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Ethical Aspects of the Assisted Biomedical Reproductive System with Special Attention to the Legislation of the Republic of Srpska

SUMMARY

The achievements of modern medicine have expanded the range of controversial situations in doctrine and the practice of Family Law. A special ethical issue is concerned with parenthood as a result of assisted reproductive technologies. Many questions arise from this problem, such as the issue of who has the right to achieve parenthood through biomedical-assisted fertilization. Another important ethical question is: *"Do children born this way have the right to know their biological origin?"* Ultimately, the final question is whether biological and sociological parenting can be reconciled. How can this contradiction be resolved? The authors will try to give possible solutions to the mentioned problems considering solutions from comparative law and the needs of the current situation. All proposals *de lege ferenda* are given from the perspective of solutions and shortcomings of the family and reproductive legislation of the Republic of Srpska.

Keywords: process of biomedical-assisted reproduction, ethics of assisted reproductive technologies, children's rights, presumption of motherhood, ethics of parenthood, bioethics.

INTRODUCTION

When it comes to the ethical framework of the biomedically assisted reproductive system in the Republic of Srpska, the Biomedical Assisted Fertilization Act (further

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BAFA) takes a restrictive approach to the process of ART. Namely, the ART procedure is performed only in medically indicated cases (BAFA, 2020, Article 3). A medical indication exists when infertility treatment by other procedures is not possible or is significantly less likely to be successful. This includes cases of impending infertility as a result of treatment or disease development. Therefore, the legislature considers the ART procedure to be the last chance for procreation and not an alternative possibility (parallel to natural conception).

Bearing in mind the broad definition of health by the World Health Organization, which includes both physical health and mental health and even social well-being, we can conclude that the mental state could also be an indication for the use of ART (Panov, 1998, p. 43). Repeated unsuccessful attempts to conceive can worsen a person's psychological condition. It is a matter of disturbing mental integrity caused by anger, fear, sadness, shame, depression, and feelings of inferiority (Jotanović, 2016, p. 145). It is the source of social and psychological suffering for both men and women and can place great pressure on the relationship within a couple. Bearing in mind the psychological dimension of infertility, we can conclude that BAFA completely ignores it as an indication for the use of ART, as well as social infertility.

On the other hand, psychological conditions can influence the process of ART. Couples must be evaluated by a psychologist before they start with the ART procedure. The psychological element is also present in other aspects of exercising the right to parenthood through the ART procedure, such as the selection of gender, eye color, hair color, higher level of intelligence, or other improvements in certain characteristics. In this case, non-therapeutic reproductive genetic engineering (cloning) is strongly prohibited. However, genetic therapeutic intervention, the goal of which is to prevent the transmission of some inherited diseases to offspring, is allowed. For instance, hemophilia, which is transmitted from the mother to male children, is justified by the interests of both the child and the parent.

When it comes to social infertility, assisted reproductive technology (ART) has initiated a considerable ethical debate. There are three ethical principles that provide the ethical basis for ART: the principle of liberty, the principle of utility, and the principle of justice. The tension between the principles of justice and utility results in the disparity of availability of and access to ART services between the rich and the poor. It is important to note that certain social factors also affect the availability of ART procedures. Generally, in the ART procedure, we look at the impact of social factors in terms of availability, accessibility, acceptability, and quality (Marković, 2009, pp. 876-878). The main problem with availability is the lack of genetic material. The allocation of limited resources of genetic material calls into question the criterion of division and its fairness (BAFA, 2020, Article 15). Accessibility

means that available resources are available to all citizens, without discrimination (ethnic minorities, persons with disabilities, individuals and/or couples, certain age, parenthood already achieved) as well as economically accessible (the possibility for all citizens with medical indications to become parents through ART, regardless of whether they will pay the fee independently or reimburse through the publicly funded health care system). Acceptability requires that availability be allowed in terms of medical ethics, cultural heritage, age, and gender structure of citizens. On the other hand, the availability of quality means that there are trained medical staff, quality medical equipment, and medicines necessary for the ART procedure.

