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Review article

The legally charged issue of cross-border surrogacy: Current regulatory challenges and future prospects

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ABSTRACT

The article aims to shed a light on the unique complexities inherent in surrogacy and the legal-ethical challenges that currently exists even in many advanced democracies, which frequently result in uneven and ill-defined standards and processes. The recent proposal of making surrogacy a "universal crime", meant to prevent cross-border surrogacy, i.e. travels by citizens from countries where it is illegal to countries where it is legal, has also been weighed, by exploring the current legislative state of affairs, trends and future horizons. Recent case-law has been analyzed and interpreted, with a close focus on Italian Supreme Court ruling n. 38162, issued on 30th December 2022 and European Court of Human Rights (ECtHR) rulings issued over the past decade. Uncertainty and ill-defined norms and court rulings risk harming the rights of children, surrogate mothers and intended parents. So far, court decisions have somehow filled the legal vacuum, considering that cross-border surrogacy is not specifically regulated in many countries and the status of children born abroad is still controversial. The views and judgments of supranational courts on the issue need to be accounted for when drafting new specific legislation. It is of utmost importance to uphold the rights of children born through surrogacy abroad, whose best interests risk being damaged. Legislative harmonization at the international level is essential to prevent the cross-border surrogacy trend. The "universal crime" draft bills appear to be difficult to enforce and too vague to be credible at the moment.

Introduction

There is no denying that Medically-assisted procreation (MAP) by means of assisted Reproductive Technologies (ART) has grown in lock-step with scientific and technological advancements, which have enabled countless couples (including same-sex couples) and even singles, where legal, to achieve parenthood. MAP has thus become increasingly rooted in modern society.

MAP advancements, innovations and growing scope, which currently offer a broad array of different approaches and strategies, are rather controversial in terms of how strictly they ought to be regulated, and to whom they should be made available [1]. In fact, those who openly oppose such procreation procedures, surrogacy in particular,

point to the danger that they could lead to the exploitation of women and the debasement of human life [2].

To be exact, surrogate motherhood is an articulated process which relies on a woman, the surrogate mother, who agrees to be impregnated through ART and give birth only to hand over the child to the commissioning couple, also known as "intended" parents. Traditional surrogacy entails that the surrogate mother use her own oocyte fertilized by sperm from the intended father or from a donor; gestational surrogacy, the most common in such arrangements, is instead achieved by a donated oocyte, donated sperm (which again can be from the intended parent) and an embryo constituted via in-vitro fertilization (IVF) to be then transferred into the surrogate's womb [3–5]. Hence, it is worth noting that no biological relationship exists between the child born from

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gestational surrogacy and the woman who acted as surrogate. Surrogates, who receive financial compensation in “commercial surrogacy” agreements, are bound by contract to waive any right over the child they bear, and such surrogacy contracts are legally enforceable in countries where the practice is legal [6]. That is the reason why surrogacy opponents often characterize it as “rented uterus” with a clearly pejorative undertone. Commissioning parents may be heterosexual or homosexual couples, or even singles if the national legislation allows it. It is therefore worth elaborating on the legal vacuum that currently exists even in many advanced democracies, which often gives rise to uneven decision-making standards and processes, by exploring the current legislative state of affairs relative to surrogacy. Particularly, a new legislative proposal backed by the center-right majority coalition aims to make surrogacy a “universal crime”, which would make intended parents punishable if they travel abroad to pursue surrogacy agreements in countries where it is legal. Court decisions following such a law bill have already nullified the legal recognition of intended parents, whose status had been recognized by local city governments.

Methods

The article hinges on a succinct analysis of recent case-law, which has been discussed and interpreted, with a close focus on Italian Supreme Court ruling n. 38162, issued on 30th December 2022, against the backdrop of the European Court of Human Rights (ECtHR) and relevant research findings on the social, legal and ethical implications of surrogacy. A total of 63 sources have ultimately been drawn upon for the purpose of this article, in order to provide a relatively comprehensive perspective on key notions such as the child’s best interests, public order, legal recognition of intended parents and future directions in the governing of cross-border surrogacy, and how such fundamental aspects could be reconciled in as well-balanced a manner as possible. In addition, 11 European Court of Human Rights (ECtHR) rulings, spanning the 2014–2023 decade, have been elaborated on and analyzed in their relevant reasoning points and rationales. Scientific databases PubMed/MedLine, Scopus, cochrane, Web of Science have been delved into by using the following as search strings: “cross-border/international surrogacy”, “child’s best interest”, “intended/social parents”, “legal status/parenthood recognition”, “international guidelines”, “caselaw”.

