



International Journal of Social Sciences

Caucasus International University
Volume 6, Issue 2

Journal homepage: <http://journal.ciu.edu.ge/>

DOI: <https://doi.org/10.55367/BJGL5550>



Commercial Surrogacy in Georgia: Contractual Dynamics and Regulatory Challenges

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ARTICLE INFO

Keywords:

In vitro fertilisation
Surrogate mother
Commercial
surrogacy in
Georgia
Gestational
surrogacy
Surrogacy contract

ABSTRACT

Surrogacy is actively utilized in Georgia, creating high demand for surrogate mothers. Frequently driven by financial difficulties, these women often enter agreements without fully understanding the medical and legal consequences. Against the backdrop of a scarce legislative framework, this research examines the commercial surrogacy agreement as a civil contract, defining its procedural stages and precise legal nature.

To achieve this, dialectical, comparative, statistical, sociological, deductive, and inductive methods are used to synthesize Georgian legislative provisions with key international court decisions. Moving beyond general comparative scholarship, this study offers a distinct analytical advancement by contextualizing the sui generis nature of surrogacy agreements within the unique Georgian legal reality—a prominent international surrogacy hub operating in a significant normative vacuum. By systematically testing specific mechanisms of the Georgian Civil Code against this framework and ECHR standards, the study exposes localized normative deficiencies.

The research reveals insufficient regulation and a critical lack of state control in Georgian legislation. Furthermore, it identifies profound legal gaps concerning the rights and obligations of the surrogate mother, as well as the legal protection and status of children born through surrogacy. Ultimately, by evaluating legislative ambiguities and international experiences, the paper proposes concrete directions for the further development of the domestic legal framework, ensuring balanced legal protection for all parties involved in the surrogacy agreement.

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კომერციული სუროგაცია საქართველოში სახელშეკრულებო დინამიკა და რეგულაციის პრობლემატიკა

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სტატიის შესახებ	აბსტრაქტი
<i>საკვანძო სიტყვები:</i> ინ ვიტრო განაყოფიერება სუროგატი დედა კომერციული სუროგაცია საქართველოში გესტაციური სუროგაცია სუროგაციის ხელშეკრულება	საქართველოში სუროგაცია ძალიან მოთხოვნადი პროცედურაა, რაც სუროგატ დედებზე ძალაღმძვინვარებას განაპირობებს. ხშირად, ფინანსური სირთულეებით გამოწვეული მოტივაციის გამო, სუროგატ დედად გახდომის მსურველი ქალები ხელშეკრულებებს ისე დებენ, რომ სრულყოფილად არ აქვთ გააზრებული სამედიცინო თუ სამართლებრივი შედეგები. მწირი საკანონმდებლო ჩარჩოს ფონზე და პრაქტიკაზე დაყრდნობით, წინამდებარე კვლევა შეისწავლის კომერციული სუროგაციის შეთანხმებას, როგორც სამოქალაქო ხელშეკრულებას, და განსაზღვრავს მის პროცედურულ ეტაპებსა და შედეგებს. აღნიშნული მიზნის მისაღწევად, გამოყენებულია დიალექტიკური, შედარებით-სამართლებრივი, სტატისტიკური, სოციოლოგიური, დედუქციური და ინდუქციური მეთოდები, რათა მოხდეს საქართველოს საკანონმდებლო დებულებებისა და საერთაშორისო სასამართლოების უმნიშვნელოვანესი გადაწყვეტილებების ანალიზი და შეჯამება. ზოგადი შედარებით-სამართლებრივი კვლევის ფარგლებს მიღმა, წინამდებარე ნაშრომში გაანალიზებულია სიახლე, რაც გამოიხატება სუროგაციის ხელშეკრულების <i>sui generis</i> ბუნების კონტექსტუალიზაციაში საქართველოს სამართლებრივ რეალობაში — ქვეყნისა, რომელიც გარკვეულწილად, წარმოადგენს სუროგაციის საერთაშორისო ცენტრს (ჰაბს) და, ამავდროულად, ფუნქციონირებს მნიშვნელოვანი ნორმატიული ვაკუუმის პირობებში. საქართველოს სამოქალაქო კოდექსის კონკრეტული მექანიზმების აღნიშნულ ჩარჩოსთან და ადამიანის უფლებათა ევროპული

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სასამართლოს (ECHR) სტანდარტებთან სისტემური შეპირისპირებით, კვლევა ავლენს მნიშვნელოვან ნორმატიულ ხარვეზებს.