In addition to the principle of medical justification as dominant, other principles reduce its importance. It is considered that medical indications should not have a monopoly in the application of ART procedures (Panov, 1998, p. 47). This also allows individuals who have already become parents (either "naturally", through the ART procedure or through legal ways - adoption) to access ART procedures. Therefore, in the conflict between the two ethical principles of medical justification and the principle of freedom of family planning (Constitution of Republic of Srpska, 1992-2005, Article 36, "*it is man's right to freely decide on the birth of children*"), the second principle takes precedence. Certainly, the general social interest, which is manifested through certain measures of prenatal policy, also plays an important role (Family Law, 2002, Article 5). Another argument in favor of the ART procedure without medical indications is that adoptive candidates are not eliminated if they have biological children (Family Law, 2002, Section 4 on adoption). However, medical indications are not necessary for the realization of parenthood, even for a medically assisted one, but a freely expressed will (desire for procreation) is sufficient. From an evolutionary perspective, generativity and procreation are important developmental tasks that allow human beings to perpetuate their genetic heritage and further care for another person. (Casonato & Habersaat, 2015, pp. 289-306).

THE SUBJECTS ENTITLED TO THE ART PROCEDURE - COUPLES VS. INDIVIDUALS

The possibility of individuals or couples (marital or extramarital) becoming subjects of biomedical-assisted fertilization is deeply conditioned by medical indications. Access to treatment with assisted reproductive technologies (ART) is most often restricted by the implementation of the eligibility criteria. Priority candidates for ART are couples (married as well as unmarried) in heterosexual relationships seeking infertility treatment. Both partnerships are eligible to apply for both procedures: homologous and heterologous fertilization. Additionally, ART procedures can be performed *in vitro* and *in vivo*. The advantage of homologous fertilization over

heterologous fertilization is that subjects use one's genetic material. Therefore, heterologous *in vitro* fertilization is used when it is not possible to use the genetic material of one of the (extra) spouses or when the transmission of hereditary diseases to the child is prevented (BAFA, 2020, Article the 35 and 36).

Initially, ART procedures were developed and only available to married couples to achieve pregnancy outside of the natural process. The law also treats marital and extramarital partners equally, giving preference to couples over individuals. Exceptionally, an unmarried woman who lives alone and can perform parental duties also has the right to infertility treatment (BAFA, 2020, Article 38, part 2). The law takes a rather restrictive approach to the individual's right to ART, allowing it only in the case of medical infertility.

Furthermore, extramarital partners permanently living together can apply for ART procedures. The ability of a person to perform parental duties is assessed through psychological evaluation. Medical and psychiatric conditions, inadequate financial resources to support the baby, previous convictions, and drug or alcohol abuse are among the common reasons for withholding ART procedures.

From the perspective of a child's best interests, the child has the right to live with his or her parents (BAFA, 2020, Article 38, part 2). Looking at that perspective, the form of marital coexistence is not relevant. The quality and permanence of the couple's relationship, and healthy and undisturbed relationships between parents are much more important. According to our legislation (in Bosnia, Herzegovina, and Serbia), only heterosexual couples can apply for biomedically assisted fertilization.

On the other hand, in countries where same-sex partnerships are allowed, the situation is quite complicated. The main problem is to determine which homosexual partnerships are entitled to biomedically assisted fertilization. We have in mind three basic concepts of same-sex partnerships. The first concept is same-sex marriage and it is represented in the Netherlands, Belgium, Sweden, Germany, France, and Great Britain. The second is the concept of registered same-sex partnerships (Hungary, Czech Republic, Slovenia, and Croatia). The third concept is the unregistered (*de facto*) same-sex community (Slovenia, Croatia) (Kovaček Stanić, 2020).

