

## ETHICAL ISSUES IN THE SURROGATE MATERNITY PRACTICE

Rukiye Türk<sup>1</sup>, Fusun Terzioglu<sup>2</sup>,

<sup>1</sup>Kafkas University School of Health Sciences, Kars-36100/Ankara

Hacettepe University Faculty of Nursing, Ankara-06100/Ankara

e-mail:rukiyet@yahoo.com.tr

### Abstract

The assisted reproductive technology was initially considered to be a treatment tool for infertile couples. However, as it was started in time to use the uteri of other women for the embryos of the other ones, the concept of surrogate maternity appeared.

The surrogate maternity is practiced in three types. In the first type of surrogate maternity, the sperm of the spouse of the prospective mother is inseminated with the ovum of the surrogate mother. The second method is the in-vitro insemination of the ovum of the prospective mother with the sperm of her own spouse, and then transferring it into the uterus of the surrogate mother. The third method is to use the sperms and ovum of the third persons for insemination.

The surrogate maternity comes with a number of ethical problems. It is reported that this practice may induce such risks that the natural reproduction would be withdrawn, and that the female body would become and sold as a reproductive box, the natural process would be medicalized, and some risks associated with the pregnancy and delivery would likely be experienced. For such reasons, there is a need to discuss the potential losses and benefits of the surrogate maternity.

**Key words:** Surrogate maternity, Ethical issues, infertility, Assisted Reproductive Technologies

### Introduction

The infertility is defined as the lack of pregnancy within minimum one year in spite of free regular sexual intercourse without any contraceptive method. And, this case is an important problem that affects one sixth of the fertile couples [1]. The infertile couples may have child through the supplementary reproductive method called the “in vitro fertilization (IVF) – embryo transfer (ET)” [2].

The assisted reproductive technologies were initially considered solely to be a treatment tool that could be applied between the actual couples. However, when it was started to use the uteri of women for the embryos of the other couples, the concept of surrogate maternity was introduced [3]. The women who get pregnant for the infertile women, and carry the baby in their uteri, and deliver the baby are called the “surrogate mothers”, and this process is known as the “surrogate maternity” [4]. It should be pointed out here that every “pregnant woman” may not be a surrogate mother. Even though she is inseminated with the sperm of a stranger, or an IVF and embryo transfer is performed with the ova of other women,

a woman is not a surrogate mother when she gets pregnant to deliver a baby for herself. If a woman gets inseminated to deliver the baby of another couple, it may be called the surrogate maternity [3].

The surrogate maternity is divided into two categories as voluntary and commercial surrogacies [5]. No payment is made to the mother in voluntary surrogacy, while the surrogating woman is financially satisfied, and paid money for her commercial service of surrogacy [6].

There are three types of the surrogate maternity. In the first instance, the partial surrogacy involves the physical intercourse of the male partner with the prospective surrogate mother, or the ovum of the voluntary surrogate mother is inseminated with the sperm of the husband through the artificial insemination. In this case, the surrogate mother is also the genetic mother. Here, there is no doubt, as the surrogate mother is also the actual mother of the newborn [7]. The second type of practice, namely the whole surrogacy, is the process of extracorporeal fertilization of the ova and sperms of the married couples where the inseminated ova are placed in the uterine of the surrogate mother [3]. Here, the surrogate mother has no genetic relation with the newborn to be delivered, so that the voluntary parents are also the genetic mothers and fathers of the child [8,9].

In the third category, as the both prospective mother and father are impotent for natural pregnancy, the sperms and ova of the third people are used to induce the pregnancy in the surrogate mother, and the delivered baby is entrusted to the ordering parents. Such a practice creates a number of complex problems in some potential cases as the sperms and ova belong to the different people, and such people are married, whereupon the child may have several parents [7]. Hence, the surrogate maternity involves many associated ethical problems.

