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Mediation as a way to resolve disputes related to the contractual regulation of the use of reproductive technologies

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Abstract

The dispute resolution approach, which transfers a conflict to the jurisdictional authorities for examination, is losing its relevance nowadays. The study presents the analysis of the practice related to the resolution of conflicts arising in the field of application of reproductive technologies through mediation. The authors have analyzed statistical data, judicial practice, surveys on the use of reproductive technologies. The advantages of resorting to mediation in the field of reproductive technologies are speed, lower cost, lack of formalism, simpler procedure for resolving this type of conflicts, application at the discretion of the participants, guarantee of full confidentiality, objectivity of conflict resolution with the participation of a neutral third party, taking into account the best interests of the child. The mediation agreement is also an independent segment of civil law and cannot be identified with a settlement agreement, but only be the basis for its adoption already in court proceedings. In conclusion, comparing the disadvantages and advantages of the use of mediation in the field of reproductive technologies, it can be stated that the latter significantly prevail.

Keywords: mediation and reproductive technologies; surrogacy; conflict resolution; litigation; settlement.

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La mediación como forma de resolver disputas relacionadas con la regulación contractual del uso de tecnologías reproductivas

Resumen

El enfoque de resolución de la controversia que traslada un conflicto a las autoridades jurisdiccionales para su examen, está perdiendo vigencia en la actualidad. El estudio presenta el análisis de la práctica relacionada con la resolución de conflictos surgidos en el ámbito de la aplicación de tecnologías reproductivas a través de la mediación. Los autores han analizado datos estadísticos, práctica judicial, encuestas sobre el uso de tecnologías reproductivas. Las ventajas de recurrir a la mediación en el ámbito de las tecnologías reproductivas son la rapidez, el menor coste, la falta de formalismo, un procedimiento más sencillo para resolver este tipo de conflictos, la aplicación a discreción de los participantes, la garantía de total confidencialidad, la objetividad de la resolución de un conflicto con la participación de una tercera parte neutral, teniendo en cuenta el interés superior del menor. El acuerdo de mediación es también un segmento independiente del derecho civil y no puede identificarse con un acuerdo de conciliación, sino sólo ser la base para su adopción ya en los procedimientos judiciales. En conclusión, comparando las desventajas y ventajas del uso de la mediación en el ámbito de las tecnologías reproductivas, se puede afirmar que estas últimas prevalecen significativamente.

Palabras clave: mediación y tecnologías reproductivas; maternidad subrogada; resolución de conflictos; litigios; acuerdo.

Introduction

The development of civil law relations in the field of application of reproductive technologies reflects the important principles of civil law, which, first of all, are freedom of contract, free expression of the will of the parties, dispositivity. These principles are reflected in the contractual regulation of the above legal relations. The classic scheme for resolving legal disputes arising between the parties to this type of agreement is to appeal to the judicial authorities. This approach to resolving a dispute that arises, by submitting it to the relevant jurisdictional authorities for consideration, is currently losing its relevance.

Litigations have a number of disadvantages, including the longevity and high cost of the process. In our opinion, taking into account the specifics of legal relations of the use of reproductive technologies, it is appropriate to use alternative methods that would contribute to the effective solution

of problems arising from non-fulfillment or improper implementation of the agreement on the use of reproductive technologies. The institution of mediation plays an important role in this situation. No special rule that would regulate the procedure for the application of mediation is defined in civil law.

Moreover, there is no scientific analysis of the use of mediation in the legal relations of surrogacy. In this regard, there is a need to implement the general legal characteristics of the mediation agreement concluded between the participants of the surrogacy program. To do this, it is necessary to identify the advantages and disadvantages of applying this practice.

Particular attention should be paid to the use of mediation in legal relations with a foreign element. Currently, the solution of a number of existing significant legal problems can speed up the procedure for resolving conflicts regardless of the nationality of biological parents or a surrogate mother, which will also contribute to the effective protection of the rights of participants in all legal relations.

The purpose of the paper is to determine the theoretical and legal basis for the mediation clause in contractual relations arising during the application of reproductive technologies. The authors set the task, in addition to the very meaning of such a reservation, to determine the legal nature, the main advantages and disadvantages of the use of mediation in the in vestigated area.

The foregoing emphasizes the relevance of the topic of the study, which requires a deep investigation of the issue.

