

**THE NEW FAMILY CODE AND SOME ASPECTS OF SURROGACY ADOPTION****Donalb Xibraku**

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**ABSTRACT:** *At a time when the Family Code was still at the stage of the project, the adoption of the Law on Reproductive Health created difficulties as this law did not foresee anything about the procedures to be followed by the ordering parents to legally register the child as a child theirs. To fill this legal vacuum in the Family Code was expressly provided, in Article 261, that for surrogative adoption, provided for in Law no. 8876, dated 04.04.2002 "On Reproductive Health", the same criteria and procedures as provided in this Code and relevant legislation apply. In this regard some problems arise depending on use of surrogative technique. In this scientific paper I will give my contribution in this field to better understand this new area of family law that is being developing every year in Albania.*

**KEYWORDS:** New Family Code, Surrogacy, Adoption

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**Some Aspects of Surrogacy Adoption**

In case of indexing the surrogative mother with the father's genetic material, the ordered, the latter and the surrogative mother are the biological parents of the child. In this case adoption should only be carried out by the biological father's wife (that is the ordering party). A biological father can not adopt his or her biological child, as this is expressly prohibited by Article 243 of the F.C. Therefore, I think that the biological father and at the same time the ordered can make the recognition of the case according to the cases provided for in the F.C, in the conditions when there is a legal vacuum for such adjustment. In the same way, the child is created as a result of joining the *in vitro* technique of the genetic material of one of the ordering parents and the donated or anonymous genetic maternity when the husband or wife is infertile or sterile.

In the case where the child born from the mother-in-law is genuinely related to the two ordering parents, so is their biological child, although not born of a biological mother, I think it is not necessary to move into adoption procedures, but recognition is sufficient made by biological parents in the forms provided in the F.C. In cases where we have passed the adoption procedures can not be applicable all the requirements and procedures to be met in an ordinary adoption. We do not have the consent of the biological parent, since it is considered that it has been consumed since the contract was signed or we did not have biologically identified parents. Therefore, in these cases, the transition to specific adoption procedures should be made by the legislator before the adoption of this law.

***Surgical contract, as an atypical contract and its legal power.***

The first problem in my opinion relates to the contract between the ordering couple and the surrogative mother. The legal nature of this contract is very controversial. Most are of the opinion that we are facing an atypical contract, provided that the contract will only be executed after the birth of the child. Neither in any other law nor in the F.C has any criterion in relation to the contract been established, leaving the full autonomy of the parties to determine the rights and obligations they undertake to each other, which I think should be disciplined by law. But is such a legally binding contract? Will the adoption process be passed when parents or one of

their parents refuses to recognize or adopt a newborn baby ?, What are his obligations to the child produced by his order in this case? ..... these and many questions the other will be unresponsive until the lawmaker decides certain rules of general character that will discipline the relationships to be created.

### ***Litigation in California regarding surrogate contract***

In the US, surrogate reproduction techniques have found a wide spread. Ordering parents, surrogate mother and donor eggs in California from her courts regarding the contractual obligation bound between the ordering parents and the surrogate mother. Courts in California have steadily relied on the legal binding of the contract between the parents (who may be a single parent) and the surrogate mother. These cases concern when the ordering parents use their genetic material, an egg donor, or an artificial insemination of a surrogate mother.

The issue of re-marriage of Buzzanca caught up in California courts was whether a married couple who had been using anonymous donors and sperm and a surrogate mother to keep the baby were the parents of a child born six days after their marriage was resolved. The ordering father raised the claim that since he was not the biological parent of the child, he could not be called the father of the child and forced to adopt it. The matter was heard even before the California Fourth District Appellate Court, which declared the two ordering parents as the lawful parents of the child.

The Supreme Court of California (California Supreme Court) in 1993, in *Johnson v. Calvert*, came to the surprise that the surrogate mother had no parental rights to the child born of her and that the contract related to her was legitimate and compulsory. This court reasoned that there are two forms of maternity providence according to the California Family Code, the first being through childbearing evidence and the second between genetic testing (blood test). When two women, through these means, prove that they are mothers of the child, the court argues that the mother who aims at childbirth and her growth is the natural mother of the child. Likewise, the ordering mother of the child through donated eggs is the mother of the child for the same reasons.

Courts in California have adhered to the view that a child born with artificial insemination should be adopted by ordering parents after his birth. But if the mother substitutes the mind before the ordering mother is adopting the child, she will remain the child's legitimate mother and the infant mother should give up any claim on the child as she is the biological mother of the child.

### ***The main purpose is the highest interest of the minor and the guarantee of his fundamental rights.***

The right to be born offspring and family creation is a right guaranteed by Albanian legislation, but the securing of offspring by the above techniques, I think it should be clarified by the natural way of conceiving a child and the most interest high of the baby that will be born. By supplementary adoption, a desire for a couple or a single person to have a child is met, changing the concept of adoption as a measure for the protection of the minor with a view to offering him a family. A minor is born as a result of a reward contract and in some cases can not exercise his right to know his biological parents.

## CONCLUSIONS

The implementation of this law was a brisk step by the Albanian lawmaker, for the fact that Albanian society is still unprepared to accept such reproduction methods. In this regard, the social well-being of the juvenile will be threatened by the social opinion that surrounds it. In conclusion, I can say that this subject is very controversial in the legal, doctrinal, social and medical environments, and with acute legal problems that appear in the context of respect for the rights of the child guaranteed by the Convention on the Rights of the Child and acts other international. It is a theme that comes out of the right to have a child and the right of a child to a family, the overwhelming first. But how do the doctrine and jurisprudence of the Albanian community go in this direction is a question that belongs to the future.