Keeping in mind the legislature of European countries, we can notice consensus according to the questions of property rights, hereditary rights, mutual support, help, and establishing a kinship with the partner's relatives of the same-sex partnership. On the other hand, the question of parenthood deriving from the same-sex relationship is pretty differently regulated (Samardžić, 2013, p. 429). For example, in Spain and Sweden lesbian couples have the right to IVF procedures, so the woman who gives birth becomes a mother and the other woman becomes a second parent. Great Britain

is even more liberal towards the parental rights of same-sex couples, allowing third-party reproduction including surrogacy (Josić, 2009, p. 432). Unlike the previously mentioned countries, in other European countries, same-sex couples are not allowed access to the IVF procedure, regardless of the concept of their regulation.

A special ethical question is whether an individual is entitled to biomedical-assisted fertilization. An affirmative position on this issue is becoming more common. The difference between a two-parent and a single-parent family is minimized, both in the world and our region. Single-parent family is more common nowadays and could be established through traditional parenting (divorce after the birth of a child, death of one parent, disputed marital paternity.) Also, the creation of a single-parent family can occur in the process of biomedical-assisted fertilization or adoption. (According to the BAFA, it is possible for a woman without the partner (marital, extramarital) to undergo the procedure in case of medical indications. Also, it is possible to dispute paternity if fertilization took place without the consent of the husband, by adoption by an unmarried person).

Finally, a key argument in favor of biomedical-assisted fertilization was the demand of the individual for happiness and health (Živojinović, 1996, p. 216). Therefore, in the perspective of changing the law and adapting it to modern life, a more liberal approach of the individuals to the ART procedure should be developed.

The right of an individual to biomedical-assisted fertilization is strictly determined depending on the existence of medical indications. More precisely, medically legitimate interventions are allowed in case of medical infertility and disallowed in case of social infertility. Social infertility affects same-sex couples, singles and people from lower income who do not have the social resources to access ART procedures. Looking in the perspective of social infertility, there is commune conclusion that the law will have to take inevitably these reasons into account in the future.

In comparative law, Spanish, English, and the law of the Canadian province of Ontario enable an individual to apply for ART procedures. The Biomedically Assisted Fertilization Act of the Republic of Serbia (2009, Article 23, part 3), as well as the corresponding Act of the Republic of Srpska (2020, Article 39 part 2), enables the individual, only with medical indications, to apply for the ART procedure. It is interesting to mention that ART procedures are more accessible to the single ladies than single man.

Different solutions between countries regarding the subjects entitled to ART have led to the emergence of reproductive tourism. Reproductive tourism, or "cross-border reproductive care", is the phenomenon of people crossing international borders to access reproductive technologies.

The destination country has more liberal conditions than the country of residence, for example, the ART treatments aren't legally available in their home country, or availability is extremely limited. Some of the common reasons are the ethical unacceptability of biomedically assisted fertilization, the impossibility to use donated embryos, the impossibility to choose the sex of the child, the impossibility of cryopreservation, the impossibility of posthumous fertilization, the age limit for women, waiting for time and costs of an ART procedure.

ADDITIONAL CONDITIONS FOR EXERCISING THE RIGHT TO BIOMEDICAL-ASSISTED FERTILIZATION

As additional conditions could be listed as the age of majority, legal capacity, judgment capacity, possibilities of cryopreservation, and others. Age of majority is a necessary condition for applying for an ART procedure. In addition, age can negatively influence the outcome of the ART procedure. Women's fertility gradually declines in their late thirties and early forties, so the success of conception is relevantly lower. The age limit for women is often set as a condition for financing ART procedures from public funds. So, BAFA of Federation of Bosnia and Herzegovina enables women to undergo the insemination process up to the age of 42 at the expense of budget funds. On the other hand, that question remains unregulated in the same Act in Republic of Srpska.

