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Transnational surrogacy in the European context: The cases of Spain and Ukraine

An assessment of economic, legal and socio-political factors

Margarita Fernández Alba

Harriet Taylor Mill-Institut für Ökonomie und Geschlechterforschung
Discussion Paper 49, 08/2024

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Die Herausgeberinnen

Transnational surrogacy in the European context: The cases of Spain and Ukraine

An assessment of economic, legal and socio-political factors

Margarita Fernández Alba

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SUMMARY

Global Care Chains perpetuate the socio-economic burden that women carry, increasing not only gender inequality but also discrimination based on race or social class. In recent years, the externalisation of social reproduction has taken a further step towards the externalisation of biological reproduction through Global Fertility Chains. In this form of employment, women no longer need to migrate in order to provide the maximum expression of physical, emotional and biological labour ever integrated into capitalist market forces.

Surrogacy is an assisted reproduction technique which has sparked international controversy, with countries that do not regulate it, countries where it is regulated and banned, and countries where it is regulated and allowed in its altruistic form, commercially or both. This paper illustrates through the cases of Spain and Ukraine, how transnational surrogacy operates in Europe with a particular focus on commercial surrogacy, and intends to answer the following research question: how do economic, legal and socio-political factors shape the surrogacy-based exchange relationship between both countries?

This work draws on the hypothesis that there is a hierarchy in the relationship between the countries that mostly demand surrogacy and the countries that mostly provide surrogacy. Through the analysis of processes such as Global Fertility Chains, bioeconomy flows and the study of variables such as the Gender Regimes and the legal frameworks of the selected countries, it is possible to explain the Spanish demand for surrogacy. Similarly, the analysis will also explain the large supply of reproductive services provided by Ukraine, which accounts for a quarter of the current global surrogacy industry.

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1. Introduction

The 'reproductive labour' of a third party in order to conceive a baby and carry it to term (Colen, 1995:78), is an increasingly common practice due to the great medical advances in the last century, where the traditional method or adoption are no longer the only means to create a family. Surrogacy has sparked international controversy, with countries that do not regulate it, countries where it is regulated and banned, and countries where it is regulated and allowed in its altruistic form, commercially or both. In this context, commissioning parents may seek commercial surrogacy internationally when their country of origin bans this practice or has a more expensive cost (Cheney 2018a:1128).

The aim of this paper is to understand how transnational surrogacy operates in Europe, with a particular focus on commercial surrogacy. For this purpose, I have decided to take cases of special interest, such as Spain and Ukraine. Spain is an EU member state where, although all forms of surrogacy are banned, there is flexibility in registering the intended legal parenthood of minors born abroad through this reproduction technique. Ukraine, an EU candidate state since June 2022, is ranked as a top 'destination' for commercial surrogacy arrangements.

The first part of this paper will offer a selection of relevant terms for a full comprehension of the topic. The theoretical framework will address feminist and sociology literature on the concept of Global Care Chains and expand this explanation of 'care work' to the concept of 'Global Fertility Chains' and reproductive work under global capitalism (Dickenson, 2007). In addition, Vertommen et al. (2022) offer an integrative Political Economy approach to understand the role of 'Bioeconomy' in surrogacy practices.

Lemke (2011) analyses the fine line between 'life' and 'politics' drawn in Human Capital theory, and Pande (2014) advocates for a thorough examination of the structural, political, economic, and cultural dominance that determine how women decide to join the surrogacy market, rather than simply reviewing surrogacy arrangements based on 'moral values' or the 'commodification' of women's bodies.

Various feminist currents have studied the implications of surrogacy. While the libertarian approach is the least prevalent among feminist scholars, there is still some friction between abolitionists, whose view is more akin to the dominant policy situation on commercial surrogacy globally, and reformists, who advocate for surrogacy regulation based on women's personal 'choice' and 'agency' (Maniere, 2017:314).

This thesis will also address the position of the EU concerning surrogacy and examine whether European Union law sets any obligations for EU member states on this matter. Later on, exploring variables such as the gender regimes (economy, polity and civil

society domains) and the legal frameworks of the selected countries, I intend to answer the following research question: *how do economic, legal and socio-political factors shape the surrogacy-based exchange relationship between both countries?*

As a first hypothesis to my research, I would like to point out that a hierarchy exists in the relationship between the countries that mostly demand surrogacy and the countries that mostly provide surrogacy. Secondly, it is to be assumed that there is greater gender inequality in the countries that mostly provide surrogacy services. The final discussion of this paper will connect all findings to explain the relationship between both countries and take stock of some arguments for and against transnational surrogacy in relation to the factors influencing the practice.

I would like to clarify that despite arguable nuances, the terms 'filiation', 'parenthood' and 'parentage' will be used as synonyms. The terms 'intended', 'contracting' and 'commissioning' parents will also be used interchangeably for those persons who, regardless of their gender or marital status, choose to contract the reproductive labour of a surrogate. Furthermore, although this work recognizes the existence of multiple gender identities, there is a significantly low or non-existent number of gender-diverse individuals taking part in the surveys or studies consulted. Therefore, meaningful results can only be derived from the available data based on heterosexual, cisgender individuals and families formed by heterosexual couples. The words 'surrogate' and 'woman' will also be used interchangeably to refer to all persons with female genitalia and gestational capacity who undergo surrogacy processes.

Although the donation of gametes or reproductive tissues is also a pertinent process prior to surrogacy, this topic will not be covered in depth during the course of the paper. The methodology will be analytical and qualitative research based on the review of existing literature by other authors, as well as official and specialised data sources.

2. What is transnational surrogacy?

Surrogacy is a form of labour in which a woman agrees to be impregnated through Assisted Reproductive Technology (ART) to become pregnant, carry a child to term and relinquish the filiation of the baby she has given birth to in order to hand it over to the other contracting party, altruistically or for monetary compensation (Tryfonidou, 2023:50; Centre for Social Research, 2010:13).

Sterility or infertility produced by some anomaly in the essential elements of reproduction, such as the absence of the uterus, malformations, or diseases like endometriosis or Asherman syndrome (Álvarez et al., 2019) is one but not the only reason

why people turn to surrogacy to have offspring. On other occasions, some women do not wish to become pregnant because of the physical changes that this implies, a high possibility of medical risks may happen during pregnancy (perhaps derived from the woman's advanced age), or the intended parents are single people or same-sex couples (González Pineda, 2015:8, 17).

There is some variety in surrogacy arrangements depending on the methods used for conception. Whittaker et al. (2022:4) refer to 'traditional surrogacy' as an ancient practice that emerged outside the biomedical field. This method gained popularity with the 'surrogate baby boom' of the 80s when women agreed to be inseminated, thus using their own egg cells and uterus to gestate a baby for someone else. At this time, the woman giving birth was recognised as the 'biological mother' as she was genetically linked to the baby she was carrying (ibid.).

Later on, with the development of ARTs such as in-vitro fertilisation or intracytoplasmic sperm injection (Vertommen et al., 2022:126), implanting already fertilised eggs (from the intended mother or a donor) in the surrogate, became a reality. This way, the baby would be genetically related to the intended parents, thus constituting 'gestational surrogacy' (Cheney, 2018b:157). Gestational surrogacy is nowadays the most widely practised method happening at a clinical level, as it guarantees the genetic link between the future child and their intended parents in the face of any potential litigation for the claim of legal parenthood (Whittaker et al., 2022:4).

Although the development of ARTs constitutes a great advance in the medical field, there are still numerous risks for both the pregnant women and the babies. Some examples are the implantation of multiple embryos that can produce a higher risk of complications and mortality during pregnancy, premature birth, and birth through caesarean section, as well as the lack of delivery aftercare provided to the surrogate. Frequently, the convenience of scheduling a caesarean delivery is sought to facilitate the travel planning of the commissioning parents as well as the work availability of health professionals, making natural childbirth the least common form of giving birth in transnational commercial surrogacy arrangements (Darnovsky and Beeson, 2014:22). In addition, due to the existence of a signed contract between the parties, in transnational surrogacy cases, the baby is immediately handed over to the parents without in many occasions, direct skin-to-skin contact with the woman who delivered the baby or breastfeeding period (Beeson and Lippman, 2017:85-86).

In 2014, Cheney initiated the International Forum on Intercountry Adoption and Global Surrogacy (Darnovsky and Beeson, 2014:2). In this arena, the terms used to identify women who would carry out a 'contract pregnancy' were very debated (Cheney,

2018b:157). While 'gestational mother', 'carrying mother' or 'surrogate mother' are terms that acknowledge the maternity of the pregnant woman, terms such as 'gestational host' or simply 'surrogate' could, according to some experts, foster the dehumanisation of this type of reproductive process as well as the woman carrying out the pregnancy (ibid.).

Depending on the type of financial compensation requested from the commissioning parents, a distinction can be made between 'altruistic surrogacy', where the contracting party will only provide payment to cover the expenses derived from the pregnancy, and 'commercial surrogacy', in which case the financial compensation can be noticeably higher, and actors such as market dynamics and intermediary agencies play a central role in that payment increase (ibid.:158). Colen (1995:78) takes into consideration all the "inequalities based on hierarchies of class, race, ethnicity, gender and place in the global economy" to introduce the concept of 'stratified reproduction' which explains why the "reproductive labour of bearing, raising, and socialising children is experienced, valued, and rewarded differently in particular historical and cultural contexts". Reproductive labour nowadays evokes old colonial, gendered and racist practices where non-white women were supposed to wet-nurse for white children (Harrison, 2016).

When cross-border reproductive labour is discussed, it is relevant to consider the relationships between the different countries that 'accept', 'tolerate' or 'prohibit' this praxis. Introducing childbearing into the market creates a high potential risk for economic, physical and psychological exploitation of women from impoverished contexts, as it enhances and perpetuates all sorts of inequalities (Twine, 2015). Conversely, surrogates do not belong to a single category, since surrogates living in the Global North may come from higher educational backgrounds and have access to full information about the procedures and terms of the contracts they are signing (Davaki, 2017:142). Despite this, and acknowledging the different realities and complexity of the issue, Harrison (2016:5) points out that the usual flow in the massive surrogacy industry goes from affluent intended parents who travel to impoverished or developing countries to outsource reproduction through commercial surrogacy and obtain "white babies" from "black bodies". This phenomenon perpetuates dominant power dynamics and prioritises the reproduction of "the white, heterosexual, married, middle-class family" (ibid.:2).

The recognition by academics and medical professionals of the risks in making commercial surrogacy a highly lucrative business is particularly relevant, as pregnant women are potentially exposed to the violation of their physical, psychological and emotional well-being (Cheney, 2018b:163). Sassen (2000) approaches global economic processes from a gender perspective and highlights how women constitute a resource for cushioning reduced public expenditure, feeding the shadow economies operating in

international economic circuits and ensuring government revenue. Nadimpally and Majumdar (2017:77) recall Sassen's work to discuss surrogacy and stress that export-oriented markets created in developing countries make use of pregnant women's bodies to generate not only the women's own livelihood, but also to alleviate public debt.

Surrogacy-born babies are at risk of becoming stateless or not having full information about their origins when they become adults (Davies, 2017:3, 6). Cheney (2018a:1133) points out that the commissioning parents mostly determine the degree of access the children will have to information about their origins, the surrogate and the context in which they were conceived. This happens due to laws that favour the intended parents' right to privacy and, at the same time, do not legally oblige them to maintain any further contact with the surrogate, who often wishes to do so (Pande, 2014).

In this sense, there are countries which ban surrogacy but try to protect the 'best interest of the child' by creating *ex post facto* jurisdictional decisions in order to establish the legal parenthood of the minor born abroad and thus safeguard their right to belong to a state (Cheney, 2018b:163). According to The Hague Conference on Private International Law (HCCH 2015:6), although this procedure constitutes a legal tool to protect minors, it is already "too late to be able to exercise any meaningful control" over the legality and ethical aspects of surrogacy practice itself, as the child already exists.

It is worth noting the peculiar case of Greece, the first EU country where gestational surrogacy was regulated and allowed in its altruistic form and where legal parenthood must be established by a court's authorisation prior to the beginning of a surrogacy process (Davaki, 2017:146). This *ex-ante* regulatory system contrasts with that of other EU countries that prohibit surrogacy and where it is necessary to transfer the legal parenthood of the babies born abroad (Twine 2015:74; Dufalová 2020:79-80). However, the Greek system constitutes an exception to the usual operational model.

On that matter, Darnovsky and Beeson (2014:26) argue that to distinguish surrogacy arrangements from child trafficking, the financial compensation should happen regardless of the pregnancy's success or the child's well-being. In reality, the presence of intermediaries makes gestational mothers feel the duty to "perform" in order to obtain a certain income level (Krawiec, 2010:50). This raises logical controversy among scholars who debate whether reproductive labour consists of a service or the selling of a product, in which case children would be labelled as a market commodity and thus the valuable natural link between mothers and children would decline (Maniere, 2017:323).

While there is no consensus on whether surrogacy gives rise to the buying and selling of babies, Allan (2017: 357-358) notes that:

"whether 'commercial surrogacy' is framed as the purchase of a child, the purchase of reproductive labour or the purchase of parental rights, they all involve the transfer, for a fee, of a child from the woman who carried it throughout pregnancy and gave birth to it, to the commissioning person(s). There is in all instances a failure to reasonably justify payment".

In addition, the Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children, including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, claims that "commercial surrogacy as currently practiced usually constitutes sale of children as defined under international human rights law" (UNHRC, 2018:12), as the custody of the child will only be transferred after the contract parents' payment. The report also advocates for the prevention of child trafficking stating that the minor's physical or legal transfer to the intended parents should remain outside of the contract. The surrogate should be financially compensated solely for carrying out the gestation, as well as being the legal mother of the baby at birth (ibid.:17), and the remuneration should occur regardless of whether or not the surrogate chose to relinquish her parentage after giving birth (Cheney 2018a:1134).

3. Mapping feminist views on transnational surrogacy

3.1 Reproductive labour across borders: economic and social factors involved in surrogacy

Over the past 50 years, women's participation in the labour market has increased due to access to education and further attainment of skills, which makes pursuing educational and career opportunities a growingly popular goal among the female population. In addition, the lack of public care provision by the welfare system in some countries, or even the yearning to circumvent the undesirable components of care (Swerdlow and Chavkin, 2017:20) has made resorting to a person external to the household an increasingly practice that, in turn, entails obtaining certain social status (Yeates, 2004 and Ortiz Monera, 2017). The demand for outsourcing domestic and care work by hiring this service in the market gives rise to the Global Care Chains, a concept that Hochschild defines as "the personal links between people across the globe based on the paid or unpaid work of caring" (Hochschild, 2000:131).