Findings

Surrogacy, a polarizing issue with far-reaching legal and ethical ramifications

Despite what one may think, surrogacy has been around for a long time in one form or another, although the first analysis and recommendations by a scientific society dates back to 1983, when the American College of Obstetricians and Gynecologists (ACOG) issued a set of remarks on the subject [7]. The same organization underscored the need for those who decide to avail themselves of cross-border surrogacy, i.e. seeking to enter into surrogacy agreements outside of their country of domicile, “to seek legal advice from appropriately qualified legal counsel experienced in cross-border gestational carrier arrangements”, given the complex nature of surrogacy contracts and the contingencies that might arise [8].

Surrogacy supporters argue that it fosters the autonomy of sterile couples and upholds their procreative rights. Various conditions can prevent women from having a pregnancy, such as Mayer-Rokitansky-Küster-Hauser syndrome, major congenital uterine malformation, unfavorable hysterectomy outcomes, intrauterine adhesions, and leiomyoma. While uterine transplantation (UTx) might address these issues in the future, it is currently a complex and experimental procedure with low success rates [9,10]. Conditions unrelated to reproductive organs, such as heart or kidney disease, may also prevent pregnancy and could benefit from surrogacy. Additionally, surrogacy can help avoid common

pregnancy risks like hypertension, preeclampsia [11], delivery-room infections [12], and is a last resort for recurrent implantation failures in assisted fertilization [13], with techniques like egg freezing broadening its application [14]. The recognition of both intended parents in cross-border surrogacy, particularly for same-sex couples, remains unresolved in Italy. Currently, Italian authorities only recognize the parent with a biological connection to the child, ignoring foreign-issued birth certificates that recognize both parents. Same-sex couples in Italy also cannot access medically-assisted procreation procedures. This situation highlights ongoing challenges and conflicting views among medical and bioethics communities, state legislatures, courts, and the public regarding cross-border surrogacy. Courts consider factors such as the children’s best interests, the gestational mother’s dignity and well-being, the genetic connection between the child and biological parents, and the family project of the commissioning parents. The debate among jurists, scholars, and policymakers focuses on which of these elements should be prioritized. [15].

The complexities of surrogacy are reflected in the diverse legislative frameworks across Europe and beyond. Both commercial and altruistic surrogacy (without financial reward beyond pregnancy-related expenses) are illegal in most of Europe, including Spain, France, and Germany [16]. In countries without specific legislation, surrogacy contracts can be unenforceable, making surrogacy indirectly illegal, as seen in Ireland, the Netherlands, Belgium, and the Czech Republic [17]. In the UK, only altruistic surrogacy for UK citizens is legal, and commercial surrogacy is banned. Portugal allows altruistic surrogacy only for heterosexual couples with a medical condition preventing natural procreation. Ukraine has the most permissive surrogacy laws in Europe, allowing commercial surrogacy for foreign citizens, although the ongoing conflict has disrupted the industry, jeopardizing the rights of children, surrogates, and intended parents [18].

Outside of Europe, very significant is the case of India, where commercial surrogacy used to be legal [19]. In October 2015, in an effort to stop fertility travels to the country, the Indian parliament enacted a bill to amend the previous surrogacy law in order to ban foreign citizens from using surrogacy services in the country [20]. Consequently, only Indian resident married heterosexual couples with medical infertility can avail themselves of altruistic surrogacy. Commercial surrogacy is therefore banned for everyone in India [21,22]. A similar scenario is taking shape in Russia (where commercial surrogacy is legal for foreigners as well), whose legislature is set to enact a law barring foreigners from entering into surrogacy agreements in the country, according to the speaker of the lower house of parliament [23].

