

**Coming Home with Baby: How to Advise U.S. Intended Parents Who Go  
Abroad to Have Children Through ART.**  
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*Assisted Reproductive Technologies in Ukraine*

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Nowadays raises the number of couples suffering infertility problems. Medical science goes forward and offers different solutions of infertility: in-vitro fertilization, artificial insemination, egg and sperm donation, surrogacy motherhood. Unfortunately only several countries have legally recognized artificial methods of fertility treatment. Ukraine is one of not numerous states that have legally provided the use of assisted reproductive technologies. Therefore Ukrainian jurisdiction has become so to say “lifebuoy for” many foreign couples trying to have their own baby.

Through unawareness of law the spouses crossing the border could meet a range of problems using assisted reproductive technologies in Ukraine. The most frightful in this situation is that any problems which may appear during and/or after the treatment concerns a life of teeny individual. Therefore in this paper we will try to describe some legal aspects of assisted reproductive technologies in Ukraine which may be useful for potential patients or their legal advisors.

Assisted reproductive technologies are legally recognized in Ukraine by law and are regulated by the Family Code of Ukraine 2002, the decree of the Ministry of Health Care of Ukraine No. 771 adopted on the 23 of December 2008 On the Approval of the Instruction about the

Order of Assisted Reproductive Technologies Application (hereinafter Instruction No. 771), the Rules of Registration of Civil Status Acts in Ukraine approved by the decree of the Ministry of Justice of Ukraine on 18 October 2000; The Law of Ukraine on Fundamental Legislation on Health Care adopted on 19 of November 1992; Civil Code of Ukraine 2004.

Under Ukrainian law Assisted Reproductive Technologies are defined as the methods of treatment of infertility, by which the manipulations with reproductive cells, separate or all stages of preparation of cells, the process of fertilization and the embryo growth before its transference to the recipient womb is accomplished in-vitro (Instruction No. 771).

The methods of treatment by assisted reproductive technologies include: In-vitro fertilization (IVF) - control ovarian stimulation for oocyte receipt, sperm receipt, oocyte insemination and embryo cultivation, including ICSI- Intacytoplasmic Sperm Injection, embryo transplantation to the woman's cavity of uterus; infra uterus sperm insemination; application of donors gametal cells and embryos; surrogacy motherhood.

Ukrainian law strictly provides the order of application of assisted reproductive technologies, medical indications for its applications, form of the documents which shall be signed.

Under Ukrainian law the intended parents are considered to be the patients of assisted reproductive technologies treatment and shall pass the treatment according to the Instruction No. 771.

The relations with medical institution are process by filling the necessary applications by the patients (intended parents) the forms of these applications are established by law.

Assisted reproductive technologies shall be applied only under medical indications by the written free will of the patient and by the statement of the patient (patients) concerning the application of supporting reproductive technologies (the form of this statement is provided by the Instruction No. 771).

Assisted Reproductive technologies cannot be applied under some moral, religious, philological views of the parents. The only grounds for application of ART are medical indications provided by the Instruction No.771

The right to apply assisted reproductive technologies has only accredited Ukrainian clinics. The accreditation is made by the Ministry of Health Care of Ukraine to reconfirm the level of medical services and confer appropriate degree. The necessary requirements for accreditation are presence of the license of Ministry of Health Care of Ukraine to apply assisted reproductive technologies treatment, equipment base and sufficient work experience of medical staff.

Intended parents have right to freely choose the clinic on their own discretion, there is no any need to receive official direction for treatment.

### **Who has right to use assisted reproductive technologies?**

Assisted reproductive technologies and in particular, surrogacy treatment, may be applied only for marriage couple (a man and a woman).

According to the Constitution of Ukraine (1996) foreigners who stay on the legal basis on the territory of Ukraine have the same rights and obligations as citizens of Ukraine. There are no any restrictions for foreigners to pass the treatment by assisted reproductive technologies in Ukraine; therefore they have equal rights to apply assisted reproductive technologies with Ukrainian citizens. Registration of child born by foreigners with assisted reproductive technologies is made in order established by Ukrainian law.

It worth to mention that Supreme Council of Ukraine is currently discussing a new amendments regarding application of ART, in particular restriction the age of woman who can apply ART to 51 years. Restriction of surrogacy treatment for foreigners, in particular it is proposed to allow surrogacy treatment only for the citizens of Ukraine and foreigners - citizens of the countries in which this method of assisted reproductive technology is not

prohibited by law, and in cases when foreigners live in the state other than the state of their citizenship - by the law of the state of their residence. It is proposed that obligatory precondition of application of surrogate motherhood is the genetic connection of the child with at least one of the future parents and absence of direct genetic connection of the child with surrogate mother.

Most probable that this discussed amendments with some corrections will be adopted in law.

The ground to introduce restriction of surrogacy treatment for foreigners is to guarantee legal recognition of paternity over the child born with ART in the country of parents' residence.

### **Documents executed in clinic**

Ukrainian legislation establishes some standard form of documents which shall be executed in the clinic by the spouses (intended parents): statement of patient/patients in relation to application of ART; patient application to use oocytes; application of the recipient of donor gametal cells, patient medical card and others. However in practice very often the clinics make their amendments and alterations to this standard forms or offer for the patients the documents which absolutely differ from that established by law. The problem is that the legal force of such altered documents may be disputable and if this issue will be brought before the court, the legal grounds to recognize such documents unenforceable under Ukrainian law may exist.

Unfortunately the Ukrainian court practice concerning the issue of assisted reproductive technologies includes only a few court decisions, and it is difficult to foresee the outcome of any possible dispute. Therefore this shall be an important forewarning for couples to understand and apprehend the content of the documents they sign. Ukrainian law provides that assisted reproductive technologies shall be applied strictly under the requirements of Ukrainian law, therefore all documents signed and actions made in defiance of the law may be recognized invalid or unlawful through the court proceeding in Ukraine. This is the important

reason for intended parents to make independent legal counseling during assisted reproductive technologies treatment in Ukraine.

Intended parents file all necessary documents directly in the clinic. The issue what method of treatment to apply is solved after the intended parents file application in clinic and pass the appropriate medical examination.

Generally speaking the scheme of application of ART is as follow:

1. Intended parents choose the clinic; agree the terms of their cooperation and fees.
2. Execute necessary documents in clinic, pass examination and treatment, carry the pregnancy, and birth of a child.
3. Register the child birth according to Ukrainian law.
4. Receive child travel document at the consulate (embassy) of their country situated in Ukraine.
5. Get child abroad.

### **Counseling and legal advice prior the treatment**

Ukrainian legislation is silent as to the necessity to receive legal and psychological counseling by the intended parents (and surrogate mother) prior to ART treatment. This issue puts to the parties own discretion.

That concerns medical advice; there is obligation of medical institution which follows from the Instruction No. 771 to objectively inform intended parents (and the surrogate mother) about the methods of treatment which will be applied, the methods of embryo transplantation and conception, the possible compliances and consequences of such treatment.

### **Legal status of child born with the assisted reproductive technologies**

Under the general rule of Family Code of Ukraine:

*The child conceived and born in marriage descends from the spouses* (art.122 of Family Code of Ukraine).

Descend of a child born with assisted reproductive technologies is defined by art. 123 of Family Code of Ukraine:

- 1. In case of birth by a wife a child, conceived as the result of use of assisted reproductive technologies, accomplished with a written consent of her husband, he is registered as the father of a child.*
- 2. In case of transplantation to the body of another woman the embryo conceived by the spouses (a man and a woman) as the result of use of the supporting reproductive technologies the spouses are considered to be the parents of a child. (Surrogate motherhood)*
- 3. The spouses are considered to be the parents of a child, born by a wife after transplantation to its body the embryo conceived by a husband and wife as the result of use of assisted reproductive technologies (artificial insemination, in-vitro fertilization, donation of gametal cells).*

By virtue of the provisions of Family Code of Ukraine, the spouses are recognized as the sole legal parents of a child born with the assistance of assisted reproductive technologies.

Ukrainian legislation also excludes possibility of challenging of maternity in the cases, provided by the part 2 and 3 of the article 123 of the Family Code of Ukraine (p.2 article 139 of the Family Code of Ukraine (2002).

### **Registration of child birth**

Ukrainian legislation recognizes the intended parents as the sole legal parents of a child born with assisted reproductive technologies; accordingly they bear all parental rights under Ukrainian law and are obliged to register the child birth in accordance with the requirements of Ukrainian law.

The registration of child birth shall be accomplished according to the Rules of Registration of the Civil Status Acts in Ukraine approved by the decree of the Ministry of Justice of Ukraine adopted on 18 October 2000.

The registration of civil status acts upon the application of foreigners and stateless persons is carried out in accordance with the Ukrainian legislation.

To register the child birth intended parents are obliged immediately at the latest one month after the child birth apply to the bodies of civil status acts registration at the place of child birth with following documents:

- Application about the registration of child birth
- National passports with notarized translation into Ukrainian
- Medical birth certificates form No. 103/o
- Certificate about passing supporting reproductive technologies treatment and
- Proof of payment the state duty

If the child was born using surrogate motherhood method the intended parents shall also submit:

- Notarized written consent of the surrogate mother to record the spouses as the parents of child;
- Certificate about genetic connection of the parents (father or mother) with the child;

The intended parents are registered as the sole legal parents of a child on child certificate of birth.

### **Child nationality**

Unfortunately the issue of child nationality does not have special legal regulation under Ukrainian law and is subject to general provisions of Law on Citizenship of Ukraine.

Ukrainian legislation on citizenship is based on the principles of prevention the occurrence of double nationality and occurrence of statelessness and provides the right of a child for prior

acquisition of her parent's nationality (if they are the foreigners). So, the child born with the assisted reproductive technologies first of all have the right to acquire the citizenship of her foreign parents, under the domestic law of their residence.