The fundamental studies of Shatkovsky (2019) have been devoted to the problems of the civil law regulation of reproductive technologies and conflict resolution. The legal constructions of the use of mediation in the resolution of the civil law conflicts have been studied by Dyachenko and Kolokolna (2020), Podkovenko (2020), Rezvorovych (2019) Mazaraki (2018-2019).

We also took into consideration the scientific conclusions of Starikova N.M., (Starikova, 2018) which recognized the forms of civil liability in the field of application of assisted reproductive technologies and contractual relations in this area.

The conclusions made by the aforementioned scientists contributed to the formation of the the oretical and legal basis of the study and specific proposals for amendments to the current legislation were developed.

However, the issue of the application of mediation in emerging relations was not subject to scientific development at all.

Insufficient scientific development in the studied area also indicates the relevance of the chosen topic.

The theoretical basis of the study is scientific development in the form of articles, scientific conferences. The empirical basis is the judicial practice that has developed in the field of disputes arising in legal relations on the application of reproductive topics, as well as law enforcement practice that has developed as a result of the resolution of the above types of disputes involving a foreign element.

1. Material and Methods

The following methods of scientific cognition: dialectical materialism, comparative, historical and legal, sociological, statistical have been used.

The analysis was carried out on the basis of statistical indicators of the use of mediation in dispute resolution in family and civil law. Significant attention is paid to the resolution of disputes arising during the contractual regulation of the use of reproductive technologies.

After analyzing the number of court decisions in the field of dispute resolution arising from the application of reproductive technologies contained in the Unified State Register of Court Decisions for 2015-2022, we can observe an obvious increase in the number of disputes resolved in court.

Therefore, the largest number of court decisions in cases on the use of reproductive technologies occurred in 2019 (295 cases), the smallest (47 cases) in 2012. Since 2012, the number of court cases has gradually increased: 2013 - 89 decisions, 2014 - 92 decisions, 2015 - 83 decisions, 2016 - 77 decisions, 2017 - 140 decisions, 2018 - 196 decisions, 2019 - 295 decisions, 2020 - 259 decisions, 2021 - 277 decisions, the first quarter of 2022 - 140 decisions (Fig. 1) (Unified State Register of Court Decisions, 2022).

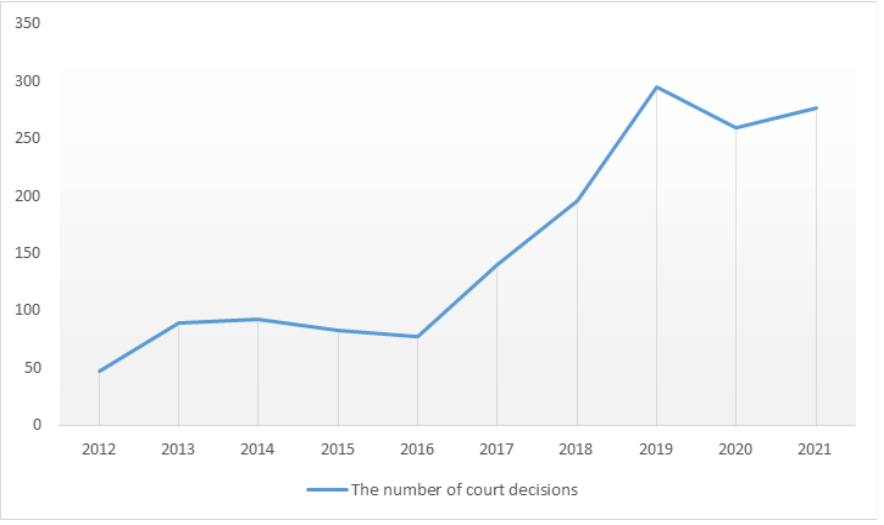

Figure 1 (developed by the author on the basis of the analysis of the Unified State Register of Court Decisions, 2022).

2. Results

The study shows that there is a constant dynamic in legal relations on the use of reproductive technologies and the frequency of appeals to the administrative procedure for resolving disputes arising in this area. Most disputes concern the collection of funds for the provision of medical services under the agreement on the use of reproductive technologies, recognition of paternity and registration of a newborn child. The growth of court appeals in 2019-2020 in Ukraine shows an increase in the number of concluded agreements in the studied area and the need to search for alternative options for resolving disputes that arise.

