



## ORIGINAL PAPER

# The New Reproductive Technology and Parent-Child Relationship

Afet Mamuti\*

### Abstract

The use of new methods of family planning, especially for the human reproduction remains one of the most controversial topics both by academic circles, medical deontology and political circles when adopting the legal regulations for this domain. Although the development of medical science and technology in the application of methods of human reproduction is considered as an advancement, however, there are divergences in terms of understanding this phenomenon, since doctors see it as a professional issue, patients see it as the right to realization of fertilization and reproduction, and especially the religious opinion and feminists as an interference with the law of nature and violation of privacy. Particularly controversial is the issue of post-human reproduction, because in this case occur the conceiving and the birth of a child after parent's death and questionable remain the rights and obligations to be established between parents and children, those of personal character as well as those involving the property. Family planning helps women and couples to plan the time of conception of the child and their increasing number of quality measures to take during pregnancy and after the moment of birth, because only in this way the desired children will be born.

**Keywords:** *parent-child relationships, reproductive methods, planned pregnancies, fertilization*

---

\* Assistant Professor, PhD, State University of Tetova, Faculty of Law, Tetova, R. Macedonia, Phone: +389 (75) 31 35 38, Email: [afet.mamuti@unite.edu.mk](mailto:afet.mamuti@unite.edu.mk)

### **Understanding the parental relationship**

Parental relationship is a special kind of relationship that is created within the framework of family relationships and that has to do with the relationship between parents and children (Omari, 2011: 97). The relationship that is created between mother and child is known as motherhood, and the relationship created between the father and the child known as fatherhood. This relationship is based mainly on the blood connection that exists between these people established as a result of the natural process of birth. Submission of birth as a legal fact determines relationship of birth parents. However, the reality today on the occasion of the conception of these relations has intervened in this sphere "exclusively private" so far the absolute, in terms of human reproduction. Therefore, giving the meaning of parental relationship by legal science and legislation can not be treated as separate from the development of medical science and technology to them.

Parental relationships in terms of rights and obligations between the parties have evolved continuously making progress in the modern era. Kids has consistently gained more rights and commitment by parents today, compared with older times when the parent had absolute power over children (Podvorica, 2006: 163-175). The establishment of parent-child relationship did not depend only from the fact of the birth of a child but also depended from the will of the parent as well. This case was especially in the ancient Roman times when there was a birth in the family by the wife of the paterfamilias or any of his sons wife's the parent-child legal relationship would happen only after the paterfamilias consent (Puhan, 1980: 192). Today's law and practice despite the expression "parent's rights" use also the phrase "children's rights", after the child as a subject of parental relations, being not fully able to take care of his rights and obligations, the government and the law have placed him in the spotlight aiming the protection of child's life, health and interests. All this undoubtedly is influenced by the United Nations Convention on the Rights of the Child which has been ratified by Macedonia in 1989, where in article 3 is provided that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

For creating national policies on family issues an important role was played by International Conventions, protocols and Recommendations of International Organizations such as the United Nations, Council of Europe and the World Health Organization. Therefore, not only acts of domestic normative is the international principle of protection of the child, central focus started from the United Nations "Convention on the Rights of the Child" (UNCRC) in 1992, "Convention on the prohibition and elimination of the worst forms of child labour", "The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse" and others.

Given that the way of the establishment, exercise and termination of parental relationships, we see that the nature of the provisions governing these relations has an imperative character (Austin, 1832: 145). This is best observed on the issue of autonomy of the will of the parents who in addition to early case of the decision to the conception of a child, continued further after his birth is limited in terms of rights and duties provided with legal norm.

However, due to the operation of the laws of nature should be noted that, when the child is a minor, has less obligations to parents, which means that parents have more obligations towards children (Austin, 2013). And when children grow up or parents are unable to care for them then duties of children towards their parents grow symmetrically

## **The New Reproductive Technology and Parent-Child Relationship**

in relation to their age (Salili, Hoosain, 2001: 198). Therefore, to have a coexistence between parents and children is not enough normative regulation of these issues, but harmony and mutual respect is needed in the parent-child relationship. If the parents are careful and more responsible towards their kids, the happier and more responsible they will become, and if that's the case then also the parents will be happier as well.