The predicted age limit is motivated by medical reasons as younger women have greater legitimacy for ART procedures. The years in which parenting is practiced are also important from a sociological aspect. The child's best interest is to have vital parents capable of performing responsible parental duties. This sociological and medical aspect of age is emphasized in Article 28 of the Act on Biomedical Assisted Fertilization; "an age that enables the performance of parental duties, raising and preparing a child for independent living". In addition to the upper age limit, which is set for women at the age of 42, the lower age limit should coincide with the age at which marriage can be contracted with the permission of the court (16 years).

The capacity of judgment is the ability to understand the legal and real significance of one's declaration of will. Its restriction can be temporary (alcohol or drug intoxication) or permanent (mental disorder, mental illness, and dementia). Therefore, the incapacity of judgment requires the existence of one of the aforementioned conditions (objective aspect) which has to result in the lack of capacity to act rationally (subjective aspect). The capacity for judgment is relative and must always be evaluated within a given context. By law, the capacity of judgment is assumed (statutory presumption) and the opposite has to be proven. The incapacity of judgment is determined by

the court. The judge's decision is guided by the opinion of a psychiatrist's expert. Generally, the capacity of judgment is necessary for exercising parental rights through process of ART. Achieving parenthood through biomedically assisted fertilization is subject to stricter conditions than achieving parenthood through a natural process. A person deprived of parental rights can re-establish parenthood through a natural process, while the same person cannot apply for the ART procedure (Article 155 of Family Law of the Republic of Srpska). Stricter conditions are determined based on the conditions for achieving parenthood through adoption.

THE RIGHT OF A CHILD TO KNOW ITS WAY OF CONCEPTION AND ITS OWN IDENTITY

Separation of legal (sociological) parenthood from biological calls into question the origin of the child and its knowledge about it. Whether the child will be informed about the method of conception is the personal decision of the parents. That decision cannot be influenced by Law. However, when a child is conceived through an ART procedure with heterologous insemination, an ethical question arises about the right to know one's own origin.

In 2020, the Republic of Srpska finally regulated the field of biomedical-assisted fertilization with appropriate Act. BAFA allows third-party reproduction, including the donation of gametes, egg, or sperm cells. It takes a restrictive approach to third-party reproduction and allows it only when it is not possible to use gametes of one of the spouses or extramarital spouses or when transmission of hereditary disease to the child is prevented (Miškić, 2020, p. 423). Donator must remain anonymous and his donation must be voluntarily made (BAFA, 2020, Article 43). Donations must be made without compensation (BAFA, 2020, Article 53). It is important to note that the provision on donor anonymity is contrary to the 1989 Convention on the rights of the Child, which gives each child the right to know his or her own identity. Article 7 of Convention on the Rights of the Child prescribes the obligation that the child shall be registered immediately after birth and shall have the right from birth to a name, including the right to acquire nationality and as far as possible and also the right to know and be cared for by his or her parents. The best interests of the child are proclaimed by BAFA (year, Article 9), as the welfare of the child and the right to the protection of human dignity. However, this Act explicitly denies the child the right to genetic truth. Some countries have shown by personal example that denying a child the right to genetic origin is unconstitutional. For example, Germany rejected donor anonymity as unconstitutional and allowed the child information about the genetic parent. It is interesting to mention UK, where under the Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations from

2004 (the "disclosure regulations"), a person aged 18 or over can require the medical file to disclose whether they are donor-conceived and the identity of their donor (if the donor provided the relevant information after 31 March 2005). But that right is unlikely to be exercised unless someone tells them the truth, or it is obvious because their legal parents are of the same sex. Based on psychological knowledge deriving from decades of studies on adoption, ART professionals throughout the world are increasingly suggesting parents who recurred to third-party procedures to disclose to their child the nature of donor conception. The Ethical Committee of the American Society for Reproductive Medicine supports this trend, although recognizing that the decision is highly personal and it is one for parents to make.

The child's interest in knowing his or her origin may be psychological, medical, as well as legal. Also, the donor has no parental rights or obligations toward children conceived by his gametes (Article 48). The donor's reasons are purely altruistic, with no intention of establishing paternity towards the future child.

