

RETHINKING CROSS-BORDER SURROGACY: HOW LEGAL FRAGMENTATION EXACERBATES THE INFRINGEMENT OF CHILDREN'S AND SURROGATE MOTHERS' FUNDAMENTAL RIGHTS

REPENSANDO A MÃE SUROGADA TRANSFRONTEIRIÇA: COMO A FRAGMENTAÇÃO JURÍDICA AGRAVA A VIOLAÇÃO DOS DIREITOS FUNDAMENTAIS DAS CRIANÇAS E DAS MÃES SUROGADAS

Article received on: 12/19/2025

Article accepted on: 4/16/2026

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The authors declare that there is no conflict of interest

Abstract

Cross-border surrogacy is a sensitive issue that raises significant human rights concerns, particularly for children, who are often the most affected. Based on an analysis of national legislation, case law, international legal instruments, and institutional reports, the findings show that fragmented legal frameworks frequently undermine the fundamental rights of both children and surrogate mothers. Divergent national approaches create legal gaps that lead to lengthy and complex proceedings, exposing children to risks such as statelessness and violations of their rights to identity, nationality, and family life. Surrogacy arrangements may also marginalize surrogate mothers by limiting their access to long-term healthcare and support, and by restricting relationships with the children they carry. A comparative analysis of prohibitive, altruistic, and commercially permissive systems reveals that regulatory inconsistencies contribute to prolonged legal uncertainty, ultimately harming children. The study highlights that surrogacy raises broader ethical and human rights concerns, including the potential commodification of children and exploitation of women. These risks are intensified by legal fragmentation, which weakens protections and increases uncertainty. The core issue lies in the interaction between contested ethical foundations and inconsistent legal responses. A more coherent, child-centered legal framework is therefore needed to safeguard children's rights while respecting the dignity of surrogate mothers.

Keywords: Cross-Border Surrogacy. Human Rights Law. Best Interests of the Child. Socio-Legal Analysis. Reproductive Justice.

Resumo

A barriga de aluguel transfronteiriça é uma questão delicada que suscita sérias preocupações em matéria de direitos humanos, especialmente para as crianças, que costumam ser as mais afetadas. Com base em uma análise da legislação nacional, da jurisprudência, dos instrumentos jurídicos internacionais e de relatórios institucionais, as conclusões mostram que os marcos jurídicos fragmentados frequentemente prejudicam os direitos fundamentais tanto das crianças quanto das mães de aluguel. Abordagens nacionais divergentes criam lacunas jurídicas que levam a processos longos e complexos, expondo as crianças a riscos como a apátrida e violações de seus direitos à identidade, nacionalidade e vida familiar. Os acordos de barriga de aluguel também podem marginalizar as mães de aluguel, limitando seu acesso a cuidados de saúde e apoio de longo prazo e restringindo as relações com as crianças que elas gestam. Uma análise comparativa de sistemas proibitivos, altruístas e comercialmente permissivos revela que as inconsistências regulatórias contribuem para uma incerteza jurídica prolongada, prejudicando, em última instância, as crianças. O estudo destaca que a barriga de aluguel suscita preocupações éticas e de direitos humanos mais amplas, incluindo a potencial mercantilização de crianças e a exploração de mulheres. Esses riscos são intensificados pela fragmentação jurídica, que enfraquece as proteções e aumenta a incerteza. A questão central reside na interação entre fundamentos éticos contestados e respostas jurídicas inconsistentes. É, portanto, necessário um marco jurídico mais coerente e centrado na criança para salvaguardar os direitos das



crianças, respeitando ao mesmo tempo a dignidade das mães de aluguel.

Palavras-chave: *Barriga de Aluguel Transfronteiriça. Direito dos Direitos Humanos. Interesse Superior da Criança. Análise Sociojurídica. Justiça Reprodutiva.*

1 INTRODUCTION

1.1 General background

Cross-border surrogacy is a phenomenon at the center of human rights in the contemporary world. It occurs when people, especially couples, travel to foreign jurisdictions to engage in surrogacy, mainly due to regulatory restrictions, affordability, or inadequate surrogates in their home countries.¹ According to Valc,² there is an international consensus on the recognition of the parent-child relationship after cross-border surrogacy to solve the problem of parental responsibility. However, Ćorac³ highlighted a concern, stating that cross-border surrogacy might cause problems when people in countries that prohibit the practice travel to other jurisdictions that have legalized the procedure to bypass their domestic regulations. The legal problem emerges when the citizens return to their countries of origin with surrogate-conceived children to be recognized as intended parents. The difference in national laws places children at the center of legal battles, which ultimately goes against the principle of best interest, which advocates for their overall welfare, including the rights to family life, identity, and nationality. In addition, given that the surrogate mothers are in other jurisdictions, it is almost certain that they would not have any contact with the children whom they have gestated for nine months. This cross-border surrogacy regulatory gap, which confronts most European courts, calls for the harmonization of national proceedings by establishing

¹ Marinelli, S.; Negro, F.; Varone, M. C.; De Paola, L.; Napoletano, G.; Lopez, A.; Zaami, S.; Basile, G., *The legally charged issue of cross-border surrogacy: Current regulatory challenges and future prospects*, European Journal of Obstetrics & Gynecology and Reproductive Biology, vol. 300, 2024, pp. 41–48.

² Valc, J., *Towards an international consensus on cross-border surrogacy: the role of the European Court of Human Rights?*, Medical law review, vol. 33, no. (3), 2025, pp. 1–18.

³ Ćorac, S., *Cross-border surrogacy and the right to respect for family life*, Foreign Legal Life, vol. 66, no. (4), 2022, pp. 505–518.

a minimal legal standard that would dictate the practice to protect the children's fundamental rights as well as give surrogate mothers the autonomy to have a relationship with the children, creating a long-term, healthy relationship for all parties.

1.2 Global context

Cross-border surrogacy is a constituent of the expanding global market, which raises issues that are fueled by differential legal standards that exacerbate the infringement of the children's and surrogate mothers' fundamental rights. The intersection between stringent and lenient regulatory standards in different jurisdictions about surrogacy creates a confusing legal system that guides the practice. Concisely, as highlighted by Eggum,⁴ the phenomenon is subject to different surrogacy statutes, with some countries offering permissive environments to execute the practice, whereas others impose strict regulations or ban the arrangement. For example, the United States and Ukraine have a permissive framework that offers legal pathways for couples to enter surrogacy arrangements with a defined compensation framework and parental rights.^{5 6} The legal documents clearly identify the rights, roles, and responsibilities of all the parties to the contract.⁷ Conversely, countries like Germany, France, and Slovenia have stringent statutes that ban surrogacy contracts based on their ethical foundations and differing societal values about reproductive technologies.^{8 9} Therefore, intended parents in these jurisdictions may struggle to attain legal parental recognition upon returning home. In addition, some jurisdictions, using the United Kingdom (UK) as the case study, incorporate a hybrid regulatory model that allows altruistic surrogacy but prohibits

⁴ Eggum, B., *Global legal challenges of cross-border surrogacy: A comparative analysis of surrogacy tourism*, 2024, https://www.researchgate.net/publication/384458007_Global_Legal_Challenges_of_Cross-Border_Surrogacy_A_Comparative_Analysis_of_Surrogacy_Tourism (26. December 2025).