კვლევა ცხადყოფს ქართულ კანონმდებლობაში არსებულ არასაკმარის რეგულაციებსა და სახელმწიფო კონტროლის კრიტიკულ ნაკლებობას. გარდა ამისა, გამოვლენილია სამართლებრივი ხარვეზები სუროგატი დედის უფლება-მოვალეობებთან, აგრეთვე სუროგაციის გზით დაბადებული ბავშვების სამართლებრივ დაცვასა და სტატუსთან დაკავშირებით. საბოლოოდ, საკანონმდებლო ბუნდოვანებებისა და საერთაშორისო გამოცდილების შეფასების საფუძველზე, კვლევა გვთავაზობს კონკრეტულ მიმართულებებს შიდაეროვნული სამართლებრივი ჩარჩოს შემდგომი განვითარებისათვის, რათა უზრუნველყოფილ იქნეს სუროგაციის ხელშეკრულებაში ჩართული ყველა მხარის სამართლებრივი დაცვა.

1. Introduction

The advancement of reproductive medicine has triggered significant global changes, laying the foundation for modern assisted reproductive technologies. The birth of the first child via artificial fertilisation in 1978 marked a turning point, and today, methods such as in vitro fertilisation and surrogacy are widely used infertility treatments, falling within the scope of the right to private and family life. As affirmed by the European Court of Human Rights in its November 2011 judgment (*S.H. and Others v. Austria*), the broad concept of "private life" and the right to self-determination encompass an individual's decision to have or not to have children. Similarly, Article 15 of the Constitution of Georgia guarantees the inviolability of private and family life, providing a constitutional basis for extracorporeal reproduction. Since the enactment of the 1997 Law on Health Protection, assisted reproductive technologies, including surrogacy, have been legally and actively utilized in Georgia.

However, surrogacy remains the subject of intense global academic and legal debates. While many countries strictly prohibit the practice, Georgia is among the few jurisdictions where it is entirely legal. Whether to ban or permit surrogacy falls within the discretionary power and margin of appreciation of the State. Although Georgian legislation fully allows surrogacy, including its commercial form.

The urgency of this research stems from a critical practical reality: the demand for commercial surrogacy in Georgia has surged to unprecedented levels, firmly establishing the jurisdiction as a prominent international hub. This demand is so overwhelming that the local demographic of surrogate mothers frequently cannot fulfill it, leading to a growing empirical practice of recruiting surrogate mothers from abroad. However, this booming industry operates within a severe domestic legislative vacuum. Consequently, an increasing number of surrogacy agreements culminate in complex court disputes, primarily arising from procedural violations and ambiguities during the contract formation stage. In the absence of specialized and comprehensive statutory regulation, domestic judges are routinely compelled to interpret fragmented laws and establish new judicial practices on an ad hoc basis. This lack of legal

predictability not only drastically delays court proceedings but also creates profound practical obstacles for practicing attorneys and the contracting parties involved.

Given the high demand for surrogacy in Georgia from both domestic and foreign couples, the sensitive and multifaceted nature of the issue necessitates strict regulatory frameworks. Robust oversight is paramount to address critical ethical and legal concerns, most notably the protection of women from the exploitation of their bodies.

In recent years, Georgian legal doctrine has seen the emergence of significant studies addressing surrogacy and bioethics. Key publications have explored the legal status of the embryo (I. Gelashvili, L. Khatiaashvili) and the general regulatory framework of surrogacy (N. Bogveradze, N. Kharitonashvili). However, these fundamental works predominantly focus on the perspectives of family law, medical law, and constitutional rights. Consequently, doctrinal research specifically analyzing the precise legal and contractual nature of the surrogacy agreement remains notably scarce. As practical experience clearly demonstrates, the disproportionate ratio between the high demand for surrogacy and the scarce regulatory framework inevitably leads to numerous legal complications and practical vulnerabilities.

Considering these challenges, the primary aim of this research is to comprehensively examine the commercial surrogacy agreement as a civil contract, define the legal stages of the procedure, and clarify its precise legal nature within Georgian civil law. Ultimately, the study concludes that the current regulatory vacuum leaves all parties vulnerable, necessitating the implementation of comprehensive legislative amendments to define the specific nature of the surrogacy contract and establish strict control mechanisms that safeguard the rights of both the surrogate mother and the resulting child.

2. Literature Review

The academic and legal discourse surrounding surrogacy is inherently multidimensional, encompassing international human rights jurisprudence, global sociological studies, and national legal doctrines.