To further broaden the overview, in addition to discussing India and Russia in the East, we can also mention the USA in the West. In the United States, surrogacy is primarily divided into two types: traditional and gestational. Traditional surrogacy involves the surrogate mother being genetically related to the child, whereas in gestational surrogacy, the surrogate mother has no genetic relationship with the child. Surrogacy laws vary from state to state: some states have favorable regulations, while others are more restrictive. Surrogacy agreements are detailed legal contracts that delineate the rights and responsibilities of the parties involved, including financial aspects and medical decisions. After birth, intended parents must establish their parental rights through legal proceedings. Surrogate mothers may receive compensation in addition to medical expenses. For international intended parents, there are additional considerations regarding the child’s citizenship and immigration status [24,25].

The climate of uncertainty jeopardizes the children’s best interest

In Italy, numerous court rulings over the years have underscored the necessity for legislative action to establish clarity and objectivity regarding the recognition of family status for children born through cross-border surrogacy. This article will focus on the latest significant ruling by the Supreme Court of Cassation, which aligns with the current

government's stance that legal recognition of both intended parents cannot be automatically granted [26]. This position will be examined in light of international judicial trends. The Court emphasized that the child's protection in surrogacy cases can be achieved through "adoption in particular cases," ensuring the child's full recognition and rights while assigning parental responsibilities to the intended parent. The Court's decision followed an application by an Italian homosexual couple, who had entered into a civil union under national law and later traveled to Canada for a surrogacy arrangement. However, only the biological father was legally recognized in Italy, whereas the Canadian court recognized both intended parents. The appeal for legal recognition was brought before the Supreme Court by the couple, highlighting the prevalent issue that surrogacy is illegal in Italy, yet fertility travels involving Italian citizens are common, resulting in thousands of children and commissioning parents. This underscores the urgent need for a balanced regulatory framework to govern this complex phenomenon. The Court chose to address the conflicting interests involved, particularly concerning the family status and well-being of children born through cross-border surrogacy [24]. While the intended parents' family project is significant, it must be balanced against other interests and needs. Surrogate mothers, often vulnerable to exploitation due to economic difficulties or coercion, must be considered. Additionally, children born through surrogacy face uncertainties about their legal status, impacting their social identity development significantly.

Discussion

Italian private international law statutes (art. 64 Law n. 218/1995) [27] stipulate that foreign judgments, like the one issued by the Canadian court recognizing both intended parents, should be acknowledged only if they do not violate national public order. Therefore, evaluating foreign certificates for recognition requires assessing their ultimate effects and their conformity with fundamental national legislation, the Constitution, and international treaties. This evaluation necessitates a thorough examination of the concept of international public order [28]. The Court has emphasized that the fundamental principles of international public policy serve the crucial function of ensuring a high degree of consistency within Italy's legal and judicial system. This harmonization aims to protect and uphold core values and rights aligned with principles upheld by international treaties, institutions, and courts.

The consistency of any foreign ruling with national law is determined by applying two basic measures. Firstly, Law 40/2004 [29–31] regulates medically-assisted procreation and prohibits surrogacy under Article 12, imposing penalties on all involved parties, including intended parents [32]. Despite flaws and constitutional challenges, the surrogacy ban remains intact. Although this piece of legislation has exhibited many flaws, especially in pandemic times [33,34] and key parts of it have been declared unconstitutional [32], the surrogacy ban has stood firm. The Court has examined whether this provision aligns with international public order, considering its aim to uphold human dignity. It has concluded that outlawing surrogacy is compatible with public order enforcement, as it reaffirms the essential nature of the values at stake. Surrogacy is deemed potentially harmful to the dignity of the surrogate mother and the children's well-being, jeopardizing the maternal relationship.

Surrogate mothers are in fact nothing more than providers of a service and the children into the final product of such a service. Such conclusions however may be grounded more in ethical and moral belief than they are in established research. Studies centered around surrogates and their motivations have in fact concluded that many surrogate mothers are often motivated by the altruistic wish to help infertile couples achieve parenthood [35–37]. In addition, though most surrogates do not consider themselves mothers, they often seek to keep in contact with the commissioning parents and children [38]; such a desire has been viewed as a healthy element indicative of personal satisfaction and emotional well-being and inner stability [39,40].

