental institution that registers births and also manages National Identity Documents in its offices, has resolved the IMMEDIATE registration of children born by gestational surrogacy in the name of the intended parents.

Regulations 93/DGRC/17, 103/DGRC/17 and 122/DGRC/20 of the General Directorate of the Registry Office enable the registration of children born by SURROGACY without the need to require, neither before nor after, judicial authorization.

The requirements are as follows: 1) That they are minors born in the Autonomous City of Buenos Aires by gestational surrogacy; 2) That the parents' procreative intent has been expressed in a previous, free and informed manner; 3) That the surrogate has previously and duly expressed that she does not have procreative intent; and 4) That the registration must be made as a precautionary measure, and the data of the gestational carrier must be recorded in the file."

The term *precautionary* does not mean that the registration is not final. In the absence of a national law regulating the registration of children born through gestational surrogacy, the registration made as precautionary measure guarantees rights, situations or expectations worthy of being considered, so that the provisional nature is an essential aspect of such legal figure.

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At the Registry Office, a "registry aspect" is recorded after the AHR, to give automatic

¹ https://documentosboletinoficial.buenosaires.gob.ar/publico/ck_PE-DIS-MGOBGC-DGRC-93-17-5239.pdf

² <https://boletinoficial.buenosaires.gob.ar/normativaba/norma/517484>

³ <https://boletinoficial.buenosaires.gob.ar/normativaba/norma/517484>

legal certainty to the filiation data of the child born by surrogacy; therefore, if there is no judicial order to the contrary, the registration is FINAL. The RIGHT TO IDENTITY and the RIGHT TO IMMEDIATE REGISTRATION is protected.

The aforementioned regulation -no. 93/DGRC/2017-, as amended, does not establish exclusions regarding the persons who can carry out the surrogacy process.

This means that both Argentine citizens and foreign citizens (residing or not in the country) can do it, and also families of all types and genders (heterosexual couples, male couples, female couples, people with single-parent family projects, other non-binary genders, etc.) can perform the surrogacy process.

Fortunately, there are no exclusions regarding the age of the future parents, nor their marital status, as they can be married, unmarried couples, or single. It is not even necessary that the AHR procedure be performed in the Autonomous City of Buenos Aires, the treatment can be performed in any clinic in the country or abroad, but for the application of the law, the birth must take place in the Autonomous City of Buenos Aires.

In the event that the requirements are not met, the aforementioned law cannot be applied, and the Registry Office will not register the child directly. In that case (in the event of non-compliance with the requirements), it is required that a lawsuit be filed to obtain the registration of the child in favor of the intended parents or parents. This does not mean that the right is "lost" with respect to the child, but that it must be claimed in court.

Up to August 2022, 49 births have been registered applying these measures, with an increase of 26% in the last year compared to the previous one, estimating the number of requests at two per month.

It is important to highlight that the resolution was issued as a result of a court order from the Administrative Court of the City of Buenos Aires, arising from a petition filed by the Ombudsman and the LGBT community.

- **Notarization of the informed consent documents. Dynamic burden of proof.**

The notarization of the previous, free and informed consent documents of those who participate in the surrogacy procedure in fertility clinics arises as a legal requirement pursuant to article 561 of the Argentine Civil and Commercial Code (textual transcription found in a book of public contracts drafted by a Notary, competent public official). The document must include the procreative intent of the intended parents and the absence of procreative intent of the gestational carrier.

The notarized document is authentic evidence whose proof is essential in case of legal challenges. In the absence of regulations, the probative force provided by the notarized document becomes unusually important in terms sufficient evidence.

The Argentine Civil and Commercial Code provides for the dynamic burden of proof, that is to say, in unlawful conducts, the burden of proof falls on the plaintiff.

Notarization is important in terms of sufficient evidence, and when the free consent stating the procreative intent or the lack of it -or the eventual annexes related to surrogacy- is made before a notary public, it establishes a truth imposed by the law, and only challengeable in a civil or criminal trials.

- **Identity document, Passport, and Nationality of the newborn baby**

The aforementioned resolutions 93/DGRC/17, 103/DGRC/17 and 122/DGRC/20 constitute *legal protection* in the Argentine territory, regarding the registration and issuance of official documents of newborns in the Autonomous City of Buenos Aires.