At the international level, the European Court of Human Rights (ECHR) has played a pivotal role in shaping the legal understanding of reproductive rights and cross-border surrogacy under Article 8 of the Convention. Fundamental principles regarding artificial procreation and the right to respect for private and family life were established in landmark cases such as *S.H. and Others v. Austria* and *Dickson v. The United Kingdom*. Furthermore, the complex challenges of cross-border surrogacy and the legal status of children born through these arrangements were thoroughly examined in *Mennesson v. France* and *Labassee v. France*, where the Court prioritized the child's right to identity despite national bans on surrogacy. Conversely, in *Paradiso and Campanelli v. Italy*, the Court defined the limits of Article 8 in cases lacking a biological link, highlighting the state's margin of appreciation and the importance of public order.

Concurrently, global academic literature critically evaluates the socio-economic implications of these differing national regulations. Authors such as Hopkins et al. (2010), Lozanski (2014), and Radhakshirna (2023) deeply analyze the risks associated with "reproductive tourism." Their works highlight a necessary

international shift toward stricter regulatory frameworks designed to prevent the exploitation and protect the fundamental rights of vulnerable women in permissive jurisdictions.

Furthermore, the global prohibition of surrogacy in numerous jurisdictions has resulted in a noticeable scarcity of comprehensive legal doctrine regarding its contractual mechanisms in those countries. A prominent example is France, where the Civil Code explicitly prohibits surrogacy practices. Under French law, surrogacy agreements are deemed fundamentally contrary to public order (*ordre public*), which constitutes grounds for the absolute nullity of the contract (*nullité absolue*). Consequently, doctrinal discourse in such prohibitionist states primarily revolves around the penal and filial consequences of cross-border circumvention rather than the mechanics of the civil contract itself. By synthesizing these contrasting international perspectives and employing appropriate comparative methodologies, this study evaluates these complexities to draw comprehensive and grounded conclusions.

In the Georgian context, existing academic literature predominantly approaches surrogacy through the lenses of bioethics, constitutional rights, and family law. Notable studies by domestic scholars (e.g., I. Gelashvili, L. Khatiaashvili, N. Bogveradze, N. Kharitonashvili) have provided valuable insights into the status of the embryo and the broader regulatory environment. Despite these important contributions, the civil and contractual mechanics of surrogacy arrangements remain largely unexplored.

Contrasting this scarcity, Georgian legal doctrine boasts a remarkably rich and highly developed tradition in the field of contract law, supported by the fundamental scientific works of prominent scholars such as L. Chanturia, B. Zoidze, D. Kereselidze, and Z. Chechelashvili. Despite their comprehensive analysis of civil obligations, these foundational treatises do not address the surrogacy agreement. This omission is systematically logical, as the commercial surrogacy agreement represents a distinctly *sui generis* contract. Due to its highly specific socio-medical elements and ethical dimensions, it falls outside the traditional classifications of classical contract law. Consequently, a significant doctrinal gap exists regarding the precise legal nature and civil classification of the surrogacy contract in Georgia—a gap this paper directly aims to address.

While the *sui generis* nature of surrogacy agreements and their intersection with medical, family, and bioethics law is well-established in contemporary comparative scholarship (e.g., Kostyk, Filip), this study offers a distinct analytical advancement by explicitly contextualizing this framework within the unique Georgian legal reality. Georgia represents a critical, yet underexplored, jurisdiction: it serves as a prominent international hub for commercial surrogacy, yet it operates in a significant normative vacuum regarding the specific contractual dynamics of these arrangements. The urgency of this research lies in the pressing friction between booming empirical practice and stagnant domestic legislation.

The original conceptual contribution of this paper does not merely restate the *sui generis* concept globally; rather, it employs this framework to systematically deconstruct and test the specific mechanisms of the Georgian Civil Code. By providing a tailored interpretative framework that juxtaposes local statutory limitations with ECHR human rights standards, this study moves beyond general doctrinal observations to expose localized normative deficiencies and propose concrete legislative solutions.

3. Materials and Methods

As a theoretical and documentary research, the present study is fundamentally based on a comprehensive analysis of the normative acts of Georgia. A critical challenge within the Georgian legal framework is that regulations governing surrogacy are scattered across multiple legislative and administrative acts. Unlike jurisdictions that provide a unified regulatory document for such legal institutions—such as the comprehensive approach seen in Canadian legislation—the absence of a consolidated legal instrument in Georgia significantly complicates its regulation and practical application.