The Court also discounts the importance of the distinction between commercial and altruistic surrogacy; both in fact take advantage of the surrogate's body as a means to bear a child that will be handed over to the commissioning couple. Such a dynamic harms the woman's dignity and impairs her freedom and self-determination. Secondly, and just as importantly, the Court singles out the concept of the child's best interest, even in terms of knowing his/her biological origins [41,42], as an integral part of the broader notion of public order. Although such a principle does acknowledge such an interest as being tied to the legal recognition of a parental relationship with both intended parents, such a requirement must not be used as a means to condone or legitimize practices or contracts that violate legislation currently in force. That is the reason why automatic recognition should not be granted, but rather a more rigorous and selective way of legitimizing the parental relationship should be put in place, i.e. "adoption under extraordinary circumstances", which is meant to express the determination to discourage fertility travels. Recent European Court of Human Rights (ECtHR) case law buttresses the margin of appreciation which must be granted to national lawmakers from each individual nation when it comes to governing ethically charged and highly sensitive matters such as medically-assisted procreation and parenthood [43–46]. Both the European Convention on Human Rights (ECHR) and the The Charter of Fundamental Rights of the European Union (CFR) support such a margin of appreciation. Such a view has been confirmed by a recent ECtHR rulings legitimizing Italy's requirement to apply for special adoption procedures, and another one in favor of a Danish court which had denied recognition of parenthood in the case of a child born abroad through commercial surrogacy.

Some significant rulings are listed in the table below (Table 1). We have decided to include examples of rulings from Southern Europe (Italy), Central Europe (France and the Netherlands), and Northern Europe (Iceland).

As evidenced by the analysis of representative case-law, currently available rulings are rather emblematic of the broad-ranging complexities and distinctive traits which characterize cross-border surrogacy nowadays. Notions such as the child's best interests, public order, family and private life, and rights thereof, commercial vs altruistic surrogacy, ethics and legislative approaches have proven somewhat hard to identify through objective parameters, given the peculiarities inherent to each case and the magnitudes of the implications at stake. The conflicting views on surrogacy, mostly arising from a new and non-traditional family entity [54–59], are in fact hardly surprising, given how many beginning-of-life controversial practices are well-known to be polarizing and divisive, from abortion to emergency contraception [60], from innovative diagnostic practices such as non-invasive prenatal testing [61,62] to personalized medicine techniques based on epigenetics, molecular classifications and tissue-engineering [63–66].

Taking it a step forward: Surrogacy as a "universal crime", feasible approach?

A further crackdown on cross-border surrogacy has been announced by the Italian conservative government and center-right lawmakers. The notion of surrogacy as a "universal crime", supposedly punishable even if undertaken abroad under a jurisdiction where surrogacy is legal, has been debated by legal scholars and policy-makers. Apparently, the conservative government concluded that imposing the requirement of "adoption under extraordinary circumstances" for the second parent was not enough to disincentivize and discourage cross-border surrogacy.

Last April 2022, the Justice Commission of the Italian Parliament's Chamber of Deputies approved a preliminary version of draft bill n. 306, named after the President of the Council of Ministers herself, Ms. Melon [67]. The bill adds to paragraph 6 of article 12 of the already mentioned law 40/2004, which bans surrogacy in Italy, the phrasing: "the penalties defined under this paragraph are to be imposed even if the criminal act is perpetrated abroad". The provision aims to enforce Italian criminal

Table 1

Relevant ECtHR decisions revolving around cross-border surrogacy and the recognition of children thus born.