According to Chavkin (2008), women's personal and professional progress in wealthier countries has been made possible by shifting the weight of care work off their shoulders (for which, in most cases, they remain fully responsible despite also working

outside the home) to other women. In the Global North, immigrants from countries where social, economic or political conditions do not allow for a dignified life are the ones who are mostly hired to perform care duties (Lessenich, 2019:119).

Care work in the home has always been relegated to women. Consequently, it is important to acknowledge the feminisation of migration that has been increasing since the 1980s and where women seek employment as domestic workers in safer and more economically and politically stable countries (Ramírez, et al., 2005). More and more women are migrating alone, becoming the main income providers for their families (ibid.).

Moreover, here comes into play the global capitalist mode of production which reinforces the subordination of women in social structures. This phenomenon happens through the wage compensation of men's 'productive work' in the market, while women are relegated to the realm of 'non-productive' work with the reproductive labour they carry out and for which they are rewarded with attributes like 'virtue' or 'love' (Fraser, 2016). This is why Sassen (2000) uses the term 'feminisation of survival' to refer to care work, which is not only a hyper-feminised sector but also highly precarious. Due to this niche work for women and the expansion of care work transnationally, Lutz (2018) highlights that women's work in the domestic sphere is almost compulsory in any part of the world, giving rise to her concept of 'transnational social inequality'.

The concept of 'reproductive labour' emerges from the urge to name how women in need of income sell their biological reproduction capabilities under capitalism to other individuals who have the financial privilege of affording such service (Dickenson, 2007; Twine, 2017:106). Due to globalisation, the market shaped by capital accumulation, and advances in information technology, reproductive labour is favoured transnationally and tinged by the racialisation of those hired for reproductive services (Vertommen, et al. 2022:128). While the physical characteristics of the women who will gestate the babies do not play an essential role in the selection of a surrogate by the contracting party (Twine, 2015), the component of 'sufficient whiteness' that Schurr (2017) highlights as a result of post-colonial legacy, acts as a decisive factor when evaluating the 'good genetic material' of the implanted gametes. Furthermore, this devaluation of surrogates is fueled by international laws that protect and support the primacy of genetic bonds, thus 'favouring' the purpose of commissioning parents (Cheney, 2018a:1130).

The concept of 'Global Fertility Chains' used by Vertommen et al. (2022:115) aims to take a step beyond Global Care Chains and extend the concept of 'care' to reproductive work, intertwining "practices, operations, and transactions among the enterprises, states, and households through which reproductive services" (ova donation or surrogacy) "and commodities" (for example a baby or stem-cell line) "are produced, distributed, and

consumed across the globe in the accumulation of capital". Moreover, Global Fertility Chains theory places gender and race at the centre, two elements often overlooked when analysing commodity production through a traditional political economy approach (Moore, 2015).

Nilsson (2022:39) views surrogacy as a form of "precarious intimate labour". Although there is no physical proximity between the commissioning parents and the surrogate, there is an intimate relationship between both parties through the "surrogate's gestation and nurturance of the intended parents' gametes" (ibid.:40). The author argues the existence of a great affective labour where the "surrogate must align their emotions for the purpose of the market, express a will to help others, nurture and care for the foetus" while suppressing their attachment from the future baby (ibid.:40).

The term 'bioeconomy' emerges in the global expansion of capitalism, with the free circulation of goods and services, creating value in the commodification of organs, reproductive tissues and even the capacity to engender and carry out a pregnancy (Vertommen et al., 2022). In this context, individuals with female reproductive apparatus constitute an essential element but receive precarious assistance and, in many cases, undervalued economic compensation (ibid.:116,118). At this point, it is only logical that different feminist currents of thought present scepticism in setting a price on reproductive services or discussing whether surrogates receive appropriate economic compensation. According to Darnovsky and Beeson (2014:26), "if surrogacy is regulated as a form of work, questions of what constitutes fair compensation and acceptable working conditions must be addressed".

Bioeconomy is influenced not only by technological advances in the field of medicine, such as ARTs, but also by the way in which the population from affluent countries lead their lives and intimate spheres (Vertommen et al., 2022). Bioeconomy is also determined by new family models, queer parenthood, advances in the attainment of reproductive rights that allow women to take greater control of their reproduction (contraception and abortion), insertion of women in the labour market, late motherhood, and increasing life expectancy (Davies, 2017:6).

The difference between Global Care Chains and Global Fertility Chains is that in the case of the former, it is migrant women who move from the Global South to the Global North to perform their work as caregivers, whereas in the latter, the surrogate does not have to travel to the country of residence of the 'contract parents' (Vertommen et al., 2022:129). This dynamic arises due to what Inhorn (2015:22,25) categorises as 'reproflows', a flow of gametes or frozen embryos travelling in cryopreservation tanks to clinics abroad to be implanted in the surrogates for commercial purposes, and then

individuals travelling abroad to seek this reproductive “assistance” (Inhorn, 2010:184). After the infants are born, the contract parents travel to the country where the baby was delivered to take their physical custody and return to their home country (ibid.).

Global Fertility Chains diversify the different processes of the fertility industry. Walker and Moore (2017: 55, 59) describe this phenomenon as “the process of going beyond the highly capitalised zones of production to secure sources of labour, food, energy and raw materials at below the prevailing average cost”. Therefore, admittedly, the reproductive industry captures the flexibility and immediacy in the search for the best economic opportunities that characterise the Post-Fordist production system (Cooper & Waldby, 2014).

Wichterich (2016) uses the concept ‘transnational care extractivism’ to illustrate how racism, deep-seated discrimination and colonialist patterns serve to justify exploitative practices of women’s labour on an international scale. In her analysis, the author shows that ‘care extractivism’ combines the meaning of ‘extractivism’ as a form of “careless exploitation and depletion of resources on the assumption that they grow naturally and are endlessly available” (Wichterich, 2019:5) with social and (and recently) also biological reproduction. In this context, surrogacy constitutes a “new form of reproductive labour and new labour relations” (ibi.:17).

The “labour-intensive processes” (gestational labour and tissue extraction) occur mostly in the periphery or Global South, where they have a lower cost and potentially a lack of transparency and legality of the practice (Vertommen et al., 2022:126). This growth of potential exploitation and criminality in commercial surrogacy happens due to the uncertainty as to whether this reproductive practice is part of the private sphere, and thus should not be regulated by the state, or whether it should be treated as in the case of adoption, as a matter of public interest and therefore regulated by the state (Cheney, 2018a:1136).

Lemke (2011:110-111) elaborates on the Human Capital theory, which developed after the Second World War and in which “every individual becomes not only a capitalist but also the sovereign of him-or herself. With every action, he or she maintains his or her individual advantage”. Lemke describes the thin line between ‘life’ (in the sense of biological resources) and ‘politics’. Through the Human Capital theory, the possibilities of the human being (both the characteristics we are born with and the ones we create through nutrition or education) are used to maximise the obtaining of scarce resources to achieve the individual’s objectives. Through this individualistic vision, nature takes on commercial interest, begins to be legally regulated, and becomes part of the market forces (ibid.:69).

While market liberalisation and the ease with which individuals and enterprises can connect in a globalised world is increasing, the inclusion of 'reproductive services' in this dynamic has led to the development of a reproductive tourism industry (García Amez and Martín Ayala, 2017). Simultaneously, the significant inequalities between the parties seeking surrogacy arrangements and those providing it are even more pronounced due to intensified competition among agencies, clinics and law firms expanding their economic possibilities (Pande, 2011). Another decisive factor in the rise of reproductive tourism is the wide variety of national legislations regulating surrogacy and the rise of the so-called "surrogacy-friendly" countries (García Amez and Martín Ayala, 2017).

Feminist scholars across the globe doing research on global capitalism have criticised the Human Capital theory, which constitutes a fundamental aspect of liberalism. For example, Kroløkke and Pant (2012:233-234) define gestational surrogates as "repropreneurs", "the mobile reproductive client/consumer/assistant/worker of a global economy in reproductive services", and argue that neoliberalism encourages individuals who are unable to conceive to be accountable for their own fertility and take actions to increase their chances of pregnancy. This approach transforms reproductive matters into specific kinds of commodities. Infertility and surrogacy are framed within a perspective of 'choice', individual ownership of one's body. This way, neoliberalism remodels the surrogate or individual into a responsible, rational decision-maker.

Whittaker (2019) also highlights that the reproductive industry is not only based on the 'repropreneurs' but also on the whole structure that makes possible the connection between clinics and brokers, travel agencies and even the intermediaries involved in the legal organisation with the corresponding diplomatic representations for the entry and exit of the destination country.

3.2 Feminist perspectives on commercial surrogacy

Abolitionism constitutes the prevailing international stance, as out of 71 countries that codify surrogacy, 62 prohibit the practice commercially (Allan, 2015:140). However, there are different currents of feminism, combined with the emergence of new family models and ways of conceiving parenthood (Karagianni, 2013) that could explain the direction taken by national legal frameworks, as well as the greater or lesser development of surrogacy in different countries. Liberal feminism supports surrogacy, the right of women to decide on their reproductive rights and, therefore, the freedom to exercise this practice with consent (Scott, 2009). On the other hand, the struggle for the abolition of surrogacy is led by radical feminist currents and those closer to socialism, whose main

argument is based on the critique of the commodification of the female body (Kimbrell, 1993).

In terms of freedom of choice and consent, Banerjee (2010:109) explains that women's decision to surrogate for another person occurs in a context where there is always a certain degree of coercion, as the decision to become a surrogate is not made in a "socio-cultural vacuum". Furthermore, she adds that "the surrogate is exploited because her labour and her body are judged on the basis of their use-value" (ibid.). Abolitionist legislations aim to protect minors' rights and stop the reinforcement of social inequalities (hierarchies of gender, class, and race, among others) reproduced by market forces (Maniere, 2017:314).

Maniere (ibid.) establishes three categories: abolitionists and reformists are equally concerned about the commodification of the body and exploitation of women, finding the current international regulation of commercial surrogacy problematic, and which they seek to modify through contrasting approaches. The third category of feminist thought is what the author defines as the "libertarian approach", which is perhaps the most distanced from feminism in that it accepts the status quo and advocates for free markets in favour of greater reproductive choice (ibid.).

The commodification of the female body, reproductive organs and gametes as well as the children born from this practice is one of the main reasons abolitionists aim to end surrogacy (Cheney, 2018a:1134). The goal is to separate the human condition from goods and services that can be bought and sold on the market, as putting a baby's life as a market commodity could have highly damaging consequences for the concept of parenthood and the bond between parents and children. Rothman claims that "biological motherhood is not a service, not a commodity, but a relationship" (1989:238) and this relationship is forged already in pregnancy (ibid.:254).

Raymond (1993:66) notes that free-market dynamics and patriarchal notions of womanhood have benefited from medical technology advances producing "the commodification of children and the proletarianization of motherhood". Similarly, Corea (1985: 214, 222) said that women act as incubators that can be rented.

For Ekman (2013:160), rather than patriarchy, it is the free market's force that leads to the commodification of children since "when a child is produced via surrogacy, the market is pivotal to the child's very existence".

Another axis studied by the abolitionist approach is the "reinscription of gender and race hierarchies" (Maniere, 2017:323). Surrogacy perpetuates the idea that some people's reproduction is more valuable than others'. Davaki (2017:152) distinguishes the women

at the top of the pyramid who are usually white, with the purchasing power to fulfil their wish to become mothers through ART, and women at the bottom of the pyramid, who are reduced to their biological function of conceiving. The latter will subject their bodies under a context of coercion (which can be subtle) to sustain their lives and their families despite the stigma, social risks, and exploitation they may suffer (Dietrich, 1992:374 and Boone, 1992:363).

In Raymond's opinion (1993:44-45), intermediaries aim to popularise the idea that no woman would undergo surrogacy exclusively for income. However, hardly any woman would do this without economic compensation. Supply would be unable to meet the demand, suggesting that economic inequality is a fundamental element in the relationship between surrogate and buyer on many occasions (ibid.).

Finally, the abolitionist approach applies Marx's theory of alienated labour to surrogacy insofar the gestating woman is completely detached from the 'product of her labour', that is to say, the baby she has gestated and given birth to (Maniere, 2017:324). Surrogacy contracts serve to whitewash the relationship of economic, racial and gender inequality that exists from the outset between the contracting parties (Ekman, 2013:151). In that sense, the commodification of the practice gives the impression that both parties are in a position of equilibrium with respect to each other.

Raymond (1993:106) criticises the liberal view of 'self-determination' that relativises external factors and ignores the power relations of the context in which the decision to be a surrogate was made. The abolitionist approach warns that it is not about undervaluing women's choices but questioning the concept of 'reproductive liberalism' that serves to justify contract pregnancy arrangements (Maniere, 2017:324). Likewise, Ekman (2013:150) asks: "how can we justify a situation in which wealthy people use poor people as breeders, inject them full of hormones, take children away from them and leave pocket money in exchange?".

Opponents of surrogacy argue that the violation of women's integrity should not be negotiated, regardless of whether surrogacy is carried out in an altruistic or commercial context (Hellerström and the Swedish Women's Lobby, 2017:306-307). However, in altruistic surrogacy, the assumption of the stereotypical concept of femininity perpetuates gender roles imposed on people born with female genitalia. As a result, women's "natural instinct" to become pregnant and 'help others' become parents is often used to justify the commodification of women's bodies, giving a tinge of "personal agency" on the surrogate mother's side (ibid.).

When it comes to choice and agency, reformists seek to incorporate all possible realities in which a woman would want to undergo a surrogacy process. While some women

do so out of economic necessity, surrogacy cannot be binarily categorised as purely chosen or coerced (Maniere, 2017:317), as it is not always stemming from economic hardship, sexism or racism.

According to Marwah (2014:292), structural oppressive factors may be rendered invisible if it is claimed that the choice to gestate for another person has been completely free. However, black-and-white thinking could also reduce all cases of surrogacy to coercion generated by economic adversity (ibid.), thus oversimplifying this complex reality (Maniere, 2017:317).

On the concept of global fertility chains, Gupta (2012:46) emphasises the neoliberal background in which the terms 'choice' and 'agency' are used to describe women's freedom but warns against isolating it from other aspects that condition women's agency, like access to education, economic independence, gender discrimination or domestic violence.