Instead of repeating the broad historical and human rights context of the introduction, this section focuses exclusively on the substantive materials that construct the current legal landscape. The foundational rights are enshrined in the Constitution of Georgia. The core civil and contractual dimensions are analyzed through the Civil Code of Georgia; within this context, the study draws critical comparisons between the surrogacy agreement and the contract for work to evaluate their legal similarities and distinctions. Furthermore, the Labour Code of Georgia is utilized to comparatively analyze the specific legal nature of the employment relationship against the surrogacy agreement, exploring the theoretical boundaries between labour obligations and commercial surrogacy.

Beyond legislative codes, the practical mechanics of surrogacy are regulated through administrative acts: Decree No. 18 of the Minister of Justice of Georgia (procedures for civil acts registration), Joint Decree No. 133-144 of the Ministers of Justice and Internal Affairs (administrative controls and cross-border implications), and Decree No. 614 of the Minister of Justice.

To achieve a comprehensive assessment of this fragmented legal regulation, the study employs dialectical, comparative, statistical, sociological, deductive, and inductive methods. By applying these methods, the research strictly fulfills the objective of documentary analysis: it presents the practical development of theoretical foundations.

The comparative method is utilized on two distinct levels. Geographically, it facilitates a cross-jurisdictional analysis by contrasting the regulatory approaches and practical realities of different countries, specifically comparing the established practices in France with those in Georgia. Institutionally, it enables a critical comparison of legal concepts; classical theoretical frameworks from civil and labour law (such as the elements of a contract for work and the criteria for employment relationships) are systematically juxtaposed with the commercial surrogacy agreement to highlight the latter's unique characteristics.

Furthermore, the integration of dialectical, deductive, and inductive methods allows for a multifaceted examination of the surrogacy contract. Through these approaches, current Georgian legislation and the jurisprudence of the European courts are analyzed in depth. By critically evaluating these sources against fundamental legal principles, this analytical process explicitly exposes the specific legal gaps that currently remain unregulated within the Georgian legislative framework.

To contextualize the legal analysis within broader societal realities, sociological and statistical methods are employed. The sociological method is applied to examine the practical and human dimensions of

commercial surrogacy in Georgia. This involves analyzing qualitative insights drawn from empirical observations of several surrogate mothers encountered during the author's professional legal practice. Furthermore, it encompasses a review of anonymous personal accounts and articles published in Georgian media. Collectively, these sociological observations reveal a critical practical reality: the primary motivating factor for women engaging in commercial surrogacy is overwhelmingly the financial remuneration they receive, which further underscores the strictly commercial nature of these arrangements.

In parallel, statistical methods are used to emphasize that infertility is a pressing global challenge. The study utilizes statistical data from the World Health Organization (WHO) regarding global infertility prevalence and infant mortality rates during childbirth. It is crucial to acknowledge a specific methodological limitation regarding domestic data: an official inquiry was directed to the National Statistics Office of Georgia (Geostat); however, the agency confirmed that it does not collect or process statistics on the specific issues discussed in this research. Consequently, the physical unavailability of local statistical evidence necessitated a reliance on robust international data.

Ultimately, by synthesizing doctrinal reviews, empirical realities, and international jurisprudence, the study evaluates the practical implications of these legal gaps. By clarifying the sui generis nature of the surrogacy contract, this methodological framework not only evaluates the current legal status but also lays a robust theoretical groundwork for future research perspectives, particularly concerning the development of a unified, specialized legislative framework for assisted reproductive technologies.

4. Discussion of Findings

The discovery of the estrogen⁵ hormone by scientists in 1923⁶ had a butterfly effect in the medical field and, because of various scientific advances, laid the foundation for surrogacy. Among these scientific achievements, the attempts of artificial fertilisation of human eggs in 1968-1969 are important, which were successfully completed in 1978 - the first child was born⁷ through the technique of artificial insemination. In France, the first "tube baby"⁸ was born on February 24, 1982. Worldwide, because of artificial insemination, more than 8,000,000 children have been born, including 400,000 in France⁹. The first "in vitro baby" was born in Georgia on July 21, 2000, however, there are no statistical data on how many babies were born using reproductive technologies in Georgia; therefore, the worldwide data will not be accurate either.

The development of artificial insemination techniques has brought science and the legal world to the point where it is possible, using the gametes of donors, with the help of a surrogate mother, without any

⁵ Steroid hormone, related to woman reproductive organs.

⁶ Reaserchers Edgar Allen and Edwart A. Doisy <https://embryo.asu.edu/pages/edgar-allen-and-edward-doisy-extraction-estrogen-ovarian-follicles-1923>

⁷ Louise Brown, was born on July 25, 1978 in England. As of April 2023, she is a mother of two sons and a healthy person.