ECtHRRulingand date	Case specifics	Outcome
Menesson v. France and Labasseev. France, 26th June 2014 [47].	The applications arose from the denial of legal parenthood recognition in France between children born through surrogacy and the intended parents. The applicants denounced such a denial harming the children's best interest.	The ECtHR found no violation of Article 8 regarding the applicants' right to family life but did find a violation concerning the children's right to private life. The Court argued that French authorities, despite knowing that the children were recognized as the offspring of Mr. and Mrs. Menesson and Mr. and Mrs. Labassee in the United States, denied them the same status under French law. This discrepancy was seen as harmful to the children's identity within French society. Additionally, the case-law prevented recognizing the legal relationship between children born via lawful surrogacy abroad and their biological father, exceeding the margin of appreciation allowed to member states regarding surrogacy. This margin is limited when it comes to parentage, as it fundamentally affects individual identity.
Paradiso and Campanelli v. Italy, 24th January 2017 [48].	The case involved a nine-month-old child born in Russia via surrogacy, placed in social-service care after it was found the commissioning parents had no biological tie to the child. The applicants filed a complaint against the child's removal and Italy's refusal to recognize the parent-child relationship and register the child's birth certificate.	With an 11 to 6 vote, the ECtHR Grand Chamber found no violation of Article 8 of the Convention. The Chamber concluded that no family life existed between the applicants and the child due to the lack of a biological tie, their short relationship, and ill-defined legal ties. The measures aimed to prevent disorder and uphold the rights and freedoms of others. The Italian authorities' stance on legally acknowledging a parent-child relationship only in cases of biological ties or lawful adoption was deemed legitimate for

Table 1 (continued)

ECtHRRulingand date	Case specifics	Outcome
		ensuring children's welfare. The Italian courts found no serious harm would result from the separation, thus maintaining a fair balance between the interests at stake and staying within their margin of appreciation.
C and E v. France (nos. 1462/18 and 17348/18), 19th November 2019 [49].	The case stemmed from the French authorities' denial of legal registration of birth certificates of children born abroad through surrogacy. The intended father's sperm had been used. The birth certificates indicated the intended mother as the legal mother.	The two applications were deemed ill-founded and therefore inadmissible. The ECtHR viewed the refusal by the French authorities as disproportionate: national legislation in fact allows for the recognition of the parent-child relationship between the applicant's children and the intended mother through second-parent adoption. It was remarked by the Court that the waiting time for a decision was only 4.1 months on average for full adoptions.
Valdís Fjölnisdóttir and Others v. Iceland, 18th May 2021 [50].	Refusal to legally recognize parenthood between the first two applicants and the third applicant, the child, who was born through surrogacy in the United States. Neither intended parent, from Iceland (where surrogacy is illegal), had any biological tie with the child, hence had not been recognized as the child's parents. The applicants complained that the denial of legal registration had unduly interfered with their rights.	No violation of Article 8 of ECHR had occurred, in light of the lack of any biological tie, although a family project did exist between the applicants. Still, the Court found that the authorities denying recognition of the applicants as the child's parents was consistently grounded in national legislation. Lastly, Icelandic authorities had taken steps to maintain that "family life" at the core of the family project, thus not exceeding the margin of appreciation.
A.L. v. France (no. 13344/20), 7th April 2022 [51].	The case was centered around the compatibility between the right to respect for private life and the national courts' refusal to legally recognize the applicant's fatherhood with his biological son, born through surrogacy in France, after	Article 8 of the Convention was violated due to France's failure to exercise exceptional diligence in this case. However, this violation does not question the Court of Appeal's assessment

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Table 1 (continued)

ECtHR Ruling and date	Case specifics	Outcome
	the surrogate mother had entrusted the child to a third couple. The applicant's argument stated that the denial of his application to have his fatherhood recognized with his biological child constituted an unreasonable interference with his right to respect for private life, as safeguarded by Art. 8 of the ECHR.	of the child's best interests or its decision, upheld by the French Court of Cassation, to deny the applicant's request. The ECtHR noted that the Court of Appeal correctly prioritized the child's best interests, considering the biological status claimed by the applicant. The domestic courts balanced the applicant's right to private life with his son's right to private and family life, justifying their interference under Article 8 § 2 of the ECHR. Despite this, the proceedings lasting over six years failed the duty of exceptional diligence, as extended delays in parent-child relationship cases can lead to irreversible outcomes.
K.K. and Others v. Denmark (no. 25212/21), 6th December 2022 [52].	This case centered on the Danish authorities' refusal to allow the first applicant to adopt the twin children, who were born via surrogacy in Ukraine. The surrogate mother had received financial compensation under an agreement involving the first applicant and her partner, who was also the biological father of the children. Danish law prohibits adoption when it involves payment to the surrogate mother who agrees to it.	The ECtHR found no violation of Article 8 concerning the applicants' family life, noting no harm since they lived together with the children's father without adverse consequences. Additionally, no violation was found regarding the mother's right to private life, as Danish authorities made a reasonable public interest ruling to curb commercial surrogacy, outweighing her private life rights. However, the ECtHR did find a violation of Article 8 regarding the private lives of the two children. The Danish authorities failed to balance the children's interests with societal concerns about commercial surrogacy, particularly regarding their legal status and relationship with the first applicant.
C v. Italy (no. 47196/21), 31st August 2023	The Italian authorities denied legal recognition	The ECtHR found a violation of Article 8