Extensive judicial practice has developed in the field of disputes related to the use of surrogacy in other countries. The result of consideration of court cases on the use of reproductive technologies depends on the national legislation of a particular country. For example, cases challenging surrogacy treaties in Taiwan are decided by local courts. Moreover, the initiators of such disputes are often surrogate parents. In one of the court cases, the husband of the surrogate mother refused to give the child to biological parents and argued that the surrogacy agreement was invalid. The court found the agreement valid because both parties actually signed the agreement in person.

The court relied solely on general law regarding the conclusion and termination of the agreement, since, there is no regulation that expressly prohibitsor permits surrogacy, so the surrogacy agreement in the case was not invalid under Article 71 of the Taiwan Civil Code. Another illustrative case was a dispute in which biological parents refused to pay for the services of a surrogate mother on the grounds that she failed to bear and give birth to a child.

The court declared the surrogacy contract invalid and critically considered the surrogate mother's demands to pay for her services, ruled that according to Article 72 of the Taiwan Civil Code, a paid surrogacy contract is invalid, because it represents a kind of commercialized labors that is contrary to public policy or morality. The court also concluded that there is no regulation that expressly prohibits the practice of surrogacy that could lead to the annulment of surrogacy agreements (Chianga and Choub, 2018).

The practice of resolving disputes arising between the parties to contractual relations in the field of application of reproductive technologies demonstrates that the only way is to appeal the parties to the judicial authorities. Given the workload of the courts, the long term of consideration of cases, the cost of court fees, the consideration of these disputes is irrational. In our opinion, in such cases, the parties may use another way to regulate the resolution of disputes arising from the contractual relationship.

In accordance with Part 7 of Article 49 of the Civil Procedure Code of Ukraine, the parties may reconcile, including through mediation, at any stage of the judicial process (Civil Procedure Code of Ukraine, 2004).

According to the Law of Ukraine "On Mediation" as of November 16, 2021, this concept should be understood as "extrajudicial voluntary, confidential, structured procedure, during which the parties, with the help of a mediator (mediators), try to prevent the emergence or settlement of a conflict (dispute) through negotiations" (Draft Law of Ukraine "On Mediation", 2020).

The Law of Ukraine "On Mediation" defines the concept of mediation itself quite widely and to a certain extent abstractly. Given the domestic legislative technique, in this case, it is reasonable to draw attention to the fact that the concept of mediation occurs rather not as in the form of a classical legislative definition, but is provided only rather as a characteristic of the procedure itself. However, in this context, it is worth noting that mediation is not only a procedure that is regulated by current legislation, but also a whole range of approaches, theories and methods, constitutes a system of values for conflict resolution.

The basic principles, on the basis of which mediation activity is based and its essence is expressed, are normatively defined in Article 3 of the Draft

Law "On Mediation". This provision contains an explicit list of guidelines that are the basis for mediation activities in the national legal reality and are considered as the starting point for the legal regulation of the institution of mediation. The legislator defines seven important principles: voluntariness, confidentiality, independence and neutrality of the mediator, impartiality of the mediator, self-determination, equality of rights of the parties to mediation (Bortnyk *et al.*, 2021).

Scientists emphasize that mediation helps to save a lot of time and find a solution to the conflict as quickly as possible, which would have a positive impact on both sides. During the quarantine conditions that arose during the pandemic, the institution of mediation, like many other spheres of public life, moved online. Therefore, individuals are involved in the mediation process through the use of online communication or artificial intelligence, for example, chatbots (Dontsov *et al.*, 2021).

The problematic nature of the use of mediation in the studied area is also explained by the attitude of society to the institute of reproductive technologies itself.

Some scientists note that the use of such methods of reproductive technologies as, for example, surrogacy is medical tourism. Modern medical tourism is a rather diverse phenomenon and has different types of legal relations. Currently, many patients with low income go to less developed countries for infertility treatment, which is high-cost in their country, however, much cheaper abroad (Samuel, 2012).

Dispute resolution in the field of medical law, in particular in the field of reproductive technologies, as shown by the findings of research, is becoming an increasingly frequent practice. This situation can be explained by a number of reasons: widespread use of reproductive technologies, imperfection of concluded contracts, non-fulfillment of the terms of the contract by a party, conflicts and gaps in current legislation.