⁸ Tube Baby - Babies born as a result of artificial insemination are referred to as tube babies.

⁹ According to the data of February 2022 of the National Institute of Demographic Studies of France. https://www.ined.fr/en/everything_about_population/demographic-facts-sheets/faq/how-many-children-have-been-conceived-by-IVF-since-the-first-test-tube-baby-was-born-in-France/

sexual intercourse, for a couple to have a child. In such arrangements, the contractual agreement is the primary legal bond connecting the parties to each other and, most importantly, to the child born through reproductive technology.

Fundamentally, the right to utilize such reproductive technologies is deeply rooted in constitutional and international human rights law. According to Article 15 of the Constitution of Georgia, the private and family life of a person is inviolable. This constitutional guarantee strictly aligns with Article 8 of the European Convention on Human Rights (ECHR). In its landmark November 2011 judgment regarding the case of *S.H. and Others v. Austria*, the European Court of Human Rights established that the broad concept of 'private life' encompasses the right to self-determination, thereby protecting an individual's fundamental decision to have or not to have children. At the same time, international jurisprudence recognizes that states possess a wide margin of appreciation—a discretionary power—to either allow or prohibit surrogacy based on their distinct public order and ethical frameworks.

Guided by these principles, the Georgian legislator evaluates surrogacy through the lens of personal freedom. Unlike many European countries, where such arrangements are deemed contrary to public order and are strictly banned, Georgian civil law does not classify the surrogacy agreement as a prohibited contract. The legal foundation for surrogacy in the Georgian legal system was first established by the 1997 Law "On Health Protection." This law officially legalized the use of modern methods of reproductive medicine, explicitly granting infertile couples the opportunity to achieve parenthood through surrogacy. Crucially, the legislator determined that the genetic parents (the intended parents)—and not the woman who gives birth to the child—are recognized as the legal parents. This specific legal norm constitutes the fundamental cornerstone of surrogacy regulation in Georgia.

Consequently, Georgia is one of the few jurisdictions that are highly permissive towards surrogacy. According to Georgian legislation, commercial surrogacy is permitted not only for citizens but also for foreign nationals, regardless of whether their home country prohibits the practice. Georgia has thus become a significant representative in the international commercial surrogacy market. However, this is largely due not only to its legal permissiveness but also to the fact that the law fails to regulate several critical issues, leaving a notable void in state control mechanisms. In Georgian society, there is limited awareness regarding jurisdictions that strictly prohibit any form of surrogacy—such as France, where surrogacy is banned and punishable under criminal law, alongside Germany, Italy, China, and Spain. Because there is no unified international consensus regulating commercial surrogacy, states retain the autonomy to govern this issue in completely different ways. Consequently, prohibitionist states face significant regulatory challenges, as their citizens frequently circumvent domestic bans by seeking these services in permissive jurisdictions like Georgia.

Generally, surrogacy is classified into two primary categories: altruistic and commercial. Altruistic surrogacy refers to an arrangement wherein the surrogate mother does not receive any financial remuneration from the intended parents for her services, beyond the reimbursement of reasonable medical and pregnancy-related expenses. This altruistic model is permitted—while commercial surrogacy is strictly prohibited—in jurisdictions such as the United Kingdom, Ireland, Greece, South Africa, Denmark, Belgium, New Zealand, Australia, and certain states within the United States. The

specific legislative frameworks governing altruistic surrogacy, as well as the exact scope of legally reimbursable costs, vary significantly across these jurisdictions. For instance, in countries like Greece, obtaining prior judicial approval is a mandatory prerequisite for proceeding with an altruistic surrogacy arrangement. The primary objective of such stringent regulations is to deter so-called "reproductive tourism" and to ensure that state-sanctioned surrogacy services remain accessible exclusively to the country's own residents (Bogveradze, 2017).

In contrast, both altruistic and commercial surrogacy are fully permitted in jurisdictions such as Ukraine, Georgia, and several other US states. Historically, India was also among these permissive countries, having fully legalized commercial surrogacy in 2002. However, in 2022, India enacted a strict ban on commercial surrogacy and imposed rigorous restrictions on altruistic arrangements (Radhakrishna & Mohanram, 2023).

While permitting commercial surrogacy falls within the discretionary power of a state, this does not absolve the state from its obligation to strictly regulate the practice to safeguard legitimate public interests. According to Article 143, Paragraph 1 of the Law on Health Protection of Georgia, in vitro fertilisation—referred to synonymously in Georgian law as "extracorporeal fertilisation"—is legally permitted. This article details the specific circumstances under which both in vitro fertilisation and surrogacy may be utilized; however, it is notable that neither this law nor other normative acts provide explicit legal definitions for the terminology employed.