Although registration is made as a precautionary measure, digital birth certificates, passports and National Identity Documents (*DNI*, in Spanish) are issued within approximately 10 days from their request, and do not refer to any precautionary nature, except in the file of the birth certificate, which is not publicly accessible, but an internal record of the Registry and only accessible by court order.

Births that take place in the Argentine territory are governed by the Argentine citizenship law, which is a dual system that adopted roman legal concepts: *ius soli* e *ius sanguinis*.

Argentina is a member state of *Mercosur*, therefore, all persons holding an Argentine ID or passports, have the right to move, work and live freely without the need for a VISA in any South American country, except Surinam and Guyana.

Any person born in the Argentine territory acquires Argentine citizenship at the moment of birth, except for the children of foreign diplomats. Furthermore, foreign intended parents may obtain Argentine citizenship through their children born in Argentine territory.

In short, all children born in Argentina through surrogacy are automatically considered Argentine citizens, regardless of the citizenship of the parents, and therefore, they will receive their Argentine identity document and passport. This is essential in cases of intended parents residing abroad since the newborn baby will be able to travel abroad with its parents in a short period of time. There is no risk of the child being "stateless", which is very common in other countries and is an extremely serious situation.

Then, the future parents will be able to convey their own citizenship to their son or daughter, and depending on their country of origin, the minors will have dual citizenship, or they will be able to renounce directly to the Argentine citizenship once they have their own.

- Personal care and parental responsibility of the child.

The custody and parental rights of the newborn baby (in Argentina it is currently called personal care and parental responsibility) is in charge of the parents or intended parents, from the moment of birth, and in some rulings it has even been determined that the parental authority is retroactive to the moment of conception.

- Foreign citizens living abroad. Recognition of filiation in their countries of origin.

For citizens residing in other countries, contracts and/or legal proceedings are carried out pursuant to Argentine regulations and in accordance with the legislation of their countries of origin, so that the foreign intended parents may obtain the acknowledgment of the baby's filiation in their own countries.

For example, for Chilean citizens who come to Argentina to carry out a surrogacy procedure, the Argentine regulations and the birth certificate issued by the registry of the Autonomous City of Buenos Aires, in the name of the intended parents, is fully compatible, so that Chilean parents can obtain the normal recognition of the child's filiation in Chile, without any additional administrative or judicial procedure, other than going through the Chilean consulate.

In other cases, for example, Spanish or French women with single-parent projects, in accordance with the status quo of the matter in Spain or France, in addition to the birth certificate issued by the Autonomous City of Buenos Aires Registry, a precautionary measure or a declaratory judgment will be necessary, in which an Argentine judge will establish maternity and thus, through an Exequatur procedure, the filiation of the child will be recognized in France or Spain, since there will be no record in the medical records of the country of origin of any pregnancy of the intended mother, and furthermore, these countries require not only the birth certificate of the child but also the certificate of live birth signed by an obstetrician that is issued in the maternity hospitals.

European couples usually choose to undergo the surrogacy process in the United States, Canada, Georgia, Ukraine, Mexico or Colombia, with different legal procedures for the recognition of filiation in their countries of origin (prenatal adoption, Exequatur procedure, among others).

In the case of foreigners, although surrogacy in Argentina is completely legal, it is necessary to take certain legal steps according to the existing regulations in the countries of origin, to ensure that the recognition of filiation is agile and without complications, and the children born by this technique can acquire their parents' citizenship.

If there is any type of difficulty in the countries of origin, it does not mean that the intended parents "lose" the right to their children, nor that they lose custody, nor that they cannot take them out of the country, but simply that the State of the country of origin may take some years to grant them the citizenship or to acknowledge their filiation (with the legal consequences that may result), therefore, the children should and may live normally with Argentine citizenship in the country of origin of their parents.

It is important to highlight that surrogacy procedures in Argentina for non-resident foreigners are completely viable and lawful, and there is no discrimination of any kind, all types of families can resort to surrogacy.

- Legal actions available in Argentine Provinces.