A child conceived through ART is not entitled to knowledge of personal data on the donor of reproductive material (BAFA, 2020, Article 58, Section VII). However, the law introduces the right of a child conceived by an ART to be informed of the content of medical documentation. Only in the case of medical indications, the child has the right to know information about the donor of reproductive material. To this purpose, all medical and legal documentation of the ART procedure is kept in electronic form, 50 years after the use of reproductive material (BAFA, 2020, Article 59). This time lapse of 50 years indicates that there is possibility for a child to find out genetic truth while the genetic parents are still alive. On the other hand, by donating reproductive material, the donor does not acquire any legal obligations to the recipient of the reproductive material nor to the child conceived or born through ART. In addition, the donor has no right to recognize paternity or maternity subsequently and thereby establish parental rights.

From the above-stated facts, we can conclude that the donation of reproductive material is partly anonymous. The identity of the donor will remain unknown, both to the recipient of the genetic material and to the child conceived by the insemination procedure. Only to protect the best (health) interests of the child can a medical file be opened and an insight into the family history of the disease, as well as other health parameters of the donor (for example blood type). Most European countries, such as Sweden, Austria, Netherlands, Germany, and Switzerland have abandoned the principle of anonymity in donating genetic material and allowed the child to know his or her genetic background (Kovaček Stanić, 1997, pp. 129-138). Common to all these countries is that they allow a child of a certain age, mostly sixteen years old (except Austria which lowered the age limit to 14 years old) to find out the identity of

the donor. A child under the expected age can only find out the physical (hair color, eye color, height, weight, skin color) and other characteristics of the donor. According to the BAFA of the Republic of Srpska, the above characteristics are not foreseen as part of the donor file. Also, persons undergoing biomedically assisted fertilization are not entitled to request such information about the donor (Article 40).

ESTABLISHING AND DISPUTING THE PATERNITY OF A CHILD CONCEIVED THROUGH ART

Interestingly, BAFA (2020) itself does not explicitly prohibit the possibility of establishing the paternity of a child conceived by ART. Disputing and determining the paternity of a child conceived by ART is regulated by the Family Law of the Republic of Srpska. Family Law (2002, Articles 135 and 136) strongly prohibits contesting paternity in the case of artificial insemination, except when conception occurs without the consent of the husband. It is important to note that Family Law does not use terms as marital or /and extramarital partner. This legal provision enables exclusively the husband for disputing paternity. An objection to such a legal wording would be that it does not follow the development of biomedical rules. The extramarital partners as well as marital are allowed undergoing IVF procedure. Even more, BAFA (2020) permits egg donation and embryo donation, so motherhood could be challenged as well as fatherhood. Therefore, the law completely unjustifiably omits other legitimized paternity challenges.

With the development of medical science, both maternity and paternity can be challenged and established in later periods of life, not just at birth. Having in mind that disputing paternity is possible only by a husband who has not consented to artificial insemination; we see that the option of establishing and disputing paternity is not available to the child. Older literature raises the question of whether a child should be granted the right to challenge paternity (Cvejić-Jančić, 1988, p. 214). Although the information about ART is a professional secret, the law does not prohibit parents from informing their child about the method of its conception.

Some serious arguments could be confronted by this legal provision. Firstly, this provision is patriarchal because it keeps the interest of the man only, leaving aside the interest of the child and the mother. The legislator represents the interests of a man, no matter whether it is a sperm donor (challenging his paternity is prohibited) or a husband (he is the only person entitled to challenging paternity). Secondly, the content of the provision is not motivated by the best interest of the child. Besides the fact that "the best interest of the child" is not preserved, the formulation itself is not quite precise. It turns out that the father can dispute paternity whenever ART

is done without his permission, including the case of homonymous ART. In that case, the husband is the de facto father of the child, no matter whether he gave permission or not. So, the prohibition of disputing paternity should be restricted only to the cases of third-party reproduction without the consent of a marital or extramarital partner. This formulation seems to express adequately present state of family relations concerning ART.