In our opinion, the use of mediation is the best option to solve such difficult situations. Therefore, one of the important arguments of this proposal is the need to apply all the principles in the studied area, which are characteristic of mediation, namely: legal equality of participants, free expression of the will of the parties, impartiality of the mediator, taking into account the interests of all parties. Moreover, given the certain specifics of such conflicts, the use of mediation has its relevance in the complex of relations that lie on the verge of civil, family and medical law.

Notably, the current legislation in the studied area does not always give the right for one of the parties to go to court. For example, Article 139 of the Family Code of Ukraine determines the right of a person to challenge the fact of motherhood. This provision gives the right to a woman who considers herself the mother of a child to sue a woman who is registered as the mother

of the child for recognition of her motherhood. However, if the child was born using assisted reproductive technologies, the legislator deprives the right to challenge the fact of motherhood (Family Code of Ukraine, 2002).

In such cases, it seems that everything is legally determined, however, in practice, situations often occur when biological parents do not return for their newborn children, and the surrogate mother cannot keep the child for legal reasons. In our opinion, such an already complicated legal problem can be solved by applying an alternative method – an agreement.

Along with the formation of mediation in our country, the issue of the development of international family mediation, aimed, first of all, at the possible reduction of tensions in the resolution of disputes arising in relations with a foreign element in family relations, is becoming increasingly important.

Statistical indicators increase every year and show that almost half of the patients seeking the reproductive medicine services in Ukraine are foreigners. The first place is occupied by patients from Israel, and they are also followed by Italians, citizens of the Federal Republic of Germany, Great Britain and other countries of the European Union. In recent years, the number of couples from Georgia and Transcaucasia with infertility problems has increased significantly (Malska and Bordun, 2018).

Studies by foreign scientists show that in the Massachusetts and Florida, for example, the treatment of infertility with assisted reproductive technologies is approximately 30–40% (Thoma *et al*., 2014).

The use of mediation in the field of reproductive rights is usually associated with contractual relations arising in this area. Under the concept of assisted reproductive technologies (hereinafter – ART), a method of treating infertility, in which manipulations with reproductive cells, some or all stages of preparation of reproductive cells, fertilization and development of embryos before their transfer to the patient's uterus are carried out *invitro* (Ministry of Health of Ukraine, 2008).

The birth of the child from a "test tube" dates back to 1978, which occurred through *invitro* fertilization. As a result of the rapid development of the advanced technologies over the past 30 years, there has been a rapid evolution among many other types of assisted reproductive technologies. Along with these technologies, social, cultural, legal and ethical relations developed.

Therefore, ART is a key symbol of our time, representing the growing importance of biotechnology in the configuration of individual, family and collective identities around the world. This fact is confirmed by the findings of more than 50 anthropologists who study the influence of ART in many areas of public life, including the traditional anthropological areas

of kinship, marriage and family, gender, religion and biomedicine (Inhorn and Birenbaum-Carmeli, 2008).

Studies conducted by the European Commission for the Effectiveness of Justice (CEPEJ) show that 47 countries do not have statistics on mediation processes. Since legal relations in the field of application of reproductive technologies arise on the verge of civil and family law, we analyzed the provision of CEPEJ indicators in the field of civil and family disputes. Ukraine showed one of the lowest indicators of the index of a balanced ratio between mediation and litigation (0.08%) (Zalar, 2019).

Other indicators were demonstrated by the Singapore International Dispute Resolution Academy (SIDRA). According to the resulting survey data, the main factors demonstrating superiority over mediation, as an independent institution, have hybrid mechanisms: the advantages were: improved efficiency (35%), cost (34%) and the performance potential (31%). The main disadvantage of mediation based on the results of the survey was determined by the performance potential only to a certain extent, while the performance potential and finality are two important factors (both 55%) in terms of user satisfaction with mediation. Figure 1. (Alexander *et al.*, 2021).

