

SUMMARY

Key Words: reproductive rights, family law, reproductive health, assisted reproductive technologies, medical law, reproductive instruments, motherhood, fatherhood.

Subject matter: Legal relations arising in connection with the use of assisted reproductive technologies.

Author: Yablonskaya Anastasia Alekseevna

Supervisor: dock.polit.sciences, kand. jus. sciences, associate professor of civil law and process G.V. Stankevich

The supervising organization: SEC "YurProsvet"

The relevance of the research topic The topic is very relevant at the present time, because over the past 20 years, the number of married couples suffering from infertility has increased significantly. This is primarily due to low rates of reproductive health, a significant number of abortions (abortions), etc. In this situation, both female and male factors play a role. Previously, the female factor significantly prevailed, but in recent years there has been a trend in which the male factor is the cause of infertility in 50 percent of cases. Since we live in an age of advanced technologies, scientific, technological and medical progress, such a problem as infertility can be solved. The use of assisted reproductive technologies is almost the only chance for infertile couples to have their own genetically native children. Moreover, the use of assisted reproductive technologies makes a significant contribution to improving the demographic situation. Methods of assisted reproductive technologies are very diverse and include the following: in vitro fertilization, injection of sperm into the cytoplasm of the oocyte (ICSI), cryopreservation ("freezing") of germ cells, tissues of reproductive organs and embryos, transportation of germ cells and (or) tissues of reproductive organs, the use of donor oocytes, donor sperm, donor embryos, artificial insemination with the sperm of the husband (partner) or donor (intrauterine insemination), surrogate motherhood. Science, technology and medicine are rapidly developing, constantly improving, assisted reproductive technologies are used more often every year, but legislation in this area continues to lag behind. This situation, which is developing in the system of legal regulation of this field of biomedicine, causes many problems, both for married couples who resort to the use of assisted reproductive technologies, and for children born as a result of these procedures. Therefore, this topic is relevant and is being investigated in order to analyze the current legislation in the field of the use of assisted reproductive technologies, as well as to identify problems and regulatory conflicts for further adjustment.

The purpose of the work: analysis of the current legal regulation in the field of assisted reproductive technologies, as well as the development of an understanding of the importance of improving legislation related to the biomedical sphere.

Objectives: give the definition of assisted reproductive technologies, as well as describe the legal relations arising from the area of their application; consider the typology of relations arising from the field of practical use of assisted reproductive technologies; explore what the reproductive rights of a person and a citizen represent; analyse the legal issues associated with the choice of the child's sex when using assisted reproductive technologies; to investigate the nature and content of the institution of surrogacy, and the legal nature of the contract of surrogacy; to characterise in vitro fertilization as an independent type of assisted reproductive technologies, as well as to consider the problem of the legal status of the embryo; analyse Russian and foreign law enforcement practices in the field of assisted reproductive technologies.

The theoretical and practical significance of the research The theoretical significance of the study consists in the generalization of scientific knowledge on this topic. The presented work can be used in subsequent studies of assisted reproductive technologies. Practical significance - the conclusions contained in the work can be applied for scientific purposes in the process of improving the legal regulation of assisted reproductive technologies.

Results of the study:

Assisted reproductive technologies are methods of infertility treatment in which some or all stages of conception and early embryo development are carried out outside the mother's body (including the use of donor and/or cryopreserved germ cells, reproductive organ tissue and embryos as well as surrogate motherhood). In addition to the above-mentioned methods, the Russian legislation includes the basic IVF programme, sperm injection into the oocyte cytoplasm (ICSI) and artificial insemination with the sperm of a spouse (partner) or donor (intrauterine insemination). The regulation of the field of application of assisted reproductive technologies is performed by such legal acts of primary importance as the Federal Law № 323-FZ of 21 November 2011 "On the basis of health protection of citizens in the Russian Federation" and Order № 803n of 31 July 2020 of the Russian Ministry of Health "On the procedure of using assisted reproductive technologies, contraindications and restrictions for their use".

The use of assisted reproductive technologies gives rise to legal relations of the following types and kinds: legal relations organizing the use of ART, relations concerning the implementation of a particular chosen ART programme, relations completing the ART programme and related to the registration of legal consequences of its use; by period of implementation: lasting but limited to a certain period of time, indefinite, those relations that cease immediately after their implementation; by subjective composition: relations between the medical institution and the subject, between the medical institution and the surrogate, between the patient and the surrogate; by object component: proprietary and non-proprietary.