⁵ *Ibid.*

⁶ Nagy, Z., *Surrogacy and its legal circumstances in the legislation and case law of selected states and ECHR*, Doctoral dissertation, University of Miskolc, Miskolc, 2025.

⁷ Eggum, *op. cit.* (fn. 5).

⁸ *Ibid.*

⁹ Piersanti, V.; Consalvo, F.; Signore, F.; Del Rio, A.; Zaami, S., *Surrogacy and "procreative tourism"*. *What does the future hold from the ethical and legal perspectives?* *Medicina*, vol. 57, no. (1), 2021, p. 47.

commercial arrangements, which is generally deemed unethical.¹⁰ These varying legal outcomes affect the surrogates, intended parents, and children as they are subject to antagonistic laws that dictate compensation frameworks, parental rights, and the legal status of surrogate-born children.^{11 12} The lack of a standardized system allows the exploitation of surrogate mothers and exacerbates the infringement of the children's rights to family life, identity, and nationality. Thus, there is an urgent need to create a standardized system that would ensure consistency in the application of the law, affording relocating couples the parental rights to their surrogate children, protecting the babies against statelessness, and giving the surrogate mothers autonomy to be part of the children's lives.

1.3 Human rights framing

Cross-border surrogacy, due to its complexity, would raise human rights issues, with a fear of possible infringement imminent. According to Ćorac,¹³ cross-border surrogacy is indisputably connected with the right to respect for family life, as per Article 8 of the European Convention on Human Rights and Fundamental Freedoms. Specifically, it creates legal uncertainty, especially related to parental rights, potentially causing family disruptions. It also alienates the surrogate mothers from the lives of the children. This course of action denies the children the right to determine whether they want a relationship with their surrogate mothers. Besides,¹⁴ noted that cross-border surrogacy can massively derail a child's right to identity and nationality, primarily triggered by differences in the laws that govern the practice in various jurisdictions. For example, a surrogate child born in the United States to German intended parents might

¹⁰ Eggum, B., *Global legal challenges of cross-border surrogacy: A comparative analysis of surrogacy tourism*, 2024,

https://www.researchgate.net/publication/384458007_Global_Legal_Challenges_of_Cross-Border_Surrogacy_A_Comparative_Analysis_of_Surrogacy_Tourism (26. December 2025).

¹¹ *Ibid.*

¹² Ashraful, D.M., Conflict of laws issues arising from international surrogacy agreements: A study on South Asian countries, <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=5340383> (3. December 2025).

¹³ Ćorac, *op. cit.* (fn. 4).

¹⁴ Wells-Greco, M., Nationality and immigration obstacles in cross-border surrogacy arrangements. In *Research Handbook on Surrogacy and the Law* Edward Elgar Publishing, Cheltenham, 2024, pp. 319–337.

fail to get German citizenship because the legal parameters do not allow the practice. This limitation would make children legally parentless in some jurisdictions, denying them their identities.¹⁵ In addition, surrogacy itself has been argued to violate children's rights and human dignity. Specifically, it diminishes children to "objects of a contract", which disintegrates their bond or connection with the women who gave birth to them. Ultimately, this practice creates a core tension between state sovereignty in family law and individual freedoms, with the legal gap creating the environment that unintentionally infringes on their rights to identity and a stable family. Therefore, this research confirms that the violation of human rights that is triggered by surrogacy is exacerbated due to the regulatory fragmentation, particularly between nations that accept, control, or ban the biological practice. At the same time, it must be acknowledged that surrogacy itself is the subject of serious ethical and legal criticism. A number of scholars and international bodies argue that, particularly in commercial settings, surrogacy may undermine the dignity of both the child and the surrogate mother by reducing reproduction and parenthood to a contractual transaction. This article does not dismiss those concerns. Rather, it argues that fragmented legal responses intensify those underlying risks by creating further uncertainty, conflict, and vulnerability for children and surrogate mothers alike.

1.4 Research gap

Despite the extensive literature on cross-border surrogacy, there exist some gaps that warrant further studies, especially to comprehend the legal disparities that ultimately infringe on the fundamental rights of the children. Currently, most studies focus on bioethical dilemmas and the rights of the intended parents undertaking cross-border surrogacy, with limited emphasis on how legal fragmentation and inconsistencies infringe

¹⁵ Garayova, L., *Parenthood without borders-judicial cooperation for cross-border family security in the EU*, ECLIC, vol. 9, 2025, p. 326.

on the children's and surrogacy mothers' rights.^{16 17 18} In addition, the literature lacks a comparative analysis of how the recent amendments to the surrogacy laws affect the recognition of parenthood and children's well-being. Therefore, this study will address the aforementioned gaps by investigating how regulatory fragmentation or inconsistencies and current reforms affect children's and surrogate mothers' fundamental rights.

1.5 Research questions

Below are the research questions that will guide the study:

- How does legal fragmentation in cross-border surrogacy affect the realization of children's and surrogate mothers' fundamental human rights?
- Do recent regulatory reforms strengthen or undermine the best interests of the child?

Accordingly, this article does not present legal fragmentation as the sole source of harm, but as a significant factor that amplifies the structural human rights concerns already inherent in cross-border surrogacy.

2 LITERATURE REVIEW

2.1 Introduction

This section will synthesize the current body of literature to help gather the preliminary findings that address the aforementioned research questions, with emphasis on how fragmented laws of cross-border surrogacy affect legal recognition of parenthood as well as the children's and surrogate mothers' fundamental rights. In summary, this

¹⁶ Buchstatter, E.; Roth, M., *Legal controversies in cross-border surrogacy: A central European perspective on the recognition of legal parenthood through surrogacy established abroad*, Access to Just Europe, 2024, p. 177.

¹⁷ Buchstatter, Roth, *op. cit.* (fn. 17).

¹⁸ Smith, M.; Hewitt, J.; Fronek, P, Surrogacy and bioethics. In *Research Handbook on Surrogacy and the Law*, Edward Elgar Publishing, Cheltenham, 2024, pp. 263–280.

section will introduce and discuss the human rights scholarship, social -legal perspectives, and legal parentage and private international law related to cross-border surrogacy.