### **The conception of parental relationships and ways of assisted reproduction Biomedical**

Parental relationship between parents and children is born since the birth of the child. For the mother of the child shall be considered the woman who gave birth to a child (Begovic, 1961: 139), a fact that is easily identified since the pregnancy of his mother and a third person. But the father of the child shall be deemed spouse of the child's mother born in term of continuity of the marriage or within 300 days from the dissolution of marriage (Mandro-Balili, Mecaj, Zaka, Fullani, 2006: 514). Regarding the child's father illegitimate children shall be deemed the person who will accept the child as his own. All this factual situation will be in full effect only after the moment of formal registration of the child in the birth register office. This model that originates from Roman law, now is represented and by the Macedonian legislation. However, as a result of the development of science technology and medicine traditional model of conceiving a child through natural relation of sex it is not the only one, because today there is a possibility of canceling the genetic part of the human body and the same can be recombined in laboratory and it comes to the conception and the birth of the child. Therefore, the issue of parental relationship should be seen in the dynamics of scientific discoveries which imposes dimensions of these concepts.

The right to reproduce has been and remains one of the main permanent functions of human beings, and one of the rights of any individual or a couple to decide freely and responsibly the number, frequency and time at which they want to have children, the right to access to information, education, communication and instruments which will enable their decisions to be based on evidence (article 2, paragraph 4 of the Law on Reproductive Health of the Republic of Albania and paragraph 4 and 5 of article 2 of The Law on Reproductive Health of the Republic of Kosova). Feeling reproduction stems from human nature itself and without the implementation of this function will not demerit the reproduction and continuation of life on earth. All this function starts from the moment of conception of the child for couples who are fertile, but for couples or people who are infertile or have reduced fertility and can not remain pregnant in the usual way this feature is implemented in alternative ways. Presentation of the need for biomedical assisted fertilization comes to expression primarily in cases where previous treatment for infertility treatment is unsuccessful or other methods are impossible or in cases where there is a reasonable risk of transmission of severe hereditary diseases in children (article 3 of the Law on Biomedical Assisted Fertilization, Official Gazette no. 37/2008). Biomedical assisted fertilization techniques represents medical application that allows merging male and female cells with the aim of achieving a pregnancy outside the natural process of common sexual relationship.

As doctrine, the legislation of different countries tend to use different terminology for the same institute of family law, and the same sense encountered expressions reproduction artificial, biomedical assisted fertilization, artificial insemination, assisted reproduction, artificial fertilization etc. All these legal terms are synonymous and used for the same situation to conceive a child with the intervention of "third person" applying

medical and technical methods that will enable a situation that was previously impossible to be realized without this intervention.

It concerns the conception of the child unlike natural way and will only couple found that in Roman times which was termed "ventrem locore", according to which the pater familias had the right to "borrow" his wife a couple in which the wife it was sterile, while maintaining the right to retake his wife after the birth (Omari, 2007: 331). Therefore, the conception of a child with a foreign wife or a foreign husband at the root of what is now known as artificial conception of the child. These methods were effectively implemented after the 40s of last century, experimenting initially their effect in animals and then in humans to those couples that even against the wishes were not able to have children from a relationship regular sex. In this process the important role of medicine which helps in the conception of the child being separated from the sexual act carried out and decided by the couple.

Unlike earlier, thanks to recent decade and progress of science has achieved the evolution of the practical modalities. Upon application of biomedical techniques for assisted fertilization remains questionable the legitimacy of the use of these methods, special care must be taken not to violate human rights which are guaranteed by national and international acts of maintaining health, dignity and privacy of the persons of which whom performed these medical procedures. The right to life and health represents one of the universal rights of humans, so any intervention that affects the area of reproductive health and human health should be done very carefully. Health meaning the entire physical, mental and social well being, and not merely absence of disease and for all what is related to the normal functioning of the health system. While the National Strategy for Sexual and Reproductive Health developed by the Ministry of Health of Macedonia says that health reproductive concerns the ability of people to have happy sex life and safe and the possibility of reproduction, and the freedom for decision making for when and how often to do it.