Under Georgian legislation, specifically Subclause "a" of Article 143 of the Law on Health Protection of Georgia, in vitro fertilisation is authorized for the treatment of infertility or when there is a risk of transmitting a genetic disease from either spouse. This process may utilize the gametes or embryos of the couple or a donor, provided the explicit written consent of the couple is obtained. Furthermore, surrogacy is explicitly permitted under Subclause "f" of the same article. Crucially, the second paragraph of Article 143 of the Law on Health Protection of Georgia definitively establishes that neither the surrogate mother nor the gamete donor possesses the right to be recognized as the legal parent of the resulting child. Under this broad legal framework, Georgian legislation implicitly accommodates both traditional¹⁰ and gestational surrogacy¹¹.

4.1. The Legal Nature of the Surrogacy Agreement: A *Sui Generis* Contract

Determining the exact legal nature of the commercial surrogacy agreement remains one of the most complex doctrinal challenges in Georgian civil law. Although Georgian legislation permits surrogacy, it establishes only general principles without defining the mandatory contractual content, specific performance rules, or additional safeguards for the surrogate mother. Consequently, legal qualification relies heavily on general civil law principles (Kharitonashvili, 2021). Within this theoretical framework, the surrogacy agreement must be distinctly separated from traditional civil and labour institutions.

¹⁰ In traditional surrogacy, there is a genetic link between the surrogate mother and the child.

¹¹ In gestational surrogacy, there is no genetic connection between the surrogate mother and the fetus.

First, a labour law qualification must be categorically excluded. Under Article 2, Paragraph 1 of the Labour Code of Georgia, an employment relationship is characterized by the performance of work under organizational subordination and disciplinary control. A surrogate mother is not integrated into an employer's organizational structure, nor does she execute her obligations under the disciplinary subordination of the intended parents. Furthermore, labour obligations are inherently process-oriented, whereas the surrogacy agreement is strictly result-oriented—its ultimate legal objective is the birth of a child.

Given this result-oriented nature, the surrogacy agreement superficially resembles a contract for work, where a contractor undertakes to achieve a specific result for remuneration (Civil Code of Georgia, Art. 629). While some doctrinal views attempt to classify surrogacy as a special type of service or work agreement (Filip, 2025), this mechanical analogy fundamentally fails. A standard contract for work deals with material or intellectual objects. In surrogacy, the object of performance inextricably involves human life, the female body, and reproductive functions. In modern legal doctrine, the human body and reproductive capabilities cannot be treated as ordinary objects of civil turnover (Chanturia, 2017). Furthermore, applying standard contractual rules—such as the unilateral right of termination—is practically impossible once pregnancy begins, as it directly conflicts with public order and the principle of the best interests of the child (Constitution of Georgia, Art. 36; UN Convention on the Rights of the Child, 1989).

The surrogacy agreement also highlights significant imbalances in contractual freedom. In practice, these agreements are often pre-drafted as standard form contracts by medical clinics, prioritizing the intended parents' interests. This creates an asymmetrical legal dynamic that places the surrogate mother in an economically and legally vulnerable position, necessitating the application of good faith and the strict protection of the weaker party (Civil Code of Georgia, Arts. 8, 361; Chanturia, 2017).

Therefore, the surrogacy agreement can be evaluated neither as a pure employment contract nor as a traditional contract for work. It is an independent, *sui generis* (mixed) civil construction that integrates elements of medical services, personal obligations, bioethics, and family law (Kostyk, 2022). As noted in contemporary comparative research, surrogacy represents a significantly more complex legal institution than standard service relations (Kovalenko, 2025). Recognizing its *sui generis* nature underscores that classical contractual mechanisms are insufficient for ensuring public order, highlighting the urgent need for a specialized legislative framework at the level of the Civil Code.

4.2. Regulatory Criteria, Contractual Asymmetries, and Procedural Execution

Building upon the *sui generis* nature of the surrogacy agreement, its practical application reveals significant regulatory gaps regarding the eligibility criteria for the parties involved and the procedural execution of the contract.