2.2 Human rights scholarship

The right to private and family life is a pivotal issue that is affected by cross-border surrogacy, whose infringement is exacerbated by regulatory conflicts between the provisions of different jurisdictions. The European Court of Human Rights set a precedent that recognizes the existence of a “real family” once the intended parents raise children born via surrogacy abroad, warranting nations, with their respective family law statutes, to respect the outcome. In the cases of *Mennesson V. France* and *Labasee V. France* in 2014, the European Court of Human Rights ruled that the French authorities’ refusal to accept the birth certificates of children born under the surrogacy arrangement in the United States, whose intended parents were French nationals, was a clear violation of the institution’s Article 8, which protects the minors’ right to private life.^{19 20} The court argued that the ban in France, which fails to recognize children born under surrogate contracts in foreign countries, created a divergence between the children’s lived reality and existing laws, which ultimately obscures their optimal development, especially in a stable and certain family structure. Nonetheless, this provision is not absolute as it is largely applicable where there is a biological (genetic) link between the children and their intended parents. The *Paradiso and Campanelli V. Italy* case, which focused on commercial surrogacy, validates the above premise.²¹ In this case, the Grand Chamber of the European Court of Human Rights sided with the Italian authorities, citing a lack of genetic link between the intended parents and the surrogate child.²² It was clear that the plaintiffs were circumventing the Italian prohibitive law, which nullified their application. These examples indicate the constant conflicts between the family law provisions of

¹⁹ European Court of Human Rights, *Mennesson v. France – 65192/11*, 2014, Jun. 26, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-9781%22%5D%7D> (26. December 2025).

²⁰ European Court of Human Rights, *Labasee v. France - 65941/11*, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-9780%22%5D%7D> (26. December 2025).

²¹ European Court of Human Rights, *Case of Paradiso and Campanelli v. Italy*, no. (25358/12), 2017, Januar 24, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-170359%22%5D%7D> (26. December 2025).

²² *Ibid.*

different jurisdictions, with Article 8 of the European Court of Human Rights clashing with national laws and provisions.

Cross-border surrogacy can also pose an imminent danger to a child's right to identity and nationality, which is protected under the United Nations Convention on the Rights of a Child (CRC). According to Article 7.1 of CRC, "a child shall be registered immediately after birth and shall have the right to a name, acquire nationality, and be cared for by his or her intended parents".^{23 24} Nonetheless, due to opposing laws in different countries, it is impossible to operationalize and standardize the CRC's provision across jurisdictions. For example, when a child born via surrogacy to French commissioning parents is conceived in the United States, France, governed by its family law, will refuse to recognize the parent-child relationship, denying the child dual citizenship. Within the recognition process, the child can become stateless. Despite the European Court of Human Rights and other welfare bodies opposing legal prerequisites that render children stateless temporarily or permanently, the actualization of the ideal outcome is impossible due to a lack of a standardized global framework to address the clashing national surrogacy laws. Therefore, it would be prudent to harmonize the global surrogacy statutes to address this issue.

The guiding principle of the best interest of a child is also defined inconsistently across jurisdictions in cross-border surrogacy cases. According to Article 3 of the CRC, children's interests should be at the forefront of every situation that affects them everywhere.^{25 26} However, what is the standard framework used to determine their best interest? According to Blitzman,²⁷ the application of the principle is reactive rather than proactive. Concisely, courts apply the principle once a child is already in peril, which, in

²³ Kil Kelly, U., *The child and the European Convention on Human Rights*, Routledge, London, 2024.

²⁴ Arkadas-Thibert, A.; Lansdown, G., Article 7: The right to a name, nationality, and to know and be cared for by parents. In *Monitoring State Compliance with the UN Convention on the Rights of the Child*, 2022, p. 51.

²⁵ März, J.W., *What does the best interests principle of the Convention on the Rights of the Child mean for paediatric healthcare?* *European Journal of Pediatrics*, vol. 181, no. (11), 2022, pp. 3805–3816.

²⁶ Ruggiero, R., Article 3: The best interest of the child. In *Monitoring State Compliance with the UN Convention on the Rights of the Child. An Analysis of Attributes. Children's Well-Being: Indicators and Research*, vol. 25, 2022, pp. 21–30.

²⁷ Blitzman, J. D., *Cheating the evidence to get to best interest and the presumption of unfitness*, *Family Court Review*, no. 62, no. (4), 2024, pp. 818–832.

most cases, is due to an uncertain legal status. In addition, Littlechild and Housman²⁸ noted that the meaning of the principle changes across borders. For example, the authorities in a country where a child is born may focus on the infant's and the surrogate mother's well-being, while the parent country would prioritize the minor's stability with their intended family. Overall, the legal disparity means that a child legally considered safe in one jurisdiction may be deemed stateless in another country, which violates their rights to identity.

The surrogate mothers also face challenges, which ultimately infringe on their fundamental rights. According to a report published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2025, surrogate mothers face physical, mental, and economic violence.²⁹ The report further states that surrogacy reduces women and children, including girls, to mere commodities, stripping them of their equality and dignity as well as encouraging exploitation. It commodifies and commercializes women's reproductive capabilities.³⁰ It also exploits the plights of vulnerable women, especially those hailing from low-income families, who desperately need money to sustain themselves.³¹ Ultimately, the physical, psychological, and economic violence results in severe human rights violations, including rights to health care, safety, and privacy.³² Besides, the surrogacy arrangement denies surrogate mothers the chance to establish a long-term relationship with the children. This analysis shows that surrogacy arrangements, especially in transnational set-ups, view surrogate mothers as "tools" to get children, disregarding their fundamental rights of equality, dignity, safety, health care, and privacy.

In summary, the current human rights statutes and provisions are inadequate to ensure the well-being of surrogate mothers and children born through transnational surrogacy, which is a growing practice internationally. Currently, the European Court of Human Rights is the body that tries to harmonize inter-border surrogacy laws, prioritizing

²⁸ Littlechild, B.; Housman, C., *Applying universal principles of 'best interest': Practice challenges across transnational jurisdictions, cultural norms, and values*, *Children*, vol. 10, no. (3), 2023, p. 537.

²⁹ United Nations, *UN expert calls for recognition of surrogacy as a system of violence, exploitation, and abuse, urges abolition*. <https://www.ohchr.org/en/press-releases/2025/10/un-expert-calls-recognition-surrogacy-system-violence-exploitation-and-abuse> (10 October 2025).