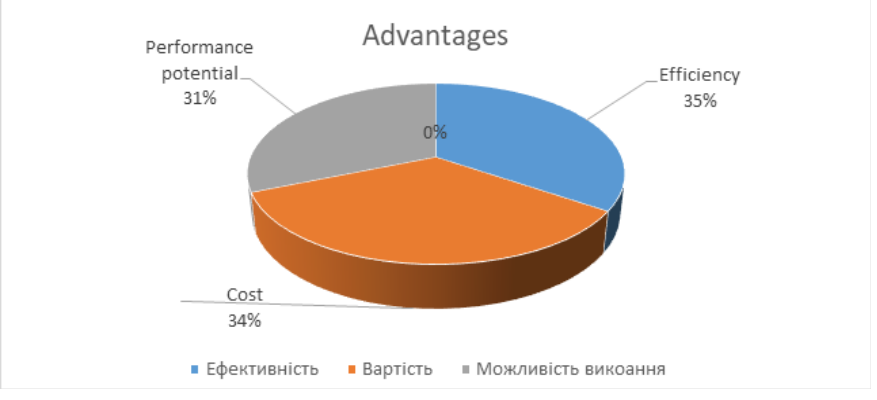

Figure 2: Source: authors' preparation.

Scientists in the field of medicine confirm international statistics and note that assisted reproductive technologies, which were originally developed to treat women with fallopian tube diseases, have been used in an increasing list of other situations over the past decade, which has led to an exponential increase in the number of children born through this procedure, which now account for 2–5% of births in developed countries (Scherrer *et al.,* 2015).

The World Health Organization estimates that at least 48 million couples and 186 million people worldwide suffer from infertility. Today, the use of assisted reproductive technologies is becoming a broad way to recover for couples who have such a diagnosis. However, the implementation of this process is associated with a number of legal elements of such process. A review of the scientific literature also made it possible to determine that couples who experience ART, are likely to face difficulties, particularly at the social, family and financial levels (René *et al*., 2022).

In 2019, the Family Mediation Council, operating in England and Wales, conducted a survey of 122 family mediators, who conducted mediation on 2161 cases within six months. As a result, the following indicators were obtained: in 70% of cases, the parties reached full or partial agreement, with 50% reaching full agreement by concluding written agreements, 20% reached agreement on some issues or on all issues in oral agreement. The findings of the survey showed, that the population was not sufficiently informed about the possibility of mediation, which is reflected in the distrust of the population in the effectiveness of mediation (Family Mediation Council, 2020).

The use of mediation demonstrates its effectiveness in many European countries. For example, in the family law of the Federal Republic of Germany for more than a decade there have been provisions on the application of mediation. In the Republic of Poland, mediation has been operating since 2005 in the resolution of civil law disputes. Labor, family, commercial disputes have been successfully resolved through mediation since 2004 in Bulgaria.

Instead, in Ukraine, the Draft Law on mediation was registered in 2015. Some scientists are critical of the provision providing for a mediation clause. In their opinion, such consolidation is inappropriate, since the legislator already provides the opportunity to apply to mediation in any case, and the presence of the clause itself does not prevent from going to court (Mamnytskyi *et al*., 2019).

In the European Union, the mediation procedure is understood as the voluntary expression of the will of the subjects of the dispute who decide to involve a third, independent party in order to independently resolve the conflict, during which a mediator maintains personal impartiality and ensures the confidentiality of information (Verba-Sidor *et al*., 2021).

K.R. Rezvorovych supports this conclusion and states that the European Community recommends the introduction of mediation both at the pre-trial and trial stage as the main method of alternative dispute resolution, since the European Union countries adhere to the principle that the right to access justice includes both judicial and extrajudicial methods of conflict resolution. Judicial practice of European countries demonstrates, that in

80% of cases, disputes that are in court proceedings and submitted for mediation, are resolved without trial (Rezvorovych, 2019).

A number of scientists believe that the use of mediation in family dispute resolution is an effective method and has positive consequences. Moreover, the application of this method makes it possible that all relations between the parties to the dispute can be restored, which will also provide an opportunity to strengthen the institution of the family in Ukraine (Dyachenko and Kolokolna, 2020).

The scientific literature defines different models of mediation, depending on a mediator. Therefore, one can find judicial mediation as part of legal proceedings (Canada), legal mediation, such services can be provided by lawyers (Italy), notarial mediation, when the mediators are a notary, as well as professional mediation (Podkovenko, 2020).

It is worth noting that alternative ways of conflict resolution in the studied area as a legal tool are not the opposite of dispute resolution in court; on the contrary, such methods are successful auxiliary processes.