The reformist scholar Teman (2010:5) proposes that commercial surrogacy may increase the surrogates' feelings of empowerment, freedom, and even heroism. Thus, through surrogacy, women produce their own agency through 'gift giving'. Advocates of reform consider it essential to examine the background and previous circumstances in the lives of women who opt for surrogacy. In many cases, the physical and mental exploitation associated with stigmatised jobs, such as housecleaning or labour-intensive factory work, leads these women to perceive surrogacy as a logical opportunity that offers more favourable economic compensation (Madge, 2014:49). Moreover, women might find personal gratification in providing this service, something they would not be able to achieve in other jobs due to their lack of skills (Teman, 2010:293).

Mutcherson (2012:316) explains that it is impossible to reach global consensus on how surrogacy should be regulated and that the fact that surrogacy is legal in some countries constitutes a minimisation of racial and reproductive hierarchies, for example, by including same-sex couples who are unable to have children naturally (ibid.: 390).

It is worth noting that the use and increase of commercial surrogacy is a result of neoliberal economic policies and reinforcement of patriarchal structures such as the traditional nuclear family composed of a heterosexual couple (Hewitson, 2014:491). While believing that contracting reproductive services could challenge mandatory heteronormativity, the origin and interest in creating this need is none other than the heteronormative idea of having to produce an offspring that is genetically linked to form a family. This opening up of reproductive opportunities for queer individuals and couples is also questionable, as it ultimately perpetuates patriarchal ideas at the cost of the reproductive exploitation of other women (Cheney, 2018b:167).

In addition to the example of familial diversity, Mutcherson (2013:233) explains that “some reproductive choices may de-emphasize and de-stabilize mechanisms of reproductive oppression” and that “opportunities for transformation should be properly balanced against other legitimate concerns about exploitation and subjugation of others”. On that matter, Hellerström and the Swedish Women’s Lobby (2017:308) point out that “children are not an entitlement through which we can justify exploiting other human beings”.

Narayan (1995:188) opposes surrogacy practices and simultaneously expresses the moral inconsistency of imposing criminal penalties on intermediaries. Since intermediaries are the actors who receive most of the compensation paid by the intended parents, this form of criminal regulation would not only not stop surrogacy arrangements but would reduce their cost (ibid.:189). The author also acknowledges the challenge of reaching a common state regulation prohibiting surrogacy, as in the extended patriarchal context in which we live, many realities can coexist: women who have undergone satisfactory surrogacy processes, and women who have suffered negative physical and psychological consequences (ibid.:195). Narayan (ibid.) stresses that “autonomy is exercised in the context of the choices we have, yet even the desires and values that structure our choices are affected by the context that have formed us”. This way, fully egalitarian and non-exploitative choices are inevitably constrained by patriarchal domination (ibid.).

3.3 Gender Regime theory

The feminist approaches discussed in the preceding section are practical for understanding gender and social transformation. According to Walby, Esping-Andersen’s model (1990), where only the ‘family’ and ‘household’ are configuring gender, fails to accurately reflect general societal trends and “the significance of social practices, wider than the family in shaping gender relations” (Walby, 2020:425). Hence, in order to create a social transformation at the macro and meso level (ibid.:415), Walby proposes a holistic approach to gender by analysing the interplay between four institutional domains: economy, politics, violence and civil society (Walby, 2009). The notion of ‘family’ and its traditionally related practices like care work, sexuality or reproduction are not disregarded but instead examined across the aforementioned domains (Walby 2020:418).

In her analysis, the author identifies the impact of the four domains on the formation of different types of gender regimes. Table 1 shows a clear distinction between domestic and public gender regimes. Furthermore, the category of public gender regime distinguishes between the public neoliberal model and the public social democratic model

based on the “depth of democracy and the capacity to forge alliances between feminism and other progressive political projects, including the labor movement” (Walby, 2020:416).

Table 1: Varieties of gender regimes

Institutional domain	Variety of gender regime			
	Domestic	Public		
	Excluded from the public	All Segregated but not excluded	Neoliberal Unequal, thin democracy	Social democratic Less unequal, deeper democracy
Economy (domestic, state, market, capital)	Women’s livelihood structured under domestic relations in the home	Women’s livelihood from free wage labor	Little regulation of working conditions	Regulation by polity for equality and balanced use of time
Polity (national state, local state, polity organized religion)	No democratic participation	Some democratic participation	Thin democracy: suffrage	Deeper democracy: presence and breadth
Civil society (sexuality and intimacy, projects and movements, education)	Confined to domestic	Not domesticated	Unequal; commercialized; thin	Reciprocal; mutual; thick
Violence (interpersonal, intergroup, state-individual, interstate)	Violence by domestic perpetrators unregulated by state	State claims a monopoly of legitimate violence	High levels of violence, though criminalized; security state	Violence criminalized by state and welfare to support victims; welfare state

Source: Walby, 2020:421

Walby uses the term ‘gender regime’ as a synonym for ‘patriarchy’ and, through her theorising, she seeks to highlight alternative forms of gender relations at the macro level, as well as the evolution of the “pre-modern, private, domestic model towards a modern, public model” (Walby, 2020:416). This evolution happens due to both feminist progress towards reducing inequality and the development of capitalism, integrating aspects such as the socialisation of domestic labour, increased female representation in polity and state regulation of domestic violence (ibid.:417).

Perhaps the most interesting classification when analysing gender inequality lies in the public gender regime models. While the neoliberal model increases gender inequality, the social democratic model reduces it through a more profound implementation of gender within the democratic framework (ibid.:419). This particularity emphasises that the evolution towards a public system does not necessarily imply the evolution towards a more egalitarian system (ibid.).

Unpaid domestic labour, as a component of a society’s economy, is traditionally the only form of work attributed to women in the pre-modern gender regime (ibid.:420). In the modern variations, however, women participate in free wage labour, which may be highly regulated in social democratic systems and comparatively less regulated in

neoliberal systems translating into unequal compensation and adverse working conditions (ibid.).

Factors like religion, universal suffrage, elections and free association are characteristic of the polity domain, which in the absence of female participation, will conform to a pre-modern model (ibid.). In contrast, the neoliberal model will promote a thin democracy, and the social democratic model will correspond with a fully developed democracy (ibid.). In the civil society domain, the neoliberal model proposes the commercialisation of intimacy and sexuality in formats like sex work or pornography, while the democratic system will try to prevent these practices (ibid.:422).

Finally, the violence domain includes all forms of aggression perpetrated by individuals or the state through institutional violence. In this case, it is interesting to observe how the neoliberal model manages the level of gender-based violence that its own policies have created (Walby, 2009), advocating for criminal justice with a particular focus on the perpetrators. On the other hand, the social democratic model focuses on the victims, securing their welfare state provision and specialised care (Walby, 2020:422).

4. How does the EU regulate surrogacy?

Although no explicit human rights agreement regarding surrogacy exists within the EU (nor the rest of the world) (Allan, 2017:354), it is possible to distinguish some texts of legally binding or non-binding nature, which regulate aspects that may be relevant for the different parties involved in a surrogacy contract.

As for the rights of the intended parents, Art. 2 TEU and Art 1. of the EU Charter of Fundamental Rights already contained a statement towards the interest of protecting and respecting human dignity. According to the International Covenant on Civil and Political Rights (ICCPR), "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence" (Art. 17). Furthermore, the ICCPR points out the principle of non-discrimination in Arts. 2 and 26, which could be applied to the right of queer people to have access to the same ART as heterosexual individuals. However, it is important to approach the right to 'form a family' with caution, as international law does not specify at any point an entitlement to use surrogacy as a method to form a family and thus the entitlement to force women into becoming surrogates for someone else.

The EU legislator has never fully considered granting permission, forbidding, or regulating surrogacy. Nevertheless, cross-border surrogacy has been addressed through various international instruments (Čulo Margaletić, 2019:795). The Special Commission of the Hague Convention of 1993 on Protection of Children and Cooperation in Respect of

Intercountry Adoption, turned the spotlight on transnational surrogacy and children's rights on the matter, resulting in The Hague Conference on Private and International Law on the Parentage/Surrogacy Project in 2015. International private law attributed relevance to the issue of surrogacy-born minors having unresolved legal parentage. The matter of concern was not only that these minors might not be able to enjoy their right to have caregivers but also that they would suffer major legal disadvantages such as becoming stateless (Allan, 2017:357).

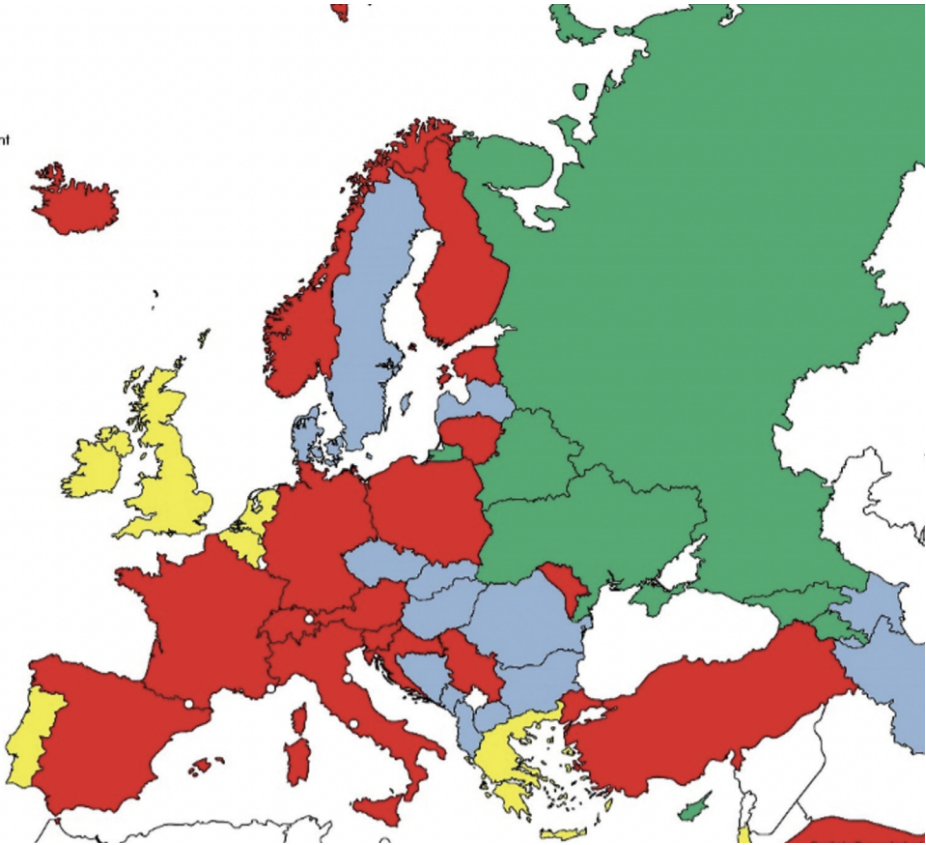
Tobin (2014:321) questions "whether surrogacy arrangements are compatible with human rights law at all". The author draws on the 'human rights discourse' to emphasise that addressing transnational commercial surrogacy from the realm of private law may "marginalise the role of public international law in resolving issues associated with international surrogacy", and ultimately detract from the protection of human rights (ibid.).

The Convention on the Rights of the Child (1989) states that welfare institutions, courts of law, administrative authorities as well as legislative bodies must always safeguard children's best interest (Art. 3). This legally-binding international agreement also mentions the requirement to register newborns immediately after birth to preserve essential elements of their identity, as well as their right to know their origins (Art. 7 and Art. 8). Finally, Art. 9 allows authorities to separate children from their parents in case of abuse or neglect. However, in all other circumstances, keeping children together with their parents would ensure the minor's well-being and best interest.

The report "A Comparative study on the regime of surrogacy in EU Member States" (Brunet et al., 2013), addressed for the first time the possibility of creating unified legislation around transnational surrogacy. The study compared EU and non-EU countries and concluded that the absence of legal provisions on surrogacy or ART in many of these countries resulted in a lack of quality data: "improved systems need to be put in place to routinely record relevant information across all countries" (Brunet et al. 2013:9).

Figure 1 shows a classification of European countries according to their current regulations in the field of surrogacy. Countries marked in blue offer inconsistent data or do not regulate the issue. Countries marked in red are those where surrogacy is prohibited in all its forms. Countries marked in green allow commercial surrogacy, and countries marked in yellow allow altruistic surrogacy.

Figure 1: Current legal status of surrogacy Europe



Source: Brandão and Garrido 2022:1149

As can be observed in Figure 1, all EU member states prohibit commercial surrogacy. Nonetheless, countries including Belgium, the Netherlands, Portugal and Greece allow non-commercial surrogacy (Twine, 2015:70).

The aforementioned report also stated that “while similar difficulties apply in relation to legal parenthood, the situation can be further exacerbated when the rules on legal parenthood in the two countries are mismatched” (Brunet et al., 2013:10). Consequently, minors are put at high risk of being left not only without legal parents but also without citizenship. The non-recognition of birth registration documents outside the birth country may lead to a challenging situation when “the child needs not just civil status travel documentation, but also a visa to gain entry into the home country of the intended parent(s)” (ibid.).

The European Court of Human Rights (ECtHR) has not explicitly ruled on surrogacy either, as it claims a lack of international consensus on the matter and acknowledges the autonomy of national regulations (Emakunde, 2018:27). Instead, the court has issued

judgments dealing with conflicts arising from surrogacy agreements, such as the definition of the minors' legal parentage. For this purpose, its jurisprudence is mostly concerned with the 'respect for private and family life' and the essential principle of protecting the child's best interest as set out in Art. 8 of the ECHR (ibid.).

These precepts are shown in the judgment on the *Mennesson and Labassee* cases (no. 65192/11 and no. 65941/11, respectively), where France denied the paternal-filial relationship established in the birth of several surrogate children in the USA (ECtHR, 2014). The ECtHR had recourse to Art. 8 ECHR and acted favourably towards the applicants on the grounds of the children's right to privacy (ECtHR, 2022:2). The ECtHR states: "the right to identity was an integral part of the concept of private life and there was a direct link between the private life of children born following surrogacy treatment and the legal determination of their parentage" (ECtHR, 2014:3).