³⁰ *Ibid*

³¹ *Ibid* 1

³² *Ibid* 2

a child's welfare. Nonetheless, given that each sovereign state has its national laws, there exist legal battles between citizens and their respective countries, with the children often being among the most affected parties, as they may be rendered stateless on certain occasions, as discussed in this section. Currently, the European Court of Human Rights has a reactive framework that addresses the violations that infringe on people's liberties. Nevertheless, it fails to institute and implement a coherent, proactive, and universally applicable statute that would ensure global automatic protection of children's and surrogate mothers' rights. Therefore, there is a need to encourage multilateral talks to harmonize the surrogacy laws to ensure that children are raised in a stable family environment, create certainty of their legal identity, and protect the dignity, safety, privacy, and health of the surrogate mothers.

2.3 Socio-legal perspective

The socio-legal perspective extends beyond the written laws and their applications to comprehend how they fit into society. Besides understanding the statute, this perspective shows the key stakeholders, power distribution, and real-life implications of the family law.³³ Thus, in the context of cross-border surrogacy, this standpoint looks beyond the family law to understand the global inequities and social structures that affect the process.

Power asymmetries and structural inequity explain the dynamics of cross-border surrogacy, raising ethical concerns that taint the status of parenthood in society. As noted by Jacobson and Rozée³⁴ and Suryanarayanan,³⁵ economic disparity encourages transnational surrogacy. Concisely, intended parents are often from wealthier nations and have substantial disposable income, whereas the surrogate mothers are economically

³³ Storgaard, A.; Johansson, S.; Åström, K.; *Introduction. Access to justice from a multi-disciplinary and socio-legal perspective: Barriers and facilitators*, Oñati Socio-Legal Series, vol. 13, no. (4), 2023, pp. 1198–1208.

³⁴ Jacobson, H.; Rozée, V., *Inequalities in (trans) national surrogacy: A call for examining complex lived realities with an empirical lens*, International Journal of Comparative Sociology, vol. 63, no. (5–6), 2022, pp. 285–303.

³⁵ Suryanarayanan, S., *Poverty and commercial surrogacy in India: An intersectional analytical approach*. Dignity: A Journal of Analysis of Exploitation and Violence, vol. 8, no. (2), 2023, p. 4.

vulnerable.³⁶ They solely participate in the surrogacy arrangement to get the funds to sustain their families. Therefore, their course of action is not a voluntary choice, but rather an inherent, systemic consequence of the global wealth disparities. In addition, Zhao³⁷ highlighted that surrogate mothers do not get the requisite care and support in the long run, which equates to exploitation by the intended parents and intermediaries. Precisely, the intended parents have the bargaining power when they sign the surrogacy contracts, often waiving them of the obligation to cater to the subsequent healthcare costs, long-term insurance, and payment to the surrogate mothers.³⁸ This issue is especially prevalent in inadequately regulated markets. Ekman,³⁹ who introduced the gender and class perspective, asserted that surrogacy is simply a transaction involving a woman's body and money. Keaney⁴⁰ added that stakeholders often outsource the surrogacy service along racial lines, causing class divisions. Overall, this analysis insinuates that cross-border surrogacy is an outcome of socioeconomic inequity, with the surrogate mothers exploited in most cases at the expense of their health and well-being, tainting the image of the intended parents who get children via the method.

Scholars have also discussed the global reproductive markets, highlighting how the legal provisions affect the decisions of the intended parents. According to Vertommen and Barbagallo,⁴¹ surrogate mothers are parties to a transaction of transnational reproductive labor. Kerr⁴² added that intended parents prioritize countries with favorable laws to outsource affordable surrogate mothers, an approach that is facilitated by regulatory fragmentation. Despite solving the immediate need of getting children, cross-border surrogacy ignores the future problem of legalizing their citizenship. Ultimately,

³⁶ Jacobson, Rozée, *op. cit.* (fn. 31).

³⁷ Zhao, Y., Protection of rights and legal remedies for surrogate mothers in China, *Humanities and Social Sciences Communications*, vol. 10, no. (1), 2023, pp. 1–12.

³⁸ *Ibid.*

³⁹ Ekman, K.E., *Being and being bought: Prostitution, surrogacy and the split self*, Spinifex Press, North Geelong, 2025.

⁴⁰ Keaney, J., *The racializing womb: Surrogacy and epigenetic kinship*, *Science, Technology, & Human Values*, vol. 47, no. (6), 2022, pp. 1157–1179.

⁴¹ Vertommen, S.; Barbagallo, C., *The in/visible wombs of the market: The dialectics of waged and unwaged reproductive labour in the global surrogacy industry*, *Review of international political economy*, vol. 29, no. (6), 2022, pp. 1945–1966.

⁴² Kerr, A., A Mother of a job: The control and commodification of women's reproduction. In *Women, Power and Autonomy: Rights, Respect and Representation in Law and Society*, Cham, Springer Nature Switzerland, 2025, pp. 31–62.

the resulting outcomes, including unclear parenthood and statelessness, trigger lengthy legal battles, with the children's rights to identity violated.

In summary, the socio-legal viewpoint illustrates the inherent and systemic issues that promote the infringement of children's and surrogate mothers' rights, with regulatory fragmentation deteriorating the situation; a lack of standardized laws to protect the children and surrogate mothers worsens the situation. It is clear that the differing moral views, economic incentives, and global demand guide domestic and transnational surrogacy, often commodifying children and surrogate mothers. The fragmented national laws limit the efficacy of international bodies, such as the ECHR, to protect fundamental human rights. Therefore, preliminary evidence suggests that protecting human rights has proven to be a daunting task in a transnational context where the application of surrogacy law is subject to different interpretations in multiple jurisdictions.

2.4 Legal parentage and private international law

Cross-border surrogacy attracts legal disputes to establish parentage. As stated by Wells-Greco,⁴³ the clash of national statutes will ultimately determine a child's citizenship. Since there is no global treaty on the recognition of parentage, legal battles would inevitably ensue in cases where the laws of the parent and host countries clash. Thus, there will be inconsistencies in the recognition of parenthood between different nations, depending on the local laws, with children being the ultimate victims, with possibilities of statelessness looming.

2.5 Summary and research gaps

To summarize, cross-border surrogacy raises serious ethical concerns, including the infringement of the children's and surrogate mothers' liberties, which include the right to private and family life, identity, dignity, security, safety, and nationality. However, the current literature treats ethics, markets, and legal procedures as separate parameters. This study will fill the gap by using a comparative model to analyze how legal fragmentation

⁴³ Wells-Greco, *op. cit.* (fn. 15).

in cross-border surrogacy derails the children's and surrogate mothers' rights (dignity, family life, nationality, security and safety).

3 METHODOLOGY

3.1 Introduction

This section will summarize the approach that the researcher used to answer the study questions. It entails the research design, jurisdiction selection, and sources of data. Overall, this study adopts a thorough, multi-method qualitative legal research design to analyze the surrogacy arrangements and their human rights implications, with a focus on how laws in different jurisdictions exacerbate the problem. It has been designed to enable a robust, contextual analysis to understand how different legislations in various countries create a parentage hindrance, derailing children's and surrogate mothers' overall well-being, which the ECHR advocates for.