The only possible ground for the child born on the territory of Ukraine to acquire Ukrainian nationality by birth if both of her parents are foreigners is article 7 (4) of the Law of Ukraine on Citizenship of Ukraine adopted on 18 of January 2001:

*A person born on the territory of Ukraine from the foreigners, who on the legal basis reside on the territory of Ukraine and has not acquired by birth the citizenship any of her/his parents, is considered to be the citizen of Ukraine.*

*“reside on a legal basis on the territory of Ukraine” means – residence on the territory of Ukraine of foreigners or stateless persons...who have registered on the territory of Ukraine their national passport or have permanent or temporary residence permit on the territory of Ukraine...*

The foreigners may receive temporary or permanent residence permit only if they immigrate on the territory of Ukraine or enter Ukraine for job placement, in all other cases the foreigners may stay on the territory of Ukraine on the temporary basis upon the registration mark at their passport documents.

The order of registration of foreigners' national passport on the territory of Ukraine is provided by the Rules of Entrance, Departure and Travel in Transit through the Territory of Ukraine by the Foreigners and Stateless Persons and is made at a passing post of National State Border.

Registration is made for a period of a short term residence on the territory of Ukraine – in case of visa entrance for the period of visa duration ....in case of visa-free entrance no more than 90 days during the 180 days from the first entrance...



The child born with the assisted reproductive technologies may have basis for seeking Ukrainian citizenship at the condition:

- both of her foreign parents have legally resided on the territory of Ukraine at the time of her birth that is confirmed by the stamp at the national passports of foreigners.
- the child didn't acquire nationality any of her foreign parents by birth.

Ukrainian legislation provides the procedure of finalization of acquisition of Ukrainian citizenship by birth in accordance with the article 7 part 4 of the Law of Ukraine on Citizenship of Ukraine. The parents shall submit to the division of the Department of Citizenship and Immigration of Ukraine:

- a) application to finalize acquisition of Ukrainian citizenship by birth (the form is approved by Ukrainian legislation);
- b) copy of the child certificate of birth;
- c) copies of the documents confirming parents foreign citizenship;
- d) copies of the documents which confirm that the parents have resided on the legal basis on the territory of Ukraine at the time of child birth (this may be parents national passports with the registration mark in Ukraine).
- e) declaration that the child did not acquire by birth the nationality any of her parents (at declaration shall be indicated the appropriate provision of law of foreign state according to which the child did not acquire nationality any of her parents. The form of this declaration is approved by Ukrainian legislation).

Upon considering of these documents may be adopted decision to register acquisition of Ukrainian nationality by birth. The person who has the right to acquire Ukrainian nationality by birth is considered to be Ukrainian national from the time of the birth; finalization of acquisition of Ukrainian citizenship only certifies its acquisition.

This procedure of acquisition of Ukrainian nationality may also be applied to the child born with assisted reproductive technologies, as her sole legal parents are considered to be the foreigners and they are registered as such at the child birth certificate.

In situation if neither legal grounds for the child to acquire the nationality of her foreign parents exist nor requirement for acquisition of Ukrainian nationality by birth (indicated above) are met, the legal status of a surrogate born child in Ukraine may be compared to a stateless person. According to the law of Ukraine on Citizenship, Article 1:

*The stateless person is a person who is not recognized as a citizen of any state according to the legislation of each state.*

In each particular case it is very important to note the specific requirements of law of intended parents' citizenship and the national rules of entrance of the country of their residence before entering Ukraine for having a baby through ART and in these circumstances consider suitability to acquire parents' citizenship for the baby.

### **Compensation**

Assisted reproductive technologies treatment may be applied for state funds only at state health care medical institutions of Ukraine and only upon the decision of the committee of Ministry of Health Care of Ukraine according to the order of the Ministry of Health Care of Ukraine No 579 dated 29 of November 2004. The rights to seek treatment for the state funds have only residents of Ukraine.

Those couples who temporarily enter Ukraine for treatment with assisted reproductive technologies do not have any right to receive state monetary support for child birth with the assisted reproductive technologies. Foreigners have right to receive state monetary support for the child birth only if they permanently live on the territory of Ukraine.

### **Costs for treatment**

The costs for medical treatment with assisted reproductive technologies differ depending from the methods of treatment, clinic tariffs for services, the scope of services, attempts of fertilization e.t.c. It is difficult to determine the general costs for treatment as each case is individual and intended parents have to contact directly the clinic they choose and inquire the possible costs for treatment. Generally speaking the costs for the treatment by surrogate motherhood method (including the compensation for surrogate mother, medical services, legal advice e.t.c.) may constitute from 25 000 to 40 000 USD.

### **Getting child home. Travel documents.**

The issue of child travel documents is closely connected with the child nationality and the entrance rules of parent's country of residence. Ukrainian authorities are empowered to give travel documents only for children-nationals of Ukraine according to the law of Ukraine on the Order of Entrance in Ukraine and Departure from Ukraine the Nationals of Ukraine dated January 21, 1994. If the child does not acquire Ukrainian nationality in order described above, Ukrainian authorities are not empowered to give any travel documents for this child and the parents have to apply to consulate or to the embassy of their state in Ukraine and receive travel documents for the child according to their national legislation.

To take the child through Ukrainian border Ukrainian custom authorities will require apart from the child certificate of birth also travel document for the child issued by the consulate of parents country of residence or the child's name shall be putted down to the parents passports. However if the child acquire Ukrainian nationality and finalize its acquisition in order described above, it may be possible to consider the opportunity to receive the child travel document from Ukrainian authorities.

### **Visa tips**

The grounds for foreigners and stateless persons stay on the territory of Ukraine are regulated by the Law of Ukraine on the Legal Status of Foreigners and Stateless Persons dated

04.02.1994 and by the Rules of Entrance, Departure and Travel in Transit through the Territory of Ukraine by the Foreigners and Stateless Persons and is limited by certain events:

1. Immigration to Ukraine for permanent residence (foreigners stay in Ukraine according to the permission for permanent residence).
2. Job placement for a definite period (foreigners stay in Ukraine according to the permission for temporary residence).
3. Temporary stay on the territory of Ukraine (in case of visa entrance for the period of visa duration ....in case of visa-free entrance no more than 90 days during the 180 days from the first entrance.

Ukraine has set visa free regime for citizens of US, Canada, Japan, European Union countries, Norway, Monaco, San Marino, Andorra, Iceland, Swiss Confederation and Liechtenstein. Visa free regime is established for the period of up to 90 days staying in the country.

If intended parents come from the country that do not have visa free regime with Ukraine the most possible for them is to get short term visa marked as type C or VC. Short term visa is processed as one-time, two-time or multiple visa for the period of six month or other period, depending from the documents which are the basis to process visa but no longer than for 5 years period.

The ground to process visa may be invitation from medical institution of Ukraine. The term of foreigners stay on the territory of Ukraine for foreigners on the basis of short term visa (C, VC) may be no longer than 90 days during 180 days from the day of first entrance.

The bodies authorized to process visa are diplomatic representation or consular office of Ukraine on the territory of foreign state.

Consular fees for visa process are as following: one time visa – 85 USD; two time visa – 130 USD; multiple visa – 200 USD.

To process the visa, intended parents shall submit the following documents to the authorized bodies:

1. Filled in visa form together with invitation.
2. Valid passport documents
3. Two photos size 3 x 4
4. Document confirming payment of consular fees.

Authorized bodies may also request other documents confirming the foreigner's financial status, return tickets, hotel reservation e.t.c.

The number of visits intended parents shall make during assisted reproductive technologies treatment will depend upon the method of treatment and is agreed with the doctor directly in the clinic. Depending from the number of visits they shall make, intended parents shall decide what kind of visa they should process.

Intended parents may stay on the territory of Ukraine within the period specified in visa. For the extension of the term of stay on the territory of Ukraine foreigners have to get special permission at the Department of Citizenship, Immigration and Physical Persons Registration in established order. The grounds to extend the term of residence on the territory of Ukraine are similar with the grounds for visa receiving according to its specific type (e.g. invitation of specified form or the invitation of medical institution).

The child birth does not establish any special legal ground for intended parents to remain in Ukraine.

### **Insurance**

On 22 of June 2011 Cabinet of Ministers of Ukraine has pass a resolution On the Order of Rendering Medical Assistance for Foreigners and Stateless persons who Temporarily Stay on the territory of Ukraine. According to this resolution the cost for medical services rendered for foreigners shall be determined by medical health care institution that has rendered such

medical services. Foreigners shall pay for rendered services in cash or non-cash transfer only in national currency. The foreigners have right to conclude insurance agreement with Ukrainian insurance company according to their insurance programs. In case of occurrence of insured accident covered by insurance policy, insurance company shall pay for medical treatment. Unfortunately Ukrainian insurance companies do not have insurance programs covering treatment by supporting reproductive technologies (including surrogate motherhood). Therefore intended parents shall bear personally all expenses of supporting reproductive technologies treatment.

We are aware about the following insurance program available for foreign parents in Ukraine:

- Insurance of surrogate mother in case of disease. Insured accidents may include: death of surrogate mother, dead born child, birth of child with physical deviances.
- Insurance of surrogate mother from accident
- Insurance of intended parents' financial risks. Insured accidents may include: failure to fulfill surrogacy agreement by surrogate mother, non-fulfillment of the agreement by the clinic.

Other possible ways of insurance intended parents may find out directly in clinic, depending on the particular circumstances of the case.

### **Surrogate motherhood.**

One of the most frequently used methods of ART is surrogate motherhood. Under Ukrainian law surrogacy motherhood is defined as the method of infertility treatment by assisted reproductive technologies and is mainly regulated by the Instruction No. 771.

The rights to use surrogate motherhood method have only married spouses. The intended parents (the spouses) have to pass medical examination in the clinic and file at the clinic all necessary documents as described above (among which the application for use of supporting

reproductive technologies treatment, the application of the recipient of donor gametal cells) e.t.c.

The surrogate mother has to present her written drawn up free will to become the surrogate mother and carry the pregnancy, which very often is executed in the form of surrogacy agreement.