If the child is born in the rest of the country (Province of Buenos Aires, and all the rest of the Argentine provinces), it is required to file a petition with the court to issue a parentage order on that minor, since there is no national or provincial regulation similar to Regulation 93/2017 of the Autonomous City of Buenos Aires. This is due to the fact that, at the moment of birth, the gestational carrier will appear in the certificate of live birth drawn up by the obstetrician or neonatologist, and thus as the mother on the birth certificate, and such situation must be modified by means of a court order.

As the codes of judicial procedures are provincial, the different legal actions available depend on each Province.

Existing legal actions:

- Approval of the court prior to embryo transfer.
- Approval of the court during pregnancy for the registration of the unborn child with the name of the intended parents as parents.
- Application for birth registration within days of the birth
- Petition for Declaration of Non-Parentage regarding the gestational carrier.
- Declaratory judgment action for the purpose of stating that parentage is established with regard to the intended parents.
- Constitutional challenge to section 562 of the Argentine Civil and Commercial Code.
- Amendment to the birth certificate petition, removing the name of the gestational carrier who appears as the mother.
- Request for approval of the agreement between the parties.
- Request for registration of a co-parenting agreement.

In summary, the characteristics in Argentina are as follows:

- Highly favorable situation, Argentina is a safe and surrogacy friendly country.
- Filiation is determined by procreative intent.
- The choice of the baby's sex is not forbidden.
- Gamete donation is traditional, it can be anonymous and/or open identity.
- The gestational carrier has no guardianship or custody rights over the newborn baby. (In some rulings, parental rights have even been determined retroactively to the date of conception).
- Voluntary interruption of pregnancy is legal.

**Opinion of the Attorney General of the Supreme Court of Argentina,
dated 27-8-2020⁴**

Due to a decision of the Civil Court of Appeals, Division H, confirming the decision of the previous instance court and the consequent unconstitutionality of Article 562 of the Argentine Civil and Commercial Code, and upon appeal, the Attorney General of the most important hierarchical body in the country issued an opinion dated 20-8-2020. Although his opinion is not binding, it anticipates a well-founded perspective of great weight for the conclusive judgment to be issued by **the Supreme Court in its first case of Surrogacy**, which will be the leading case for other similar cases in which history will be made and will probably be a reference in the matter.

The case highlights the intent of the parties, a two-men couple and a gestational carrier who knew the context and family project of the intended parents - who already had a daughter born through Surrogacy abroad - and who planned to extend their family in a parallel surrogacy program (which would result in the almost simultaneous birth of twins). The intended parents, by means of a public deed, gave their free, prior and informed consent for the Surrogacy treatment. There are no conflicting interests or conflicting rights between the parties involved in the case and it is necessary to determine the filiation situation of the child and to put an end to the uncertainty of the lack of documentation in order to ensure the gestational reality.

The legal representative understands that GESTATIONAL SURROGACY is not forbidden in our legal system and therefore allowed, he considers that the registration of the child must be ordered in compliance with the constitutional and conventional rights of the child. In fact, the argument in the more than 52 Argentine rulings that the official considered, has article 19 of our *Magna Carta*, the Argentine Constitution, as a common element: *“The private actions of men which in no way offend public order or morality, nor injure a third party, are only reserved to God and are exempted from the authority of judges”, “... No inhabitant of the Nation shall be obliged to perform what the law does not demand nor deprived of what it does not prohibit.”*

⁴ Attorney General Víctor Ernesto Abramovich Cosarin <http://www.colectivoderechofamilia.com/fa-fed-csjin-dictamen-procurador-fiscal-trha-gestacion-por-sustitucion/>

The legal representative analyzes in a systemic way and through different sources the norms that integrate the family relations and those of filial origin of techniques for assisted human reproduction and concludes that there is no prohibition for its procedure nor is there any mention of illegality or nullity in the agreements for its implementation. It also infers that GESTATIONAL SURROGACY is one of the practices provided for in Law 26862 - (Argentine Law on Medically Assisted Reproduction - Integral access to medical procedures and techniques) among the assisted reproduction techniques, and he cross-references the concept with the World Health Organization's glossary that incorporates GESTATIONAL SURROGACY within the assisted human reproduction treatments- AHR.