3.2 Research design

The scholarly piece adopts a qualitative legal research approach, which includes a comparative case study to answer the research questions. According to Bhat,⁴⁴ qualitative legal research aims to study phenomena in their natural settings, synthesize and interpret their realities, and provide solutions in different social contexts. This research design, which explores the fragmented inter-border surrogacy laws, aims at achieving an analytical and mechanistic explanation of how the varying legislations hinder parental recognition and block the creation of a standardized surrogacy law to protect the vulnerable surrogate mothers, creating family disruptions that would ultimately derail children's well-being. The deficiency also encourages the exploitation of surrogate mothers, stripping them of their fundamental rights. In addition, in line with Thomann et al.'s⁴⁵ assertion, a comparative case study would foster a richer

⁴⁴ Bhat, P. I., *Idea and methods of legal research*. Oxford University Press, Oxford, 2019.

⁴⁵ Thomann, E.; Ege, J.; Paustyan, E., *Approaches to qualitative comparative analysis and good practices: A systematic review*, *Swiss Political Science Review*, vol. 28, no. (3), 2022, pp. 557–580.

comprehension of individual cases and highlight broader trends across different contexts, using countries with different surrogacy legislation as the reference. Hence, in this case, the qualitative legal research will analyze and interpret law in different social contexts to examine how regulatory provisions operate in practice and affect vulnerable stakeholders, especially children and surrogate mothers.

3.3 Jurisdiction selection

The inclusion criteria are straightforward and diverse to ensure that the comparative analysis is comprehensive. Using purposive sampling, the researcher selected four countries to represent different regulatory models: France and Slovenia (prohibitive), the UK (altruistic-only), and the United States (commercially-regulated). France and Slovenia would be good case studies as they offer a clear, prohibitive stance on surrogacy within their local legislative framework. This diverse selection, which allows comparison between states where the practice is formally prohibited (Slovenia and France), commercially permitted (California, the United States), and altruistic only (the UK), enables a thorough analysis of antagonistic models and determines how the different statutes are harmful, especially to children. Concisely, the distinct jurisdictions and their contrasting statutes highlight the conflicting normative frameworks that promote legal fragmentation, which is the foundation that causes the infringement of the surrogate parents' and children's rights. The inclusion of the UK portrays the pragmatic approach that analyzes situations on a case-by-case basis to ensure that surrogacy is not economically motivated. It creates the leeway to allow surrogacy and recognize intended parents, but under a strict ethical model.

3.4 Data collection

The researcher used a mix of primary and secondary sources to collect the requisite data to answer the study questions. Precisely, the researcher drew assertions and conclusions from national legislation, reported case laws from domestic and international courts, and policies and institutional reports from reputable institutions like UNICEF. For example, the study referenced France's 1994 bioethics law that prohibits surrogacy,

Section 26-17-801 of the Alabama Code that expressly permits the practice, and the Surrogacy Arrangement Act that allows altruistic arrangements and criminalizes commercial plans. In addition, the study referenced case laws from France, Slovenia, the United States, the United Kingdom, and the European Court of Human Rights to show how the fragmentation of inter-border surrogacy laws sometimes goes against children's best interests with the aim of maintaining state sovereignty. The diverse sources will ensure that the study has extensive data to derive accurate and reliable deductions.

3.5 Data analysis

The researcher interpreted the data sequentially, deriving the prominent themes to answer the study questions. Specifically, the study used a structured qualitative content analysis that incorporated deductive coding to answer the research questions. The main codes or themes used in the content analysis are legal fragmentation, human rights infringement, and procedural pathways. In line with Fife and Gossner,⁴⁶ “a deductive qualitative analysis enables researchers to use existing theories to assess and interpret meanings, processes, and narratives of interpersonal or intrapersonal phenomena.” Therefore, through analyzing the existing articles, case laws, and legislation, the study derived key themes that answer the research questions.

4 COMPARATIVE LEGAL ANALYSIS

4.1 Spectrum of national regulatory models

The analysis highlights the disjointed regulatory models that cause legal battles and uncertainties, ultimately infringing on children's and surrogate mothers' rights. Using France as the case study, prohibitive regimes criminalize surrogacy arrangements.⁴⁷ The

⁴⁶ Fife, S.T.; Gossner, J.D., *Deductive qualitative analysis: Evaluating, expanding, and refining theory*, International Journal of Qualitative Methods, vol. 23, 2024, Article, 16094069241244856.

⁴⁷ Raj, A., *Global Perspectives on Altruistic Surrogacy: Analyzing the Prohibition in Selected Countries and Recommendations for Legalization*, LawFoyer International Journal of Doctrinal Legal Research, vol. 3, 2025, p. 261.

1994 Bioethics Law rendered surrogacy forbidden in France.⁴⁸ The French Supreme Court, in 1991, declared surrogacy contracts void after deliberating on *Cass. Ass. Plen, 31/05/1991* case, providing the legal precedent for the institution of the Bioethics Law, whose provisions have been codified in article 16-7 of the French Civil Code. Consequently, using its domestic public policy, France does not recognize foreign birth certificates and parentage orders that are outcomes of inter-border surrogacy. Conversely, using the United States as the case study, permissive systems have established frameworks that allow and regulate commercial surrogacy. However, the laws vary significantly by local jurisdictions, with states like Nevada and California supporting the provision while Louisiana prohibits it.⁴⁹ States that allow the practice issue pre-birth orders that specifically name the intending parent in the birth certificates. Nonetheless, it is vital to understand that the parent nations that prohibit commercial surrogacy will automatically reject their citizens' applications to naturalize their surrogate children. Besides, utilizing the UK as the case study, altruistic frameworks selectively permit surrogacy; it allows the practice if it is not for commercial gain. Under this framework, the surrogate becomes the legal parent of the child.⁵⁰ Nevertheless, the Human Fertilization and Embryology Act 2008 allows intended parents to officially apply for a parental order.⁵¹ It is vital to note that the surrogate's consent is a prerequisite for a parental order.⁵² This assertion was evident in the *Re A and B (2016)* case, where the court adjourned the proceeding due to the respondent's (surrogate's) refusal to consent to the order being made.⁵³ ⁵⁴ Besides, in case the subjects fail to meet the parental order

⁴⁸ Rial-Sebbag, E., *The human body and the body elements—Conditions for their use in genetics under the French bioethics law and beyond*, *Ethics, Medicine and Public Health*, vol. 33, 2025, Article 101026.