Intended parents may use surrogate motherhood method only under certain medical indications provided by the Instruction (e.g. absence of womb, unsuccessful 4 or more attempts to use assisted reproductive technologies treatment, difficult somatic disease which make impossible to carry the pregnancy, deformation of womb e.t.c.). Ukrainian legislation provides the scopes of medical examination for both of spouses and for surrogate mother and the list of contraindications to use surrogate motherhood method.

Under the general rule provided by Article 123(2) of Family code of Ukraine during application of surrogate motherhood method the baby shall be conceived using spouse's gametal cells. However the Instruction provides opportunity for the spouses amongst other methods of treatment to use donated gametal cells, and establishes the medical indications and procedure of it application. Therefore in practice the child may be conceived using: wife's egg + husband sperm; donor's egg + husband sperm; wife's egg + donor sperm. It is necessary to admit that Ukrainian legislation does not allow using only donor's gametal cells for baby conceiving. The baby shall be genetically related at least with one of the spouses.

In this relation it worth to draw attention to the decision of Kiev Solomianskyi district court held on 6th of October 2010<sup>1</sup>. This case concerns spouses, who came from USA trying to have the baby through surrogacy treatment in Ukraine. They entered into surrogacy arrangements with Ukrainian surrogate mother and pass the treatment in accredited Ukrainian clinic. The child was conceived using donor's oocytes and donors sperm, neither intended father nor intended mother have biological connection with the born child. In spite of this they

were registered as the parents of a child on the child certificate of birth. The deputy prosecutor initiated court proceeding with the demand to nullify the record about the parents of a child.

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<sup>1</sup>Decision of Kiev Solomianskyi district court held on 6th of October 2010, case No. № 2-2283-1/10

The court satisfied his demands on the basis of article 123(2) of Family Code of Ukraine, which provides:

*In case of transplantation to the body of another woman the embryo conceived by the spouses as the result of use of the supporting reproductive technologies the spouses are considered to be the parents of a child.*

As the intended parents did not have any biological connection with the child, the court found that they cannot be registered as the parents of a child on a child certificate of birth and hold the decision to amend the records about the child birth at the book of registration of civil status acts and register the parents of a child on the basis of article 135 of Family code of Ukraine which provides the order of registration of child birth if her parents are unknown:

*If the parents of a child are unknown, the registration of child birth is made under the decision of Custodian body which determines the surname, name and patronymic name of a child and the records about the parents of a child.*

In such a way the court has cancelled the records about foreign parents of a child and deprived them of possibility to be legally recognized as the parents of a child under Ukrainian law.

It worth to pay attention to the fact that surrogate mother also cannot be biologically connected with the child. Such situation neither falls within the notion of “surrogate motherhood” under Ukrainian law nor it has any legal regulation, therefore the surrogacy motherhood in Ukraine is allowed only with use of spouses and donors gametal cells.

### **Surrogate Mother**

The requirements for the surrogate mother are provided by Section 7(4) of the Instruction:



*The surrogate mother shall be an adult capable woman provided that she has her own healthy child, presented her written drawn up free will and has no medical contraindications.*

Usually each clinic has its database of potential surrogate mothers and the intended parents have opportunity to choose the woman from this database. The surrogate mother may also be the woman acquainted with the intended parents or their relative, provided she meets above mentioned requirements.

There is no any specific requirement as to the marital status of surrogate mother. The surrogate mother and her husband have neither the status nor the rights and duties of parents of surrogate born child.

However, if the surrogate mother is married the issue of receiving the husband consent for a wife to become a surrogate mother may appear. Ukrainian legislation neither entails any rights or obligations to the husband of surrogate mother nor establishes a specific requirement to receive consent of a husband for a wife to become a surrogate mother. Although we consider, that to receive the consent of husband of married surrogate mother is enough sufficient. The presumption of fatherhood established by the article 123 of the Family Code of Ukraine (2002) provides that the father of a child born in marriage is considered to be the husband of a woman. There is no prohibition in Ukrainian legislation to challenge the paternity on the basis of p.2 article 123 of the Family Code of Ukraine (at assisted reproductive technologies application when the surrogate mother is involved). From this follows, that theoretically the husband of married surrogate mother can challenge the paternity of surrogate born child.

In addition, the consent of a husband of married surrogate mother is necessary to secure the validity of surrogacy agreement. On the assumption of the p.2 article 65 of the Family Code of Ukraine (2002):

*The husband has right to apply to the court with the claim about the rescission of the agreement, on the basis it was concluded by another spouse without his/her consent, if this agreement is beyond the scopes of minor domestic agreement.*

On the basis of above mentioned provisions, we could make the conclusion, that although Ukrainian legislation neither require to receive the consent of a husband of surrogate mother nor entail any parental rights to him to avoid any possibility of challenging the paternity and to provide the validity of the surrogacy agreement, it is necessarily to receive the husband written consent of married surrogate mother.

### **Surrogacy Agreement**

As a rule in practice to settle the relations on surrogacy, the parties conclude surrogacy agreement which simultaneously present their consent to surrogacy arrangements. Surrogacy agreement may be bilateral (between the intended parents and the surrogate mother) or the medical institution may be included as the third party to the surrogacy agreement.

Ukrainian law is silent as to the necessity of signing of surrogacy agreement, its form, content and the party's rights and responsibilities under such agreement. Therefore the parties may upon their own discretion decide whether to sign the surrogacy agreement and the terms they would like to agree in it.

As to the legal nature of the surrogacy agreement, it has some features of service agreement, under Civil Code of Ukraine (2003). Consequently the surrogate mother shall be considered the contractor and the spouses who rendered their genetic material for conception are considered to be the customers under the surrogacy agreement.

Therefore the subject of the surrogacy agreement, concluded between the intended parents and surrogate mother shall be worded as "carrying of pregnancy and birth of a child conceived by the spouse after undergoing assisted reproductive technologies treatment", that

is to say, rendering special service by the surrogate mother and receiving for it appropriate compensation.

All others elements of surrogacy agreement, in particular, its term, payments, parties rights and obligations, the terms of its dissolution, suspension, responsibilities of the parties shall be agreed by the parties mutual consent.

It is essential for the parties to follow the general provisions of Civil Code of Ukraine (2003) on agreements to provide the validity of surrogacy agreement.

The content of this agreement shall not contradict with the provisions of this Code, other acts of civil legislation and with the moral bases of the society (art.203 of Civil Code of Ukraine)

It is necessary to point out some requirements for conclusion of surrogacy agreement which are necessary to follow to provide its validity under Ukrainian law:

- The surrogacy agreement shall be concluded till the moment of embryo conception and its transference to the surrogate mother. The surrogacy agreement concluded after the child conception may be considered as the agreement on transfer of child and may be invalidated (Civil Code of Ukraine 2003).
- A person cannot be the subject of the civil agreement; therefore the wording of the subject of the surrogacy agreement cannot provide transfer of a child to the biological parents by the surrogate mother or transfer/relinquish of parental rights (Civil Code of Ukraine 2003).
- Assisted reproductive technologies may be used only by the spouses who have registered their marriage; consequently the surrogacy agreement shall be concluded only by the spouses who have registered their marriage. (art. 123 of the Family Code of Ukraine 2002).
- The parties of the surrogacy agreement shall be adult and capable persons (art. 203 of the Civil Code of Ukraine 2003).

- The surrogate mother shall be an adult capable woman provided that she has her own healthy child, presented her written drawn up free will and has no medical contraindications. The surrogate mother shall be objectively informed concerning the procedure of application of supporting reproductive technologies treatment (Instruction # 771).

Another very important issue is the legal form of the surrogacy agreement. A great number of Ukrainian scientists, among them Viktiriya Moskalyk (candidate of legal science, lecturer of the department of civil law and procedure of Kharkiv National University of Internal Procedures) in her article published in the journal “Notary for You” №12 (86) December 2006 considers that this agreement for the purpose of the rights and interests of the parties and the rights of surrogate born child shall be concluded in writing and notarized. Notarial certification of surrogacy agreement in some aspects will guarantee the validity of this agreement (in particular legal capacity, free will of the parties of the agreement, the presence of necessary documents for its conclusion) and make impossible its invalidation in these aspects. Nevertheless, the absence of notarial certification of surrogacy agreement does not lead to its invalidation and the parties have right to decide whether they want to notarize such agreement. The parties are free to agree whether to make notarial certification of such agreement.

### **Payments under Surrogacy Agreement**

I would like also to dwell upon the legal grounds of the payments which may be agreed and received by the surrogate mother under surrogacy agreement.

The general provisions of Civil Code of Ukraine 2003 on agreements (Art. 632) provide:

1. *The price in the agreement shall be determined by the mutual consent of the parties.*

On the assumption that the surrogacy agreement is the kind of agreement for rendering services, the provisions of the Civil Code of Ukraine 2003 about the payments under the service agreements shall apply. In relation to the payments there are two kinds of service

agreements under the Civil Code of Ukraine 2003: the service agreement on fee basis and the service agreement on free of charge basis.

The provisions of Civil Code of Ukraine on Service Agreements Article 903:

*If the agreement provides rendering services for fee, the customer shall pay for rendered services the amount, within the terms and in order, determined in the agreement.*

Article 904 of Civil Code of Ukraine 2003:

*Under the free of charge service agreement the customer is obliged to compensate to the contractor all actual costs for rendering services.*

At the absence of specific legal regulation, there are different views of Ukrainian scientists to this issue. For example, Viktoria Moskalyk (candidate of legal science, lecturer of the department of civil law and procedure of Kharkiv National University of Internal Procedures) in her article published in the journal “Notary for You” №12 (86) December 2006 considers that the price under the surrogacy agreement may consist of two parts:

1. Compensation of actual costs of surrogate mother connected with the execution of the agreement, this includes the costs for: medical treatment, increased nourishment, medicines, loss of salary e.t.c.
2. Reward for rendered services, agreed by parties’ mutual consent, this reward shall not include the surrogate mother expenditures connected with pregnancy and child birth.