In his opinion, he quotes the jurisprudence of the Inter-American Court of Human Rights (*Artavia Murillo et. al. - In Vitro Fertilization - v. Costa Rica, the right to enjoy scientific advances*), and the European Court and the Supreme Court of the United States, emphasizing personal autonomy and the private family sphere that must be carefully guarded from any arbitrary interference of the State, especially since in certain cases it is the only medical procedure for persons, either couples of the same or different sex, and persons with the inability to gestate.

In direct reference to the supremacy of the Argentine Constitution, the human rights treaties to which the Republic is a party, he also refers to the convention on the rights of the child that protect its identity and that includes the determination of filiation, the nationality, the name, and the relationships linked to the private life and the construction of the identity of the child born according to its biological, historical experience, consistent with the reality of GESTATIONAL SURROGACY.

He specifically discourages the idea of stepparent adoption, which in the end, even if the child is adopted by the person who does not provide the genetic material within the couple, the parental responsibility with respect to the gestational carrier is not extinguished, nor is the adoption granted. The extent of parental rights and duties constitutes a concept far from reality, as these can be revoked, since there is no abandonment of the adopted child, nor biological ties with the children of the gestational carrier who received an embryo with an anonymous egg

donation.

In sum, the attorney general determines that "the registration of co-parenthood decided by the contested judgment does not violate any legal prohibition, and is the solution that best balances the fundamental rights of the parties and the best interests of the child, his private life and his identity."

Since 2020, new rulings have been incorporated, reaching around 70; but this is not absolute, since most of the judicial decisions remain confidential due to the best interests of the children. In addition, the strategies to initiate judicial processes are varied, including, without limitation, filiation challenges, precautionary measures, or constitutional challenges.

C. Altruistic surrogacy and reimbursement.

Surrogacy procedures are carried out with the help of women who wish to offer their reproductive capacity for mixed (altruistic and economic) and diverse reasons (they have a deep sense of solidarity, and at the same time they have their own personal project -which does not lie in having a child).

During the process, if the relationship is mediated and accompanied, socio-affective ties are usually created, or these may be pre-existing if there are intra-family kinship or friendship ties.

Compensation is based on what is involved in carrying a pregnancy to term, with previous clinical examinations, loss of profits, possible consequential damages, psychological support, external help for the upbringing of one's own children, special care, life insurance, health insurance, postpartum care, body changes, travel expenses, clothing, possible side effects, and a variety of factors that are extremely difficult to determine in a non-monetary altruistic act.

Monetary compensation paid to surrogates in gestational surrogacy has been increasing in recent years. Competitive rates for surrogates will vary over time and cannot and should not be predicted by "law or competent authority" except to establish mandatory minimum

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standards. In addition, surrogates who have already successfully completed one or more surrogacy processes may charge higher fees.

Surrogates and donors are entitled to reasonable compensation for the time, effort and medical risk involved in the process. However, compensation should not be contingent on any particular outcome. It may be possible to stipulate a proration of the surrogate's compensation based on the duration of the pregnancy, or specific compensation associated with various invasive procedures, or due to the complexity of the procedure (e.g., in the case of a multiple pregnancy). Surrogates must also be compensated even when pregnancy does not occur, or in cases of miscarriage.

While termination of pregnancy for non-medical reasons is extremely rare, it is sometimes difficult for the intended parents to accept the principle or the surrogate's right to make decisions of her own body. However, although there may be contractual consequences in relation to the remaining compensation, we believe that there should not be any kind of financial penalty for the surrogate who decides to terminate the pregnancy, as this would diminish her autonomy.

Regardless of any compensation plan for the effort and time invested, surrogacy contracts should clearly stipulate that the intended parents will be responsible for all medical expenses related to the process that are not covered by the surrogate's or donor's health insurance. The same principle applies to non-medical expenses, such as clothing, transportation, childcare, lost profits, and any other expenses that are directly or indirectly related to their role in the surrogacy procedures.

The eventual compensation agreed upon or the recognition of expenses is a matter of private agreement between the parties and if there is a document signed by them, it may be enforced in court, since it does not constitute a contract with an unlawful purpose under Argentine law.

Articles 17 and 53 of the Argentine Civil and Commercial Code establish that the rights over the human body do not have commercial value, but rather affective, therapeutic,

scientific, humanitarian or social value and can only be disposed of by the owner provided that at least one of these values are respected. Only those acts involving one's own body that cause a permanent damage in its integrity or that are contrary to law, morals or good customs are prohibited, except when they are required for the person's health.