⁴⁹ Mutavdzic, T.P., *Legal challenges across state lines: A look into surrogacy law in the United States*, *Journal of Civil Law Studies*, vol. 16, 2024, p. 265.

⁵⁰ Horsey, K.; Arian-Schad, M.; Macklon, N.; Ahuja, K., *UK surrogates' characteristics, experiences, and views on surrogacy law reform*, *International Journal of Law, Policy and the Family*, vol. 36, no. (1), 2022, p. ebac030.

⁵¹ Horsey, K.; Jackson, E., *The Human Fertilisation and Embryology Act 1990 and non-traditional families*, *Modern Law Review*, 2023, pp. 1472–1488.

⁵² Olaye-Felix, B.; Allen, D.E.; Metcalfe, N.H., *Surrogacy and the law in the UK*, *Postgraduate Medical Journal*, vol. 99, no. (1170), 2023, pp. 358–362.

⁵³ Horsey, K., Mahmoud, Z.; Wade, K., Introduction: Future directions in surrogacy law—Law and policy reform in the UK and beyond. In *Future Directions in Surrogacy Law*, Bristol University Press, Bristol, 2025, pp. 1–22.

⁵⁴ Tobin, B., *Surrogacy and consent under Irish law: A problematic copy and paste from the UK*, *Friend of the Court*, vol. 6, 2024, p. 260.

requirements, courts in the UK use the children's best interest principle, which is under the Children's Act, to make the final ruling.⁵⁵ This analysis shows that many jurisdictions have varying laws governing surrogacy, making inter-border arrangements complicated, especially for countries with different laws.

Despite its flexibility, Slovenia's core legislation also aligns with France's model of controlling surrogacy, which adversely impacts legal recognition of parenthood after a cross-border arrangement. Specifically, Article 7 of the Infertility Treatment and Procedures of Biomedically-Assisted Procreation (ZZNPOB) prohibits surrogacy in Slovenia.⁵⁶ This provision stipulates that "a woman who intends to give her child to a third party after birth, either for payment or not, is not eligible for biomedically-assisted fertilization procedures (BMFA) or adoption."⁵⁷ The law criminalizes the act, with the perpetrators eligible to a prison sentence of up to three years⁵⁸. In addition, according to the United Nations Office of the High Commissioner for Human Rights (OHCHR),⁵⁹ Slovenia's Family Code defines a mother as a woman who gave birth to a child, disregarding surrogacy arrangements and parental recognition. Nonetheless, contrary to France's rigid legislation, Slovenia's legal system has more lenient laws and judicial precedences that recognize intended parents whose statuses have been legalized in jurisdictions where they entered the surrogacy contracts.⁶⁰ Precisely, according to Article 94, Section 1 of the Private International Law and Procedure Act (PILPA), "A foreign court decision shall be considered equivalent to a decision of a court of the Republic of Slovenia and shall have the same legal effect in the Republic of Slovenia as a domestic court decision only if it is recognized by a court of the Republic of Slovenia."⁶¹ This provision does not demand automatic recognition of parenthood. Instead, it instructs a thorough and affirmative judicial process to establish parental legal recognition. The

⁵⁵ Horsey, Arian-Schad, Macklon, Ahuja, *op. cit.* (fn. 47).

⁵⁶ Doljak, S.A., *Biomedically assisted fertilization in the republic of Slovenia*, Biomedical Journal of Scientific & Technical Research, vol. 41, no. (2), 2022, pp. 32600–32604.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ United Nations Office of the High Commissioner for Human Rights. *Slovenia*. (No URL, Document Available).

⁶⁰ Salamon. K., *Slovenia: Full recognition as a continuous challenge. Drid for Survey Slovenia*, https://www.mirovni-institut.si/wp-content/uploads/2013/01/Grid-for-survey_Slovenia_WEB-PUBLICATION.pdf (26. December 2025).

⁶¹ *Ibid.*

subsequent provisions of PILPA specify the conditions or grounds for non-recognition, with the contravention of national policy being regarded as among the primary rationales of denying parenthood. Therefore, despite Slovenia having definitive statutes that bar surrogacy, the nation recognizes the parental rights of certain inter-border surrogacies for the children's best interests.

This comparative analysis has highlighted how countries are governed by national family laws, which might contradict each other, complicating inter-border surrogacy. But how does legal fragmentation promote the violation of children's and surrogate mothers' fundamental rights? Section 5 will elaborate on the human rights implications of the fragmented surrogacy policies.

4.2 Pathways to parental recognition

There are different mechanisms that people can use to get parental recognition in surrogacy arrangements. Though rare, there are countries that automatically recognize intended parents as the children's legal guardians. For example, the law in Ukraine and Georgia explicitly states that intended parents are the children's legal guardians from birth.^{62 63} This arrangement does not warrant a judicial process to get parental recognition. However, in many countries, commissioning intended parents must petition a domestic court to agree with the foreign judicial judgment or start a new proceeding to establish parentage. The judges, using the domestic law as the guiding provisions, will consider critical factors like a child's best interest, domestic prohibition, and biological connection to make the final decision.⁶⁴ Finally, stakeholders can use the mandatory domestic adoption, which is common in the altruistic-model nations, to establish parentage anew. In this arrangement, the system dissolves the existing parentage agreement, temporarily rendering a child stateless. Using the domestic law, the child will be adopted again. These examples show the different mechanisms to gain parental recognition, justifying the

⁶² Sarnacka, E.; Demchenko, I., *Legal Regulation of Surrogacy in Poland and Ukraine: A Comparative Analysis, Review of European and Comparative Law*, vol. 57, no. (2), 2024, p. 223.

⁶³ Dzholos, S.V.; Koshulko, O., *Surrogate motherhood in Ukraine and around the world: Legal regulation & management practice*, MEST Journal, vol. 10, no. (2), 2022, pp. 46–56.

⁶⁴ Tesfaye, M.G., *What makes a parent? Challenging the importance of a genetic link for legal parenthood in international surrogacy arrangements*. International Journal of Law, Policy and the Family, vol. 36, no. (1), 2022, p. ebac010.

premise that the admission of parenthood in cross-border surrogacy is sophisticated due to the varying laws and procedures, but exposes children to dangers of statelessness, separation from families, and a lack of identity.

4.3 Consequences for citizenship and legal identity

The failure of parental recognition after inter-border surrogacy, which is an outcome of the difference in statutes between jurisdictions, has instant and severe effects on the children. Notably, it enhances the risk of a child being stateless.⁶⁵ A child born in a foreign soil may hold that passport, but may be denied recognition (citizenship) in his or her intended parents' home country if the prevailing laws prohibit surrogacy. Besides, the failure to obtain citizenship may lead to prolonged separation from family and denied access to healthcare, social benefits, and education that citizens typically receive. From this analysis, it is evident that the children suffer from not being recognized legally in their home nations due to the complex nature of cross-border surrogacy.