Mediation clause does not deprive a party of going to court in the end case if a compromise between them is not reached. The ability of participants in legal relations to independently determine which of the methods is best for the settlement of controversial issues is not prohibited by current legislation and is regulated by the contract. Mediation lies in the private legal plane when the parties are in a contractual relationship with each other. Its application is not a judicial procedure, the participants are legally equal, the participants take actions on the principle of dispositivity without external influence.

The advantages of using extrajudicial methods also include mainly such signs as rapidity, lower cost, lack of formalism, a simpler procedure for resolving this type of conflict. In addition, subjective factors are the free choice of the parties at their own discretion to determine the way to resolve the conflict.

Ensuring confidentiality is also one of the important advantages of using mediation in the legal relations of surrogacy.

Potential parents of the child may have a fundamental interest in protecting their family, social and psychological ties with the child. The decision on the need to notify the child of the fact of its origin should be entrusted solely at the discretion of the spouses. It is up to them to decide whether to inform their child of the manner of birth through surrogacy and/or gamete donation.

Another advantage is application of mediation on the objectivity of resolving a dispute with the participation of a third neutral party with the appropriate specialization. Appropriate training of mediators is an important

element in the effectiveness of mediation. The further development of this important institution for the country depends on how the legal norms are applied and the agreement is concluded.

In the scientific literature one can also find the opposite opinion, based on the belief that the judicial method is the most optimal in legal relations for the use of reproductive technologies. This position is explained by the fact that the value of the court decision is more pronounced, despite the length of the term of consideration. In addition, there is a need to involve professionals. Importantly, as a result of the trial, judicial practice is formed, certain judicial conclusions are summarized, which significantly affects the further resolution of such cases in the future (Shatkovsky, 2019).

Among the disadvantages related to the use of mediation in the studied area, it is worth mentioning possible difficulties in the implementation of the mediative decision, that is, there is no coercive mechanism.

In addition, the delay in time by the parties as a negative factor affecting the effectiveness of mediation can be also considered as disadvantage. One of the parties may show a tendency to intransigence, as well as a desire to transfer responsibility for resolving the conflict to someone else.

The inaccessibility of mediation for vulnerable and low-income categories of the population is noteworthy. In Ukraine, the inaccessibility of services for the organization and conduct of the mediation procedure is explained in the absence of relevant conflict resolution centers. This is especially true of the use of reproductive technologies, since such legal relations have a number of specific features.

Apparently, no sufficient number of mediators in the studied area and the mechanism of payment for their service sexist to date. Usually, a successful mediation procedure ends with the signing of the mediation agreement. In the event that an unqualified specialist makes it incorrectly, difficulties in its implementation may arise. For example, the parties may ignore the terms of the contract.

As a result, it can be stated that the progressive development of mediation in the field of conflict resolution on the use of reproductive technologies can be achieved only if the principles of awareness, accessibility and support of this institution are observed by the government and the population.

There is an opinion that, since the mediation procedure cannot be applied to disputes that affect or may affect the rights and legitimate interests of the third parties who do not participate in the procedure, its purpose in resolving family disputes, where the interests of children are mainly resolved, is not clear (Mazaraki, 2018).

This conclusion is controversial, since a detailed study of the application of mediation in the use of reproductive technologies suggests that an

effective mediation agreement that meets the interests of the child is able to maximize the protection of his/her rights and legitimate interests. Due to the fact that mediation, along with the substantive one, has an emotional component, the parties to the mediation agreement can focus as much as possible on individual needs and protect their children.

In our opinion, the resolution of any dispute should take into account the highest interests of a child. Consequently, the advantages of mediation in this case are obvious. A legal dispute between the parties during the first few weeks or months of a child's life can adversely affect children in the first days of their lives, onerous court procedures can not only legally but also psychologically affect the early period of a child's life. At the same time, if children in adulthood find out the fact that they were the subject of a controversial surrogacy agreement, it can have a significant psychological impacton them.

Therefore, Article 6 of the Convention on the Rights of the Child prescribes States Parties to "ensure, to the maximum extent possible, the survival and development of the child." The Committee also notes that "the first years of the child's life are the foundation of his or her physical and mental health, emotional safety, cultural and personal identity, and the development of his or her abilities." In particular, the Committee notes that the well-being and development of children "depend on and build around close relationships" (United Nations Organization, 1989).