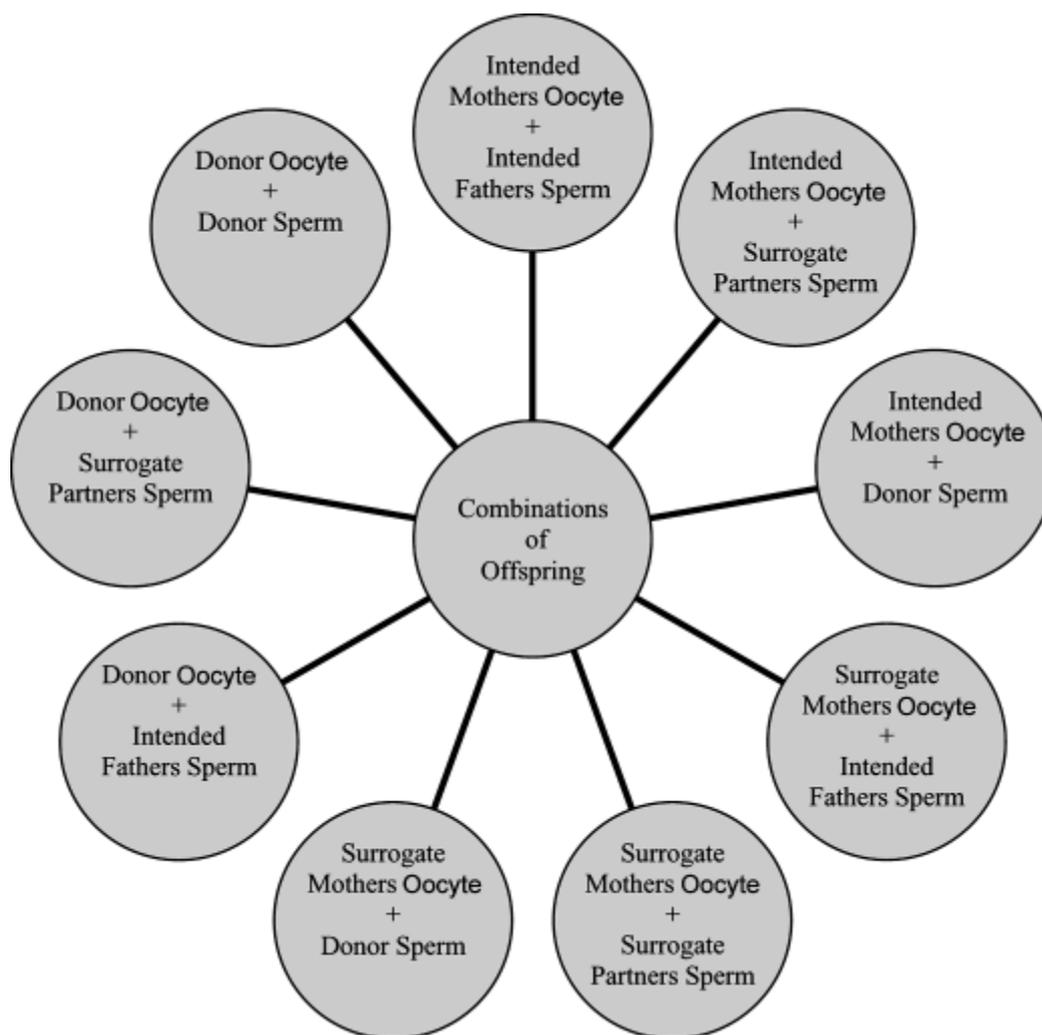


Figure I: The above figure shows any possible forms of insemination and sexual intercourse attributable to the surrogate maternity [10].

### **Ethical Problems Associated With Surrogate Maternity**

**1- Is the natural fertility jeopardized?** The objections in principle to the practice of surrogate maternity are based on the fact that the “natural reproduction” ways are not used in the surrogate maternity. The surrogate maternity is performed through either the artificial insemination or the IVF method [3,11]. All such practices sacrifice the natural reproductive capacity of the human being as a living creature. This feature of the human being as a living creature with natural reproductive capacity impairs his identity. In particular, the Catholic Church depends on this reasoning to claim the surrogate maternity should be banished. In their standing, the surrogate maternity is not a natural kind of maternity, and hence it harms the identity of individuals [3].

Though the surrogate maternity is assumed to be a help rendered to a couple wishing to have a child, it in fact involves multidimensional social and psychological arguments. Ignoring all such facts, and taking it solely within the framework of having a baby, or perceiving the surrogate maternity as a devotion, reflects a very narrow angle of view [4]. The surrogate maternity also involves a number of factors beyond a pure altruistic approach. The paid “pregnancy” service is another dimension contributing to the change of natural reproductive way of the human being, which erodes the social and individual values [3].

**2- Is the female body sold?** According to the opinions opposite to the surrogate maternity practices, it means “selling the female body”. The surrogacy is compared to the prostitution in the literature, whereby the women are claimed to sell their uteri, and forgive the control of their own bodies [11].