5 HUMAN RIGHTS IMPLICATIONS

5.1 Systemic violation of the best interest of the child

Although advocated for on paper under Article 3 of the CRC, the legal analysis suggests that state policy thresholds supersede a child's interests. Precisely⁶⁶, asserted that the preventive regional laws, especially by the European Court of Human Rights, are reactive rather than proactive. Specifically, the national and regional courts apply the child's best interest principle after a crisis, rather than use the framework as a predefined model to inform surrogacy proceedings and state agency roles. Besides, the generalization, which is based on the assumption that all cross-border surrogacy arrangements work against the interests of children, contravenes Article 3 of the CRC that

⁶⁵ Wojtan, P.A., *The legal vacuum of surrogacy and its implications for childhood statelessness*, Polish Journal of Political Science, vol. 11, no. (2), 2025, pp. 47–64.

⁶⁶ Blitzman, *J op. cit.*

warrants state agents to assess the subjects' cases individually.⁶⁷ Therefore, the analysis indicates that states prioritize legal procedures and institutional rigidities at the expense of children's best interest (well-being).

5.2 Breach of the right to private and family life

Legal fragmentation, propagated by differences in national law, erodes family unity, violating the children's right to private and family life. The case studies in subsection 4.1 highlight the different national legislations: prohibitive, altruistic, and commercial surrogacy provisions. Thus, if commissioning parents have to manoeuvre between jurisdictions that prohibit and allow surrogacy to get recognition, the legal process would be extended and sophisticated. Consequently, the legal proceedings, which might take years, create a prolonged period of uncertain legal status and can cause child anxiety and confusion, interfering with their private life.⁶⁸ It also affects the intended parents' mental stability, causing anxiety and depression, which interferes with their private lives and their ability to take care of the children.⁶⁹ In addition, denial of citizenship and travel documentation might coerce one or both intended parents to be physically separated from their children.⁷⁰ Hence, state-imposed separation in line with the surrogacy laws that do not prioritize a child's best interest immensely interferes with the right to family life, affecting a child's welfare, especially mental well-being, after being separated from their intended parents.

5.3 Denial of the right to identity and nationality

Regulatory fragmentation also denies children the right to identity and nationality. Conventionally, children's heritage is tied to the countries of origin of their intended or

⁶⁷ Krutzinna, J., *Who is "the child"? Best interests and individuality of children in discretionary decision-making*, *The International Journal of Children's Rights*, vol. 30, no. (1), 2022, pp. 120–145.

⁶⁸ Santamaría-Gutierrez, R.; González-Albors, E.M.; González-Sala, F.; Lacomba-Trejo, L., *Exploring attachment dynamics in surrogacy: A systematic review*, *Psychiatry International*, vol. 6, no. (4), 2025, p. 145.

⁶⁹ *Ibid*

⁷⁰ Wells-Greco, *op. cit.* (fn. 15).

surrogate parents and ancestors.⁷¹ Nonetheless, the court proceedings to determine the legal status of a surrogate child, especially in countries that prohibit surrogacy, can render him or her stateless for a prolonged period.⁷² For example, in Slovenia, the government's refusal to transcribe a foreign birth certificate in line with the domestic laws would create an identity gap. Notably, the prolonged legal proceedings, which could take years, deny children their inherent right of citizenship to reflect their social, biological, and factual reality. This outcome is a clear violation of Article 7 of the CRC, which gives every child the right to acquire a nationality at birth, irrespective of their race.⁷³ Over time, a child would be confused due to a lack of identity and a sense of belongingness, causing mental illnesses like depression.⁷⁴ Therefore, the legislative hindrances, especially the rigidities and bureaucracies of the legal proceedings that are propagated by fragmented national statutes, are an intended outcome of the contemporary legislation, which ultimately obstructs children's development and preservation of their identity as advocated by Article 7 of the CRC.

The denial of the right to a nationality leads to statelessness, which is a scenario that should not occur, as it denies children their fundamental right to recognition. Using Slovenia as an example, the *jus sanguinis principle* of recognition warrants thorough scrutiny to know the intended parents' heritage prior to granting the surrogate children official citizenship.⁷⁵ Precisely, a child born to a Slovenian father through an international surrogacy arrangement cannot obtain citizenship until the courts and other government agencies prove his or her background. The failure to recognize the intended parents' heritage, which is a possible outcome in Slovenia, given that the statutes prohibit surrogacy, may make the child de facto stateless.

⁷¹ Walsham, A., *Generations: Age, ancestry, and memory in the English reformations*. Oxford University Press, Oxford, 2023.

⁷² Curtin, R., *Suspension of citizenship: Ethical concerns in international commercial surrogacy and the legal possibility of stateless children*, *Vanderbilt Journal of Transnational Law*, vol. 55, 2022, p. 805.

⁷³ Kilkelly, U., *The child and the European Convention on Human Rights*, Routledge, London, 2024.

⁷⁴ Dutcher, Janine M., James Lederman, Megha Jain, Stephen Price, Agam Kumar, Daniella K. Villalba, Michael J. Tumminia et al. "Lack of belonging predicts depressive symptomatology in college students." *Psychological science* 33, no. 7 (2022): 1048-1067.

⁷⁵ Republic of Slovenia, *Citizenship*. <https://www.gov.si/en/topics/citizenship> (26. December 2025).

5.4 Critical question: does recognition legitimize human rights violations?

Instead of just focusing on the implications of parental non-recognition, it is important to understand how surrogacy, especially commercial arrangements, violates the human rights that it claims to address. Notably, there is a high risk of commercial surrogacies commodifying the children and surrogate mothers.⁷⁶ This outcome, which places a transactional value on a child's and mother's lives, reduces human dignity.⁷⁷ Besides, surrogate mothers, especially in developing countries, are exploited, evidenced by noncompetitive compensation and inadequate healthcare.⁷⁸ This study does not seek to address these foundational deficiencies. Instead, it shows how local laws, which determine parental recognition or non-recognition, greatly affect children's and surrogate mothers' fundamental human rights. On one hand, non-recognition might align with the countries' laws and ethical grounds, as well as curb the exploitation of surrogate mothers at the expense of the legal uncertainty of the children. On the other hand, parental recognition will create a stable family for children but legitimize practices that promote their commodification. Therefore, this analysis acknowledges that surrogacy in itself is characterized by controversies. This tension demonstrates that neither blanket recognition nor absolute prohibition offers an adequate legal response. Non-recognition may reflect legitimate public policy concerns and attempts to prevent exploitation, yet it may also expose children to legal insecurity and serious harm. Recognition, by contrast, may protect the child's legal status and family life, but may simultaneously risk legitimizing practices that raise profound human rights concerns. Legal systems must therefore navigate carefully between these competing considerations.