The World Health Organization has determined that mental health for certain people is deeply related to the possibility of forming a family, which is of significant relevance for those who can only access family formation through gestational surrogacy.

The main points to be considered for the due protection of the surrogate are independent legal advice and medical advice, with exhaustive explanations about all the steps of the treatment, its risks, obstacles, and specific development, together with permanent psychological support, and respect for privacy and self-determination.

Experience shows that intended parents are usually at the same level of vulnerability -or even at a higher level- as they go through the mourning of the loss of their reproductive capacity (physical or social) in solitude and resort to multiple financial strategies to pay for the processes, in addition to the legal uncertainty or the different procedures they must go through in order to form or expand their family.

The choice of the surrogate and her willingness to collaborate in the family project of the intended parents is the key to obtain a result, in a peaceful, caring and respected environment.

It is important at this point that the selection, examinations and monitoring of the surrogate should be carried out by experts, as well as the examinations carried out on the intended parents.

As the gestational carrier plays a key role in surrogacy, it is frequently wondered what would happen if she does not want to give the newborn to the intended parents, or if they abandon the newborn for any reason (or get divorced, separate or die) in contradiction to their express procreative intent laid down writing.

In practice, experience and statistics show that surrogates do not participate in a surrogacy program to have a child of their own, they have different individual projects, they feel great responsibility, relief and pride in giving the child to the intended parents; likewise, children born by surrogacy, like those born by AHR, are desired children, dreamed and loved by their intended parents since before their conception.

The documents, agreements and covenants subscribed are fundamental to establish the guidelines and conditions under which the procedure will be carried out in case of contingencies during the procedure, even without covering all moral issues, the surrogate who does not give the newborn to the intended parents incurs in illegitimate deprivation of the newborn's freedom, that is to say, an illicit act known as kidnapping -in terms of criminal responsibility-, or at least as a breach of the duty of custody, after the birth.

Extraordinary judicial measures would be adopted, such as restraining orders and orders prohibiting leaving the country.

As for the intended parents, the refusal to be responsible of the newborn implies child neglect and the crime of abandonment of a person and, therefore, the State will take action and place the newborn eligible for adoption.

In no way can the surrogate who has expressed her lack of procreative intent be considered as the intended adopter of the newborn, unless she expressly assumes it.

- **Guardian of the unborn baby.**

It is important, in any event, that the future parents have a GUARDIAN appointed for the unborn child, in the event of their death before or after the birth, and it is not advisable that the guardianship falls on the surrogate, except in cases in which the surrogate is a family member.

It is also important to state the continuity or not of the treatments in the event of divorce, separation or death, regardless of who provides the genetic material, in the consent

documents subscribed in the health centers or, failing that, in annexed documents.

The provision of a guarantor for the obligations of the intended parents with regard to the gestational carrier and the health centers (duties generally assumed by the agencies) plays a fundamental role, and must be foreseen in the respective agreements or covenants on the matter.

D.- Bills (proposed legislation)⁵

There exist 17 bills that have been submitted to the Congress of the Nation since 2012, but most of them have not been passed, and some have been reintroduced.

The bill process in the Argentine Republic depends on the urgencies and priorities established by majorities and in times of development and debates in internal commissions that in some cases take years, and thus, bills may die after a determined period of time.

According to the facts, the topic is not, for the moment, an issue that catches the attention of legislators, despite the fact that it is a necessary and relevant topic that can benefit society.

In 2022, Senator Anabel Fernández Sagasti, inspired by a previous bill presented by the national congresswoman Gabriela Estévez (*Frente de Todos [political party]-Córdoba*) - proposes an amendment and additions to some articles of the Argentine Civil and Commercial Code (arts. 562, and additions 562.2, 562.3, 562.4, 562.5, art. 563 second paragraph and art. 564 subsection C) and amendments to article 8 of Law 26862 including gestational surrogacy to be provided by the three subsectors of health in the country (public sector, social security - (public health insurance), and private - (private health insurance).