Under Georgian law, surrogacy utilizing both intended parent and donor gametes is permitted for married spouses and heterosexual couples in unregistered marriages. However, specific restrictions apply. According to Subclause "g" of Article 2 of the Law of Georgia "On Health Protection" (1997), a "couple" is strictly defined as a man and a woman, thereby legally prohibiting surrogacy services for same-sex

couples. While the citizenship of the intended parents is not a limiting factor, unmarried heterosexual couples must legally prove actual cohabitation for a minimum of one year to execute a notarized surrogacy agreement (Decree of the Minister of Justice of Georgia No. 18, 2012).

In stark contrast to the criteria established for intended parents, current Georgian legislation fails to prescribe any statutory requirements for the surrogate mother. The law omits fundamental medical and ethical criteria such as age limits, physical or mental health evaluations, parity (the requirement to have prior biological children), or the maximum number of surrogacy cycles a woman may undergo. Given the high commercial demand, these critical screening protocols are entirely delegated to private clinics. This legislative vacuum places highly vulnerable women—particularly those with underlying mental health or severe socioeconomic challenges—at a significant risk of entering into commercial surrogacy agreements without fully comprehensive informed consent or genuine free will.

Procedurally, the formalization of the surrogacy agreement is strictly regulated by administrative law. Prior to the initiation of in vitro fertilisation, the contract must be executed as a notarized document encompassing the intended parents, the surrogate mother, and any gamete donors (Decree of the Minister of Justice of Georgia No. 614, 2020). Crucially, the resulting birth certificate exclusively registers the genetic/intended parents; both the donors and the surrogate mother are explicitly prohibited from being legally recognized as parents in the civil registry (Order No. 18, Art. 19, 2012). Once the notarized consent is established and the embryo is transferred, the surrogate mother is legally bound to gestate the fetus, transfer all parental rights upon birth, and—if applicable—inform her immediate family of the arrangement. Furthermore, Georgian law explicitly prohibits the surrogate from withdrawing her consent once the medical process has commenced.

The execution of these contracts frequently exposes severe legal and physical asymmetries. Driven by high commercial remuneration, surrogates undergo rigorous medical preparations, including the administration of hormonal treatments (such as estrogen) that carry severe physical side effects. Furthermore, the contracts are predominantly pre-drafted by clinics as standard-form agreements focused on safeguarding the intended parents' interests. These contracts often impose intrusive behavioral prohibitions on the surrogate, including strict bans on sexual relations during pregnancy (Radio Liberty, 2022). Interestingly, unlike commercial surrogacy contracts widely utilized in other jurisdictions where the surrogate's spouse is a required co-signatory (National Public Radio, 2015), Georgian civil law and practice completely exclude the surrogate mother's husband from the contract, legally disregarding him as a party or a potential legal father (Civil Code of Georgia, 1997).

Ultimately, because the surrogacy agreement falls outside standard labour or service contracts, the application of general civil law remedies is highly problematic. For instance, the general contractual right to unilateral termination is fundamentally incompatible with the realities of surrogacy; once pregnancy is established, neither the surrogate mother nor the intended parents can unilaterally terminate the agreement without violating public order and the right to life. The absence of explicit statutory regulations regarding contract termination, liability frameworks, and detailed rights of the surrogate firmly underscores the necessity of integrating a dedicated, comprehensive chapter within the Civil Code of Georgia to govern this unique legal relationship, rather than relying on fragmented administrative acts.

4.3.The Legal Status of the Embryo and the Child Born Through Surrogacy

When analyzing the legal nature of the surrogacy agreement, defining the legal status of the embryo represents one of the most complex and theoretically significant challenges. The essence of the surrogacy contract involves not merely the woman's pregnancy and gestation, but also the creation of the embryo, its transfer into the surrogate's body, and ultimately, the birth of the child. Consequently, a comprehensive legal assessment of surrogacy is impossible without addressing what legal nature the embryo possesses, when human legal personhood commences, and whether the embryo can be considered the object of the contractual relationship.

This issue is particularly crucial because the ultimate outcome of the surrogacy agreement is the child. In reality, the contract is concluded specifically for the purpose of the child's birth, and its economic, social, and legal significance is inextricably tied to the existence of the future child (Hussein, Abolaji, & Gbolahan, 2025). However, at the moment of the contract's execution, the child does not yet exist. Only the embryo exists, having been created through artificial fertilisation and subsequently transferred into the surrogate mother's body. Therefore, it is strictly necessary to establish how the law perceives the embryo and its place within the private law system (Filip, 2025).

A systematic analysis of the Civil Code of Georgia demonstrates that legal capacity (personhood) is strictly linked to the fact of birth. An individual becomes a bearer of civil rights and obligations only after they are born. Accordingly, the embryo and the fetus are not considered full-fledged legal subjects. This approach is particularly evident in the sphere of civil turnover, where the embryo cannot be an independent bearer of property rights, obligations, or other civil rights.