For that matter Ministry of Health in Macedonia in cooperation with the Institute of Public Health and UNFPA (United Nations Fund for Population) in order to define the priorities for sexual and reproductive health has drafted a National Strategy for reproductive and sexual health (2010-2020). This strategy aims to plan, mobilize and coordinates resources for effective action necessary based on four fundamental principles: human rights, gender equality, multisectoral approach and community involvement (according to WHO Regional Strategy On Sexual And Reproductive Health, 2001). All this strategy is based on institutional policies and strategies that are consistent with the trends of contemporary development.

Because not all couples have the same problems related to infertility, medical practice has developed specific methods related to artificial insemination, starting from the simplest ones who know the science of biology to the most sophisticated that are enabled as a result of the development of the science of genetics and technical. Problems with infertility can occur in women as well as men. Women infertility may be caused as a result of problems with the ovaries, problems with fallopian tube and problems related to disorders of hormonal, whereas men infertility is mainly caused as a result of the reduced number or lack of sperm morphological good, tumor in the testes and men who are under the influence of certain therapies such as chemotherapy and radiotherapy. To say that a couple is infertile or has reduced fertility must have had at least one year of unprotected sexual intercourse and without the use of contraceptives and not come to pregnancy.

## The New Reproductive Technology and Parent-Child Relationship

Although there are situations where pregnancy is not held until the moment of birth but this is about another kind of infertility.

Besides the above mentioned requirements that may person to use the right of biomedical assisted reproduction by Macedonian legislation it should be a macedonian citizen and must be of legal adulthood and fully capable to take action, despite were husband marital or extramarital if it is able to practice parental rights. The most important types of artificial insemination can include: IVF (In Vitro Fertilization); ICSI (Intracytoplasmic Spermatozoa Injection); GIFT (Gametes Intrafallopian Transfer); ZIFT and TET (Zygote Intrafallopian Transfer); Ectogenesis (is the growth of embryo in an foreign body, presents the technique of replacing the biological mother with a surrogate mother) (Braho, 2015: 1) considering as follows IVF - in vitro fertilization and embryo transfer represents egg cell outside the woman's body, in order to fertilize the same with sperm in the embryo epruvet and then restore to the latter; ICSI - injection of sperm and introcitoplasmatica is a common method that involves injecting sperm inside the egg cytoplasm and is mainly done when it can not be achieved in any other way (Van, Nagy, Joris *et al.*, 1995). Technique represents the most frequent and most successful applied in cases of severe damage spermogram; GIFT - gamete intra fallopian transfer showcases for promoting fertility so that egg cells from the ovaries of the female removed and placed in tubes uterine together with the sperm of her husband. Although this successful method is used less because of the way the intervention and the need for more healthy uterine tubes; ZIFT and TET - this method is applied when the fallopian tube created a barrier that prevents the penetration of the sperm into the egg cell and a similar procedure as in vitro fertilization and embryo transfer, but the difference is that the egg and sperm in the initial phase for 24 hours placed in the fallopian tube instead of the uterus until fertilized.

According to the Law on assisted fertilization biomedical Macedonia recognized:

- a) autologous fertilization - under which priority is given to its use of sex cells, embryos respectively couple to marital and extramarital who performed the procedure;
- b) allogeneic fertilization - applies if the procedure for biomedical assisted fertilization could not use its cells sex couples marital and extramarital respectively if these can not be used in order to prevent the transmission of serious diseases inheritable to the child, it can be used donated sperm, eggs or embryos cells from other people. Both of the above methods are implemented through medical procedures as follows:

1. Corporal Fertilization Interior, which includes:
  - a) intra-uterine insemination sperm, which is done in cases of male infertility and involves the introduction of sperm from the sperm previously selected in the woman's uterus (Edwards, Steptoe, 2011);
  - b) the establishment of an egg cell together with sperm in the woman's uterus;
2. Fertilization performed outside the female body and includes:
  - a) union in order fertilization of an egg with sperm outside the body of the man, and then placing the same in the woman's uterus;
  - b) the introduction of embryos into the woman's uterus.