Table 1 (continued)

ECtHR Ruling and date	Case specifics	Outcome
[53].	to the parent-child relationship documented by a Ukrainian birth certificate between the applicant, a child born through surrogacy in Ukraine and her biological father and intended mother	(right to private and family life) regarding the delayed recognition of the applicant's parental relationship with her biological father by Italian courts. This caused uncertainty about her identity and statelessness. No violation of Article 8 was found regarding the legal parent-child relationship with the intended mother. The Court stressed that domestic law should allow recognition of the legal bond between a child born through surrogacy and the intended parent, particularly if the parent is the biological father. The ECtHR criticized Italy for not promptly addressing this, affecting the applicant's right to private life. Regarding the intended mother, while Italian law did not permit registration of the child's birth certificate under her name, adoption was still an option. The Court ruled that Italy's decision not to register the Ukrainian birth certificate naming the intended mother as the child's mother was within its discretion.

statutes against anyone involved in the commercialization of gametes or surrogacy arrangements, even if conducted abroad. This could effectively halt cross-border surrogacy unless intended parents relocate permanently to the country where the arrangement was made. Penalties would mirror those for offenses committed in Italy, regardless of legality in the foreign country. The Meloni draft bill does not explicitly state whether the punishment applies only to Italian nationals, though a similar bill by lawmaker Mara Carfagna [68], merged with bill 306, limits prosecution to Italian citizens in its latest version. Such a legislative initiative, if enacted, would constitute a noteworthy exception to the principle of territoriality, as defined by art. 6 of Italy's Criminal Code, which states that Italian law is enforceable only if the offence has occurred on Italian soil. Nonetheless, art. 7 of the Criminal Code codifies the possibility of applying Italian laws to criminal acts committed abroad, but that would be feasible only if specific conditions were met. Specific legal provisions, for instance, need to outline the scope of applicability of Italian law even if the fact is committed abroad. In this case, if the draft bill 306 were enacted, its application would be governed by such provisions. At present, bill 306 lacks clarity and specifics, notably failing to define surrogacy, a gap also present in Law 40. Moreover, the current versions of the bills may conflict with

fundamental principles of Italian criminal law, such as double criminality. This principle dictates that an act punishable under Italian law must also be punishable if committed abroad, provided it is also illegal under foreign law. Consequently, it seems unlikely that these bills could be applied to cross-border surrogacy, as intending parents typically travel to countries where surrogacy is legal and regulated by national statutes.

As for the possible impact of such a proposal on the rights and well-being of minors, the outlook is quite grim. The children would in fact have to be taken away from their parents, which would most likely be a violation of their right to family life (especially for those children with consolidated family settings) and therefore run counter to the ECHR, article 9. However, such extremes are highly unlikely to ever materialize: on 10th June 2023, Italy's family Minister Eugenia Roccella pointed to the need for an exemption legalizing the family relationships of children born through surrogacy and currently in established family settings. The tightening restrictions have led to public prosecutors demanding the cancellation of birth certificates previously granted for the children of same-sex parents born through surrogacy abroad. On 20th June 2023, Padua prosecutor's office filed a challenge meant to nullify 33 birth certificates. Three days later, the Milan Courthouse ruled in favor of the cancellation of a birth certificate indicating both the biological and the second intended parent [69,70]. That is in keeping with the Supreme Court decision case law opposed to the automatic recognition of second intended parents, as detailed herein in previous chapters.