The right to make use of assisted reproductive technologies is part of the competence called reproductive rights, which means the legal capacity of an individual to determine the fact and the moment of child birth, the number of children and the spacing of their births at his/her discretion by having the necessary information and means. Under Russian law, a man and a woman, whether married or unmarried, may avail themselves of these procedures in the presence of mutual informed voluntary consent to medical intervention, and a single woman (also in the presence of her informed voluntary consent to medical intervention) may avail herself of them. As far as the rights of single men are concerned, we observe that law enforcement is moving towards recognising them, arguing for the equal status and rights of men and women.

The choice of the sex of the unborn child is not allowed under Russian law. This is only possible to avoid the future child inheriting certain genetic diseases, but not for the purpose of improving or suppressing certain cosmetic, behavioural or mental characteristics.

Surrogacy is the carrying and birth of a child (including premature birth) under a contract between a surrogate (a woman carrying a fetus after a donor embryo transfer) and the potential parents whose sex cells have been used for fertilisation, or a single woman for whom carrying and birth is medically impossible. Legislative requirements for surrogate mothers are as follows: a woman aged 20 to 35, who has had at least one healthy child of her own, who has received a medical certificate confirming her satisfactory state of health and who has given her written and voluntary consent to the medical intervention. On the other hand, a woman who is married according to the procedure established by Russian legislation may become a surrogate only with the written consent of her spouse. There are two types of surrogacy: traditional and gestational.

A surrogacy contract is an agreement between the intended parents and the surrogate mother for carrying and giving birth to a child. The definition of its legal nature raises some controversy: to classify this type of contract as a family contract or a civil law contract. The contract is mutually-binding, compensatory and consensual. On the whole, after analysing this type of assisted reproductive technology. Generally, having analysed this type of assisted reproductive technology, we have concluded that its legal regulation is not sufficiently developed, as there is no detailed legislative regulation, which is also a significant gap.

As for the use of IVF, the legislator regulates this type of ART in sufficient detail, it seems that this is due to the fact that IVF is the most popular procedure that people resort to for the treatment of infertility. The basic IVF program is a method of overcoming infertility by prior fertilization of a female oocyte in the laboratory, bringing it to a certain stage of development and subsequent introduction of the embryo into the uterine cavity. Nevertheless, the use of this

type of ART implies the problem of the legal status of the embryo: to refer it to the subject, object of legal relations or a special unique phenomenon. In the course of the study, we found out that the legal status of the embryo is not regulated in the Russian legislation.

Recommendations:

- in the legislation on reproductive rights, it seems necessary: adjust the legal status of unmarried persons and their right to use ART programs, replace the definition of "single woman" with "unmarried person" in order to neutralize the non-identity of the rights of single men and women, provide effective and meaningful information and educate citizens in the field of reproductive rights;
- In the law on ART, it is advisable to include a provision that the condition on the quality of the service is an essential condition of the contract for the provision of medical services for the use of ART. It is proposed to establish the following requirements for the quality of this service: 1) the provision of services in accordance with the standard of medical care for patients in need of assisted reproduction treatment; 2) compliance with the legislation of the Russian Federation on reproductive technologies; 3) the availability of the doctor performing the medical intervention, the necessary qualifications; 4) the appropriate technical equipment of the service provider;
- Chapter 10 of Family Code of the Russian Federation – it is necessary to add an article "Secret of the origin of a child born as a result of the use of assisted reproductive technologies", which refers to the subjects of keeping this secret surrogate mother, donors of reproductive tissues, medical workers, officials who register the birth of a child, as well as persons who are otherwise aware of the origin of the child;
- In case of surrogate motherhood, to clearly regulate the rights and obligations of the surrogate mother and the intended future parents and the contents of the surrogate motherhood agreement in general by introducing it in the Civil Code of the Russian Federation in a separate chapter;
- To introduce the concept of reproductive rights into the Federal Law of 21.11.2011 № 323-FZ "On the basis of public health care in the Russian Federation" and the underlying rights, combining the concept of reproductive and sexual rights;
- To clearly outline the special status of the embryo as a whole and of the embryo obtained through the use of ART procedures in order to avoid conflict issues.