The bill is intended to regulate surrogacy as a procedure of assisted human

⁵ <https://www.diputados.gov.ar/proyectos/proyecto.jsp?exp=1374-D-2018>,
<https://www.senado.gob.ar/parlamentario/parlamentaria/403295/downloadPdf>,
<https://www.senado.gob.ar/parlamentario/parlamentaria/433789/downloadPdf>

reproduction with a surrogate, without profit motive and with the requirement of prior judicial authorization, with the focus on the procreative intent expressed in a prior, informed and free consent document.

The draft is flexible since it does not require at least one of the intended parents to contribute their genetic material. However, in other aspects it is extremely restrictive. It requires previous judicial authorization with excluding requirements (it states that the participation of the surrogate must be in an altruistic and non-monetary way without any profit motive, and imposes that the surrogate or the couple of applicants must be native or naturalized citizens of Argentina, or they must have lived at least five years in the country).

These limitations -that do not reflect reality- seem to ignore the actual process of gestational surrogacy; the non-monetary altruistic act should not rule out reimbursement for reasonable expenses, lost profits during the gestational period, among others, that will be considered by the parties. Judicial authorization is also excessive and could only be effective if an "expedited proceeding" is legislated. Today we have a collapsed and discredited court system that works in a defective and arbitrary manner. Parties cannot and should not wait years to obtain authorization, this is unfeasible.

Article 19 of the Constitution of the Argentine Republic provides that: *"The private actions of men which in no way offend public order or morality, nor injure a third party, are only reserved to God and are exempted from the authority of judges.* No inhabitant of the Nation shall be obliged to perform what the law does not demand nor deprived of what it does not prohibit."

As for the limitations of foreigners, the grounds of the project allude to the pejorative term "reproductive tourism", tinged with ideology, which only leads to isolation from the world and lack of integration to it, reducing sources of work and opportunities to those who have limitations in their countries of origin that do not recognize surrogacy as a right to build a family. Rather than *reproductive tourism*, the correct term is *reproductive exile*.

Current legislation of the Argentine Republic, in terms of recognition of rights and the

prestige of fertility centers in comparison with those of the Region make Argentina a country of 'reproductive exile' and, in particular, a potential country in reproductive matters, which could be terminated if any of the bills that discriminate against the possibility of foreigners to carry out the process in the country were to be approved.

Article 20 of the Constitution of the Argentine Republic establishes the equality of civil rights between Argentine citizens and citizens of other countries, and provides that: "*Foreigners enjoy in the territory of the Nation all the civil rights of the Argentine citizen.*" This rule establishes the principle of equality between Argentine citizens and foreigners.

In addition, the general guidelines of comparative law are restated with respect to proving the impossibility of conceiving or carrying a pregnancy to term, that the surrogate provides only her reproductive capacity and not her own eggs, that she builds or has emotional ties with the petitioners, that she has not undergone more than two surrogacy treatments, and that she has at least one child of her own.

Other bills, such as that of Senator Julio Cobos and that of Congresswoman Vanesa Laura Massenatti provide for a National Registry of Surrogates, a rigorous system for approval of the agreements between the surrogate and the applicants, and emphasize the non-commercial aspect of economic compensation and that a minimum fixed by a competent authority appointed for that purpose must be established. They also emphasize the requirement that surrogates must be Argentinian or must have resided in the country for at least 5 years, and the hiring of a mandatory life insurance, and also focus on the preservation of the right to information of minors born by assisted human reproduction. Julio Cobos' bill includes a sanction for intermediaries who profit from gestational surrogacy, with the exception of organized and professional agencies that collaborate with the protection of all the interests involved.

Congresswoman María Rachid's bill does not establish that having the Argentine Nationality must be a requirement, neither for applicants nor for surrogates. Surrogates cannot exceed 35 years of age and must prove that they have not been pregnant in the last 365 days. The clinic, prior to the embryo transfer, must request that the instrument from which the consent

of the applicants and the surrogate is obtained be submitted, in which the integral well-being of the surrogate is ensured. The bill foresees that, after the birth, there will be no further contact between the surrogate and the child, unless otherwise agreed, and prohibits the commercialization of embryos; however, it incorporates the possibility for the intended parents to decide to terminate the pregnancy during the first 14 weeks.

The hypothesis that a bill will be approved without modifications is uncertain and the time or priority given to the issue depends on unpredictable factors.

