

THE CASE AGAINST

COMMERCIAL

SURROGACY

Introduction

There are proposals to recognise commercial surrogacy arrangements entered into by Irish people overseas. A Special Joint Oireachtas Committee has been established for this purpose. But almost no European country permits commercial surrogacy because it commodifies children and exploits low-income women.

This briefing note will examine the arguments against commercial surrogacy a little more closely.



Commodifying children

Commercial surrogacy contracts by their very nature entail a couple or an individual paying a woman to carry a baby on their behalf. It makes babies subject to a commercial transaction. Money changes hands in return for the transfer of a baby to the commissioning or paying couple very soon after delivery. The baby has been conceived and gestated for this express purpose. A UN report has called this the 'sale of children'.

Exploiting low-income women

It is almost invariably low-income women who offer their wombs 'for rent' in these arrangements. Their poverty can easily drive them into this situation. It is also why the destinations for Irish people availing of commercial surrogacy tend to be countries like Ukraine or previously, India, until India banned non-nationals from availing of commercial surrogacy.

Commercial surrogacy contradicts Ireland's evolving laws on adoption

Adoption is different from surrogacy in that it provides a home for a child when a mother, or the mother and the father, feel they cannot raise the child because of their circumstances. But the child was not conceived with the express purpose of handing him or her over to a commissioning couple for a fee at the end of nine months.

Irish adoption law is increasingly cognizant of the need to respect the right of an adopted person to eventually know his or her natural parents.

Surrogacy (commercial or otherwise) works in the opposite direction. It is extremely unlikely that a child born of surrogacy will ever come to know its birth mother, or its genetic parent(s) where an egg donor and/or sperm donor is used.

Permitting it overseas would set up a double standard

The proposed law on surrogacy in Ireland intends allowing non-commercial surrogacy but prohibiting commercial surrogacy. If we then facilitate Irish people availing of commercial surrogacy overseas, that will set up a double standard.

As a paper on the topic prepared by officials for the Joint Oireachtas Committee says: "Providing for recognition of foreign commercial surrogacy arrangements while limiting domestic surrogacy to altruistic arrangements, thereby providing a greater standard of protection for women in Ireland than abroad, would create a double standard in Irish law which may be difficult to justify."



The flawed counter-argument that it's happening anyway

A counter-argument is made that Irish people are availing of commercial surrogacy overseas anyway, so it is better for the State to make it easy for them to be recognised as the legal parents of the children, and that this is in the best interests of the children.

However, this is an argument accepted by almost no other country in Europe because it effectively legitimates a practice that is intrinsically flawed and for which there are no remedies. It would simply increase the practice of what amounts to baby-buying and exploitation, something the State should not countenance. Encouraging the commodification of children cannot be in a child's best interests.

UN Special Rapporteur, Maud de Boer-Buquicchio, said in a report in 2018: "There is no right to have a child under international law".

A better approach

At present, Irish courts consider on a case-by-case basis the petition of couples who come home with babies acquired through commercial surrogacy to be legally recognised as the parents. This should continue for the time being, but the better answer is for the State to support efforts to formulate and enforce an international treaty which seeks to ban the practice everywhere.

REFERENCES

- Issues Paper on International Surrogacy for Special Joint Oireachtas Committee (2022).
- Maud de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including prostitution, child pornography and other child sexual abuse material (2018). UN Doc A/HRC/37/60.
- Ukraine, Belarus and Russia are the only countries in Europe where commercial surrogacy is legal.

About the Iona Institute

The Iona Institute promotes the place of marriage and religion in society. We defend the continued existence of publicly-funded denominational schools. We also promote freedom of conscience and religion.



The Iona Institute

23 Merrion Square, Dublin 2. Tel 01 6619 204

Email: info@ionainstitute.ie Web: www.ionainstitute.ie