Which of the methods will be applied to a particular case will depend on the nature of the problem that hinders the process of conception and childbirth. For more than 37 years since the first birth in 1978, through this technique they have arisen and continue to arise millions of children in those countries where the application of these methods allowed. According to statistics published Richard Kennedy of the International Federation of Fertility Association for maintaining reportedly from 1978 to 2007, we have over five million births by the use of assisted reproduction techniques. (Innes, 2013). The possibility of joining the egg cell with sperm in a test tube, outside of the woman's body and then placing the embryo in the same or any other woman, has ruled out the need for sexual intercourse, where the division of reproductive process from sexual intercourse.

But in this case there is a need of intervention of "third parties" who may be medical quality staff, sperm donor, an egg donor or grantor to "rent" the uterus. This way human reproduction at the beginning initially encountered resistance from religious organizations and later by organizations dealing with the protection of human rights. This has surprised and perhaps shes parents and scientists in the field of justice, because of the meaning they had about fatherhood and motherhood in particular.

### **The rights of parents to artificial reproduction**

The establishment of parental relationship through biomedical assisted reproduction became its own initiative spouses or persons who are out of wedlock. Preliminary procedure requires that the doctor explains and advises them respectively couple wife for all the details about the repercussions arising after the application of these methods in relation to the rights and obligations during pregnancy and after childbirth moment (Gracia, Woodruff, 2012: 158). For the progress of any procedure for biomedical assisted fertilization statement required to be given to the parties consent in writing. Consent for the implementation of those procedures has legal significance as it serves as a declaration of acceptance of paternity, maternity respectively after childbirth (Paragraph 2 of Article 12 of the Law on Biomedical Assisted Fertilization). Spouses, respectively husband or wife shall be entitled to withdraw the statement to allow the application of methods of reproduction artificial to the stage of placing sperm cells, the egg cell or embryo in a woman's body, because thereafter a statement this would be without legal effect (Higdon, 2011: 27-30). The doctor until the establishment of sperm or egg cell or embryo in a woman's body should carefully check whether someone has not submitted a request for withdrawal of the declaration granting consent in writing. This is of particular importance in case of any eventual dispute, then no one has the right to refuse paternity mother, with the written consent of her husband, is impregnated through artificial insemination (Article 62 of The Family Law of The Republic of Macedonia).

### **Donor and procedure donations of genetic material**

All these procedures can not be realized without having a person who would have the quality of the donor genetic material. The quality of donor egg cell, sperm and embryo can appear only persons who are adults and ability to act. Additionally required and consent donor gives a like such and should be subject to prior asked about his health condition and history of disease was possible to do with the health consequences for the woman or the child to be born. The cells of the sperm can be donated by a man whose consent to their use for the fertilization of a woman who is not his wife nor has the community living with, and the eggs cell can be donated by a woman who with her consent has agreed that the same use for the fertilization of another woman. Also there is the possibility of the appearance of donor embryos that can be husband and wife who renounce the use of their embryos so that the same used by other marital or extramarital couple for their needs. Important is that donors have no right or duty in relation to the child that will be born in terms of paternity or maternity or with his parents. Also donors after informed in detail about the effects of their action are required to provide a written statement before a notary in connection with their consent to donating, which proved that the action in question have been on the basis of their free will and without any influence from any external circumstance that would violate free will. Identification of donors in Macedonia made in the special register called the State Register of donor sperm, egg cells and embryos. Unlike users of this material, donors can make a statement to withdraw

## **The New Reproductive Technology and Parent-Child Relationship**

consent for the use of their genetic material, even after the issuance of this material, but at the latest until the beginning of the procedure for biomedical assisted fertilization. Health institutions involved in this procedure are required to retain all records relating to personal secrecy, medical and genetic donor. The entire procedure is performed without any donation is done for donor compensation.