Furthermore, the poor women of the third world are used as a tool to meet the reproduction needs of the Western women who are infertile, or postpone their reproductive plans for their career [12,13]. The close relation of the surrogate mother with the money would facilitate her involvement in such attempts. The monetary need is a factor for the women to get pregnant and allow her body being used for money, and affording the any consequent troubles/pains. For this reason, it is worried for the women turn into a “baby machine” in time [3]. In an interview carried out by Baslington with 19 surrogate mothers, the most effective motive for acting as a surrogate mother was to earn money for 11 women, while the money was not the sole reason for seven interviewees. The remaining eight interviewees stated that they expected no financial benefit [14]. Would the popularity of subrogate maternity practices really result in exploitation of the poor women?

**3- Are the women going to be the breeding boxes?** It is claimed that the paid surrogacy demotes the female body into a commercial commodity, and a tool of reproduction. As it is an unwelcome act for the woman to have sex for money, it is likewise undesirable for her to act as a “breeding box” [15-17]. The surrogate maternity, either altruistic or not, causes the woman to see herself as a “reproductive tool” [18,2]. When the surrogate mothers were asked, in a study carried out by Van Zyl and Van Nierberk, what kind of a relation they felt with the fetus, they gave typical answers, e.g. “I have never thought that it is my baby”, “It is not my baby, but I only carry it” and “I feel just like a hotel [19]. Is it really so? Does the surrogate mother turn into a breeding box?

On the other hand, in a study carried out in Israel, the surrogate mothers could easily discriminate themselves from the fetus, and implied that the fetus was a “stranger” in an emphasis on its genetic relation with the couple [20]. The study of Van der Akker on the

surrogate mothers revealed that many surrogating mothers were satisfied to withdraw the child, and the satisfaction was associated with melancholy in only a negligible portion of such women [10]. Ciccarelli from the United States of America held negotiations with 14 surrogate mothers, of which 11 ones said that they felt no commitment with the baby, and expressed her emotions with such wordings as *“I felt no commitment, as I had always in mind that it did not belong to me”*, or *“I just felt guilty, as I did not feel bad for withdrawing the baby”*. In this context, one may think that the women served just like a breeding box [8].

**4- Is the female body medicalized?** The medicalization is a concept that was developed by Michel Foucault, and takes an important place in the belief system of this intellectual. The surrogate maternity contracts, which insult the female subjectivity, medicalize the female body, and so trample the female dignity. The surrogating women are also forced to consent the prepartum diagnostic tests such as amniocentesis, abortion, Caesarean section, etc. depending on the physician recommendation [20]. And, it induces many ethical and legal problems.

**5- Are the surrogating mothers prone of the risks associated with the pregnancy and delivery?** Though the pregnancy is a natural process, one may not claim that it is free of risks. The bodily deformations and disorders (cardiac, respiratory, excretory, nervous, etc.) caused or exacerbated by the pregnancy bear a fatal risk of 1/4800. A pregnant woman may be expected to sustain such risks, but it must be borne in mind that the surrogate mothers endure the same for the benefit of others. In this context, one may claim that all such risks would become assumed for nothing when some problems are experienced during the process. For instance, the Newspaper Daily Mail announced that a 29 years old surrogate mother died a short time later than the birth [21]. It was however observed in another study that some surrogate mothers experienced severe times of pregnancy, and faced a number of health problems associated with the abortions caused by the ectopic pregnancy.

[22]. The potential results of having a baby with anomaly constitute another argument. Who should adopt and care such an abnormal baby if it is refused by the couple who applied for surrogate maternity)? [17,23].

**6- Does the surrogating mother lose her autonomy?** Even though a surrogating mother is free and conscious, there is always a possibility for her to repent for carrying and delivering a baby that does not belong to herself. In a study carried out by Vasanti Jadvani in the United Kingdom with 34 surrogate mothers, it was determined that the surrogate mother experienced some mental and emotional problems for 32%, and the same rate reduced up to 15%, while it went on for one year by 6%. The women, who participated in the study, still

experiences such types of problems by 9%, and a portion of 6% was forced to get support from a psychologist [24]. A decision assumed to have been deliberately taken would likely restrict the autonomy of a repentant mother. One must not allow the woman to take such decisions that may result in troubles for her in the future [3]. Furthermore, it is defended that the surrogating mother is not fully aware of what is argued, and that no woman would dare such a practice unless she is desperate and poor [20]. No doubt, it is a paternalistic approach to protect the prospective surrogating mothers with the concern that she would lose her autonomy. It is thought that the prohibition of the surrogate maternity would allow preventing any possible related problems. There are however some other claims that prohibiting the women to assume such commitments would likely jeopardize their autonomy and personality [23]. By the way, does the personal freedom not mean taking even the decisions, for which we might feel remorse in the future?