Method of determining the application of mediation is essential, since in national legislation and domestic law there are such concepts as "consent to the use of mediation", "mediation agreement (conciliation agreement)", "agreement on the results of mediation" and "mediation clause", "agreement to mediate" and "agreement on the results of mediation" (Mazaraki, 2019).

In our view, it cannot be unequivocally stated that a mediation agreement should be concluded exclusively in the form of a separate agreement, it can also be defined by the parties as part of the main contract.

However, if we are talking about legal relations arising from the use of reproductive technologies, it is necessary to pay attention to the inherent specifics of these legal relations and the fact that on the basis of it, a conciliation agreement can be concluded in the future. Thus, this type of contract is bilateral and consensual. Its provisions determine the subject of the contract, as well as information on the process and method of resolving the dispute, information about the mediator, as well as the rights and obligations of the parties and the timing of its implementation.

If we talk about the place of the mediation agreement in the system of contracts as a whole, it is worth considering that this agreement is a certain contractual structure arising from existing legal relations.

Therefore, in legal relations arising from the use of reproductive technologies, a mediation agreement will be concluded after the conclusion of the main contract, and therefore will have the characteristic features of a derivative agreement.

When choosing between a mediation clause within the surrogacy agreement and a separate agreement, it is worth noting that the contract is a separate independent legal structure. The main purpose of such an agreement is to resolve the dispute outside the judicial system and resolve the conflict if specific conditions occur. In addition, taking into account the provisions of Article 626 of the Civil Code of Ukraine, the mediation agreement meets all the criteria of a civil law contract.

Importantly, the mediation agreement cannot be identified with the previous agreement or mediation agreement. This type of contract is concluded as a result of a complex legal process.

Conclusions

The mediation agreement is also an independent segment of civil law and cannot be identified with a conciliation agreement, but only be the basis for its adoption already in court proceedings.

The development of the practice of pre-trial dispute resolution and the expansion of the practice of peaceful settlement of the conflict are interrelated. The analysis of the legal regulation of the use of mediation in other countries shows that Ukrainian legislation is making first steps in the application such an institution as mediation, though it has already had a certain practice in the field of application of reproductive technologies.

Given that the courts act as the only state body that carries out legal regulation and protection of the rights and interests of participants in legal relations in a certain way, mediation can be the leading method to be applied.

It is obvious that the resolution of controversial issues during the contractual regulation of the use of reproductive technologies has an objective need for an effective mechanism to low the level of conflicts in the studied area.

The main task of using mediation in the field of reproductive technologies is to reduce the level of conflict, increase the effectiveness of protecting the rights of the parties in contractual relations. We believe that mediation agreement should have consequences not only of a psychological approach to conflict resolution in this area, but also of an appropriate legal mechanism for implementation. Thus, the interested party will be able to demand the fulfillment of the terms of the agreement reached as a result of mediation.

Mediation differs from other methods of dispute resolution since it has special criteria that are characteristic of a civil law agreement. The mediation procedure is used to reformat legal relations into new ones or terminate them.

The advantages of using mediation in the field of reproductive technologies are the rapidity, lower cost, lack of formalism, a simpler procedure for resolving this type of conflict, application at the participants' own discretion, ensuring complete confidentiality, objectivity of resolving a dispute with the participation of a third neutral party, taking into account the highest interests of a child.It has been determined that the disadvantages include difficulties in implementing the mediative decision, delaying time by the parties, inaccessibility of mediation for vulnerable and low-income categories of the population, absence of sufficient number of mediators with appropriate training.

Comparing the disadvantages and advantages of using mediation in the field of application of reproductive technologies, it can be stated that the latter significantly prevail.

In our opinion, it is worth amending Section II "General Provisions on the Contract" of the Civil Code of Ukraine, as well as the Procedure for the Use of Reproductive Technologies, defining the concept of a mediation agreement, indicating that the agreement on the use of mediation in legal relations arising during the use of reproductive technologies is a voluntary, bilateral, consensual agreement concluded in writing between the parties to the agreement on the use of reproductive technologies and is a special way to resolve a dispute arising from specific material and legal relations outside the jurisdictional order of the judicial system.

Taking into account the fact that legal relations in the studied area are usually complicated by a foreign element, it is necessary to establish an appropriate algorithm, as a result of which special norms of international and national law would be created, in order to eliminate a number of conflicting problems of a legal nature arising during the recognition of paternity.

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Vol.41 Nº 77

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