### **The relationship of parents with children born by surrogate mother**

Surrogate motherhood means leaving available or "rent" her body respectively uterus or reproductive capacity with the aim of establishing foreign embryo to carry and birth, and postpartum no claim foresee any baby born. In some cases, the surrogate mother need to give only her womb and in some cases giving even need its egg cell. This method of childbirth in Macedonia was initially prohibited by the provisions under the Law on Biomedical Assisted Fertilization (2008), and later with additions and changes that followed in 2014 by following and trended international development of this institute, the same was allowed. On the basis of these changes are foreseen and conditions who may be a surrogate mother, and the other asked: surrogate mother to be aged 25-50 years old, having been the mother of at least one child and be healthy in terms of mental and physical health, be in good condition physical, not removed or limited ability to act, the parental right not to be removed or limited, or sanctioned for criminal offense not exceeding more than 6 months, not to be addicted to drugs and other narcotic substances, not to be dependent on alcohol and not suffering from any contagious incurable diseases. Provisions of the law regulating this issue for mothers gestational used expression surrogate mother, to be closer terminology used most European countries (gestational mother). That can marital couple or extramarital couple pull one such right should be presented specific reasons, including: the wife of the married couple have been born with the absence of the uterus or deficiencies in the uterus which can not be remedied with the procedure modern surgery, be damaged uterus from a previous surgery or similar.

In terms of compensation for service on a global level, there are two forms of surrogate mothers, surrogate mother surrogate mother altruistic and commercial (Hatzis, 2003: 415). Macedonia recognizes only form of maternal surrogate altruistic service performs simple motifs charitable, and surrogate mothers to effect commercial is prohibited and it qualifies as a criminal offense under the Criminal Code provisions, which shall be punishable with imprisonment from six months to five years for each person who will require such compensation (Paragraph 3 Article 27 The Law on Biomedical Assisted Fertilization) However, around the world there are countries that perform this service for certain compensation

### **The exercise of parental rights**

With the exercise of parental rights means undertaking all actions that fulfill all the rights and obligations of parents towards minor children or to those whose parental right is extended. The exercise of parental rights is considered personal and exclusive right of his parents when those same exercise within the legal authorizations and agreements. The law puts on equal footing in terms of rights and obligations as well as his father, mother, and no one is entitled to any of the exclusive rights with the exception of natural rights. If one parent is deprived of the ability to act or is deprived of parental authority, he is deceased or unknown then the other parent will exercise the parental rights (authority) over the children. Also, these rights and obligations in the modern era are also divided between the parents and the various state institutions, because the state referring to the

principle of protecting the best interests of the child interferes in different ways for their protection. Also in undeveloped societies more and more efforts are being made to raise awareness regarding the rights of children that they not be regarded as "property" of their parents, although some still believe that the law allows them to let children behave tyrannical (Macedo, Young, 2003: 2).

Children have the same rights in relation to their parents no matter what methods are used to capture and their coming to life, whether natural or artificial. In fact the only difference to children born from artificial insemination is not allowed here is that the authentication procedure or rejection of fatherhood and motherhood, because in this case the parents make a statement before a notary where they agree in advance that the child to be born is accepted for own.

### **Conclusions and Recommendations**

The application of new methods of medical and technical human reproduction is intervening in the most intimate marital relations and the fact of the child's conception depends not only on the willingness of the spouses but interaction is required and third persons. Most couples who for various reasons consider themselves infertile and unable the right to become parents only in natural way, have the potential to find an adequate solution to their problem through the use of medical assistance. Application of these methods sometimes creates the impression that when biomedical science can not find solutions for diseases or defects healthy little heavier for infertility, ended healthy desire to become a parent at all costs and that is variant surrogate mothers. Due to the increased interest of infertile people to apply these methods through the US National Institutes of Health (National Institute of Health) makes investments in medical science and biotechnology twice more than for all other searches taken together cancer, AIDS, diseases and diabetes neuropathological. We finally recommend: 1. to amend the concept of motherhood and fatherhood in doctrine and under positive legislations conform and adapt to new situations that are created when a child can be born by surrogate mother, after the provision of the law says: "mother of the child shall be deemed wife who was born child." Now, in the case of the mother surrogate have women whose GM is the child and the other woman who bears the burden and gives birth, according to The Law on Biomedical Assisted Fertilization child belongs to the first woman, and by The Law on Family of the Republic of Macedonia child must meet wife second, where it presented and collision of laws; 2. due to the influence of external factors more, state institutions, media and NGOs should develop campaigns to sensitize the public about the possibility of resolving infertility, because the lack of understanding for these solutions by the parties often that renounce the realization of this desire; 3. because of the psychological impact that could have on his wife, or for the issue of reproductive human couple, should by the legal norm or any other legal act to regulate the psycho-physical treatments and emotive treatments particularly women before and after moment of childbirth, in order to maintain sound relations between partners.