6 DISCUSSION SUMMARY

From the analysis, it is evident that cross-border surrogacy adversely affects children and surrogate mothers, with the fragmentation of national statutes complicating

⁷⁶ United Nations, *UN expert calls for recognition of surrogacy as a system of violence, exploitation, and abuse, urges abolition*. <https://www.ohchr.org/en/press-releases/2025/10/un-expert-calls-recognition-surrogacy-system-violence-exploitation-and-abuse> (10 October 2025).

⁷⁷ *Ibid*

⁷⁸ *Ibid* 1

the process of attaining legal parenthood status and protecting the vulnerable. Overall, the national regulatory approaches are insufficient because they fail to prioritize children's best interests and surrogate mothers' welfare. Specifically, from the analysis, it is evident that states have their own family (surrogacy) laws that align with their public policy or moral preferences. Concisely, the national laws prohibit, partially accept, or fully support surrogacy. These different principles, enshrined in the laws of the land, complicate the parental recognition proceedings, often delaying court cases and denying children legal recognition in cross-border surrogacy arrangements. Throughout this process, children are likely to face complex and often prolonged legal scrutiny upon entering their intended parents' country. Therefore, the current legal layout fails to prioritize a child's best interest as they preserve their sovereignty-centered laws. In addition, because of a lack of standardized law that protects the rights of the surrogate mothers, they are subject to exploitation. Mostly, intended parents target vulnerable surrogate mothers in low-income countries or neighborhoods to minimize costs, explaining why they are underpaid, disrespected, and denied access to quality care during and after the gestational period. This analysis also shows that the current restrictive reforms are counterproductive. Concisely, the statutes formulated to counteract surrogacy tourism ultimately punish children, push intended parents to reside in countries with less stringent regulations, erode the rights of the surrogate mothers, and deepen legal fragmentation in the global sphere. Therefore, this analysis criticizes the net benefit of surrogacy, with the differences in national laws causing the legal bureaucracies that harm children and create a statutory vacuum that incentivizes some intended parents to exploit and demean surrogate mothers.

7 POLICY RECOMMENDATIONS

After establishing that the fragmentation of statutes harms children and surrogate mothers, it would be prudent to reverse-engineer the national laws and create a universal, collaborative framework to address the shortcomings highlighted in this paper. Given the systemic and inherent failure of unilateral state solutions, it would be prudent to commence a multilateral initiative that would harmonize the surrogacy law to reduce the fragmentation. The multilateral soft law or policies should focus on addressing critical issues, such as preventing children's statelessness, allowing their access to legal

documentation promptly, and providing universal statutes that protect surrogate mothers against possible exploitation and humiliation. For example, in cooperation with the parliaments of the EU, AU, and GCC, international legal bodies, such as the Hague and the European Court of Human Rights, can model legislative provisions that hasten the court proceedings and protect the surrogate mothers, sensitize countries to embrace them, and apply the universal statutes to ensure timely proceedings that promote the victims' welfare. However, states should not be compelled to recognize surrogacy arrangements that contradict their national policies and ethical frameworks. Through coordination, the international community can also urge the swift development and institution of a soft law instrument that prioritizes children's best interests in the recognition of parentage in inter-border surrogacy cases. In addition, lawmakers can advocate for, legislate, and oversee the implementation of child-centred legal recognition protocols that prioritize the minors' immediate and long-term safety and well-being. For example, rather than imposing automatic recognition of parentage, lawmakers should establish a case-by-case framework guided by the best interests of the child. Such a framework should ensure that no child is left stateless or without prompt access to legal documentation, while still allowing courts to assess whether recognition would conflict with fundamental principles of public policy or human rights. Where judicial scrutiny is necessary, procedures should be expedited so that questions of citizenship, legal parentage, and civil status are resolved without prolonged uncertainty for the child. This course of action will minimize the time it takes for the legal proceedings to end, which would have otherwise prolonged the children's "suffering." In addition, the decision-makers, especially lawmakers, must ensure that the fundamental principles of human rights are embedded in the revised surrogacy regulations. For example, the best interest assessment should be made mandatory when resolving parentage issues for every single case. These recommendations, which are interconnected, would ensure that the laws are simple, child-centered, and safeguard the surrogate mothers' well-being.

8 CONCLUSION

To summarize, the analysis indicates that parenthood recognition in cross-border surrogacy is not only a complex issue but also raises ethical concerns, primarily due to

the violation of fundamental rights of children and surrogate mothers. Using a comparative socio-legal analysis as the primary research design, with Slovenia being at the center of analysis, it is evident that legislative fragmentation exacerbates the violation of children's and surrogate mothers' rights. Specifically, the differing national laws create a legal limbo, undermining children's rights of identity, stable family, and nationality. The lack of a universal law to protect surrogate mothers, especially in developing economies, makes them vulnerable to exploitation, evidenced by underpayments, inadequate health care, disrespect, and insecurity. In addition, the reforms to counteract surrogacy tourism are counterproductive as they punish children further. However, it would be inadequate to deduce with certainty that fragmentation alone is the cause of human rights violations. Commercial surrogacy, in itself, raises genuine concerns about the commodification of children and the exploitation of surrogate mothers. Thus, it would be prudent to conclude that fragmentation only intensifies the problems caused by surrogacy. For that reason, any future legal response must remain both child-protective and ethically cautious, avoiding simplistic solutions that either ignore the harms associated with surrogacy itself or disregard the concrete legal vulnerability of children born through such arrangements. The article's original contribution lies in the determination of the efficacy of the cross-border surrogacy laws, with a focus on critiquing whether they are child-centered and protect the surrogate mothers. It analyzes human rights principles, private international law, and assesses the global markets to indicate how they combine to create a non-functional system, which prioritizes national interests at the expense of the children's and surrogate mothers' welfare. Therefore, this analysis extends the scholarly discussion beyond the moral discrepancies of transnational surrogacy to show how the legal layout in itself, characterized by bureaucracies and rigidities, is a source of injustice. Nonetheless, this research is limited to the legal aspects of surrogacy, with the focus on the specific laws and how they deny children and surrogate mothers their fundamental rights. In the future, it would be prudent to include the psychosocial perspective that indicates the psychological effect of cross-border surrogacy, which is aggravated by national statutes, on children and surrogate parents. It is particularly vital to understand how these legislative practices, which are standard and rigid, as well as lack an emotional aspect, affect the children's psychological health and stability in the long run. The outcomes of these studies would guide policies, especially

in social work, having identified the vulnerable groups, which include children denied citizenship by surrogacy laws and surrogate mothers.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.