Antonov S.V. candidate of legal science, attorney-at law, research worker of the Institute of State and Law named by V. M. Koretskiy in his article “The Legal Regulation of Application Supporting Reproductive Technologies and Protection of Rights of its Participants in Ukraine and Abroad” considers that correctly composed surrogacy agreement may establish only monetary compensation with the aim of creation of the most favorable conditions for carrying of pregnancy by surrogate mother and her further rehabilitation .

To my mind, in any case special attention shall be paid to the wording of the provisions of surrogacy agreement about the payments. The payments cannot be made for the transfer of a child or the transfer or deprivation of parental rights of surrogate mother, as it will come into conflict with Ukrainian legislation and moral bases of the society. At the same time Ukrainian law does not forbid to establish the special remuneration to the surrogate mother for rendering services of carrying of pregnancy and child birth and/or compensation of all reasonable expenses connected with rendering of such services, in particular costs for loss of salary, medical treatment, medicines, clothes, housing e.t.c.

**In what circumstances intended parents are recognized as the parents of surrogate born child?**

The intended parents are recognized automatically as the parents of a child by virtue of law provisions. However there are certain requirements for them to follow at the procedure of assisted reproductive technologies application provided by law to be recognized and registered as the parents of a child:

1. To pass the treatment by supporting reproductive technologies by the method of surrogacy in accordance with the Instruction # 771.
2. Prior to the conception the intended parents have to present their written consent for implantation and carrying of an embryo conceived after undergoing IVF treatment by the surrogate mother. This follows from the article 123 (2) of the Family Code of Ukraine and article 48 of the Law of Ukraine on Fundamental Legislation on Health Care adopted on 19 of November 1992:

*Artificial fertilization and embryo implantation shall be accomplished in accordance with the conditions and order established by the Ministry of Health Care of Ukraine by the medical indications of adult woman subject to such actions provided the presence of written spouses consent, securing the donor anonymity and protection of medical secrecy.*

3. Prior to the conception the surrogate mother shall present her written drawn up free will to become surrogate mother, carry the pregnancy and born the child for intended parents.

In practice the consent of intended parents and surrogate mother may be executed by signing of surrogacy (gestational) agreement.

4. The surrogate born child shall be biologically related at least with one of the parents. According to the Instruction # 771:

*Registration of a child, born with the assisted reproductive technologies by means of surrogate motherhood is accomplished in order established by active Ukrainian legislation at the presence of the certificate on the genetic connection between the parents (mother or father) and the embryo.*

5. The surrogate mother shall present her notarized consent to register the intended parents as the parents of the child at child certificate of birth.

#### **Donation of gametal cells and embryos**

According to the Instruction No.771.

*Donation of gametal cells and embryos is the procedure, by which the donors by their written, voluntary will give their sex cells - gametal cells (sperm and oocyte) or embryos for infertility treatment in other persons.*

*The donors of gametal cells cannot undertake parental obligations as to the prospective baby.*

*The donation of gametal cells and embryos is carried out at the presence of Application of oocyte donor, Sperm donor Application, Embryos donors' application.*

*The donor of oocytes may be:*

*-Female acquainted with the patient;*

*-Anonymous voluntary donors;*

*- Patients of supporting reproductive technologies program, who under their written free will gave for the recipient part of their oocytes.*

The sperm donor may be male from 20 up to 40 years old at the condition that he has his own healthy born child.

Instruction No. 771 provides certain physical and healthy requirements for oocyte and sperm donors, the scope of medical examinations for sperm and oocyte donors, the list of documents required from oocyte and sperm donors, the scheme of oocyte donation.

Intended parents may use donors' gametal cells for child conception only under certain medical indications provided by the Instruction No. 771. Usually the clinic have it database of donors.

### **Anonymity of Donors**

Under the Instruction No. 771:

*The phenotypic portrait of donors of gametal cells and embryos donors shall be provided for the recipient.*

In other words intended parents receive only non-personified information about medical-genetic examination of anonymous donors, their nationality, appearance, e.t.c.

*The use of donor gametal cells and donor embryos is carried out by the Application of the recipient of donor gametal cells/embryos (the form of this application is established by law).*

Signing this application intended parents oblige them not to disclose the personality of donors.

Besides, according to the Law of Ukraine on Fundamental Legislation on Health Care adopted on 19 of November 1992 Article 48:

*Application of artificial fertilization and embryo implantation is made with securing of donors anonymity and preservation of medical secrecy.*

*Disclosure of donor's anonymity may be accomplished in order established by Ukrainian legislation.*



At the date there is no enacted legal act in Ukraine providing special circumstance to disclose the donor's anonymity.

### **Do the donors entail any rights or duties in relation to the child?**

In accordance with chapter 5 part 2 of the Instruction No. 771:

*The donors of gametal cells cannot undertake parental obligations as to the prospective baby.*

At assisted reproductive technologies treatment Ukrainian legislation proceeds from the presumption of parentage of intended parents (art. 123 (2) Family Code of Ukraine 2002) and does not endue any parental rights to the donors of gametal cells.

The sperm and oocyte donors cannot undertake any parental right to the baby at assisted reproductive technologies treatment in any circumstances.

The parents who are the patients of assisted reproductive technologies treatment and gave their consent for use of donor's gametal cells are considered to be the sole legal parents of child born with assisted reproductive technologies, even when the embryo was conceived with the genetic material of one of the parents (sperm or oocyte) and the donor's gametal cell.

### **Difficulties of Getting Child Home**

The majority of difficulties arise after the child birth when the parents meet the problems of getting the child abroad to their home. From the first glance, it seems that no any problems may appear, as surrogacy motherhood is legal in Ukraine and being registered as the parents of a child on a child birth certificate, the spouses can easily obtain necessary travel permissions. However everything is much more complex and complicated. Usually the possibility to get the child travel documents depend on the legal regulation of surrogacy in the country of parents' jurisdiction. Surrogacy motherhood is allowed only in 15 countries, the rest of counties forbid it, even establish criminal responsibility or allow under certain conditions. For instance: surrogate motherhood is forbidden in Denmark, France, Netherlands, Sweden, Austria e.t.c. In Hungary and Brazil the surrogate mother may be elected only among

the closest relatives. Some countries permit only non-commercial surrogacy and very often recognition of the spouse's paternity over the surrogate born child is possible only through the court proceeding (England, Ireland).

It worth to remind situation when on 21 of March 2011 French parents tried illegally to take out to France their twins daughters born by Ukrainian surrogate mother, hiding them in the furniture trunk of car salon, however they were apprehended by Ukrainian customs authorities. In spite the fact, that they have passed the treatment in Ukraine in accordance with Ukrainian law, and have been legally recognized as the parents of children in Ukraine and registered as such on children's certificates of birth, they could not receive children's travel documents at French embassy, as surrogacy is forbidden in French. In such circumstances they decided to get their children to France illegally. Ukrainian authorities have brought a criminal case against the parents and grandfather of the children under the p.2 article 332 of Criminal Code of Ukraine for the illegal passing of the children through Ukrainian border.

On 21 May, 2001 Ukrainian court proclaimed a verdict in their criminal case No. 1-131/11 and convicted the parents and grandfather of children under p.2 article 332 of Criminal Code of Ukraine and impose a penalty in total sum of 29 000 hryvnia's with confiscation of wagon. The fact is that in the majority of cases, legal recognition of the spouses' paternity in Ukraine does not create any parental rights for them in the country of their residence. Therefore before entering Ukraine for surrogacy arrangements it is necessary to investigate the legal regulation of surrogacy in the domestic jurisdiction of foreign parents and make sure that there is legal possibility to take the child home and recognize the paternity in the country of the parent's residence.

Another interesting case concerns parents from Canada, who have passed ART treatment in Ukraine by the method of surrogate motherhood. Under the Canadian law, if the child is born by

the surrogate mother, the national court of the country where the parents pass the treatment has to confirm by its decision the fact of paternity and give the permission for child going abroad. So, Canadian parents applied to Shevchenkivskiy district court of Zaporizhya city and successfully gain a court decision dated 13 December 2010 in their case No. 2-0-239/10. The court has ascertained the juridical fact that the Canadian spouses are legal parents of a child born by the surrogate mother and gave the permission for the child to go to Canada or any other foreign country accompanying with the parents.

### **Summary**

Assisted reproductive technologies are legal in Ukraine and are recognized as the methods of infertility treatment. Ukrainian jurisdiction allows for the intended parents to be legally recognized as the parents of the child and registered as such on child certificate of birth. However Ukrainian recognition of child paternity does not create any grounds for the intended parents to recognize the paternity in the country of their domicile if assisted reproductive technologies are restricted or forbidden there. Therefore before entering Ukraine for assisted reproductive technologies treatment, intended parents have to consider all legal aspects of their paternity recognition in Ukraine and abroad and receive competent legal counseling. Only cognizance of domestic and Ukrainian law may serve as a good pledge of their legal paternity over the tiny baby.

**Extract from the Rules of Registration of the Civil Status Acts in Ukraine approved by  
the decree of the Ministry of Justice of Ukraine adopted on 18 October 2000.  
(Registration of surrogate born child)**

Chapter 1 Clause 8: the registration of civil status acts upon the application of foreigners and stateless persons is carried out in accordance with the Ukrainian legislation.

Chapter 1 Clause 4: The documents made in foreign language shall be submitted for the registration civil status acts together with its translation into Ukrainian language, certified in established order.

Chapter 2 Clause 8: For registration civil status acts the parents shall pay duty, in order established by Ukrainian legislation.

Chapter 3 Section 1 Clause 1: Registration of child birth is accomplished by the bodies of civil status acts registration simultaneously with the determination of the origin of a child and awarding surname, name and patronymic.

Chapter 3 Section 1 Clause: The ground for registration of birth is:

a) Medical birth certificate form No 103/o (approved by the order of the Ministry of Health Care of Ukraine adopted on 8 of August 2006 № 545) issued by the medical institution, irrespective of subordination and form of ownership, where the child was born.