The evidence used to establish or challenge paternity is medical expertise. Medical expertise includes determining the day of conception, based on the degree of maturity of the newborn, and determining the fertility of the supposed father. The most important is genetic expertise.

One of the important medical procedures is the analysis of blood groups. It is based on the knowledge of the way of inheriting blood types from parents to children (Kovaček Stanić, 1997, p. 73). In addition to the expertise of classical blood groups, in the procedures of determining or disputing maternity or paternity, the analysis of HLA antigen is applied, also as a type of analysis of blood systems. The HLA system is a complex system of antigens and is found on the surface of many cells of the human body. It is considered that this analysis can determine paternity with 82% accuracy, and if this method is combined with other analyses up to 96% accuracy. The combined analysis also includes the anthropological-genetic method, which compares hereditary morphological traits, e.g. fingerprints, palms, soles, pigmentation, features of the head, physical abnormalities (excess or lack of fingers, fusion of fingers, white skin spots - vitiligo and white hair - albinism). Nowadays the most common and reliable way to establish a genetic link is DNA analysis. DNA is the basic biochemical content of chromosomes, which is a form of gene transfer as the smallest hereditary factor. DNA prints reveal individual DNA lines, which in a child can only be descended from two genetic parents. DNA analysis can be performed on blood samples but also on other body fluids (saliva, semen, vaginal secretions), and tissue samples. Genetic parenting can be determined with certainty by DNA-based analysis, while analyzes previously could only rule out parenting with certainty.

PRESUMPTION OF MOTHERHOOD

Currently, according to the Family Law in the Republic of Srpska (2002), the traditional irrefutable presumption of motherhood is valid. This assumption *"mater semper certa est"* dates back to Roman law. Until the period of ART procedure development, it was not necessary to reconsider it. The legal formulation of the irrefutable presumption of motherhood is "the child's mother is the woman who gave

birth to him" (Family Law, 2002, Article 109, part 1). Paternity can be questioned but maternity established at birth remains. With the development of medical science, both maternity and paternity can be challenged and established in later periods of life, not just at birth. However, this irrefutable assumption should be changed to a rebuttable assumption and read "the child's mother is considered to be the woman who gave birth to him". Such a formulation is necessary because of the possibility of challenging motherhood in cases of ART procedures.

Most legislation that recognizes ART procedures has retained a solution that determines maternity by birth, either implicitly or in special legal provisions. This understanding indicates the predominance of the fact of carrying and giving birth to children over egg donation. Although the child is genetically related to another woman, the mother is considered to be the one who gave birth to him. The genetic mother can only hope for a voluntary transfer of rights and obligations based on adoption. In the case of an egg donation, the woman who gave birth to the child is the intended mother, so the criterion of birth coincides with the sociological criterion.

A particularly complicated situation arises in the case of a surrogate mother. Many countries' legislatures consider a surrogate mother a legal mother because they respect the old legal principle *"mater semper certa est"* (Miškić, 2020, p. 429). Two principles are relevant for determining maternity in the case of surrogacy: the principle of genetic truth and the principle of sociological reality. The principle of genetic truth claims that the child's parents are the ones whose genetic material was used for fertilization. The first principle completely ignores the second principle. The second principle is that the parents of the child are the ones who raise and transmit values, not anonymous providers of gametes. The gestational type of surrogacy integrates both principles because the mother of the child is a person whose genetic material carries and takes care of the child. Therefore, I consider it justified that the intended mother, who is also a genetic mother, is considered to be a legal mother. Recognition of a legal mother is needed for reasons of simplification of the procedure and a greater degree of security of the party in the procedure. Otherwise, if the surrogate mother is declared a legal mother, the procedure is unnecessarily complicated by the adoption process and the fact of the genetic link remains completely ignored. An alternative to the complicated adoption process is to make a court decision that considers the genetic parents as the child's parents instead of the surrogate mother and her marital/extramarital partner. Thailand, as one of the countries of reproductive tourism, has enabled intended parents to register directly on the child's birth certificate in case of gestational surrogacy (Stasi, 2020). The basic condition for the intended parents to be declared legal parents is that at least one of the parents is genetically related to the child. Regardless of whether the genetic material comes from one or both parents, they are considered co-parents. Such a simplified model of obtaining parenthood over