In the context of the surrogacy agreement, this circumstance acquires paramount importance. Since the child does not yet exist and legal personhood has not yet arisen, the embryo occupies the central place in the contract's performance process. The embryo is created, stored, transported, and ultimately transferred into the surrogate's body. Therefore, it can be argued that the immediate legal focus of the surrogacy agreement during its execution phase is not directed toward the child itself, but rather toward the embryo, representing a potential child.

Once this potential child is born, the contractual execution transitions, and the child immediately acquires full legal personhood. According to Article 32, Paragraph 2 of the Constitution of Georgia, Georgian citizenship is acquired by birth or naturalization. Consequently, children born through surrogacy on Georgian territory theoretically acquire citizenship based on the principle of territoriality. However, if the intended parents recorded in the child's civil birth registry are foreign nationals, preventing statelessness requires a specific administrative procedure. These parents must submit a formal document from their respective embassy to the Public Service Development Agency, certifying that the child is not granted citizenship of the parents' home country. Following this confirmation, Georgia grants the child a personal identification number. Only then can a Georgian passport be issued, enabling the child to legally leave the country with their intended parents.

Recognizing the prevention of transnational human trafficking of children born through surrogacy as a legitimate state aim—a stance strongly supported by both the European Court of Human Rights and the

Constitutional Court of Georgia—the Georgian government has implemented strict cross-border control mechanisms. The Joint Decree of the Minister of Justice and the Minister of Internal Affairs of Georgia (No. 133-144, April 2016) establishes rigorous procedures for the departure of children born via in vitro fertilisation. Under this framework, the Public Service Development Agency registers the child based on notifications directly received from medical institutions, provided the intended parents apply for the civil registry record. Through this Joint Decree, the Ministries of Justice and Internal Affairs ensure comprehensive registration and exercise strict oversight over border crossings. This legal mechanism guarantees that the Georgian state maintains accurate information regarding the child's movement, verifying exactly with whom the child crosses the border, thereby actively and effectively preventing potential instances of transnational human trafficking.

5. Conclusions

While Georgia represents one of the few global jurisdictions that fully permits both commercial and altruistic surrogacy, it does so in the absence of a comprehensive, unified legislative framework. As this study demonstrates, the commercial surrogacy agreement is fundamentally a *sui generis* civil construction. Because its object involves human life, reproductive functions, and the complex transition of an embryo into a child possessing full legal personhood, the surrogacy contract cannot be mechanically categorized as a traditional employment relationship or a standard contract for work.

Currently, because Georgian legislation lacks specific statutory provisions governing these agreements, their execution relies heavily on the general doctrine of contractual freedom. This over-reliance leaves the content of the agreement largely dependent upon the parties' discretion, which in practice translates to standard-form contracts drafted by medical clinics that disproportionately favor the intended parents. Consequently, the existing fragmented framework fails to fully achieve legitimate protective objectives. The absence of statutory eligibility criteria—such as psychological, physical, or socioeconomic evaluations—exposes surrogate mothers to significant risks of commercialization, physical asymmetry, and potential exploitation. Given the sensitive bioethical and legal implications of these arrangements, greater and more rigorous state involvement in their regulation is urgently required.

Furthermore, the legal framework governing the status and protection of children born through surrogacy remains insufficiently defined. While Georgian administrative mechanisms successfully register births and monitor immediate border crossings to prevent transnational human trafficking, current legislation does not establish enduring legal safeguards. Crucially, the state lacks effective post-departure monitoring mechanisms to oversee the legal status, welfare, and movement of these children once they leave the territory of Georgia. This profound legislative gap creates severe challenges in ensuring the uninterrupted protection of the best interests of the child in cross-border surrogacy arrangements.

Considering the escalating global demand and Georgia's prominent position in the international surrogacy market, maintaining the regulatory status quo is legally untenable. It is essential for the Georgian state to develop clear, rigorous legal regulations and effective institutional mechanisms governing every phase of the surrogacy process—from the initial creation of the embryo to the final transfer of parental rights. To achieve indispensable legal certainty, structural consistency, and the

protection of all involved parties, the legislator must urgently consolidate the currently scattered normative provisions into a single, unified legislative act specifically dedicated to surrogacy and assisted reproductive technologies.

Declaration on the use of artificial intelligence

Artificial intelligence was used for the stylistic refinement and clarity of this article.

Author Contributions: Both authors contributed equally to this work.

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