Chapter 3 Section 1 Clause 3: The registration of birth is accomplished by the bodies of civil status acts registration by the place of child birth.

Chapter 3 Section 1 Clause 8: The registration of a birth is carried out upon the oral or written application of child parents or one of them....The application about the child registration shall be lodged by the parents immediately at the latest one month after the child birth. Failure to fulfill this obligation is the ground to impose responsibility to the child parents established by the law.

Chapter 3 Section 1 Clause 11: Simultaneously with the application about the registration of birth shall be submitted the following documents: a) Passports or passports documents, certifying the persons of parents (or one of them).

Chapter 3 Section 1 Clause 10: In case of birth of a child by a woman who has undergone the embryo implantation conceived consequently by spouses after application the supporting reproductive technologies treatment, the registration of a birth is conducted by application of the spouses who presented their consent for such implantation. In this case simultaneously with the document confirming the fact of a child birth by this woman shall be tendered her notarized written consent to record the spouses as the parents of a child. Herewith in the column “For marks” the appropriate record is made: the mother of a child according to the medical birth certificate form No 103/o is the citizen (surname, name, patronymic).

Section 7 (11):

Registration of a child, born with the assistance of supporting reproductive technologies by means of surrogate motherhood is accomplished in order established by the active Ukrainian legislation at the presence of certificate on the genetic connection between the parents (mother or father) and the embryo.

**Decree of the Cabinet of Ministers of Ukraine on the Approval of the Standard Forms of the Book of Civil Status Acts Registration and Description of the Certificate Blanks Issued by the Body of Civil Status Acts Registration adopted on 12 of September 2002**

**(EXTRACT)**

The following information is recorded at the certificate of birth:

..surname, name and patronymic, the date and place of birth of a child, the date and number of the appropriate record at the registration book of civil status acts, surname, name and patronymic, nationality of father and mother of newly-born, and also the place of registration, the body issuing the certificate of birth and the date of issuing.

**Decree of the Ministry of Health Care of Ukraine adopted on the 23 of December 2008**

**On the Approval of the Instruction about the Order of Supporting Reproductive Technologies Application. (Instruction No 771)**

## (EXTRACTS)

### 1. General

1. Instruction about the order of application of assisted reproductive technologies (farther is Instruction) determines the order and terms of application of methods of assisted reproductive technologies (farther - ART).

2. Instruction is obligatory for all establishments of health care regardless of their form of ownership and subordination.

ART are methods treatments of infertility by which manipulations with reproductive cells, separate or all stages of preparation of cells, the process of fertilization and the embryo growth before its transference to the recipient womb is accomplished in-vitro.

3. ART is carried out exceptionally in the accredited establishments of health care.

4. Patients can freely choose establishment of health care for application of ART.

5. Procedures of ART are carried out by specialists who own necessary professional skills.

6. ART is used by medical indications under the voluntarily consent of patients executed in writing, and on Statement of patient/patients for application of ART (Appendix 1).

7. Adult woman and/or man have right by medical indications for application of the medical programs of ART in accordance with the article 281 of the Civil code of Ukraine.

8. A question concerning application of methods of ART is decided after execution of Statement of patient/patients in relation to application of ART (Appendix 1) and after appropriate examination.

9. Adult woman or man who have a right by medical indications on application of the medical programs of ART, are determined by the state of somatic and psychical health, results of hormonal and medical-genetic examination, at absence of contra-indications to maturing of pregnancy and birth of child.

10. Data of examination and inspection of patients are brought into the Medical card of patient (Appendix 2) on the basis of form of No 025/o the "Medical card of outpatient", ratified by the order of Ministry of Health Care of Ukraine from 27.12.99 No 302.

11. At the absence of contra-indications to application of ART, patients are directed for treatment to health care institution regardless of form of ownership at presence of results of examination. Patients can apply for application of treatment by the methods of ART directly, without direction.

12. After application of ART the letter of incapacity is given out to working patients in accordance with the order of Ministry of Health Care of Ukraine from 13.11.2001 No 455 "On approval of Instruction about the order of issuance of documents which certify the temporal incapacity of citizens", registered in Ministry of Justice of Ukraine 04.12.2001 under No 1005/6196.

13. The clinical observation of patient who has passed ART is carried out in accordance with the order of Ministry of Health Care of Ukraine from 28.12.2002 N 503 "About the improvement of ambulatory obstetric-gynecological help in Ukraine".

14. Implementation of every methods of ART is conducted with the obligatory clinical monitoring and control of general state of patient. In the case of violation of the mode of treatment by patients further medicare by methods of ART can be cease on reasonable determination of doctor.

15. Contra-indications to application of ART are diseases, defined by Apendix 1 to Order of direction of women for realization of the first course of treatment of infertility by the methods of assisted reproductive technologies under absolute indications for budgetary funds, ratified by an order of Ministry of Health Care of Ukraine from 29.11.2004 No 579, registered in Ministry of Justice of Ukraine 15.02.2005 under No 224/10504.

16. Medical assistance by the methods of ART is given in the conditions of confidentiality in accordance with the article 40 of Law of Ukraine on Fundamental Legislation on Health Care.

17. Specialists who render medical assistance to the patients by the methods of ART inform them of possible inefficiency of attempts of ART (failure of pregnancy) and possible complications.

## **2. A volume of inspections of persons, who pass the medical programs of ART:**

### **1. Volume of inspection of woman**

Obligatory:

- Conclusion of therapist about the state of somatic health and absence of contra-indications for maturing of pregnancy;
- Determination of blood type and rhesus-factor;
- Clinical blood test, that takes into account time of rolling up;
- Blood test on a syphilis, HIV, hepatitis of B and C;
- Bacterioscopic analysis of excretions from three points (vagina, urethra and zerkvilkalniy channel);
- Cytological examination of smear from the neck of uterus;
- Common gynecological inspection;
- Ultrasonic inspection of organs of small pelvis.

Under Indications:

- Inspection of uterus and uterus tubes;
- biopsy endometria;
- Bacteriological inspection of material from urethra and zerkvilkalniy channel;
- Analyses of blood folitripin (ФСТ), liutropin (ЛГ), estradiol (E2), prolactin (Прл), testosterone (Т), cortizol (К), progesteron (П), tyrocsyn (Т3), triiodo-thyronine (Т4), tyreotporin (ТТГ), somatotropin (СТГ);



- Inspection of presence of antispermial and antiphospholipid antibodies;
- Inspection on urogenital and TORCH infections;
- Examination of other specialists under doctor determinations;
- Medical genetic advising and karyotyping;
- Fluorography.

At the discovery of diseases at presence of indications to ART shall be conducted the treatment of discovered pathology.

## 2. Volume of inspection of man

Obligatory:

- Blood test on syphilis, HIV, hepatitis of B and C;
- Spermogramma.

Under Indications:

- Determination of blood and Rhesus-factor type;
- Consultation of androlog;
- Medico-genetic advising and Karyotyping;
- Inspection on the infections of TORCH;
- Blood test on filitropin (ΦCT), lutropin (ЛIT), testosterone (T), prolactin (ΠрЛ).

## 3. Methods of treatment by ART

### 1. Indications for in vitro fertilization (farther IVF):

- Absence of uterus tube;
- Impassability of uterus tube;
- Masculine fruitlessness;
- Fruitlessness of undefined genesis;
- diseases which need preimplantation genetic diagnostics (farther - PGD) for the exclusion of possibility of birth of child with the inherited pathology.

2. Contra-indication for reapplication of IVF are determined in accordance with the point 15 chapter 1 of this Instruction.

3. Stage of accomplishing IVF:

- Selection and inspection of patients;
- Controlled stimulation of ovaries (induction of superovulation);
- Monitoring of folliculogenesis and development of endometria;
- Puncture of follicles of ovaries, search of oocytes;
- Preparation of sperm;
- Insemination of oocytes and cultivation of embryos in vitro;
- Embryo transfer is transference of embryos in the cavity of uterus;
- Support of lutein phase of the stimulated menstrual cycle;
- Diagnostics of pregnancy.

Accomplishing of IVF is also possible in the conditions of natural menstrual cycle without the use of inductors of ovulation....

#### **4. Infra uterus sperm insemination**

1. Infra uterus insemination by sperm of man or sperm of donor is one of forms of treatment of fruitlessness and can be conducted by insertion of prepared sperm to the cavity of uterus in the period of ovulation.

2. Decision about the use of infra uterus insemination by sperm of man or donor is adopted by a patient on advice a doctor depending on quantitative and high-quality descriptions of ejaculant....

#### **5. Donation of gametal cells and embryos**

1. Donation of gametal cells and embryos is the procedure, by which the donors by their written, voluntary will give their sex cells - gametal cells (sperm and oocyte) or embryos for infertility treatment in other persons.

Implantation of embryo is carried out on the medical indications of adult woman at the condition of presence of the written consent of patients, providing of anonymity of donor and maintenance of medical secret.

2. The donors of gametal cells can not undertake paternal obligations in relation to a future child.

3. Donorship of gametal cells and embryos is carried out at presence of Statement of donor of oocytes (Appendix 8), Statement of donor of sperm (Appendix 9), Statement of donors of embryos (Appendix 10).

4. In the case of appearance of complications during application of procedure of donation of gametal cells health care institutions provide to the patients full medical assistance.

5. The donors of oocytes can be:

- acquainted women, relatives;
- anonymous voluntarily donors;
- patients of the programs of ART, who under their voluntarily consent executed in writing, give part of the oocytes to the recipient.

6. Requirements to the donors of oocytes :

- woman in age from 20 to 32 years;
- presence of the born healthy child;
- absence of negative phenotypical displays;
- satisfactory somatic health;
- absence of contra-indications for participating in the program of oocytes donation (farther - OD);
- absence of the inherited diseases;
- absence of harmful habits : drug addiction, alcoholism, glue-sniffing.

