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PATERNITY IN APPLYING ASSISTED REPRODUCTION POST-MORTEM

The acknowledgement of the paternity of a child born under the conditions of assisted reproduction is legislatively fixed, and is applicable with any of the paternity presumptions regulated in Art. 61 of the currently operating Family Code of the Republic of Bulgaria (FCRB) [5]. The husband of the mother is acknowledged as the father of the child if the child was born during the marriage, or prior to the expiry of three hundred days as of its termination (par. 1, in relation to par. 4), as long as the mother has not entered into a new marriage before the expiry of that period (par. 2, in relation to par. 4), as well as in the cases when the three hundred days as of the date of the last notice of the husband have not expired with his declared absence, respectively – as of the date of the presumed death with declared death (par. 3, in relation to par. 4).

A specific case of assisted reproduction is the posthumous one, which is prohibited in Bulgaria.

It is not allowed in a number of other countries either, for example in Italy or France, while in Germany there is even penal liability envisaged for that. In Australia and Israel, the post-mortem reproduction is partially allowed, while it is applied in Russia and in some states of the USA, where the first registered cases of posthumous spermatozoon extraction date back as early as 1980 [4].

The issue of assisted reproduction post-mortem has become increasingly relevant also in relation to the development of technologies and the achievements of medicine.

It presupposes also many sub-issues (for example, the use by the surviving husband/the surviving wife of recent follicles from the hair of the deceased spouse, or the artificial creation of oocytes or spermatozoa, etc., with the purpose of posthumous assisted reproduction (author's note), to which medicine has had answers for a long time now. However, those answers are still not accepted by law and ethics.

Obstacles to the application of posthumous reproduction in Bulgaria are the Bulgarian traditions and the established legal theory and practice, as well as considerations of most diverse nature: socio-economic, biological, ethical, psychological, etc.

Such reproduction is not accepted by the Bulgarian Orthodox Church (BOC) either, moreover the latter is generally against any methods of assisted reproduction.

The position of the church is quite extreme: that this is „ultimately a theological and existential issue", that „the powers of authority of science, and,

in particular, of medicine, are not unconditional or unlimited, especially when they refer to the apex of creation – the man", and that "only God may determine the physical and spiritual parameters of human existence" [6].

Nevertheless, the Bulgarian society has to solve a number of problems with an increasingly global nature, although there are no definitive solutions for them.

Such is the nature also of the problem for allowing the post-mortem assisted reproduction through the use of gametes from a deceased person, or of zygotes, created from the gametes of the latter.

Over the last year, the case of a widow has been publicly discussed at length. She had started an in vitro procedure with her husband, but they did not complete it because of his sudden death.

With the legislation observed, nothing was done any further, but that woman engaged the government, represented by various authorities and institutions, as well as some non-governmental organizations, to be allowed to give birth to a child from her late husband [2].

This case, though not isolated in practice, has given rise to various reactions in the society, including some diametrically opposite positions about the solution of the raised issue.

On the one hand, legislation has envisaged regulations, which prohibit the posthumous assisted reproduction.

The prohibition is upheld by the supporters of the thesis that it is selfish to have a child created only by the surviving wife, since that child will be deprived of a father, and in that sense – a half-orphan, such as the case in question, and that this factual situation cannot be compared with the cases when the child has already been either conceived or born before the death of his/her father.

This first thesis is also subjected to the concerns about any misuse of gametes or zygotes.

On the other hand, the supporters of the opposite thesis point out as an argument the practices in some foreign countries.

They consider that posthumous assisted reproduction should be allowed in Bulgaria as well, in case of an explicit statement made by the deceased person in his lifetime, whereby expressing his wish/consent to have his gametes or zygotes used after his death.

The second thesis is also based on the right of every human being to have a child, as well as on the right of every human being to continue one's lineage after death.

The Bulgarian legal regulations concerning assisted reproduction are presented in the eponymous Section III of the Health Act (HA) [1], as well as in the issued on the basis of Art. 130, par. 3 of the same act, Ordinance No 28 of 20 June 2007 on the activities related to assisted reproduction (OARAR) [3], which defines the medical standards for assisted reproduction.

According to those standards, death is a prerequisite both for blocking, and

for extracting and destroying ova, spermatozoa and zygotes, nevertheless whether there is a wish declared by the wife/husband/partner in his/her lifetime, or not, in respect to oocytes, respectively – spermatozoa or zygotes (See Art. 70, par. 4 and 5 and Art. 71, par. 7 and 8 of the OARAR [3]).