Another factor that the court takes into account when advocating for the establishment of legal parenthood between the surrogacy-born minor and the intended parents is the fact that they have lived together for a certain period and have 'acted as a family' in which the parents provide appropriate care for the child. In this line, the *Paradiso and Campanelli* case against Italy in 2017 offers an example where a judgment handed down by the court found no violation of Art. 8 of the Convention (ECtHR, 2022:2). The ECtHR ruled that the short time spent with the baby (born in Russia) and the absence of genetic link to the commissioning parents, were compelling reasons for the Italian state to deny legal parentage and order the baby's subtraction from the commissioning parents (ibid.). Hence, it can be interpreted, that the desire of the applicants to become parents through surrogacy could not override the child's best interest. (Emakunde 2018:28).

The ECtHR's case-law suggests that the restrictions on surrogacy established in the national legislations of EU member states should not result in the non-recognition of parentage between surrogacy-born children and the intended parents (Emakunde, 2018:28). Exceptionally, there will be cases of force majeure for the aforementioned reasons (total absence of biological link, short time of cohabitation with the child and unstable family situation among others) where the children's superior interest would be best protected by separating them from the intended parents and its consequences would not be detrimental to their development (ibid.).

Freedom of movement and family reunification rights within the EU constitute another fundamental principle in the EU structure to be taken into account in surrogacy. Art. 2(2) of the Directive 2004/38 states that the hosting Member State is obligated to allow spouses or registered partners of the incoming Union citizen as well as their direct descendants under the age of 21 to enter and reside within its territory. Moreover,

according to CJEU case-law, the failure of the EU member state to admit the aforementioned categories of family members of the Union citizen in its territory translates into a limitation on the practice of free movement, infringing upon EU legislation and thus violating EU law (Tryfonidou, 2023:34).

Tryfonidou (2023:17) defines parenthood as “a civil status, which is central to a person’s identity and from which many important rights and obligations are derived”. The EU structure unanimously establishes the fundamental need for all surrogacy-born minors to have clearly defined legal parents and civil status (Emakunde, 2018:29). However, even if the EU aims to develop and provide quality reproductive health services in all member states, the legislative and budgetary functions of the EU have minimal scope of action in the area of family law. Consequently, any processes happening after birth, a key element in the context of surrogacy, remain virtually unregulated (ibid.).

Judiciary channels like the CJEU and the ECtHR have shown a better compromise than the political arena in the regulation of surrogacy-related issues. Another example of the ineffective management of surrogacy at the EU level is the inaction of the Commission. Through this “imposed inaction” (McConnell and ‘t Hart, 2019:651), member states’ domestic regulations are considered the best tool to regulate reproductive technologies, enabling a decentralised approach based on their own cultural customs (Foret and Bolzonar, 2021:6). Moreover, in 2016, the Commissioner for Justice, Consumers and Gender Equality Jourova, stressed that “surrogacy was beyond the competencies of the Commission” and that European treaties should not override national legislation on reproductive methods in an attempt to homogenise the laws concerning surrogacy (ibid.).

EU surrogacy-related policies aim to mitigate the legal uncertainty of surrogacy-born minors by putting children’s rights at the centre of the political debate. However, examining the surrogate’s rights outlined in the texts published by EU institutions is crucial.

The European Parliament operates as the best platform for the divergent cultural and normative representation of member states. However, forming coalitions with diverse ideologies can be a major challenge for the consensus on moral issues (Foret, 2014). Nonetheless, the EP has succeeded in publishing an updated comprehensive resolution this year where surrogacy is expressly addressed in Art. 63:

"Reiterates its condemnation of the commercial practice of surrogacy, a global phenomenon that exposes women worldwide to exploitation and human trafficking, while targeting financially and socially vulnerable women in particular; highlights its severe impact on women, women’s rights, women’s health and gender equality, and underlines its cross-border implications; calls for a European legal framework to

address the negative consequences of commercial surrogacy” (EP, 2023).

While the European Parliament is able to initiate a compelling call for action, EP resolutions are not legally binding, whereby the supremacy of national regulations prevails.

5. Analytical framework

In order to analyse the factors that determine the relationship between Spain and Ukraine in terms of supply and demand of surrogacy, this paper will apply a holistic framework based on Walby’s Gender Regime theory (2020), previously explained in section 3.3. The exhaustive assessment of the domains proposed by the author allows a comprehensive understanding of the economic, political and social context women encounter in both countries. The economy domain will address the position of women in the labour market (employment rate, part-time work, women in managerial positions, wage gap, occupation type and level of segregation). The polity domain will deal with “women’s political representation and equality machinery” (Lombardo and Alonso, 2020:458). The civil society domain will address the concept of femininity in society, emerging feminist movements and the social forces that support or reject surrogacy.

The analysis of these indicators in the subchapters “Economic factors” and “Socio-political factors” will reveal each country’s level of gender equality in different spheres of life. Thus, it will be possible to prove or refute the stated hypotheses: there is a hierarchy between the demanding country and the providing country, where the country that provides surrogacy has a higher degree of gender inequality.

The fourth domain (violence) proposed by Walby will be excluded from the analysis, as the way in which the state deals with gender-based violence at the institutional, interpersonal or interstate level is not an essential element in determining the commercial, legal or social relationship in the surrogacy exchange between countries.

Another key variable that shapes this analytical framework is the different legal instruments each country possesses to regulate surrogacy, as well as the several law modifications aimed at regulating the consequences derived from surrogacy arrangements.

The data analysed will be drawn both from national legal texts (in the case of Ukraine translated into English) and official sources such as Eurostat, the International Labour Organization (ILO) and the Global Gender Gap Report of 2022 and 2023 published by the World Economic Forum among others. The Global Gender Gap Report, in particular, describes the degree of gender parity in different countries through “four key dimensions

(Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment)” (WEF, 2022:5). The surveyed states are ranked on a scale of 0 to 1 where the benchmark score of 1 indicates full gender parity. Later in the report, each country’s economy profile provides a series of subindexes that address the four dimensions outlined above, as well as other individual indicators that are not reflected in the final index calculation but incorporate relevant additional information.

6. Case study

The comparison between Spain and Ukraine presents significant limitations due to their distinct historical, cultural, and political contexts. Ukraine, as part of the USSR, granted women the right to vote in 1918, and the Soviet regime promoted gender equality through an extensive education system that resulted in high female employment rates (Lapidus, 1978). In contrast, while women’s suffrage emerged in 1931 in Spain, the country was under Franco's fascist dictatorship from 1939 until 1975. During this period, women's rights as well as women's roles and opportunities in many areas of life including education were severely restricted due to deeply entrenched machismo (Payne & Palacios, 2014).

The case study will also elaborate on different economic factors inherently connected to surrogacy, influencing both the decision to become a surrogate and the availability of surrogacy services. One example is income level. Lower-income women in some countries may be more likely to become surrogates due to the substantial financial compensation they receive (Pande, 2010). This compensation can be a significant source of income compared to their regular earnings, offering an economic incentive. At the same time, the ability to afford surrogacy often depends on the financial stability and income levels of the intended parents influencing their choice to pursue surrogacy over adoption (ibid.).

Another key economic factor is the cost of medical procedures as well as the legal fees associated with the drafting and review of contracts, parental rights agreements, and any necessary court processes in the country where surrogacy is offered, making surrogacy more attractive in certain regions (Ciccarelli and Beckman, 2005).

The economic viability of surrogacy is also affected by the legal and regulatory frameworks. In countries where surrogacy is contemplated by law, this industry may be enhanced, attracting international clients and generating significant economic activity (Smerdon, 2008).

Economic disparities between countries can drive 'reproductive tourism', where individuals from wealthier nations seek surrogacy services in lower-income countries where costs are lower. This creates an international market for surrogacy services (Gurtin and Inhorn, 2011).

Employment Opportunities is also a relevant economic factor related to surrogacy. In regions with limited employment opportunities, surrogacy can be an attractive option for women seeking to improve their economic situation. The compensation received can be used for major life improvements, such as pursuing education, housing, or starting a business (Pande, 2010).

6.1 Spain

6.1.1 Economic factors

Spain is a country with an authoritarian legacy (Moreno, 2001:3) whose welfare regime has later been classified as a 'Mediterranean welfare regime' (Ferrera, 1996). This categorisation is due to a familialist concept of care and social reproduction where in families, formed by heterosexual couples, the man is the breadwinner and the woman dedicates her time to providing care and housework (Ferrera, 1996). The mixed model that Moreno (2001) proposes, the 'via media', includes the universalisation of the health and education system (closer to the social-democratic model where there is strong general taxation funding), a conservative pension system and liberal lines of 'means testing' for the access to social benefits (Guillén and León, 2011:306).

After the death of dictator Franco in 1975, the strive for equality resulted in improved educational opportunities for women, and the conquest of reproductive rights, translating all of this into an increase in female participation in the labour market (Pérez Orozco, 2006). In addition, intending to comply with the objectives of the European Lisbon Strategy (2000), Spain began at the end of the 20th century to implement tools to boost female employment and thus create a better and more efficient economic development (Salido Cortés, 2015:278). In this way, the traditional breadwinner model transformed towards the dual-earner model, where care and domestic work remained predominantly undertaken by the woman of the couple (Montagut, 2000) and later potentially externalised to migrant women.

The Spanish economy in recent years has been strongly determined by the austerity policies imposed at the EU level as a consequence of the Eurozone crisis in 2008. Strict surveillance of national public expenditure by the EU translated into a retrenchment of the

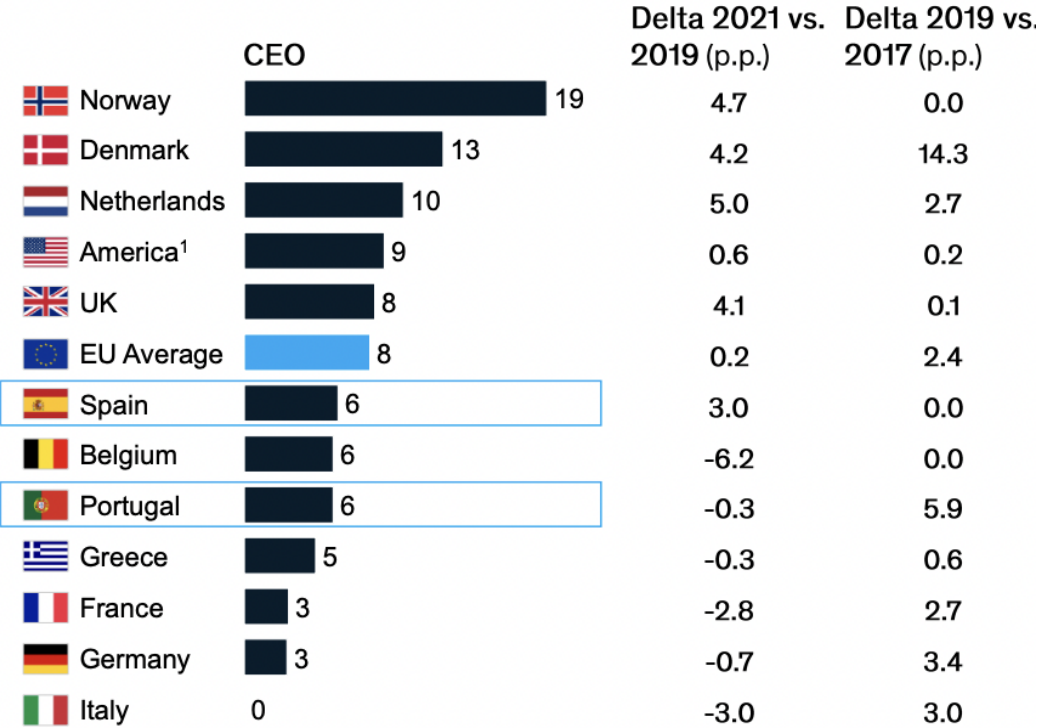
Spanish welfare state with budget cuts and major privatisations as well as the emergence of neoliberal policies enhancing labour market deregulation (Council of the European Union, 2012). Rajoy's conservative government since 2011, resulted in high unemployment rates reaching 26.94% in the first quarter of 2013 (Statista, 2023a). In addition, precarious jobs increased due to the 2012 labour reform that made dismissals more flexible and reduced permanent employment (González, 2021).

Unemployment mostly affected the male-dominated sectors, causing women to start participating in the labour market as 'additional workers' (Cebrián & Moreno 2018:48) to compensate for the lack of household income traditionally provided by men.

Women have performed up to 75% of part-time jobs in times of crisis, intending to maintain the household economy while making a bigger effort than their male partners to also keep family conciliation (Maroto Illera, 2012). According to Eurostat, in 2012, 24.6% of women compared to 7.1% of men earned income through part-time work (Eurostat, 2023).

On a positive note, in terms of parity in leadership positions in the corporate sector, Spain is very close to the desired European average. Figure 2 shows the percentage of female CEOs in Spain and some other EU countries in recent years. Even below the European average, Spain has a higher representation of women in top leadership positions than neighbouring countries such as France or Italy.

Figure 2: Women in corporate leadership positions in 2021 (%) and evolution compared to 2019 & 2017



Source: European Institute for Gender Equality in McKinsey & Company, 2023:12

In 2022, Spanish GDP per capita had a value of 36.22 (WEF, 2022:321). Despite the existence of a wage gap, the 2021 gender pay gap was 8.9%, meaning it has decreased by 11.6% since 2002 and is currently within the EU average (13%) (Eurostat, 2023).

Regarding parental leave, it is important to mention the reform introduced by the Royal Decree-Law 6/2019, *on urgent measures to guarantee equal treatment and opportunities for women and men in employment and occupation*, modifying the previous Organic Law 3/2007 *on the effective equality between women and men*. In the previous law, ten weeks of maternity leave could be transferred to the father. However, there were no 'real' incentives to do so (Lombardo, 2017:23). The 2019 reform aims to promote gender equality concerning childcare and working time outside and inside the home by guaranteeing each parent's individual entitlement to sixteen non-transferable weeks of parental leave, keeping 100% of their regular earnings (Koslowski et al., 2020).

Although, in recent years, there have been advances in the struggle against gender inequality in the economic sector, horizontal segregation persists in Spain. In the fields of

social, legal or humanities, 60% of the workers are women, while in the fields of engineering and architecture, women account for only 25% of the overall workforce (McKinsey & Company, 2023: 9). There is also vertical segregation where according to McKinsey & Company (2023:2), less than one-third of companies have women occupying more than 40% of their leadership positions.

6.1.2 Legal framework

In recent decades, surrogacy has aroused major ethical and legal controversy at the international level. While most European countries prohibit surrogacy in their commercial nature, very few actually contribute to the total abolition of this practice in their territory, as they do not impose restrictions on obtaining a surrogate child abroad and then registering its filiation in the intended parents' country of origin. (Cheney 2018b:158). This is the case of Spain, where surrogacy has been 'tolerated' by allowing the registration of minors born from this technique abroad and later transferred to Spain.

The first time surrogacy was contemplated in Spanish legislation was in Law 35/1988 *on assisted reproduction procedures*, which recognised the complexity, and ethical and legal controversy of this practice. According to Art. 10 of the aforementioned law, surrogacy contracts were declared null regardless of their commercial or altruistic nature. Consequently, only the woman who gave birth would be recognised as the baby's biological and legal mother.

In addition, Art. 221 of the Organic Law 10/1995, on the Criminal Code imposes a penalty of one to five years imprisonment for those who:

"with financial compensation, give a child, descendant or any minor to another person, even if there is no relationship of filiation or kinship, avoiding the legal procedures of guardianship, foster care or adoption, with the purpose of establishing a relationship analogous to that of filiation."

The offence also carries a disqualification period of four to ten years from exercising parental authority, guardianship, or custody.

Law 14/2006 *on assisted human reproduction techniques* reproduces again Art. 10 of the previous Law of 1988, declaring once again null any contract whose object is a surrogacy arrangement where the gestating woman relinquishes the parentage of the baby she will carry to term for a third person, with or without economic compensation.

According to Art. 10.2 of Law 35/1988, "the filiation of children born through surrogacy shall be determined at birth". Consequently, since an intended mother has not given birth to the baby, the legal parentage cannot be established. To protect the minors' best interest, Instruction of 05/10/2010 of the Directorate-General for Registries and Notaries, dictated the possibility of registering surrogacy-born babies as long as there is a judicial resolution issued by the competent court that recognises the legal parentage of the commissioning parents. This judicial resolution requires the infant's genetic link to at least one of the commissioning parents and the identification of the surrogate (who has previously relinquished the baby's parentage) through a medical certificate. Evidence of the surrogate's full consent to undergo surrogacy is also required, along with the respect of her procedural rights (Art. 3. c and d).

After providing the judicial resolution issued in the country of birth, the baby can be registered in the Consulate and thus obtain the necessary documents to travel to Spain (Muñiz, 2023). Law 26/2015, that modified Law 54/2007 on international adoption, stated in Art. 24 that adoptions in which the minor's best interest was not respected, or were carried out without consent or obtained through payment would be considered to violate Spanish public order. Nevertheless, since the surrogacy-born minor is already legally filiated to one of the intended parents, upon their arrival in Spain, if the other parent has not provided genetic material, they could initiate an adoption procedure (ibid.). It is crucial to note that under Art. 175 of the Civil Code of Spain (1889), some requirements to adopt would be being older than 25 years old and a minimum difference of 16 years and a maximum of 45 years between the adoptee and the adopter.

In 2014, the Supreme Court of Spain declined the recognition of surrogacy practices through judgment no. 247/2014. The judgment denied Civil Registry inscriptions for surrogacy cases on the grounds of Spanish public order, as it was considered incompatible with fundamental aspects of family relationships such as filiation, the person's dignity and respect for their moral integrity, along with the protection of children and pregnant women. In addition, the judgment stressed the risks derived from the commodification of babies born through this ART. However, four dissenting opinions were issued, pointing out the undermining of the child's best interest by jeopardising their legal parenthood. This contrasting position of the Supreme Court against what was established in the previous Instruction of 05/10/2010 of the Directorate-General for Registries and Notaries, unleashed great uncertainty.

In 2016 the doctrine was slightly unified through the Supreme Court judgments 25/10/2016 and 16/11/2016 in which, although surrogacy contracts remain void, the child's superior interest is protected by granting maternity social benefits to the

commissioning parents in the same way it would be granted for adoption and foster care. The judgments also stress the state's commitment to not only allow this bond but facilitate the children's appropriate integration into their commissioning families (Emakunde, 2018:37).

In this context, the ECtHR's Advisory Opinion (2019) and the Supreme Court of Spain's judgment 1153/2022 state that the minor's best interest must always prevail (Olympe Abogados, 2023) and that each particular case must be exhaustively addressed.

Even though surrogacy manages to exist within the Spanish legal vacuum, it remains highly criticised and condemned. According to the recent Organic Law 1/2023 which amends Organic Law 2/2010 *on sexual and reproductive health and termination of pregnancy*, surrogacy is recognised as a form of violence within the realm of women's sexual and reproductive health. Arts. 32 and 33 express the following:

"Gestation by surrogacy is a contract null and void, according to Law 14/2006, of 26 May, on assisted human reproduction techniques, whereby gestation is agreed, with or without price, at the expense of a woman who renounces maternal filiation in favour of the contracting party or a third party"; "the public administrations (...) shall urge the judicial action aimed at the declaration of unlawfulness of advertising that promotes commercial practices for gestation by substitution and its cessation" (Organic Law 1/2023).

In addition, Organic Law 1/2023 introduces in its third section the prohibition of advertising commercial surrogacy by intermediary agencies and the consequent penalties for non-compliance:

"The illegality of surrogacy established in Law 14/2006, of May 26, on assisted human reproduction techniques, is reinforced through the prohibition of advertising by intermediary agencies".

6.1.3 Socio-political factors: a polarised debate

Lombardo and Alonso (2020) stress the spatiality aspect when analysing the gender regime of a decentralised state like Spain. In this sense, multilevel governance is an important factor when conducting a comprehensive study of the domains comprising a state's gender regime.

The polity domain had a great impact on the economy domain during the crisis since many of the initiatives to promote gender equality created by local governments in different

regions of Spain could not be developed. This stagnation of the gender equality programmes happened due to a lack of funds provided by the conservative central government guided by EU austerity guidelines (Lombardo and Alonso, 2020:459). As a result, there was a decline in the progress made by the feminist movement, which had previously achieved an increasing political representation of women until shortly before the crisis (ibid.:458). Female representation in public office also decreased from 2011. In 2018, only 25% of women worked as councillors in the Central Bank, and there was 31% of female representation in the conservative party (PP) between 2011 and 2018 (Verge and Lombardo, 2018). In addition, the PP government established Law 27/2013, in which municipalities were exempted from creating and implementing their own initiatives to support gender equality.

Previous Law 3/2007 created by the socialist government (PSOE), introduced mandatory quotas for candidate lists. This way, left-wing parties managed to increase parity in the parliament, reaching 39.4% female representation in the 2015 general elections (Lombardo and Alonso, 2020:458). From this moment, a feminisation of politics could be observed with coalitions such as *Unidas Podemos* ('United We Can'), which unfortunately failed to notably increase gender equality in institutions (ibid.:459).

After the crisis, the institutions responsible for promoting gender equality followed different directions according to each region's political ideology. Galicia, Murcia or the capital followed neoliberal lines (Paleo and Alonso, 2014), while autonomous communities such as Andalusia or the Basque Country, with more consolidated feminist social movements and institutions, intended to foster a social democratic institutional approach. These regions aimed to support their equality mechanisms with equivalent levels of public funding as prior to the crisis (Alfama, 2017).

It should be noted that the greater or lesser attention to gender equality has always been dictated by the political ideology of the party in power at the time. The socialist PSOE government led by Zapatero achieved great advances before the crisis: Law 1/2004 on anti-gender-based violence, Law 13/2005 allowing same-sex marriage and Law 39/2006 on the provision of public care for dependants among them (Bustelo, 2014).

The great impact of the crisis and the consequent neoliberal austerity policies further destabilised the already precarious and feminised employment. In this context, feminist groups like *Las Kellys* or *Cuidadoras de Bizkaia* ('Carers from Bizkaia') mobilised against the consequences of the 2012 labour reform (Lombardo and Alonso, 2020:457). Furthermore, in 2018, the largest feminist demonstrations and strikes in the history of Spain (Requena Aguilar and Borraz, 2023), constituted a call to the institutional structure to include gender equality in all areas of life (Lombardo and Alonso, 2020:457).

The struggle and perseverance of the Spanish civil society has been crucial in maintaining a public gender regime despite the consequences of implementing EU austerity mechanisms (Lombardo, 2017:30). Conservative policies that dragged women back to the private sphere reflected a prominent “going back home” ideology during the crisis. However, feminist mobilizations in Spain have successfully resisted this regression and the shift from a public gender regime to a domestic gender regime (ibid.). Despite the harsh economic conditions and lack of employment, women have managed to stay in the labour market and make progress in the realm of reproductive rights such as the elimination of the 2014 anti-abortion law (ibid.).

In recent years, there has been rising attention towards surrogacy, resulting in a topic of significant public interest. Rodríguez Jaume et al. (2023:132) have published this year their analysis of Spanish civil society’s opinion on surrogacy. The study shows progressive de-stigmatisation in resorting to surrogacy as a method to become parents when facing infertility. Likewise, the study also reveals the increasing popularity of this practice among alternative family models, being “the homosexual collective 280% more likely than heterosexual population to accept surrogacy as an assisted reproduction technique” (ibid.:133).

This interest has led to the rise of associations such as *Son Nuestros Hijos* (‘They Are Our Children’), the first organised group in Spain dedicated to activism supporting surrogacy as a method to achieve individual’s ‘family projects’ (Son Nuestros Hijos, 2023). In addition, the Madrid LGBTQIA+ organisation *COGAM* initiated in 2016 a campaign to legalise surrogacy in Spain (AmecoPress, 2016). Also in 2016, *Grupo de Ética y Buena Práctica de la Sociedad Española de Fertilidad* (‘Group of Ethics and Good Practice of the Spanish Fertility Society’) published a proposal outlining the general basis for the regulation of surrogacy in Spain. A year later, the *Association for Surrogacy in Spain* promoted a Popular Legislative Initiative to regulate the practice, and the parliamentary group *Ciudadanos* registered their Proposition of Law advocating for a right to surrogacy as “new forms of expression of citizen’s freedom” (Emakunde, 2018:38).

While there have been attempts to regulate and legalise surrogacy in Spain, there have also been counter-movements to denounce the commercialisation of the female body and express rejection for potential regulating laws. Some of the opposing organisations are *Stop Vientres de Alquiler* (‘Stop Wombs for Rent’), *Red Estatal Contra Vientres de Alquiler* (‘National Network Against Surrogacy’) and the *Federación de Mujeres Progresistas* (‘Progressive Women’s Federation’) (Emakunde, 2018:74). However, the most influencing association is *No Somos Vasijas* (‘We Are Not Vessels’), a platform initiated by Spanish women philosophers and constitutionalists. This organisation, along with *The European*

Women's Lobby, has joined the international campaign 'Stop Surrogacy Now' (Mujeres en Red, 2015). In its manifesto, *No Somos Vasijas* declares that:

"the desire to be parents and the exercise of freedom does not imply any right to have children. Therefore, we show our absolute rejection towards using women's wombs for the purpose of gestation for others"
(No Somos Vasijas, 2015).

The manifesto also highlights several notable points, including: the defence of women's free choice in matters of sexual and reproductive rights, as well as the non-inclusion of the human body's integrity in contracts and market forces. Surrogacy is also denounced as a form of sexual control of women in modern societies and it is compared to prostitution or abortion, establishing a parallelism with the practices of control in traditional societies like arranged marriages or dowry payment. The argument of altruistic surrogacy is also criticised as it silences the massive practice of commercial surrogacy and no regulation could control and avoid the real coercion exerted on the surrogates (ibid.).

6.2 Ukraine

6.2.1 Economic factors

Ukraine, Belarus, Estonia, Latvia, Lithuania and Russia are former USSR states that have historically encouraged women's work in manufacturing and activism in the party. The Ukrainian post-communist welfare system is characterised by a significant female presence in the labour force, a large public sector and high levels of inflation (Fenger, 2007:15). Fenger (ibid.) categorises this welfare system as 'type IV', as it does not correspond to any of the models proposed by Esping-Andersen (1990): Conservative, Liberal or Social Democratic.

In the last decade, difficult economic conditions in Ukraine, such as high unemployment rates, low wages and inadequate social security benefits, have forced many women to seek employment opportunities abroad (Dzholos and Koshulko, 2022:53). Since 1990 and once Ukraine became independent from the Soviet Union, the Ukrainian population started massively migrating to other countries to escape the harsh and precarious living conditions (Brunarska et al., 2016:115-116). The primary destination for this migration flow was Poland, where Ukrainians constitute the most numerous nationality among migrant caregivers employed in private households in the country (Safuta, 2017 in Rothgang et al., 2021:14). The number of migrants also grew after Kyiv's anti-government

protests in 2013 and remained steady since the beginning of the war in eastern Ukraine in 2014 (Rothgang et al., 2021:15).

The Ukrainian gender regime continues to be strongly influenced by its Soviet past (Tarkhanova, 2015:3). The gendered notion of 'womanhood' enmeshed in the institutional structure and thus in state welfare policies, reduces women's interests to the interests of children, referring to the role of women as 'nurturing mothers' (ibid.:2). Prior to Ukraine's post-socialist transformation, in addition to women's representation of a maternal figure, there was also a strong sense of the 'working mother' (ibid.:3). This concept placed an expectation on women to combine domestic work and care for dependents, and their employment outside the home. The balance between both types of work was possible by securing women's jobs while providing them state-subsidised services, health care, benefits for working mothers and child care assistance (Zhurzhenko, 2001:36).

Ukraine has undergone a major transformation since 1991, which changed the planned economy of the Soviet regime to a market economy and democratic institutions. However, this transformation failed to sustain favourable GDP growth (Brik and Obrizan, 2023:4), reaching only 3.35% in 2021 (Statista, 2023b). With the post-socialist economic reform, the state experienced a decline in its financial and ideological influence (Zhurzhenko, 2001:36).

The lack of welfare state support resulted in the re-traditionalisation of the nuclear male breadwinner model (Solari, 2017:29-30), where the traditional gender order was drawn upon to justify women's 'obligation' of "full-time employment and full-time caring" (Tarkhanova, 2015:3). The weakening of the social welfare system, the rising expenses for social services, the declining quality of healthcare and the marketisation of education led to women's overburdening with responsibilities previously assumed by the government (Zhurzhenko, 2001:37). According to the State Statistics Service of Ukraine, the female employment rate fell from 58% in 2010 to 44% in 2020 (Brik and Obrizan, 2023:5-6). This decrease was influenced by various factors, including the effects of COVID-19 and the strict lockdowns imposed in feminised employment sectors (ibid.).

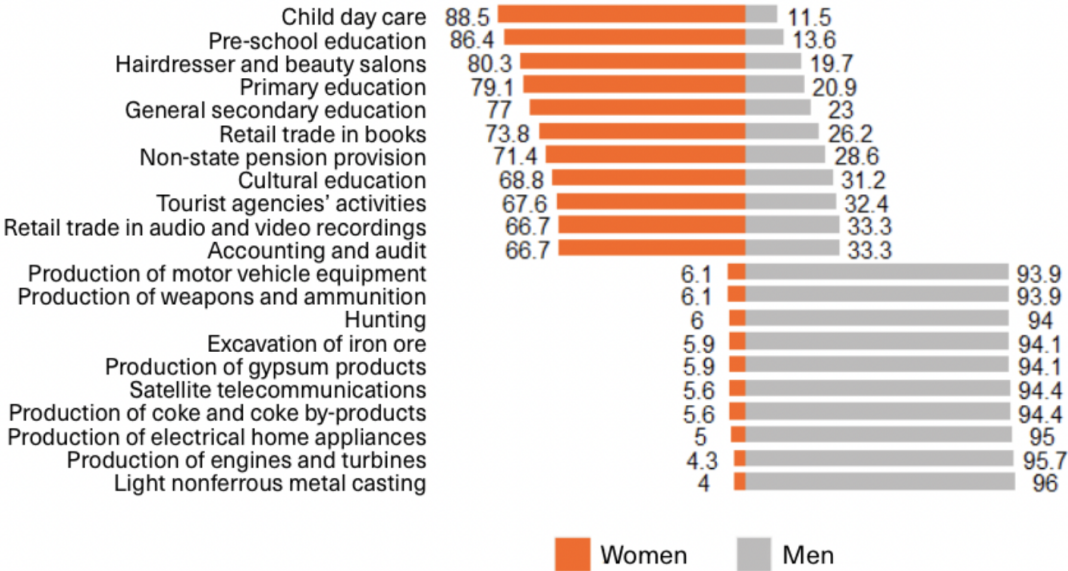
Women spend an average of 29 hours doing housework, whereas men spend only 15 hours (Hanso, 2022). This highly unequal distribution of housework between genders results in women sacrificing their time doing domestic chores instead of activities that contribute to their educational progress, hobbies or self-fulfilment (Yaroshenko et al., 2021). The Soviet legacy of encouraging women's participation in the labour market exists to this day (Zhurzhenko, 2001:37). However, the time spent on housework translates into gender segregation in the labour market in which men occupy more renowned and better-paid positions and their female counterparts are often employed in auxiliary roles in the

public sector, where there is low investment in female human capital (Klemparskyi et al., 2022:154).

Employers fear that especially young women may become pregnant. Consequently, they are assigned support tasks that offer significantly lower salaries (Malysh, 2018). Since it is difficult for women to achieve a high level of income, it will be complicated for them to invest in creating new businesses or self-employment (Onishchik et al., 2020).

Figure 3 illustrates how even when women hold management positions, this occurs more frequently in low-paid fields such as child daycare and education.

Figure 3: Number of women and men in management positions per sector, in %



Source: Tkachenko, 2021 (SSSU data)

Gender stereotypes have a notable impact during job applications, as employers consider factors such as 'good looks' or age range when hiring women. Therefore, female applicants have significantly lower chances of obtaining a job that male candidates have applied for (Klemparskyi et al., 2022:147). The Ukrainian feminist activist Maryna Shevtsova states:

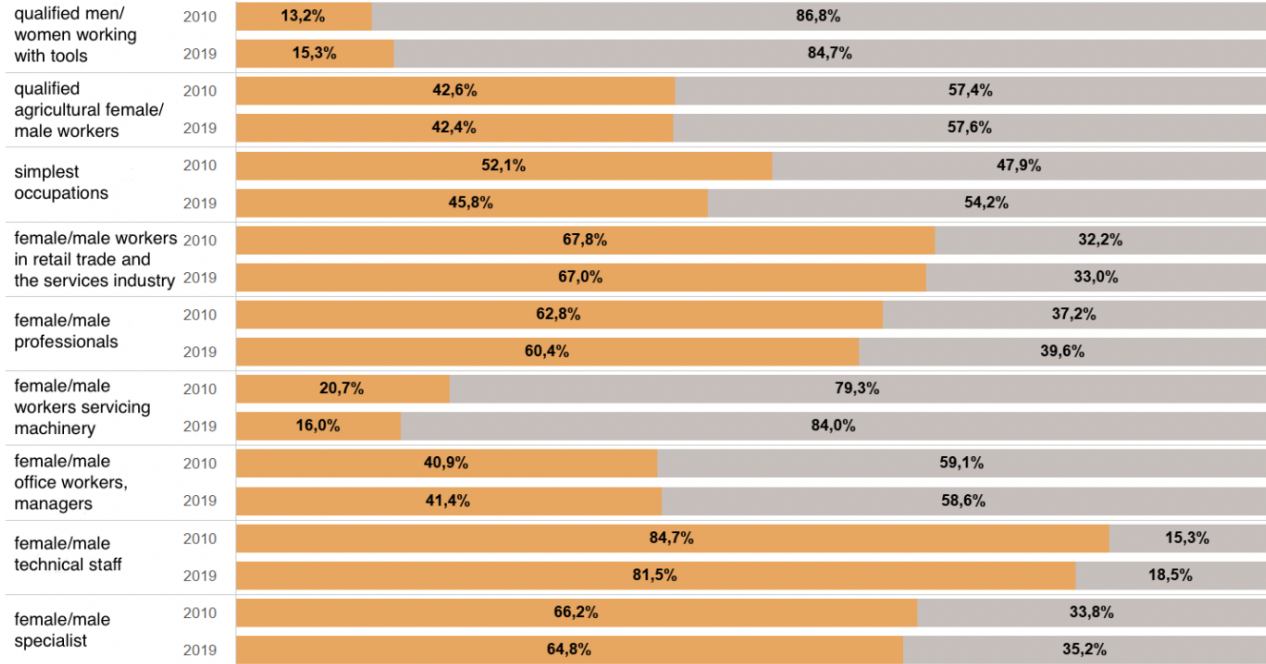
"Your appearance could be questioned during a job interview, you could be made to sign a paper that you would not get pregnant while working for the company, and it was a quite common practice to pay women much less than men, with the justification that a man needs to provide for a family, while a woman can always find a man to help her financially" (Hanso, 2022).

This focus on physical appearance translates into accentuated gender discrimination in hiring, work placement and professional development (Chepurko, 2010:30). As a result, the devaluation of women’s skills, educational level and qualification potential has led to a labour market characterised by great inefficiency and women’s precarious work (Klemparskyi et al., 2022:141, 154). In contrast, male entrepreneurship engaged in the redistribution of state property in the last years of the economic transition has evolved to men occupying positions of higher prestige in the present (Zhurzhenko, 2001: 37).

Order no. 256 (1993) of the Ministry of Health established a list of up to 500 job categories that presented “harmful, hazardous or hard working conditions” (Euromaidan Press, 2017). Prior to the abolition of the aforementioned Order in 2017, Art. 10 of the Law on Occupational Safety prohibited women from taking up those jobs (Chepurko, 2010:34), thus causing occupational segregation (Klemparskyi et al., 2022:146).

Figure 4 shows how the proportion of workers by occupation type has not significantly changed between 2010 and 2019:

Figure 4: Proportion of employees (female in orange and male in grey colour) by occupation type, comparison between 2010 and 2019, in %

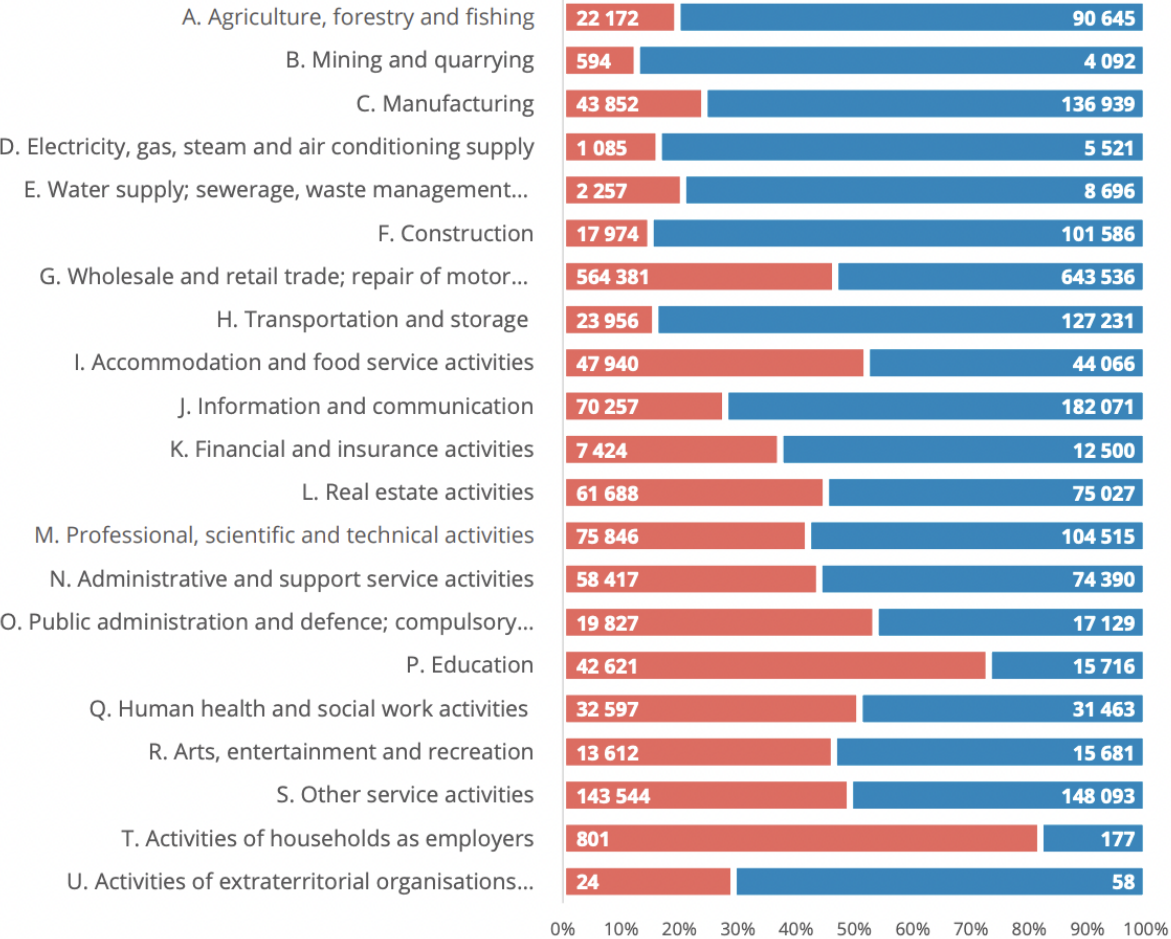


Source: Tkachenko, 2021 (SSSU data)

In addition, Figure 5 shows that the categories “Accommodation and Food Service Activities”, “Public Administration and Defence”, “Human Health and Social Work

Activities”, and above all, “Education” and “Household Activities as Employers” display the highest presence of female workers.

Figure 5: Ratio of men and women by NACE sections (classification of economic activities in the European Union), 2020



Source: Ukrainian Center for Social Data, 2021:24

Ukraine has managed to considerably increase the percentage of female managers and self-employed entrepreneurs (Ukrainian Center for Social Data, 2021). This upward trend is reflected in the Gender Gap Report (WEF, 2023), as there has been a major increase in firms with female top managers in the last few years, reaching a value of 17.70% in 2023. Although the percentage of women in managerial roles has increased, top leadership positions are still mostly occupied by men, whereby the Ukrainian economy is characterised not only by horizontal segregation, as seen above, but also vertical segregation.

In 2022, Ukraine's GDP per capita stood at 12.38 (WEF, 2022:347). It is also crucial to recognise the substantial wage gap of 18.6% between male and female workers compared to the EU average of 13% (ILO, 2023).

Concerning parental leave, the Ukrainian government grants women a maximum of 18 weeks while entitled to 100% of their salaries. This period includes a requirement for 70 days to be taken before the expected date of delivery and 56 days after childbirth (Papaya Global, 2023). However, there is no paid parental leave for fathers, who can take up to two weeks of unpaid leave during or after their partners' maternity leave period has concluded (ibid.).

The minimum monthly wage in Ukraine as of May 2023 is UAH 6.700 (€166) (CEIC, 2023) and the average price of surrogacy is \$37,000 (Aznar and Peris, 2019:59). In the described economic context, it is not surprising that undergoing surrogacy is highly attractive for single, divorced or married women who wish to gain economic independence, especially if they have children or their husbands do not contribute to the family economy, earn a low salary or exercise domestic violence (Vlasenko, 2021:48; Dzholos and Koshulko, 2022:54).

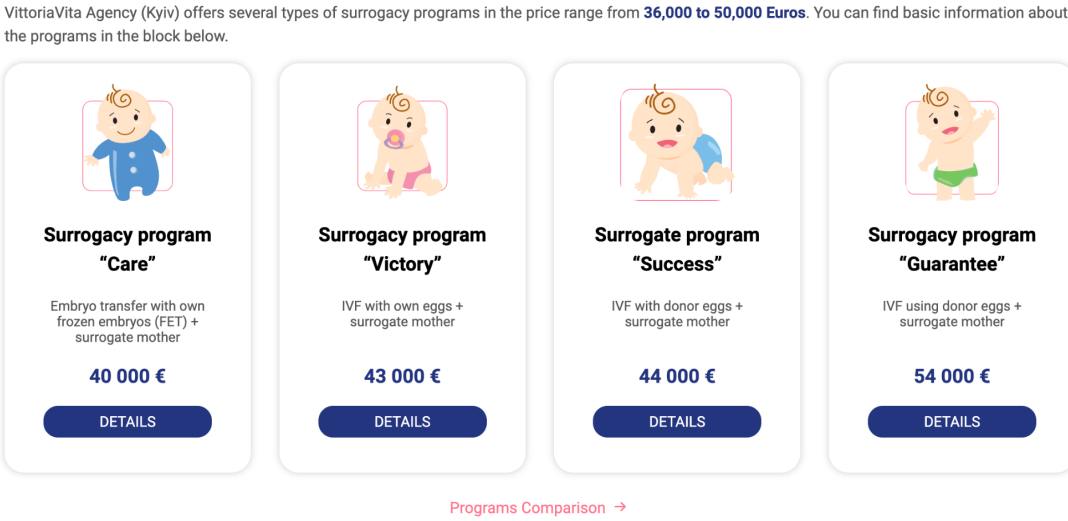
While surrogacy can be a practice where women may be well informed and autonomously consent to gestate for other individuals, structural economic pressures should not be underestimated (Ber, 2000). This is further elaborated by Vlasenko, who investigated that 88% of the surrogate mothers who agreed to be interviewed stated that their primary motivation for becoming egg donors or surrogate mothers was solely financial (Vlasenko, 2021:42). In contrast, Susan Kersch-Kibler, founder of the Delivering Dreams International Surrogacy Agency, describes how although monetary compensation certainly plays a significant role, the surrogates are also driven by a desire to make a meaningful impact on the lives of others (Kersch-Kibler, 2022:8).