7. Indications for accomplishment of IVF with the use of donor oocytes:

- absence of oocytes, conditioned by natural menopause;
- syndrome of premature exhaustion of ovaries;
- state after ovariectomy, accomplishment of radio- or chemotherapy;
- anomalies of development of reproductive organs (disgenesis of gonads, syndrome of Shershevskogo-Ternera);
- risk of transmission of the inherited diseases, connected with sex (haemophilia, myodystrophy of Diyshen, ihtioz, miotrophy of Sharko-Mari-Trusso);
- unsuccessful attempts of IVF (4 and more) at the insufficient review of ovaries on induction of superovulation, repeated receipt of embryos of low quality.

8. Contra-indications for application of ART with the use of donor oocytes are determined in accordance with the point 15 Chapter 1 this Instruction.

9. The volume of inspection of donors of oocytes and patients (recipients) is the same as during accomplishing of procedure of IVF (points 1 and 2 Chapter 2 this Instruction).

10. List of necessary documents for accomplishment of oocytes donation:

- agreement with the donor of oocytes about the voluntarily informed written consent of donor to participate in the program of OD and accomplishment of controlled stimulation of ovulation and puncture of ovaries;
- statement, where the written consent of man is given;
- questionnaire of donor of oocytes (Appendix 11);
- personal card of donor of oocytes (Appendix 12);
- catalogue of donors of oocytes with anthropometric and phenotypical data.

The questionnaire of donor is filled and encoded by a doctor. A code chart is free. Work with donors is conducted by a doctor who accomplish medical examination of donor before every attempt of IVF, carries out control after timely accomplishment and results of laboratory inspections in accordance with the calendar plan of inspection.

11. Algorithm of accomplishment of the program of oocytes donation:

- doctor conducts medical examination of donor before every attempt of IVF, carries out control after timely accomplishment and results of laboratory researches in accordance with the calendar plan of inspection;
- conduct synchronization of menstrual cycles or preparation of cryoembryos for embryo transfer in the planned menstrual cycle;
- methods of IVF and ICSI (under indications);
- supervision of donor of oocytes by doctor to beginning of menstruation, expected after a cycle OD.

12. The donor of sperm can be a man in age from 20 to 40 years at presence of his born healthy child.

12.1. For the donor of sperm negative phenotypical displays must be absent.

12.2. The donorship of sperm is allowed at condition of absence of somatic and inherited diseases which can negatively influence on a health of future child, deviations from normal morphometric and phenotypical signs, and also other contra-indications.

12.3. The donorship of sperm is not allowed at the condition of application of narcotic and toxic matters, abuse of swizzles.

12.4. Registration card of donor of sperm (Appendix 13) is filled for the donor of sperm.

12.5. Data about the donors of sperm and its use with anthropometric and phenotypical data are brought to the Journal of account, storage and use of sperm of donors (Appendix 14).

12.6. A specialist of ART carries out the medical examination of donor of sperm, controls the results of laboratory researches according to the calendar plan of inspection.

13. The embryo donors can be patients of the program of IVF, who after birth of child have unused kryoconservated embryos in kryoback.

13.1. After voluntarily free will of patients-donors executed in writing these embryos can be used for donation to the fruitless patient/matrimonial couple-recipients, and also women-recipient, who are not in marriage.

13.2. Data about the donors of embryos and their use are brought to the Journal of Storage and Use of Kryoconservated embryos (Appendix 15).

## **6. Use of donor gametal cells and embryos**

1. Use of donor gametal cells and embryos is carried out on Statement of recipients of donor gametal cells/embryos (Appendix 16).

2. The phenotypic portrait of donors of gametal cells and embryos donors shall be provided for the recipient.

3. Indications of ART with the use of donor embryos:

- absence of own oocytes in recipient;
- unfavorable medical-genetic prognosis in recipient;
- syndrome of premature exhaustion of ovaries;
- ovarioektomia, radio- or chemotherapy in anamnesis;
- unsuccessful results of IVF (4 and more).

4. Contra-indications for application of ART with the use of donor embryos are determined in accordance with the point 5 Chapter 1 this Instruction.

5. The examination of recipients of embryos and donor oocytes is the same as during application of procedure of IVF.

6. The examination of donors of embryos and donor oocytes is the same as during application of procedure of IVF.

7. In the case of use of new donor oocytes for treatment by ART synchronization of menstrual cycles of patient and donor is carried out.

8. In the case of use of kryoconserved embryos for embryotransfer preparation of the planned menstrual cycle is carried out.

10. It is allowed to use only preliminary frozen and unfrozen before application of ART donor sperm. The use of donor sperm enables direct contact of donor and recipient.

## **7. Surrogacy motherhood (farther SM)**

1. Patients for treatment by ART method of surrogate motherhood shall pass the examination according to specific indications for treatment by ART.

2. Indications for surrogate motherhood are:

- absence of uterus (inherent or acquired);
- deformation of cavity or neck of uterus at inherent defects or as a result of diseases which make impossible maturing of pregnancy;
- synechias of cavities of uterus, which are not subject to therapy;
- heavy somatic diseases after which maturing of pregnancy threatens to the further health or life of recipient, but which do not influence on a health future child;
- unsuccessful results of ART (4 and more) at the repeated receipt of embryos of high quality, transference of which did not result in pregnancy.

3. Examination of surrogate mother is carried out on general grounds for treatment by ART.

4. The surrogate mother shall be an adult capable woman provided that she has her own healthy child, presented her written drawn up free will and has no medical contraindications.

5. Contra-indication for application of ART by the method of surrogate motherhood and the scope of examination of patients is determined in accordance with the point 15 Chapter 1 and Chapter 2 this Instruction.

6. Algorithm of application of ART by the method of surrogate motherhood:

- choice of surrogate mother;

- synchronization of menstrual cycles of recipient and surrogate mother, preparation of cryoembryos;
- procedure of transference of embryo to the uterus of surrogate mother;
- cryoconservation of unused embryos;
- diagnostics of pregnancy;
- monitoring of pregnancy in SM;
- determination jointly with the doctor the method of birth, place of birth, method of bringing up of new-born;
- birth can be a partners between recipients and surrogate mother.

7. Medical assistance to the surrogate mother is given in accordance with clinical protocols.

8. The new-born gets medical assistance in accordance with the requirements of order of Ministry of Health Care of Ukraine from 29.12.2003 No 620 "About organization of rendering stationary obstetric-gynecological and neonatological help in Ukraine".

9. Information about a child, born by a surrogate mother, in the day of discharging from the maternity hospital/department is given by phone to child's polyclinic (according to the child place of domicile).

10. If the parents of child, born by a surrogate mother, are foreign citizens, they shall report the address of their temporal residence to the moment of processing of documents and departure from a country for accomplishing patronage by specialists from pediatrics 'and supervision.

11. Registration of child, born by means of ART by the method of surrogate motherhood, is carried out in order established by current legislation of Ukraine at presence of certificate about the genetic connection of parents (mother or father) with a child....

## **Appendix No.1**

### **To Instruction about the order of application of assisted reproductive technologies**



**A statement of patient/of patients in relation to application of ART**

Health care institution \_\_\_\_\_

I/we, woman \_\_\_\_\_ date of birth \_\_\_\_\_ passport series: \_\_\_\_\_ No. \_\_\_\_\_ issued, \_\_\_\_\_, place of job \_\_\_\_\_

Man \_\_\_\_\_ date of birth \_\_\_\_\_ passport series : \_\_\_\_\_ No. \_\_\_\_\_ issued, place of job \_\_\_\_\_ resident address: \_\_\_\_\_ Tel.: \_\_\_\_\_

Under voluntarily consent asks to render medical assistance by the methods of assisted reproductive technologies with the purpose of treatment of fruitlessness: \_\_\_\_\_

(to mark the methods of assisted reproductive technologies)

I (we) realize and consent, that in the process of accomplishment of treatment can appear the necessity of change the methods of assisted reproductive technologies.

I (we) declare, that give complete information about the inheritance, venereal, psychological and other diseases in family.

I (we) in understood way is (are) acquainted from a doctor \_\_\_\_\_  
(Name of the doctor)

With the order of accomplishment of examination and treatment is (are) acquainted/acquainted.

I (we) is (are) informed about necessity to fulfill all medical prescriptions and timely report to the doctor about any changes in a feel or state of health during the examination, treatment, and also during one month after application of assisted reproductive technologies, about pregnancy or absence of pregnancy.

I (we) assert that read attentively, understood all given information and had the opportunity to discuss with a doctor all necessary issues, related to treatment by the methods of assisted reproductive technologies.

Address and telephone, under which it is possible to report necessary for us information:

\_\_\_\_\_

Woman \_\_\_\_\_ Man \_\_\_\_\_

Date " \_\_ " \_\_\_\_\_ of 200\_\_

Statement is certified: Director of health care institution \_\_\_\_\_

### **Appendix No.1**

#### **To Instruction about the order of application of assisted reproductive technologies**

#### **Statement of recipients of donors' gametal cells/embryos**

I/we, \_\_\_\_\_ date of birth \_\_\_\_\_ (\_\_\_\_ full years) after accomplishment of treatment by assisted reproductive technologies under the methods of donors gametal cells or embryos will not disclose the personality of donors.