a child born through a surrogate mother is allowed in the UK (Human Fertilisation and Embryology Act, 2008).

CONCLUSION

The reproductive legislation of the Republic of Srpska has taken a major step forward with the adoption of third-party reproduction. Even though BAFA allows third-party reproduction, including the donation of gametes, egg, or sperm cells, it takes a restrictive approach and allows it only when it is not possible to use gametes of one of the spouses or extramarital spouses or when transmission of hereditary disease to the child is prevented. However, this Act raised many bioethical questions to which it did not provide answers. In addition, some of the issues involve changing the provisions of the Family Law (challenging parenthood).

The possibility of individuals or couples (marital or extramarital) becoming subjects of biomedical-assisted fertilization is deeply conditioned by medical indications. Medical legitimate interventions are allowed in case of medical infertility and disallowed in case of social infertility. A restrictive approach to ART procedures (age, marital status, discrimination based on sexual orientation) has led to an increasing number of outgoing cases. Additional reasons for reproductive tourism are the impossibility to choose the sex of the child, the impossibility of cryopreservation, the impossibility of posthumous fertilization, and the waiting time and costs of an ART procedure. In Republic of Srpska, a child conceived through third-party reproduction is not entitled to knowledge of personal data on the donor of reproductive material. The identity of the donor will remain unknown, both to the recipient of the genetic material and to the child conceived by the insemination procedure. Only to protect the best (health) interests of the child can a medical file be opened and an insight into the family history of the disease, as well as other health parameters of the donor (for example blood type). Family Law strongly prohibits contesting paternity in the case of artificial insemination, except when conception occurs without the consent of the husband. An objection to such a legal wording would be that it does not follow the development of biomedical rules. The extramarital partners as well as marital are allowed undergoing IVF procedure. Even more, BAFA permits egg donation and embryo donation, so motherhood could be challenged as well as fatherhood. Therefore, the law completely unjustifiably omits other legitimized paternity challenges.

In addition, the legal formulation of the irrefutable presumption of motherhood is "the child's mother is the woman who gave birth to him" should be changed into "the child's mother is considered to be the woman who gave birth to him".

In reality, sociological parenthood is increasingly suppressing biological parenting. The traditional understanding of institutions of Family Law, such as family, paternity, and maternity has been shaken by the progression of medically assisted conception. Eliminating existing conflict of rights supposes a radical change in the social and individual attitude to parenthood.

REFERENCES

Babić, I. & Jotanović, R. (2018). *Civil Law - Introduction to the Civil Law*. Banja Luka: Pravni fakultet Univerziteta u Baoj Luci.

Casonato, M. & Habersaat, S. (2015). Parenting without being genetically connected. *Enfance*, *3,* 289-306.

Cvejić-Jančić, O. (1988). Utvrđivanje i osporavanje očinstva djeteta začetog putem artificijelne inseminacije. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 211-217.

Janjić Komar, M. (1992). Pravo na asistiranu prokreaciju. *Theoria, 35,* 19-34.

Josić, S. (2009). Prikaz novog zakonodavstva Velike Britanije o roditeljstvu u slučaju biomedicinski potpomognutog začeća. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *1*, 432.

Jotanović, R. (2016). *Pravo na fizički integritet kao osnova drugih prava ličnosti*. Banja Luka: Pravni fakultet Univerziteta u Banjoj Luci.