Kersch-Kibler (2023) also claims that surrogacy candidates are carefully selected following strict requirements: being a Ukrainian citizen, not being older than a certain age (which may vary depending on the agency), having given birth to a healthy child previously and absence of chronic illnesses that could affect the pregnancy among others (VittoriaVita, 2023). Furthermore, applicants are encouraged to seek independent legal counsel and consult experienced surrogates to ensure their understanding of the process prior to signing the surrogacy contract (Kersch-Kibler, 2023:8).

Ukrainian renowned surrogacy clinics establish different plans and prices for each service. BioTexCom clinic in Kyiv offers a 'Standard' plan for €39.000 with a waiting time up to a year, a 'Standard plus' plan for €49.000 with an unlimited number of attempts and a waiting time up to 6 months and a 'VIP' plan for €64.000 with an unlimited number of

attempts and a reduced waiting time of up to 4 months (Biotexcom, 2023). VittoriaVita (2023), another well-known clinic, provides information on the 'Care', 'Victory', 'Success' and 'Guarantee' programmes (Figure 6) and offers a plan comparator that provides information on the additional features or benefits of choosing a higher-priced programme: personalised legal assistance, preparation of travel documents and possible extra payment for a necessary abortion or caesarean section among others.

Figure 6: Overview of VittoriaVita surrogacy services



Source: "Our programs", VittoriaVita website, 2023

6.2.2 Legal framework

Commercial surrogacy has been legally recognised and permitted in Ukraine since 2002. Both the Family Code of Ukraine (2002) and subsequent laws not only do not prohibit financial compensation to the surrogate mother but also appeal to the principle of contractual freedom whereby the parties involved may freely stipulate the amount in accordance with Ukrainian civil legislation, customary business practices and the principles of justice and rationality (Lamm, 2013:178; Puhach, 2018:70).

Surrogacy in Ukraine is seen as a popular way of "treating infertility" (Horobets and Yakushchenko, 2022:59), as Art. 281.7 of the Ukrainian Civil Code (2003) guarantees the right of any adult to undergo ART programmes based on medical indication, following the specified procedure and conditions set by the law. From this legal precept it can be understood that the minor's legal parenthood will belong to those persons with whom the child is biologically related (Puhach 2018:70).

Order no. 787 *on Approval of the Instruction on the Use of Assisted Reproductive Technologies* (2013), issued by the Ministry of Health of Ukraine, establishes the requirement that a health condition such as the absence of uterus, deformities in the uterine cavity or severe somatic diseases must be medically proved in order to undergo a surrogacy process. This Order restricts the practice to its gestational form (the surrogate and the baby do not share any genetic connection) and establishes operational guidelines like the surrogate must give written consent, be in good health conditions and have at least one child of her own (Porrúa Perea, 2022:29).

Besides, paragraph 1 of Art. 123 of the Family Code of Ukraine *on establishment of maternal and paternal filiation in case of medically assisted procreation and implantation of eggs* stipulates that "if the wife is fertilised by artificial procreation techniques upon written consent of her husband, the latter is registered as the father of the child born by his wife". Paragraph 2 states that "if an ovum conceived by the spouses is implanted to another woman, the spouses shall be the parents of the child", whereby it is not necessary to initiate an adoption procedure to acquire the legal parenthood of the surrogacy-born minor. Finally, paragraph 3 indicates that "whenever an ovum conceived by the husband with another woman is implanted to his wife, the child is considered to be affiliated to the spouses".

According to Art. 123 of the Family Code of Ukraine, commissioning parents must be married (referred to as "spouses"). However, same-sex marriage is not legally recognised in the country. As a result, the Ukrainian Parliament decided to issue an amendment (no. 3760-VI) to Art. 123.2 of the Family Code, by which it was specified that the parents must be a man and a woman.

In addition, Art. 139.2 of the Family Code, prevents the pregnant woman from contesting the minor's legal parentage when there is an effective genetic link with the intended parents:

"A woman who claims to be the child's mother may bring an action against the woman registered as the child's mother to establish her maternal affiliation. Contesting maternal affiliation is not allowed in cases set forth in Article 123, paragraphs 2 and 3, of the present Code".

Surrogacy-born infants must be registered in accordance with Law no. 2673 *on State Registration of Acts of Civil Status* and Order no. 52/5 issued by the Ministry of Justice *on Approval of the Rules for State Registration of Acts of Civil Status in Ukraine*. For this purpose, the intended parents must proactively request the registration by providing a certificate that confirms the baby's genetic link to at least one of the two commissioning parents (paragraph 11, section 1, chapter III of Law no. 52/5). Additionally,

the surrogate must consent for the intended parents to be registered as the baby's biological parents (Horobets and Yakushchenko, 2022:60). The failure to relinquish the newborn's parentage could have detrimental judicial consequences for the surrogate (Emakunde, 2018:25).

6.2.3 Socio-political factors: from a demographic crisis to renting wombs

The postwar era initiated a highly politicised 'demographic crisis' that condemned women who 'selfishly' wished to prioritise their professional development and personal growth instead of getting pregnant and forming a family (Zhurzhenko, 2012:131-132).

Mass emigration to other countries, coupled with the continuation of the demographic crisis in the 2000s, made the Ukrainian government attempt to 'revive the nation' by reemphasising traditional values such as the "socially stable, spiritually and physically healthy, family with two or more children" (Tarkhanova, 2015:10). Since the main goal was to increase the fertility rate, women's reproductive role became very present in the political discourse and embedded in legal texts, and welfare policies quickly set their focus on the care and protection of childhood (ibid.:17).

The pro-natalist intervention had been happening since the early 90s with the governmental aim to 'revive the nation' through a state endowment consisting of a one-time payment per born child regardless of the employment status of their parents (Tarkhanova, 2015:20). This revival of the nation was intended through the 'repopulation' programme "Towards people" promoted by the Cabinet of Ministers in 2005 (ibid.:9), where women were attributed the responsibility for the 'nation-building' project (ibid.:17).

According to Transparency International (2023), Ukraine's corruption index has been growing since 2012, reaching a score of 33/100 (0 corresponds to the highest corruption level) in 2023. This prominent political corruption also affected the 'repopulation' programme, with allegations of corrupt practices emerging in 2005 during the Orange Revolution. As a result, restricted criteria were implemented for receiving the one-time payment per born child (Zhurzhenko, 2012:141).

Paradoxically, this attention and praise of motherhood and family life erected women as the nation's symbolic representation while distancing them from actual political participation (Tarkhanova, 2015:4). These tensions between mothering and simultaneously contributing to the household's income are enclosed in the previously explained concept of the 'working mother' (Tarkhanova, 2015:17).

The development of the market economy caused the destruction of socialist social programmes and severely undermined employment rights, especially for female workers (Klenner and Leiber, 2009). However, despite the appalling economic crisis, no notable feminist movements emerged in Ukraine to challenge and fight against traditional gender roles (Watson, 1997). Interestingly, the liberalisation of the market did not change the pre-independence Ukrainian model conformed to traditional gender roles (Klenner and Leiber, 2009). Instead, it generated new gender inequalities that appeared as “natural”, biologically justified by the marketization discourse and not attributed to market dynamics (Zhurzhenko, 2001:31).

Although a segment of Ukrainian society stigmatises surrogacy for degrading the traditional bond between parents and their offspring (Vlasenko, 2021:67), it is an increasingly common practice through which many women can financially support their families (Hanso, 2022). Thus, the commercialisation of gestation has become a common form of generating income within a socio-economic context that compels women to undertake certain medical risks in order to sustain life.

The collapse of the Soviet Union brought unemployment and poverty, which made women eager to become (low-paid) sex workers or even find work abroad, often falling into human trafficking networks that the corrupt system itself (police and other officials) has organised (Hughes and Denisova, 2001:45.). Interestingly, women who have donated eggs or have undergone surrogacy criticise sex workers and consider that in comparison, gestating for other individuals is an ‘honest and respectful job’ (Vlasenko, 2021:74).

Many women openly state that surrogacy has been motivated by strong economic necessity, yet many other women qualify it as ‘helping’ others and a means to empower themselves (Hanso, 2022). However, regardless of the moral precepts that may lead a person to support or reject this practice, the strong unfavourable conditions under which surrogacy processes are carried out in Ukraine should not be underestimated. In some cases, the commissioning parents ‘collect’ the baby after delivery without any face-to-face contact or gesture of gratitude to the surrogate (Kersch-Kibler, 2023:10). Kersch-Kibler (ibid.) also recalls a case where the premature arrival of a set of intended parents in the country forced the surrogate to give birth earlier than expected, disregarding the health professionals’ advice.

In Report A/HRC/37/60 (2018), the NGO La Strada-Ukraine states that exploitative practices and human trafficking may likely occur in countries with developing economies like Ukraine, where surrogacy is provided in the law but fails to regulate crucial aspects concerning the rights and consequences for the parties involved (La Strada-Ukraine

2020:2). In its Comments on the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration, La Strada-Ukraine adds:

"...the reproductive agencies and international commercial surrogacy networks frequently recruit surrogate mothers who are vulnerable to exploitation due to poverty, powerlessness, a lack of education, and multiple forms of discrimination. With national laws on surrogacy varying from state to state from prohibitionist to permissive or non-existent and the lack of international standards on the issue of surrogate motherhood, the trafficking for exploitation in abusive surrogacy practices, which ultimately may amount to the sale of children, is becoming a great concern which needs particular attention"
(La Strada-Ukraine, 2020:1).

Under the slogan 'Parenthood is not a right!', the feminist activist group FEMEN has also condemned surrogacy, especially addressing Spanish intended parents who have found in Ukraine the 'incubators' to serve their personal desire to become parents (FEMEN, 2020).

In this complex context, the potential influence of civil society organisations in implementing anti-trafficking strategies would be fundamental (La Strada-Ukraine, 2020:2). Yet, very little interest has been shown by both reproductive agencies and civil society itself in addressing the state's responsibility to improve the conditions surrounding surrogacy processes. The reason for this lack of action can be attributed to the risk of potential restrictions or even a total ban on the surrogacy industry (Hanso, 2022). Since some engagement with the authorities has been initiated through various proposals; yet, without the participation of leading stakeholders and specialised professionals on the matter, it is not possible to know what direction the different initiatives would take (ibid.).

7. Discussion

7.1 Gender regimes comparison

After exposing the economic and socio-political context of Spanish and Ukrainian women, we can observe similarities and, more significantly, differences in the level of gender inequality existing in the two countries.

Until the death of dictator Franco, Spain had a domestic gender regime marked by a lack of democratic participation, the relegation of women to the domestic sphere and no state regulation of gender-based violence. Years later, Spain shows the blossoming of a

public gender regime with the socialist government prior to the European debt crisis. This transformation led to greater representation and stabilisation of women in the political sphere as well as a special interest in combating gender-based violence and enhancing the presence of women in the labour market.

However, since 2010, the economy domain has been strongly marked by the hegemonic influence of the EU. As a result, the central government's approach to deregulation and recentralisation has shifted towards a more neoliberal gender regime. Austerity policies combined with the right-wing party ruling since 2011 generated not only a retrenchment of the welfare system but a backlash against gender-equality programs and institutions.

Conservative policies emanating from the central government between 2011 and 2018 faced opposition from a substantial portion of civil society. This resistance to "going back home" has been possible thanks to a strong feminist movement that fought against an even stronger precarisation of feminised labour, the anti-abortion law and a general regression of gender equality.

In addition, we have observed a polarisation in terms of reproductive rights in the field of surrogacy. The enhanced protection of LGBTQIA+ rights in Spain has resulted in a heightened demand for surrogacy services beyond national borders. Nowadays, both heterosexual and homosexual couples with financial capacity resort to commercial surrogacy to form a family. Consequently, despite the existence of a solid anti-surrogacy network, the last decade has shown a notable inclusion of the matter in parliamentary debates with legislative proposals to regulate and permit the practice.

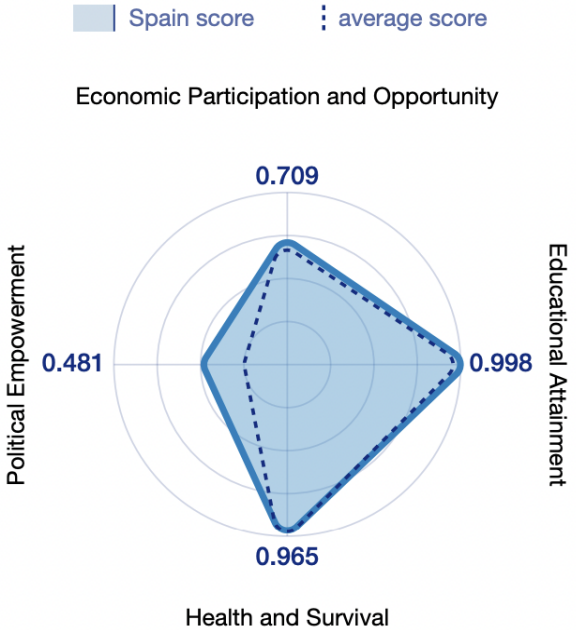
The empirical analysis conducted on Ukraine shows a very particular gender regime. On the one hand, it is crucial to take into account the country's Soviet past, which historically encouraged female participation in the labour market and, at the same time, promoted welfare state policies that encouraged women to have children and equally devote their time between 'caring' and full-time employment outside the home.