Address and telephone, under which it is possible to report necessary for us information:

\_\_\_\_\_

Patient (patients) \_\_\_\_\_ Doctor \_\_\_\_\_

Date " \_\_ " \_\_\_\_\_ of 200\_\_

Statement is certified: Director of health care institution \_\_\_\_\_

Stamp \_\_\_\_\_

#### **Court Decisions**

**Case № 1-131/11**

#### **SENTENCE**

#### **IN THE NAME OF UKRAINE**

May, 17, 2011

Berehovo

Berehivskiy district court of Zakarpatska region in the person of presiding judge Feiira O. O., with the secretary Cosmas T.V., with the participation of public prosecutor Gorvata A.A., advocate PERSON\_1, translator PERSON\_2, considering in the open judicial session in the courtroom in city Berehovo criminal case on the charge of:

PERSON\_3 PERSON\_4 (Patrice Le Roch), INFORMATION\_1, native of INFORMATION\_2, PERSON\_5, habitant INFORMATION\_3, PERSON\_6, 35, PERSON\_5, married, has two juvenile children on maintenance, INFORMATION\_4, working as the director of service of first-aid, previously unconvicted, citizen PERSON\_7,

According to p. 2 of article 332 of the Criminal Code of Ukraine,

PERSON\_8 PERSON\_4 (Bernard Le Roch), INFORMATION\_5, native of INFORMATION\_6, PERSON\_5, habitant INFORMATION\_7, PERSON\_5, married, INFORMATION\_4, pensioner, previously unconvicted, citizen PERSON\_7,

According to p. 2 of article 332 of the Criminal Code of Ukraine, -

HAS FOUND OUT:

PERSON\_3 PERSON\_4, do not having the opportunity to legally take out from Ukraine to PERSON\_5 their two children PERSON\_9, INFORMATION\_8 and PERSON\_10 PERSON\_9, INFORMATION\_8, with the purpose of organization of their illegal passage through the state boundary of Ukraine, approximately in the middle of March, 2011 phoned his father PERSON\_8 PERSON\_4, that he on his own car "Daimler Chrysler Caravans Inter", state number plate 4913 XG 72 arrived to Ukraine for an assistance in illegal passage of these infant children through the state boundary of Ukraine, to what father agreed to.

On March, 21, 2011 PERSON\_3 PERSON\_4 and PERSON\_8 PERSON\_4, on a previous concert inter se, with the purpose of illegal passage of these infants on the car "Daimler Chrysler Caravans Inter", state number plate 4913 XG 72, driven by PERSON\_8 PERSON\_4, at the unstated time, left from Mukachevo of the Zakarpatska oblast in direction of entry point

"Luzhanka" of Beregisvskiy district of Zakarpatska oblast. On their way, they stopped on the side of the road, and then PERSON\_3 PERSON\_4 and PERSON\_8 PERSON\_4 hid two infant children in the furniture small box of car "Chrysler Caravans Inter", state number plate 4913 XG 72, covering them by the soft part of furniture, with the purpose of making impossible the disclosure of children by the officers of boundary and custom services of Ukraine.

On March, 21, 2011 PERSON\_3 PERSON\_4 and PERSON\_8 PERSON\_4 approximately at 07:00 a.m. entered the territory of entry point "Luzhanka" in the car "Daimler Chrysler Caravans Inter", state number plate 4913 XG 72.

During in-depth boundary custom check of this transport vehicle there were disclosed two infant children PERSON\_9 and PERSON\_10 PERSON\_9.

At the court hearing defendant PERSON\_3 PERSONS\_4 admitted his guilt in incriminated crime fully and gave evidence that he and his wife PERSON\_11 could not give birth to a child during reasonable amount of time. Assistance in treatment of infertility to him and his wife was provided by Kyiv firm "Biotexcom", the representatives of which drove them in the specialized medical clinic in Kyiv - LLC "Institute of Genetics of Reproduction", which further was engaged in impregnation, carrying of a pregnancy and birth of children by a surrogate mother. On January, 23, 2011 two girls were born by a surrogate mother in one of Kyiv maternity hospitals. The birth certificate was issued to them after birth of children, and after that he together with his wife appealed to the embassy PERSON\_5 in Ukraine with the purpose of execution of necessary documents for the taking out children to PERSON\_5 and granting them French citizenship. However, embassy turned them down, as the substitute maternity in PERSON\_5 is forbidden. In this connection, not having other opportunity to take out the children from territory of Ukraine, he decided to take out children from Ukraine in illegal way, hiding them from passport-custom control in the car of type "auto-house" of his

father. Thus, he did not inform his wife about illegal character of own actions, as he considered that she would not agree with him.

Thus, in the middle of March, 2011 he phoned his father PERSON\_8 PERSON\_4 and asked him to arrive to Ukraine, in order to help illegally take out children from Ukraine. On March, 20, 2011 his father in the car of "Daimler Chrysler Caravans Inter", state number plate 4913 XG 72 arrived to Mukachevo, and in the morning on March, 21, 2011 he together with the father and children headed for entry point "Luzhanka". Before entering the entry point they hid children in the furniture trunk of car salon in order to do impossible their exposure during a visual check. However, on the territory of entry point their car was taken out of the general stream of transport vehicles and directed to a observation point for passing the in-depth check, during which the custom officer discovered hidden children PERSON\_9 and PERSON\_10 PERSON\_9.

He sincerely repented of his deeds, promised not to break the law anymore and asked to punish him severely.

Defendant PERSON\_8 PERSON\_4 in the judicial sitting admitted his guilt fully and gave evidence that in the middle of March, 2011 his son PERSON\_3 PERSON\_4 phoned him from Ukraine and asked to arrive to Ukraine, to help illegally take out from Ukraine his children PERSON\_9 and PERSON\_10 PERSON\_9. Thus, on March, 20, 2011 in his own car "Daimler Chrysler Caravans Inter", state number plate 4913 XG 72 he arrived to Mukachevo, and in the morning on March, 21, 2011 he with his son PERSON\_3 PERSON\_4 together with son's children headed for entry point "Luzhanka". Before entering the entry point they hid children in the furniture trunk of car salon in order to do impossible their exposure during a visual check. However, on the territory of entry point their car was taken out of the general stream of transport vehicles and directed to a observation point for passing the in-depth check, during which the custom officers discovered hidden children of his son.

He sincerely repented of his deeds, promised not to break the law anymore and asked to punish him severely.

As the defendants and other participants of judicial trial in accordance with the article 299 of Criminal Code of Ukraine admitted inadvisable research of proofs in relation to the actual circumstances of case and did not contest the charges, the Court comes to the conclusion, that guilt PERSON\_3 PERSONS\_4 and PERSON\_8 PERSON\_4 is well-proven.

Estimating the proofs collected at case in their aggregate, the Court considers guilt of defendant PERSON\_3 PERSON\_4 in organization of illegal passage of children through the state boundary of Ukraine performed on a previous concert by the group of persons as well-proven and his actions are to be categorized under p. 2 of Article 332 of Criminal Code of Ukraine.

The Court considers the guilt of defendant PERSON\_8 PERSON\_4 in assistance in illegal passage of persons through the state boundary of Ukraine by way of granting his own transport vehicle for the hidden moving of children in it on the previous concert by the group of persons well-proven and his actions are to be categorized under p. 2 of Article 332 of Criminal Code of Ukraine.

Choosing the punitive measure for the defendants, the Court takes into account the degree of gravity (seriousness) of committed crime, its social danger, personality of guilty persons and actions of each guilty in committing illegal actions, namely active role PERSON\_3 PERSON\_4 in the committing this crime and circumstances which attenuate and aggravate punishment.

The Court takes into account as circumstances which attenuate punishment of defendants the fact that defendants PERSON\_3 PERSON\_4 and PERSON\_8 PERSON\_4 admitted their guilt fully, sincerely repented of their deeds, assisted in crime detection, at the place of the residence they are characterized positively, previously not convicted, as well as that

PERSON\_3 PERSON\_4 has on maintenance two infant children and has permanent job, PERSON\_8 PERSON\_4 is a pensioner, that the actions of defendants didn't cause the harm.

The court takes into account as the circumstance which aggravates their punishment the fact that defendants committed crime in relation to infants.

At the same time, taking into account circumstances which attenuate punishment of PERSON\_3 PERSON\_4 and PERSON\_8 PERSON\_4 in their aggregate, the Court considers them substantially reducing the degree of gravity of committed crime, and taking into account the personalities of guilty persons, the Court considers to award punishment to them with application of article 69 of Criminal Code of Ukraine, namely to apply other more lenient kind of primary punishment not mentioned in the sanction of the article for this crime.

Deciding the fate of material proofs in this case, the Court takes into account that transport vehicle "Daimler Chrysler Caravans Inter", state number plate 4913 XG 72 was used by the defendants for illegal passage of juveniles through the state boundary of Ukraine, therefore it must be confiscated to the benefit of the State according to the article 81 of the Criminal Code of Ukraine.

Guided by articles 323, 324, 330 of the Criminal Code of Ukraine, - :

**CONVICTED**

PERSON\_3 PERSON\_4 under p. 2 of article 332 of Criminal Code of Ukraine, with application of article 69 of Criminal Code of Ukraine to the fine of 15 000 (fifteen) thousand hryvnias.

Restraint for PERSON\_3 PERSON\_4 till sentence entry into legal force shall be previous - bail.

After sentence entry into legal force, bail in a sum 20 000 hryvnias deposited to the account of USBU in Zakarpatska oblast of Ukraine, shall be returned to the bailor PERSON\_1

PERSON\_8 PERSON\_4 under p. 2 of article 332 of Criminal Code of Ukraine, with application of article 69 of Criminal Code of Ukraine to the fine of 14 000 (fourteen) thousand hryvnias.

Restraint for PERSON\_8 PERSON\_4 till sentence entry into legal force shall be previous - bail.

After sentence entry into legal force, bail in a sum 20 000 hryvnias deposited to the account of USBU in Zakarpatska oblast of Ukraine, shall be returned to the bailor PERSON\_1.