A possible new surrogacy law pursuant to Argentine legislation would be applicable in the future (legal principle of non-retroactivity). The temporal effectiveness and the entry into force of the new law applies to the consequences of existing legal relationships and situations, a criterion that has given rise to differing interpretations. However, the codification itself (Argentine Civil and Commercial Code, preliminary title, article 7) safeguards the rights protected by constitutional guarantees (Argentine Constitution, articles 16 c and 19) "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

E- Feminism and its activism.

A factor to consider in the evolution of future legislation is the influence of feminist movements whose convening power has been observed in the massive marches for and against abortion, gender violence, and the visibility of femicides.

Within these currents, militant ideological issues are raised regarding gestational surrogacy, which puts reproductive and sexual rights, ownership of the body, and self-determination in the spotlight. It is important to highlight once again that the economic, political, social and religious context has an impact on the possible victimization or reality in terms of the commodification of surrogates' bodies and the objectification of children, both of which are exposed to illegal human trafficking.

The unique perspective of interrelating gestation, childbirth and the care of the

newborn babies, is in fact distorted in gestational surrogacy, giving rise to a new vision whose backbone is the procreative intent that privileges the volitional element over the biological one.

F. Coordinating Agencies

Agencies are non-medical companies that act as intermediaries between women who wish to offer their reproductive capacity, gamete donors and the intended parents (this includes clinics or attorneys that undertake to carry out all or some of these tasks).

Legal scholars that question the ethics of surrogacy consequently question the legality or ethics of agencies as well. However, agencies' role is vital from the beginning of the procedure to postpartum (or even until the recognition of filiation in the country of origin of the intended parents takes place); in addition, they are very useful and necessary to coordinate all stages of the process, and they exist in all surrogacy- friendly countries. In some countries they are even regulated and authorized by the State.

In some countries they depend directly on fertility clinics.

Interaction with the gestational carrier during pregnancy and childbirth is facilitated by agencies, as they carry out interviews, medical, psychological and socio-environmental examinations of women who wish to offer their reproductive capacity, and subsequently accompany them in the process, using an interdisciplinary approach. These agencies also assist intended parents so that they can carry out a gestational surrogacy process, especially if the intended parents are foreigners and do not reside in the country where the surrogacy is to be performed.

There are no regulations in Argentina regarding this type of agencies, but nothing prevents their participation, since there are no regulations in this regard, and they do not need authorization from the Argentine State to do business.

It is highly advisable for the State to regulate the operation of this type of intermediaries.

In spite of the opposing arguments, the agencies that coordinate the processes were created as a response to the difficult social conditions that support reproductive work and that "profit from the desire of intended parents and the vulnerability of surrogates."

The reality is completely the opposite, the response to the complexity of these multidisciplinary practices is only feasible with an organization working with suitable and coordinated professionals who can ensure the safety of the parties and their legal, psychological and medical dignity. The design of independent programs is required, with a collaborative approach, specifically for a surrogacy process, which discourages speculation, abuse, illegality, and carelessness that the gestational carrier and the intended parents may suffer, if unprotected, without official regulation or complementary strategies.

The answer, then, lies in counseling and in consent documents -which must be prior, free, informed, clear, and precise- and private regulatory frameworks with guidelines and plans that ponder the weaknesses of all the participants in the process.

G. Cross-border cases. High vulnerability.

Within a system that supports surrogacy, intended parents should undergo a criminal background check, which will be made available to their possible surrogate before contact is made, so that decisions about everyone's safety can be made.

An analysis of the economic stability is also relevant for the purposes of full compliance with surrogacy. Psychological interviews and support during the procedure should be reviewed on a case-by-case basis.

Everything must be monitored by specialized teams with experience in surrogacy: infertile couples, people with single-parent projects, or same-sex couples may be parties, each one of them having their own desires and anxieties that can overflow or affect the surrogate. They may feel anguish, frustration, emotional imbalance, or stress while going through the procedure, everyone trying to maintain control and not to invade the surrogate's privacy, but at the same time trying to be present.

It is essential a continuous follow-up, permanent support and counseling, guidance, communication offered by the surrogacy team, given that some details for one area may be a warning for the other, all areas must be coordinated and structured for the benefit of the parties involved in Surrogacy, and the protection of the best interest of the unborn child.