### **References:**

Austin, J. (1832). *The Province of Jurisprudence Determined*, London: John Murray Albemarle Street.



## The New Reproductive Technology and Parent-Child Relationship

- Austin, M. W. (2013). *Rights and Obligations of Parents*, Kentucky, United States: Eastern Kentucky University.
- Begovic, M. (1961). *Family Law*, Beograd: Akademija.
- Braho, H. (2015). Medical Assisted Reproduction and Legal Framework in Albania, *Academic Journal of Business, Administration, Law and Social Sciences*.
- Edwards, R. G., Steptoe, P. C. (2011). *Clinical Research in Human in vitro Fertilization and Embryo Transfer*, USA, Arizona State University: Center for Biology and Society.
- Gracia, C., Woodruff, T. K. (2012). *Oncofertility Medical Practice: Clinical Issues and Implementation*, New York: Springer Science Business Media.
- Hatzis, A. N. (2003), "Just the Oven": A Law & Economics Approach to Gestational Surrogacy Contracts. Retrieved from: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=381621](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=381621).
- Higdon, M. J. (2011), *Fatherhood by Conscriptio: Nonconsensual Insemination and the Duty of Child Support*, College of Law, Tennessee: The Tennessee University.
- Innes, E. (2013), *Five million babies have now been born by IVF - and HALF since 2007, new figures confirm*". Retrieved from: <http://www.dailymail.co.uk/health/article-2462640/Five-million-babies-born-IVF--HALF-2007.html#ixzz49nBefKvk>.
- Macedo, S., Young, I. M. (2003), *Child, Family and State*, New York, NOMOS XLIV, New York University.
- Mandro-Balili, A., Mecaj, V., Zaka, T. and Fulani, A. (2006), *Family Law*, Tirana: Kristalina KH.
- Omari, S. (2007), *Family Law*, Tirana: Morava.
- Omari, S. (2011), *Loss of parental responsibility – a new legal instrument between need of protection of the best interest of the child and respect of parent fundamental rights*, Law School, Tirana: Tirana University,
- Podvorica, A. (2006), *Family Law*, Prishtina: Iliria University.
- Puhan, I. (1980), *Roman Law*, Prishtina: Prishtina University.
- Salili, F., Hoosain, R., (2001). *Multicultural Education: Issues, Policies, and Practices*, Connecticut USA: Information Age Publishing.
- The Family Law of the Republic of Macedonia (1992), *Official Gazette*, no. 80/1992.
- The Law on Biomedical Assisted Fertilization (2008), *Official Gazette*, no. 37/2008.
- The Law on Reproductive Health of the Republic of Albania, *Official Gazette*, no. 8876/2002.
- The Law on Reproductive Health of the Republic of Kosova, *Official Gazette*, no. 2006/02-L76.
- Van, S., Nagy, P., Joris, H., Janssenswillen, C., Staessen, C., Verheyen, G., Camus, M., Tournaye, H., Devroey, P. (1995), *Results of intracytoplasmic sperm injection with ejaculated, fresh and frozen-thawed epididymal and testicular spermatozoa*", Brussels.
- WHO (2001). *Regional Strategy On Sexual And Reproductive Health*. Retrieved from: [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0004/69529/e74558.pdf](http://www.euro.who.int/__data/assets/pdf_file/0004/69529/e74558.pdf).

---

### Article Info

*Received:* May 25 2016

*Accepted:* July 20 2016

---