Ukraine's independence ushered in a market economy, giving rise to neoliberal policies that cut back on the social benefits that households had been receiving for the care of dependents. As a result, there was a conservative regression that resulted in a re-traditionalisation of the breadwinner model. This arrangement of the economic, political and social spheres could be equated to the neoliberal model proposed by Walby (2020). However, in my opinion, it is more appropriate to categorise the Ukrainian model as 'neopatriarchal' (Moghadam, 2020) due to a conservative family law, highly segregated presence of women in the labour market, absence of women in the judiciary structure and limited feminist activism among civil society.

The Global Gender Gap report of the World Economic Forum (2022) present Spain's and Ukraine's gender gaps according to four variables: Economic Participation and Opportunity, Educational Attainment, Health and Survival and Political Empowerment.

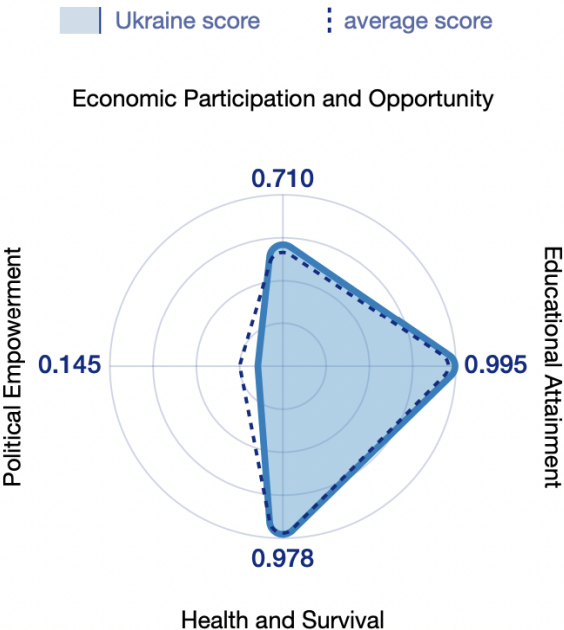
Figures 7 and 8 show that both countries present similar patterns regarding the first three indexes described. However, there is a big difference in Political Empowerment, which has a value of 0.481 in Spain and 0.145 in Ukraine.

Figure 7: Global Gender Gap Index 2022 Edition: Spain



Source: World Economic Forum. Global Gender Gap Report, 2022:320.

Figure 8: Global Gender Gap Index 2022 Edition: Ukraine



Source: World Economic Forum. Global Gender Gap Report, 2022:346

Simultaneously, political empowerment represents one of the most decisive factors influencing the parity score of both countries: 0.788 for Spain and 0.707 for Ukraine, occupying respectively the 17th and 81st positions in the ranking out of 148 countries analysed in the report.

As described in previous sections, women’s political participation in Ukraine is very low. The Spanish transition to democracy in 1978 included reforms that significantly improved women's political participation (Threlfall, 1985). While female suffrage existed in Ukraine since 1918, the authoritarian Soviet political environment often limited genuine democratic participation. The transition to an independent Ukraine in 1991 also faced significant political and economic challenges (Kubijovyč, 1993).

Moreover, Spain has implemented various gender quotas and legislative measures to enhance female political representation, such as the Organic Law 3/2007. Conversely, gender quotas were first introduced in the Ukrainian parliament in 2013 and not on a mandatory basis, but with the incentive that those political parties adopting quotas would receive extra funding for it. It was not until 2020, with the implementation of the new Electoral Code, that mandatory quotas were enforced (Sokolova, 2020). As for the number

of women in parliament, the Global Gender Gap report scores 0.754 for Spain (WEF 2022:320) and by contrast only 0.255 for Ukraine (ibid.:346).

In the comparison between welfare regimes, both countries come from authoritarian legacies that have perpetuated laws reducing women to their "caring duties". However, Spain has evolved more rapidly towards the dual-earner model that outsources care work to third persons. It is also interesting to see how despite the fact that in both countries there are more women than men pursuing tertiary education (WEF 2022:320, 346), there is still a less favourable employment situation (unemployment rate, precarious conditions, managerial positions) for women in Spain and especially in Ukraine. Based on this result, it can be deduced that pronounced gender roles in Ukraine still have a great impact on women's professional prospects.

Both states exhibit a considerable predominance of men in managerial roles. Although the subindex "Firms with female top managers" (WEF, 2023) shows a higher value for Ukraine (17.70) than for Spain (17.60), Ukraine faces a higher level of horizontal and vertical segregation than Spain. Women's participation in the labour market is high in both countries, but the wage gap is much higher in Ukraine, thus leading to widespread poverty among women.

Another important aspect is the 'civil and political freedom' indicator of the Gender Gap Report (2022), which shows that, unlike Spain, there are no party membership quotas in Ukraine. This could be detrimental to the development of enriching parliamentary discussions on topics around the emancipation of women in the political, social and economic spheres.

Table 2 aims to provide a summary and enhance the reader's understanding of the empirical analysis conducted in the previous chapter:

Table 2: Overview of Spain and Ukraine’s gender regime and legal framework concerning surrogacy

	Spain	Ukraine
Economy domain	Precariousness accentuated by the Eurozone crisis until 2017	High level of precariousness due to post-socialist transformation
	High female participation in the labour market. Certain degree of horizontal and vertical segregation	High female participation in the labour market. Substantial level of horizontal and vertical segregation. Gender-based discrimination during job application processes
	Wage gap within the EU average (8.9%)	High wage gap (18.6%)
	Individuals outsourcing care work and biological reproduction based on their financial capabilities. Increasing widespread practice among heterosexual and homosexual couples	Women undergoing surrogacy in order to maintain livelihood
Polity domain	Increasing female representation, variable depending on the government’s ideology. Quotas in candidate lists	Increasing representation. No quotas in candidates lists
Civil Society domain	Significant level of feminist activism	No considerable level of feminist activism
Legal framework	Prohibitive but legal vacuum when registering surrogacy-born minors in Spain. The Supreme Court of Spain condemns the commercialisation of women’s bodies and babies born from this practice but prioritises the child’s best interest to be integrated into a family	Permissive but no exhaustive regulation of the rights of the parties involved, neither the consequences for surrogates arising from complications during pregnancy, childbirth or legal proceedings

Source: own elaboration based on the data provided in previous sections 6.1. and 6.2.

7.2 Surrogacy-based exchange relationship between Spain and Ukraine

Commercial surrogacy has experienced growing popularity since the 80s. The Ukrainian socialist transition to liberal economies and the expansion of 'reproductive tourism' under global capitalism has led women to perceive surrogacy as a desirable form of employment. Under stereotypical notions of femininity, surrogates resort to the 'gift giving' narrative as an ethical justification for their economic motivations. Ukrainian surrogates give birth to more than 2,000 babies per year, there are approximately 50 reproductive clinics in the country (Hegarty & Layhe, 2022) and Ukraine accounts for a quarter of the \$6 billion global surrogacy industry (Kersch-Kibler, 2022).

The Spanish demand for surrogacy occurs primarily among heterosexual couples and to a slightly lesser extent by male homosexual couples. (Moreno Beltrán, 2018:9). Spanish commissioning parents choose surrogacy destinations according to criteria of medical conditions and the legal security in which the process develops (ibid.:19). The most chosen destination is the USA (43.7%), where surrogacy processes can cost over €100.000, and there is no restriction on the intended parents' marital status or sexual orientation (RTVE, 2023). The second most preferred destination is Ukraine (43.2%) (ibid.), where surrogacy can be arranged from €35.000. Although Ukraine is a very attractive country due to its proximity, the social desired 'whiteness' of its population, the affordability of the procedure and its legality under Ukrainian family law, the Spanish government has advised against resorting to this country to contract surrogacy services alleging legal uncertainty and medical malpractice (Ministry of Foreign Affairs, European Union and Cooperation, 2020).

At a medical level, surrogates are exposed to obstetric violence: induced early deliveries, caesarean sections, lack of skin-to-skin contact after birth and even induction of abortions so that agencies generate a higher profit for the cost of a new insemination (García Orta, 2019:3). The Spanish embassy in Kyiv also warned in 2019 of fraud and deception by Ukrainian clinics as well as irregularities in the process and trafficking of minors (ibid.:4). Concerning the legal situation, in recent years the Spanish consulate in Kyiv had been registering about 10 surrogacy-born minors a year, a number that rose to 300 in 2018 (Fernández Echeagaray, 2020:186). Until then, the registration of minors was carried out through a DNA test proving their legal parentage to the intended parents but this method was no longer possible after the EU Regulation 2016/679 on General Data Protection came into force (ibid.:187).

Since Ukraine contemplates surrogacy in its own Family Code, surrogacy arrangements do not require any judicial intervention. Ukraine did not issue judicial

resolutions proving the genetic connection between the intended parents and the newborns, a key requirement for registering minors in Spain according to the Instruction of 05/10/2010 of the Directorate-General for Registries and Notaries. Therefore, without the possibility to verify legal parentage, the Spanish government began reviewing individual cases. As a result, some families were indicated to obtain an Ukrainian passport for their children to travel to Spain but not all minors could be registered and therefore obliged to remain in the country (Fernández Echeagaray, 2020:185). This is a clear example that a mismatch in the attribution of legal parenthood between two national regulations can give rise to legal uncertainty. While in Ukraine, the intended mother is automatically recognised as the legal mother (the surrogate has previously relinquished parenthood in the initial contract), in the Spanish jurisdiction, filiation is determined based on parturition.

The economic, social, and political factors examined confirm the hypotheses formulated at the beginning of this paper. There is an economic, social and political hierarchy in which different degrees of gender equality constitute a determining factor in the surrogacy-based exchange relationship between the countries. The underdeveloped economy and high degree of gender inequality in Ukraine make this state a main provider of surrogacy services. In contrast, Spain has better economic prospects and a lower level of gender inequality. In this context, more and more heterosexual married couples have been demanding surrogacy services in Ukraine.

8. Concluding remarks

Over the past 35 years, there has been an increasing flow of domestic workers migrating to other countries to perform care work in private households or institutions. In addition to this care outsource trend, the demand for reproductive services has become a reality.

The incorporation of women into the labour market in more developed countries constitutes a form of feminist progress, which in turn, results in the outsourcing of care to other migrant women from more disadvantaged contexts. In this sense, some women are considered more valuable than others. Global Care Chains perpetuate the socio-economic burden that women carry, increasing not only gender inequality but also discrimination based on race or social class. In recent years, the externalisation of social reproduction has taken a further step towards the externalisation of biological reproduction through Global Fertility Chains. In this form of employment, women no longer need to migrate in order to provide the maximum expression of physical, emotional and biological labour ever integrated into capitalist market forces.

In Ukraine, although similar educational attainment exists between both sexes, women's exposure to economic insecurity due to lower employment opportunities and strong gendered societal norms prevent them from meaningful emancipation, thus generating high gender inequality. Ukrainian women continue to encounter economic, social and political obstacles that keep them on the 'provider side' bearing children for foreign wealthier commissioning parents and resorting to surrogacy as a means of generating sufficient income.

Debates around surrogacy have taken different paths. Abolitionist currents claim that the commercialisation of life and the human body is a product of the patriarchal system, liberal economies, white supremacy and the neo-colonisation (of women's bodies) through technological progress. Reformist positions defend that surrogacy, in a context of guaranteeing the rights of the parties involved as well as an informed and conscious decision towards the practice, could mean the exercise of women's individual reproductive rights and a form of employment. In contrast to abolitionists, the reformist approach aims to accept this reality, create social and political debate and regulate the practice in order to eradicate its exploitative component.

But is it possible to eradicate this exploitative component? Is it even logical to integrate biological processes as intimate as pregnancy within market forces? Can a baby be the object of a contract? Is surrogacy not an exploitative practice by nature? Is "selling" one's body in physically demanding jobs like mining or construction work the same as "selling" one's body through sex work or engendering a life?

Surrogacy constitutes today a very heterogeneous practice where each case can present as particular even within a common national regulation; and although there is no binding surrogacy-specific EU regulation, the existing reports and ethical guidelines do not apply to third countries where most surrogacy pregnancies are carried out. While Spain holds a prohibitive approach towards this practice, factors like the surrogacy legal provisions of the birth country, the requirement or not of a judicial resolution to prove legal parentage, intercountry adoption procedures, the time spent with the minor and ultimately, the child's best interest, can contribute to a favourable or unfavourable recognition of the legal parentage. Therefore, despite the abolitionist approach prevailing in most countries, surrogacy will not be eradicated or regulated towards a non-exploitative dimension as long as there are countries that legally allow and provide surrogacy for a low price, and countries whose population manages to circumvent national prohibitive regulations to register surrogacy-born minors born abroad.

Despite the disruption of the Russian invasion, Ukraine's \$1.5 billion surrogacy industry continues to grow. External factors like the COVID-19 pandemic or the current

war have resulted in hazardous conditions for the surrogates and the babies, who in recent years, have suffered abandonments or big delays in being collected by intended parents due to the impossibility of entering the country (Hegarty & Layhe, 2022).

It is reasonable to conclude that Ukraine will continue to provide reproductive services as long as women face substantial economic barriers to maintaining livelihood, and countries like Spain demand the outsourcing of biological reproduction in considerably less economically developed countries.

As illustrated, bioeconomy and the reproductive services industry are placed in the dilemma between neoliberal interests and ethical considerations. It is particularly striking that agencies' websites offer surrogacy in Ukraine as if it were 'Netflix' subscription plans, extremely trivialising the commercialisation of the human body. Surrogacy is one of the most critical feminist concerns of our time and long term effects of how surrogacy-born individuals perceive their existence due to a commercial transaction and a lack of knowledge on the context in which the pregnancy was carried out remains to be seen.

There are liberal approaches supporting this practice as a form of boosting free trade and women's self-determination, as well as reformist potential solutions like the "unsuccessful' gestational surrogates should be guaranteed a minimum wage as well as lifetime access to reproductive health care" (Twine, 2017:119). However, I find it hard to believe that even the most exhaustive regulation would achieve prioritising the non-neglect of women's and children's rights in impoverished economies over powerful interests like economic profit and the perpetuation of patriarchal pressures. While individuals (heterosexual or homosexual) who wish to start a family and cannot have biological children deserve compassion and understanding, this should not override other women's integrity. Having children is not a right but rather a personal desire that, in no case, should be satisfied through the imperialist exploitation of women.

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