High vulnerability in surrogacy is determined by a selective process, which involves a comprehensive assessment of the surrogate, fertility clinics, attorneys, psychologists, obstetricians, assistants, intermediary agencies, etc., in order to ensure the best approach to pathologies that must be detected in time to avoid consequences that fall on absolutely vulnerable people. Surrogates and their own families, partners, spouses or their social environment have their story and past, which must be considered for their stability and mental health.

In the case of foreign intended parents, it is important to establish prior meetings, and meetings during the course of the pregnancy to generate mutual trust and to understand the altruist goal that must be present during the procedure. For this purpose, it is essential to guarantee translation or communication with interpreters or experts who can interact and build bridges to facilitate communication during the procedure.

Due to the worldwide situation, it is feasible that Argentina -because of its qualities- becomes a new pole of attraction to perform highly complex fertility procedures (AHR) such as surrogacy.

H. Conclusion

Latin America, as a region, has its own historical context and very peculiar circumstances. Currently, the Argentine Republic, regardless of its government, has a legal framework which is favorable to surrogacy procedures.

Even with the absence of a rule of law on the matter, the supranational scenario, the legislation and laws that respect inclusion and diversity, which also have a majority social acceptance, lay the necessary foundations for the development of surrogacy programs in an

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open and conflict-free manner.

The multidisciplinary and joint participation with the respective clinical, legal, social and psychological counseling completes an adequate framework for the evolution of gestational surrogacy.

The gender identity law, the law on equal marriage (respect for marriage), the voluntary interruption of pregnancy law, the law on medically assisted reproduction, the local laws of the Autonomous City of Buenos Aires, and jurisprudence, constitute the basis of legitimacy that are required.

Applicants from the different provinces of the country or abroad must also be considered another advantage, which is the possibility of initiating and continuing some phases of gestational surrogacy remotely. You may communicate with the clinic, with the surrogate, with attorneys, and with intermediaries remotely. In addition, you may notarize the signatures of clinical documents, agreements, the request and authorization to send samples of genetic material, and subscribing consent documents, remotely.

The validity of these authentic notarized documents is carried out by means of a videoconferencing system and advanced identity accreditation supervised by the authorities of the Civil-Law Notary Public Association of the Autonomous City of Buenos Aires (entity that represents and regulates Notaries in the territory of the Federal Capital of the Argentine Republic).

The selection and examination of intended parents and surrogates is easier for those who desire to form their families and parties to the procedure, due to globalization, social networks, transportation and communication connectivity, and access to information.

Indeed, the end does not justify the means; all the steps taken in this direction require a private regulation, faster than the rules, such as accessible, simple and clear agreements, with the relevant reasonable provisions on a case-by-case basis, intermediaries that coordinate and agree with surrogacy, organized structures that facilitate the admission, transition, development,

outcome and risks of gestational surrogacy.

The Argentine Republic is also a country whose natural wonders attract citizens from all over the world; thus, reproductive migration or *reproductive exile* may ensure a comfortable environment in cases where it is necessary to remain in the country for prolonged periods of time. All over the country there are prestigious fertility clinics, but perhaps the City of Buenos Aires, as it is a cosmopolitan city and due to its building infrastructure to accommodate foreigners and citizens from the interior of the country, is the city with the largest number of clinics. In addition, it has the regulatory advantage of the Registry Office with respect to surrogacy births, a fact that, to date, has been indisputable.

As regards the financial area, and considering the expenses involved in surrogacy, there may be some difficulties due to the political situation, the complex exchange rate policy and the skyrocketing inflation. We, the local citizens, are familiar with various strategies to mitigate its effects and have learned to be experts in suggesting and developing tools to buy, receive and save in foreign currency. Cross-border cases will then require extra counseling in this regard, a situation that, if explained in time, can be handled easily.

Furthermore, given the complexity of surrogacy, it is necessary to have professional, legitimate, open intermediaries to contribute to the procedure and to prevent abusive conducts.

Collaboration agreements are key for surrogacy success, successful surrogacy strategies and planning. These agreements entered into by the parties set forth their duties and responsibilities. Another key element for success is the sense of teamwork during the procedure, where each actor is fully aware of and committed to its responsibilities.