Material proofs in the case:

"Daimler Chrysler Caravans Inter", boot № NUMBER\_1, state plate number 4913 XG 72, located on territory of internal court of SBU Administration of Ukraine SSU in Zakarpatska oblast, after sentence entry into legal force it must be confiscated to the benefit of the State;

- control coupon of series of AAJI №0047706; certificate №06PX02552 of February, 14, 2006 about registration of car; sheet containing list of documents, necessary for registration of fact of birth of child-citizen PERSON\_5; contract between a firm "Biotexcom" from one side and PERSON\_3 PERSON\_4 and PERSON\_11 PERSON\_4 from the other; request of PERSON\_3 and PERSON\_11 PERSON\_4 to the embassy PERSON\_5 in Ukraine on the record of fact of birth of child-citizen PERSON\_5 by name PERSON\_10 PERSON\_4 and PERSON\_12 PERSON\_4 of February, 21, 2011; receipts №2066362 and №2043825 of December, 05, 2010, №01118 and №04675; statements to LLC "Institute of Genetics of Reproduction" from PERSON\_4 PERSON\_11 and PERSON\_4 PERSONS\_3 in relation to realization of treatment of infertility by the method of ART; copies of medical birth certificates №53 of January, 25, 2011 and №52 of January, 25, 2011; translations of pages of passports of citizens PERSON\_5 PERSON\_9 №08CL76586 and PERSON\_11 PERSON\_9 № 08CL76583 into Ukrainian language; agreement of February, 02, 2010 between LLC "Institute of Genetics of Reproduction" and PERSON\_11 and PERSON\_3 PERSON\_4;



general agreement in relation to realization of ART by the method of surrogate motherhood between LLC "Institute of Genetics of Reproduction", PERSON\_13 and PERSON\_11 and PERSON\_3 PERSON\_4; statement PERSON\_3 and PERSON\_11 PERSON\_4 to LLC "Institute of Genetics of Reproduction" of February, 02, 2010; ambulatory card of PERSON\_11 PERSON\_4 №6788 of February, 02, 2010; consent on embryo transfer of PERSON\_14 of June, 05, 2010; Statement of PERSON\_14 of June, 05, 2010, instruction for the patient of - PERSON\_3 PERSON\_4 in relation to handing over of ejaculate, sheet with data and medical indexes in relation to the impregnation of ovule, issued in the name of PERSON\_11 PERSON\_4 and PERSON\_3; act records about birth №470 of February, 15, 2011 and №469 of February, 15, 2011; medical birth certificates № 53 of January, 25, 2011 and №52 of January, 25, 2011; notarial certified statement of PERSON\_13 of February, 10, 2011; certificates №140211/19 of February, 14, 2011 and №140211/11 of February, 14, 2011; two statements of PERSON\_3 and PERSON\_11 PERSON\_4 to department chief of RATS of Svyatoshynskiy district administration of Justice in Kyiv of February, 18, 2011 with receipts; copy marriage certificate of PERSON\_3 PERSON\_4 and PERSON\_11 of December, 13, 2004, together with its translation into the Ukrainian language; copies of pages of passports of citizens PERSON\_5 PERSON\_9 №08CL76586 and PERSON\_11 PERSON\_9 №08CL76583, together with its translation into the Ukrainian language, kept at materials of the case shall be kept at case file.

The sentence is declared and can be appealed during 15 days from the day of its proclamation in the appeal court of Zakarpatska oblast through this district court.

**№ 2-0-239/10**

**DESICION**

**IN THE NAME OF UKRAINE**

on December, 13, 2010

Zaporizhzhya

The Shevchenkivskiy district court of Zaporizhzhya in the person of presiding judge Zhupanova I.B., with the secretary Braginiy I.V., considering in the open judicial session the civil case on a statement of PERSON\_1, the interested person PERSON\_2, on establishment of fact which has a legal value and granting permission,

ESTABLISHED:

On 2.12.2010 the applicant appealed to the court with the statement, in which he explained that he had been born INFORMATION\_3 in Zaporizhzhya, Ukraine. His wife - PERSON\_2 INFORMATION\_2 was born in Ternopil, Ukraine.

In 1994 he with the wife left for permanent residence to Canada. In 1997 they gained citizenship of Canada.

However, almost more than 12 years they have been experiencing problem with impregnation.

From September, 2008 they arrived to the motherland for treatment of infertility by the methods of assisted reproductive technologies in PP the "Medical center of "Intersono" in Lviv. Last time they have arrived in 2009 and have procedures of treatment of infertility.

In this center in a period from September, 24 till October, 26, 2009 the medical cycle was carried out with transference of embryos, that belongs to the married couple PERSON\_2, in the uterus of surrogate mother PERSON\_4, INFORMATION\_1, that is confirmed by the certificate of PP "MC "Intersono" № 147 of 5.07.2010.

INFORMATION\_4 daughter PERSON\_5 was born, that is confirmed by the birth certificate.

Surrogate mother PERSON\_4 issued the notarial certified statement on the granting the consent to their paternity in relation to the born child.

However, according to the Canadian national legislation in the case of impregnation from a surrogate mother, the confirmation of fact of paternity in the state, where an impregnation was

occurred, is needed, as well as the court consent is necessary in order to departure outside Ukraine.

In the judicial sitting the applicant applied statement in which he asked to satisfy his statement and consider the case without his physical presence.

Interested person in the judicial sitting submitted statement in which he didn't deny the satisfaction of statement, asked to consider case without her physical presence.

Examining the statement of applicant, interested person and writing proofs, presented in case file, the court considers the application to be subject to the satisfaction, as it meets the requirements of the law and is grounded on writing proofs.

The court established that PERSON\_1 registered marriage with PERSON\_2 on 23.09.1993, issued by Bureau of main registrar, Ontario, Canada.

According to the passport, PERSON\_1, INFORMATION\_3 was born in Zaporizhzhya, Ukraine and is the citizen of Canada.

According to the passport, PERSON\_2, INFORMATION\_2 was born in Ivanivka, Ukraine and is the citizen of Canada.

In 1994 PERSON\_1 and PERSON\_2 left for permanent residence to Canada. In 1997 they gained citizenship of Canada.

The certificate, issued by the PP "Medical center of "Intersono", Lviv, № 147 of 5.07.2010, states that PERSON\_2, INFORMATION\_2 and PERSON\_1, INFORMATION\_3 underwent the procedures of treatment of infertility by the methods of assisted reproductive technologies in the medical center "Intersono" in period from September, 2008 till current time. In the period from September, 24 till October, 26, 2009 the medical cycle was carried out with transference of embryos which belong to the married couples PERSON\_1, in the uterus of surrogate mother PERSON\_4, INFORMATION\_1, which eventually resulted in singleton

pregnancy. Upon the date of issuance of certificate pregnancy resulted in urgent birth of child PERSON\_5, INFORMATION\_4.

In accordance with the birth certificate issued by the municipal department of RATS of the Lviv municipal administration of Justice, act record № 3263, parents of PERSON\_5, who was born INFORMATION\_4, is PERSON\_1 and PERSON\_2, citizens of Canada.

On 22.01.2010 PERSON\_4 wrote the statement, certified by the private notary of the Lviv municipal notarial district Kotarska A.T., № 94, on her consent to the fact that as the parents of the born by her child, who was conceived by the method of IVF with the use of oocytes and sperm which belong to PERSON\_2 and PERSON\_1, were mentioned these persons who are the genetic parents of new-born child.

In accordance with item 1 of part 1 of article 256 of Civil procedural code of Ukraine the court considers the cases on establishment of fact of family relations.

It is foreseen in the part 2, 3 of article 123 of Family Code of Ukraine, that in the case of transference of embryo of human in the organism of other woman, conceived by the married couple in the result of application of assisted reproductive technologies, the parents of child are the married couple. The married couple are acknowledged as parents of the child, born by the wife after transference of embryo of human in her organism, conceived by her husband and other woman in the result of application of assisted reproductive technologies.

By virtue of part 4 of article 29 of Civil Code of Ukraine, residence of natural person under the age of 10 is the residence of his/her parents or one of them, with whom he/she lives.

According to the article 1 of the Law of Ukraine "On the order of Ukrainian citizens departure from Ukraine and entry to Ukraine" N 3857 - XII of 21.01.1994, the citizen of Ukraine has a right to departure from Ukraine, except as otherwise provided by this Law. Articles 6, 9, 12 of this Law contain limits on departure from Ukraine.

In accordance with the article 313 of Civil Code of Ukraine, natural person under the age of 16 has a right on departure outside Ukraine only by consent of the parents (adopters), trustees as well as escorted by them or escorted by the persons, authorized by them.

In accordance with the items 2, 2-2 "Rules of crossing of the state border by the citizens of Ukraine", approved by the resolution of CMU № 57 of 27.01.1995, crossing of the state border by the Ukrainian citizens is carried out in the entry points through the state border according to the documents on the right to departure from Ukraine.

Citizens under the age of 16 departure outside Ukraine escorted by one of the parents or escorted by persons, authorized by one of the parents in the case of providing the originals of documents or its notarial certified copies, including court decision on permission granting on departure outside Ukraine of citizen under the age of 16 age without consent and escort of other parent.

Guided by articles 10, 59-62, 208, 209, 212-218, 223, item 1 of part 1 of article 256, 259 Civil procedural Code of Ukraine, part 2, 3 of article 123 of Family Code of Ukraine, part 4 of article 29, article 313 of Civil Code of Ukraine, article 1 of the Law of Ukraine "On the order of Ukrainian citizens departure from Ukraine and entry to Ukraine" of N 3857 - XII of 21.01.1994, items 2, 2-2 "Rules of crossing of the state border by the citizens of Ukraine", approved by the resolution of CMU № 57 of 27.01.1995, court

DECIDED:

To satisfy statement of PERSON\_1 in full.

To establish that PERSON\_1, INFORMATION\_3 birth and PERSON\_2, INFORMATION\_2 birth, are the father and the mother of PERSON\_5, born INFORMATION\_4 in Lviv, Lvivska oblast.

To allow PERSON\_5 of the age under 16, native of Lviv, Lvivska oblast, Ukraine, departure outside Ukraine to Canada and to any other country of the world before reaching lawful age,

escorted by her father PERSON\_1, INFORMATION\_3 birth and mother PERSON\_2, INFORMATION\_2 of birth.

The decision of the court can be appealed in the appeal court of Zaporizhzhska oblast through the Shevchenkivskiy district court of Zaporizhzhya by way of filing the appeal during ten days from the day of proclamation of decision.