Ethical issues in surrogacy and respecting Human rights

The ethical issues related to surrogacy are complex and concern various aspects of human rights. We have tried to find a way to analyze and explain them as effectively as possible. Among the various issues that appear to stand out there is a risk that surrogate mothers, particularly in economically disadvantaged contexts, may be exploited or coerced into pregnancy for financial reasons. This could also lead to inadequate respect for the rights of the child born through surrogacy, which must instead be protected; it is necessary to ensure that the child has access to information about their origin and that their emotional and psychological needs are always considered. Furthermore, defining who the legal parent is can create conflicts, especially when laws from different countries are involved. Therefore, it will be necessary to clarify the legal position of intended parents and surrogate mothers, and naturally ensure the physical and mental health of the surrogate mother as much as possible, providing adequate medical care and psychological support before, during, and after pregnancy. We have wondered how to address these issues. It will be necessary to implement clear and regulated laws that protect the rights of all parties involved. These laws should include strict criteria for selecting surrogate mothers and ensure their informed and voluntary consent, as well as adequate medical and psychological support. It will be necessary to establish legal mechanisms to ensure that the rights of the child are protected, including rights to citizenship, identity, and adequate care.

At this point, an equally important question is whether surrogacy should be completely banned. The authors agree that with current scientific knowledge, a total ban on surrogacy does not appear necessary if surrogacy is well-regulated and human rights are respected. However, in the absence of such regulations and protections, the risk of exploitation and abuse is very high, making a ban a consideration to protect public health. It will be crucial to minimize risks for both parents and surrogate mothers. This includes implementing stringent selection criteria for surrogate mothers and closely monitoring their health throughout the process. Ensuring surrogate mothers have access to the best possible medical care and treating them with respect and dignity is essential. Solid legal contracts defining the rights and responsibilities of all parties, including agreements on medical complications and financial support, will be necessary. Educating all parties involved about risks and

responsibilities will be paramount, along with providing ongoing counseling to address any issues that may arise. In conclusion, addressing the ethical issues of surrogacy requires a balance between strict regulation, protection of human rights, and continuous support for all involved parties.

Conclusions

The current levels of uncertainty, inconsistency and instability regarding the families of children born through surrogacy abroad are endangering the rights and well-being of children and parents alike. Since surrogacy is not specifically governed in many countries through specific legislation, the judiciary has somehow filled the void, particularly to provide safeguards for children born abroad and whose intended parents seek to legally register as their own. The broad-ranging discourse on surrogacy needs to go farther than legal codes, rulings and regulations: it needs to be centered around and take into account different ethics precepts, morality, core values and even faith. The issue is still far from being solved mostly because research findings are still inconclusive on the surrogacy phenomenon. In most western countries, surrogacy is frequently considered as an insult on the dignity of women, and therefore outlawed, fertility travels are not. Still, such travels are costly, and this has an element of inequality and discrimination, since parenthood through such means can only be achieved by those who can afford it. The issue of coercion and exploitation and coercion of surrogate mothers is real, although research points to many surrogates being driven by an altruistic motivation arising from a desire to help infertile couples achieve parenthood. Case-law reflects such a wide degree of diversity, but ultimately, much more objective standards need to be put in place through the harmonization of legislative frameworks, relying on as broad a consensus as possible in order to strike a difficult balance and reconcile the rights and aspirations of all, while guaranteeing that the best interests of children is preserved and upheld at all times.

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Susanna Marinelli: Writing – original draft, Visualization, Validation, Supervision, Resources, Investigation, Formal analysis, Data curation, Conceptualization. **Francesca Negro:** Writing – review & editing, Visualization, Methodology, Formal analysis, Data curation. **Maria Cristina Varone:** Writing – review & editing, Visualization, Methodology, Conceptualization. **Lina De Paola:** Writing – original draft, Visualization, Resources, Investigation, Formal analysis, Data curation, Conceptualization. **Gabriele Napoletano:** Writing – original draft, Supervision, Resources, Formal analysis, Conceptualization. **Alessandra Lopez:** Writing – original draft, Resources, Methodology, Formal analysis, Data curation, Conceptualization. **Simona Zaami:** Writing – review & editing, Visualization, Validation, Supervision, Investigation, Formal analysis, Data curation, Conceptualization. **Giuseppe Basile:** Writing – review & editing, Writing – original draft, Supervision, Methodology, Investigation, Data curation.

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