#### **7- Does the surrogate maternity weaken the marriage relations of the couples?**

One may even talk about some other adverse effects of the surrogate maternity. The engagement of a surrogating mother may result in weakening of the marriage relation between the infertile couple. For instance, a surrogating mother may develop some warm feelings to the sperm donor [3]. And the man may perceive the fertility of the surrogating mother as a miracle, and attribute more value to her, compared to his formal wife. In this context, it is defended that such a situation may jeopardize the marriage relations of the couples. Would the marriage relations of the couples really weaken?

Somebody claims that the surrogate maternity promises solving many problems of the infertile couples. To be deprived of children may frequently distress the infertile couples, so that the marriage union may be jeopardized, and even broken down. The childlessness, particularly in the patriarchal communities, results in the adoption of a second wife by the husbands in the more conservative and traditionalist sections of the community, and it may readily be a catastrophe for the first wife. The surrogate maternity may appear as a solution for the marriages jeopardized due to the infertility of the female partner, and serve for the sustainability of the marriage union [25].

**8- What should be done when the surrogating mother claims that it is her own baby, and abstains from giving it back?:** In psychodynamic aspects, the postpartum separation of a surrogating mother from the newborn would result in a mourning reaction. In some cases, the surrogating mother may feel emotionally engaged with the baby in the course, and even after the period of pregnancy, and refuse withdrawing the baby. Therefore, it is of high importance to prepare, and render psychological support to the both parties before and

after the process of pregnancy [25,3]. What should be done if the surrogating mother changes her mind, and withdraw delivering the newborn to the voluntary couple? No doubt, the guardianship challenge would outburst between the parties.

*The case “Baby M” is one of the best examples of such a situation. In 1985, Mrs. Mary Beth Whitehead signed a contract of surrogate maternity for her insemination with the sperms of the potential father, and delivery of the newborn to Mr. William Stern (the potential father) and his spouse, but after delivery of the baby, she refused withdrawing the baby, decided to cancel the contract. Mr. Stern filed an action with the competent court to hold the guardianship, and execute the contract. In the said case, the “New Jersey Tribunal” judged that the surrogacy contract was valid, and terminated the parental rights of Whitehead in favor of the Sterns. It was so judged that a couple was under the constitutional guarantee to conclude legally valid contracts on their rights of reproduction. However, in February 1988, the “New Jersey Supreme Court” reversed the judgment of the lower tribunal, and restituted the parental rights of Whitehead. With the said judgment, the Supreme Court adopted that the surrogating mother could not decide with her free will due to economic and social influences experienced by her. Nevertheless, the Supreme Court did not reverse the lower court verdict leaving the guardian right at the side of Mr. Stern, as he had considerably more satisfactory financial standing compared to that of Whitehead, but granted Whitehead with the right of visiting the child [26,4].*

**9- Did the baby want to be born through the surrogate maternity?:** While it is even doubtful if the surrogating mother is volunteer, it is impossible to expect a baby to declare its consent. It means that the baby is not autonomous [16].

**10- Is the surrogacy comparable to the sale of children?:** The opponents of the surrogate maternity and the contract of surrogacy claim that such practices make the children a product that could be purchased and sold. Furthermore, the child is treated as a tool to satisfy the needs of the other people, so that the child rights are infringed [15]. For some people, hiring a surrogating mother is comparable to buying a baby with money. The same circles defend that the legalization of the surrogate maternity would encourage the industry of baby brokerage. Such an approach is comparable to treating the human baby just as a commodity for sales, namely to the enslavement. The surrogacy usually jeopardizes and damages the mother-child relation [3].

**11- Must the surrogacy be banished?:** The opponents of the surrogacy are of the opinion that it should be banished for the potential physical, psychological and symbolic risks on the child. The child may also suffer psychological damage when it learnt how it was born

[17]. On the other hand, the supporters claim that such banishment is contrary to the rule on the prohibition of discrimination. In this context, the prohibition of the third person help means a discrimination against the people who could not get their baby through natural ways. Furthermore, it is defended that the discrimination imposed by the nature on such infertile couples would be worsened and confirmed by the law [3]. Unless a number of concrete evidences exist on the harmful effects of the surrogacy contract on the newborn, one should respect the decisions of the individuals on reproduction [6,19].