Furthermore, the OARAR prohibits taking (obtaining) gametes from dead or brain dead persons (See par. 5.2. of Section IV „Medical Activities and Biological-and-Laboratory Methods applied with Assisted Reproduction" of the OARAR [3]).

Besides, hereditary law does not envisage explicit regulations, which would either acknowledge or prohibit the right to inherit gametes/zygotes.

On the basis of the imperative legal norms, even if the deceased person may have declared (Even when such a statement explicitly includes the wish to use the gametes/zygotes also after the death of the declarant (author's note) in his lifetime his wish/consent to have his gametes or zygotes used for assisted reproduction, and though it is not admissible (however, theoretically and technically, it is still possible to obtain gametes posthumously as well [4, p. 33]), it may be concluded that the presumption for paternity post-mortem should be acknowledged only if the assisted reproduction was done while the father was still alive.

That means that the medical intervention itself, nevertheless which method of assisted reproduction is applied (extracting gametes, intrauterine insemination, transfer of gametes in the fallopian tubes, transfer of a zygote in the fallopian tube or in vitro fertilization), should be done prior to the father's death, and with observation of the rules for the validity of the intervention itself.

Furthermore, for acknowledging paternity it would be unimportant what genetic material was used for the assisted reproduction – of the one, or of both spouses, with donor oocyte and/or donor spermatozoon, respectively – what the zygotes were created from – genetic material of both spouses, or of one of them, and/or with donor material.

It would be important only if there was a marriage, during which the child was conceived with the assistance of any of the methods of assisted reproduction, and if the three hundred days as of terminating the marriage have not expired.

It has to be further established whether the late husband had explicitly given his informed consent for each specific procedure, or in particular – for the procedure that the child was conceived and born of.

In the other cases, when, for example, the child was conceived before the marriage and assisted reproduction was done with two unmarried partners, paternity shall be acknowledged only if the partners concluded marriage afterwards and three hundred days as of the termination of the marriage with the father's death have not expired at the time of the child's birth, as well as provided that the deceased person had declared his wish/consent for any of the

activities in assisted reproduction.

There is also the possibility to apply any of the other methods for establishing paternity – through recognizing the child by the deceased partner of the mother in his lifetime (Art. 64, par. 1, sentence 2, hypothesis 1) [5], or possibly – with an establishment claim, filed by the mother or the child against the heirs of the deceased person (Art. 72, par. 2) [5].

In the last case, however, it will be necessary to prove the genetic relation between the deceased man and the child.

Finally, it may be concluded that law is significantly lagging behind the development of the social relations and science, most of all medical science.

Nevertheless, there are standards adopted for assisted reproduction, some issues beyond their scope remain unsolved.

Using foreign countries' experience, Bulgaria could introduce some regulations, which would provide an imperative solution to posthumous reproduction in a clear and definitive way, while undoubtedly taking into account the potential risks of abuse.

This, however, suggests conducting an in-depth analysis of assisted reproduction post-mortem from various perspectives with the involvement of competent specialists from different fields of science and practice.

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TO THE NECESSITY OF ADMINISTRATIVE REGULATION OF EXTERNAL ECONOMIC ACTIVITY

In all economically developed countries, in order to ensure sustainable socio-economic development, there is a tendency to improve the mechanisms and forms of stimulation of trade activities. This is reflected in the national economic policy, the definition of goals and objectives of foreign economic activity, business strategies. Attempts are made to create the most favorable economic and legal conditions for entities that enter into economic activity.

Without any doubts, the states are aware in the context of globalization, successfully developing business is able to generate income not only for themselves but also for the state. This is actual for States that intend to manage the economic behavior of their residents. R. Stober nevertheless justifies the need to create an "economic administration", notifying that for reasons of the importance of ensuring the welfare and progressive development of the population none of states refuses to administer.

The Law of November 14, 2005 №60-Z "on approval of the main directions of domestic and foreign policy of the Republic of Belarus" among the strategic objectives of the state was registered equal integration of the Republic of Belarus into the world economic space [4]. This process is impossible without competent administrative and legal regulation of foreign economic activity (hereinafter-FEA), as one of the most difficult areas of economic development of the state. Nowadays, experience has been gained in this area. Nevertheless, in the dynamically developing world and conditions of globalization the mechanisms of implementation of administrative and legal regulation of foreign economic activity need to be improved.

Makrusev V.V., talking about foreign economic activity, considers it on two levels: