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Surrogate motherhood and the filiation of the nasciturus

Surrogate motherhood is a practice of assisted human reproduction, which in recent years has begun a legislative ascent for its regulation, in several countries. Colombia is not the exception, it is currently in the process of debate in the Senate of the Republic, a bill that, if approved, will go to regulate surrogacy within Colombian territory. This text investigates the agreement on which surrogate motherhood is practiced in Colombia, which does not have a classification within the Colombian legal system. Substitute motherhood, surrogate motherhood or belly rent, are the names with which is usually called the practice in which a woman, by agreement between parties, is committed to carry out a pregnancy and deliver the child at the time of birth.

The procedure of surrogate motherhood resorts to the techniques of assisted reproduction and its historical antecedent dates from 1884. This new reality opens questions about the sonship of the fertilized child under these techniques of assisted human reproduction and to whom the rights of the child are enforceable. Likewise, this topic opens the discussion about the certainty of motherhood, regardless of who is the mother who owns the fertilized ovule. In Colombia there is no legislation dealing with surrogate motherhood, however, the Constitutional Court has established that filiation is a fundamental right, due to its connection with the right to legal personality, especially when it comes to children, advocating the prevalence of their rights. We have seen the need for the law to adapt to social - cultural changes and technological advances - scientific, as it is, to legislate on techniques of assisted human reproduction, given the need in some countries to control the population and in others, to increase it.

Legislative stagnation in this issue denotes a number of cases of surrogate motherhood, in clinics that provide this service clandestinely, and others openly, offering their services in web pages, but that, when solving the dilemmas of filiation, they incur falsehoods in public documents, as well as relying on another kind of legal

infractions such as a civil contract. The latter is inadmissible in surrogate motherhood, before the event, that a human being cannot serve as a commodity between supply and demand.

In other countries, the issue of surrogate motherhood is legislated in a permissive manner and without obstacles.

In some countries, the technique of assisted human reproduction in surrogate motherhood is determined by means of a contract with validity, which, at the time of delivery, that son, product of this technique, becomes the son of the contracting parents, who acquire the filiation right.

This paper will preferably develop the problems of civil contract and filiation with regard to surrogacy.

Biography: José Antonio García Pereáñez is serving as a professor and researcher at the American University Corporation in Columbia. He is a trainer of law students in the humanistic areas and his deontological goal is the "Legal Defence of Life". He worked on issues such as: abortion, surrogate motherhood, homoparental families, the report, ADHD, Alzheimer's disease, telemedicine and telelaw, among others. He dedicated his whole life to education, in high school, undergraduate and postgraduate. His intellectual concern at the moment is to offer Legal and ethical deliberations in the search for Human Dignity, and for women in Particular.

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