#### **Other Arguments on Surrogacy:**

- Does the child have the right to know its genealogy and its natural parents? [4]
- Who is the real (biological) mother of the newborn? [4]
- If the surrogating mother does not want to deliver the baby, and requests abortion (for any reason, except the medical need), would she be entitled to do it? [27]
- Would the donor family adopt such a baby as their own baby? [4]
- What results could be expected if the donor family refuses the baby? [4]
- Should the surrogating mother not be paid, would the baby have to be hold by the surrogating mother? [4]

#### **Surrogacy and Religion**

Though the surrogacy is legal in many countries, the surrogate maternity is in conflict with the religious rules all over the world [28]. Example: Though the surrogacy is legitimate in the United States of America (USA), the American orthodox Christian couples experience religious troubles on the perfect surrogacy, and have already applied to get permit for surrogacy from the priests. And the priests reported that the extrasomatic pregnancy is religiously improper [29]. The catholic church also orders prohibiting the surrogacy that is unnatural, and injures the personality of the individuals [3]. In Israel, the surrogate mothers go on doing the duty of being a good citizen by helping the childless women. In a study carried out by Teman's (2003), it was determined that the surrogate mothers served the religious assets by assuming a divine duty like delivering a baby, i.e. creation, through surrogacy for the childless women [20]. The religious denial of surrogacy is particularly based on the principle of preserving the generations [4]. And the Islamic Law takes it as an adultery to involve a third person in the divine marriage relation between the spouses [30]. Egypt does not permit the surrogacy, as it is immoral. In Saudi Arabia, the religious authorities do not allow the use of surrogate mothers [31].

### **What has the health staff to do for surrogacy?**

The assisted reproductive techniques have advanced, and seem to advance in line with the rapid technological developments. The physician has a very important role in rendering medical help to the infertile couples who are decided to try surrogacy [32].

The physician is to perform a number of examinations, including the physical and psychological evaluations, to determine if the candidate surrogate mother is suitable for treatment, and inform them of the responsibility and consequences of the surrogacy [33]. In this context, the role of the physician taking decisions on the care of the fetus and mother is of high importance in monitoring the pregnancy of surrogate mother. On the other hand, the relation of medical confidentiality between the physician and the patient is important. To what extent must the physician allow the disclosure of the information on the surrogate mother, child and couples, in case of any possible conflict between the surrogate mother and the voluntary couple? [34]. Should a conflict of interests appear, the physicians and medical staff should be able to persist influences, and keep neutral.

The medical staff, and particularly the physicians, should not consider that the right of reproduction is not exclusively endowed to the individuals who want to get a child. The right of reproduction should be cumulatively handled with the prior community health issues, embryonic rights and child rights, and the advantages and disadvantages thereof should be kept in mind. Actions should be taken to prevent any possible pressure of the new reproductive technologies on the parents, especially the women. Such methods are to be evaluated in consideration of the risks for and adverse effects on the physical, emotional and social health of the women, and the rules of justice and autonomy should be maintained. The assisted reproductive methods should not be commercialized, and any necessary measures should be taken for use such scientific and technical facilities for the humanistic purposes to solve the problem of the infertile couples on the basis of the scientific ethics and human rights. Furthermore, the physicians should not be a tool to demolish the human assets for the sake of scientific development with the aim of human happiness against the developing technologies [35].

In consequence, the surrogacy is a sustainable practice preferred by the infertile couples who desire to have babies. The surrogacy, and particularly the “status of the surrogating mother, voluntary couples and the surrogated baby” should be discussed in ethical and legal aspects, and any necessary actions should be taken to prevent its abuse. The health staff to take role in such practices should be ethically responsible to make the parties duly informed of any possible risks and benefits of the surrogacy. By the way, it is of high

importance for the medical staff to be aware of any ethical and legal problems associated with the surrogate maternity. In this context, the advisory services to be rendered by the health teams would be helpful for the desirous couples as well as the prospective surrogate mothers to take conscious decisions. There is however a need to make any necessary legal arrangements for the parties engaged in this process. For the ethical dilemmas on the surrogate maternity, there are some ethical arguments such as the lose of natural reproduction, and the use, commercialization and medicalization of the female body as a breeding box, and the lack of autonomy of the newborn, and its comparability with the child trade. However, there are no adequate research data on all such topics. Hence, it is suggested to carry out a number of studies and surveys on the surrogacy and ethical dilemmas.