Kovaček Stanić, G. (1997). *Pravo deteta da zna svoje poreklo*. Novi Sad: Pravni fakultet u Novom Sadu.

Kovaček Stanić, G. (2020). Istopolno partnerstvo – porodičnopravni aspekt. In *Stanje stvari*, https://stanjestvari.com/2021/05/20/gordana-kovacek-stanic-istopolno-partnerstvo-porodicnopravni-aspekt/ (accessed April 4, 2022).

Marković, M. (2009). Pravo na najviši dostižni standard zdravlja: prema Opštem komentaru br. 14 Komiteta za ekonomska, socijalna i kulturna prava. *Pravni život, 9*, 871-887.

Miškić, M. (2020). Surrogacy as a form of third-party reproduction in the Biomedically Assisted Fertilization Act of the Republic of Srpska. *International Scientific Conference: Transformative Technologies: Legal and Ethical Challenges of the 21st Century*, Faculty of Law, University of Banja Luka, 421-432.

Panov, S. (1998). *Pravo na roditeljstvo*. Beograd: Pravni fakultet Univerziteta u Beogradu.

Samardžić, S. (2013). Prava istopolnih partnera u Evropskoj uniji i Srbiji u oblasti bračnog prava. *Zbornik Pravnog fakulteta u Novom Sadu*, *2*, 429-446.

Stasi, A. (2020). Protection for Children Born Through Assisted Reproductive Technologies Act, B.E. 2558: The Changing Profile of Surrogacy in Thailand, In National Library of Medicine https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5753847/ (accessed: June 15, 2022).

Živojinović, D. (1996). Pravo na začeće uz pomoć biomedicine - sa posebnim osvrtom na prava neudate žene. *Pravni život*, *10*, 211-221.

Human Fertilisation and Embryology Act, United Kingdom, 2008.

Biomedical Assisted Fertilization Act of Republic of Srpska. *Službeni glasnik Republike Srpske*, 68/20.

Biomedical Assisted Fertilization Act of Republic of Serbia. *Službeni glasnik Republike Srbije*, 72/09.

Family Law of the Republic of Srpska. *Službeni glasnik Republike Srpske*, 54/2002, 41/2008, 63/2014, 56/2019.

Non-contentious Procedure. *Službeni glasnik Republike Srpske*, 36/2009, 91/2016.

Constitution of the Republic of Srpska. *Službeni glasnik Republike Srpske*, 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 26/02, 30/02, 31/02, 69/02, 31/03, 98/03, 115/05, 117/05.

Law on conditions and procedure for termination of pregnancy. *Službeni glasnik Republike Srpske*, 34/08.

Etički aspekti biomedicinski potpomognute oplodnje s posebnim osvrtom na zakonodavstvo Republike Srpske

SAŽETAK

Dostignuća suvremene medicine proširila su spektar kontroverznih situacija u doktrini i praksi obiteljskog prava. Posebno pitanje je roditeljstvo, kao rezultat potpomognutih reproduktivnih tehnologija. Iz ovog problema proizlaze mnoga pitanja, primjerice, tko ima pravo ostvariti roditeljstvo biomedicinski potpomognutom oplodnjom? Drugo važno pitanje je: „Imaju li djeca rođena ovim putem pravo znati svoje biološko podrijetlo?“ Posljednje pitanje koje se postavlja jest mogu li se biološko i sociološko roditeljstvo pomiriti. Kako se ova proturječnost može riješiti? Autori će, uzimajući u obzir rješenja iz poredbenog prava i postojeće stanje, pokušati ponuditi moguće smjernice za navedene probleme. Svi prijedlozi *de lege ferenda* ponuđeni su iz perspektive rješenja i nedostataka porodičnog i reproduktivnog zakonodavstva Republike Srpske.

Ključne riječi: proces biomedicinski potpomognute reprodukcije, potpomognute reproduktivne tehnologije, pravo djeteta, pretpostavka majčinstva, etika roditeljstva, bioetika.