### References

1. Repokari, L. et al. *Hum Reprod* 22(5), 2007, 1481-1491.
2. Uysal, P., *T Klin History-Law Medical Ethics* 11(1), 2003, 41-44.
3. Aydın, E., *Turk Soc Obstet Gynecol*, 3(1), 2006, 19-25.
4. Görgülü, Ü., *The Journal of Islamic Law Research*, 15, 2010, 197-208.
5. Kırkbeşoğlu, N., [Bioethics and Legal Issues in the Field of Paternity.] İstanbul: Vedat Publishing 2006, 70-71.
6. Hatzis, A.N., *Portuguese Economic Journal*, 8(3), 2009, 205-220.
7. Keser, L., *Monthly Law Journal*, 7(52), 1997, 306-314.
8. Ciccarelli, J.C., Beckman, L.J., *J Soc Issues*, 61(1), 2005, 21-43.
9. Ben-Asher, N., *Cardozo Law Review*, 30(5), 2009, 1885-1924.
10. Van den Akker, O.B.A., *Human Reproduction Update*, 13(1), 2007, 53-62.
11. Metin, S., *Istanbul Bar Association Publications*, 2012, 7-54.
12. Palattiyil, G. et al. *Internal Social Work*, 53 (5), 2010, 686-700.
13. Donchin, A., *Bioethics*, 24(7), 2010, 323-32.
14. Baslington, H., *J Health Psychol*, 7(1), 2002, 57-71.
15. Damelio, J., *Bioethics*, 22(5), 2008, 269-77.
16. Hanna, J.K.M., *Bioethics*, 24(7), 2010, 341-7.
17. Andrews, L.B., *Virginia Law Review*, 81(8), 1995, 2343-75.
18. Donovan, P., *Family Planning Perspectives*, 18(2) (1996) 57-60.
19. Liezl, V.Z., *Journal of Medical Humanities*, 23(2), 2002, 107-118.
20. Teman, E., *Medical Anthropology Quarterly*, 17(1), 2003, 78-98.
21. Tieu, M.M., *Journal of Medical Ethics*, 35 (3), 2009, 171-5.
22. Ragoné, H., *American Ethnologist*, 23 (2), 1996, 352-365.
23. Posner, R.A., *Journal of Contemporary Health Law and Policy* 5(21), 1989, 21-31.
24. Jadva, V. et al. *Human Reproduction*, 18(10), 2003, 2196-2204.

25. Oguz, H.D., Effects Of Infertility On Mental Health, Marriage Relationships And Sexual Life Among The Women Undergoing Infertility Treatments.] Istanbul: TC. Ministry of Health, Bakırköy Prof. Dr. Mazhar Osman Mental Health and Neurological Diseases Training and Research Hospital, 2004. (dissertation).
26. Anleu, S.R., *Gender and Society*, 16(1), 1992, 30-48.
27. Çiçek, N., Mollamahmutoğlu, L., (Ed.). *Palme Publishing* , 2009 397–405.
28. Fisher, A.M., The Journey of Gestational Surrogacy: Religion, Spirituality and Assisted Reproductive Technologies. <http://dx.doi.org/10.1080/1364436X.2013.801831> (Accessed 15 February 2014).
29. Thompson, C., Making Parents the Ontological Choreography of Reproductive Technologies. Cambridge: MA: The MIT Press, 2005.
30. Inhorn, M.C., *Social Science & Medicine*, 56 (9), 2003, 1837–1851.
31. Aramesh, K., *J Med Ethics*, 35 (5), 2009, 320-2.
32. Goldman, B., *Canadian Medical Association Journal*, 138 (2), 1988, 166-67 .
33. Rothenberg, K., Surrogacy and the Health Care Professional, in: Gostin, L (ed) *Surrogate Motherhood, Politics and Privacy*, Indiana University Press, Bloomington and Indianapolis 1990, 206-215.
34. Reilly, D., *Canadian Medical Association Journal*, 176 (4), 2007, 483-485.
35. Örnek Büken, N., [Üremeye Yardımcı Tedavi (ÜYT) Uygulamaları ve Üremeye Yardımcı Tedavi Merkezleri Hakkında Yönetmelik ile ilgili Bazı Çıkarımlar.] Accessed Date: 14.02.2014. [www.huksam.hacettepe.edu.tr/Turkce/.../uremeye\\_yardimci.doc](http://www.huksam.hacettepe.edu.tr/Turkce/.../uremeye_yardimci.doc)