



# Legal and Ethical Problems of Regulating Relations Regarding the Use of Assisted Reproductive Technologies

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## Abstract

The paper is devoted to the research, analysis and solution of problems of legal regulation of relations in connection with the use of assisted reproductive technologies as special methods of infertility treatment. The modern domestic legal base and law-enforcement practice in the field of relations regarding artificial insemination are investigated. Some theoretical, practical and moral problems affecting the provision and protection of the rights and interests of participants in this kind of social relations are analyzed. The long-overdue need to develop and improve the legal regulation of relations regarding the use of assisted reproductive technologies is justified. The scientific novelty of the work is the authors' attempt to determine the main trends and directions of legislative support of this sphere of social relations and substantiate the most constructive proposals in order to improve the corresponding mechanism of legal regulation; the authors have studied the history of the establishment and development of the institute of artificial means of reproduction and analyzed the current norms of law.

**Keywords:** Reproductive technologies, infertility, embryo, donor sex cells, generative organs tissues, surrogate motherhood, sex cell donors, surrogate arrangement.

## INTRODUCTION

The problems of legal regulation of relations regarding the use of assisted reproductive technologies have traditionally been paid close attention since the appropriate methods of medical intervention need a special regime of the impact of legal norms.

Assisted reproductive technologies are methods of treating infertility, in which separate, or all stages of conception and early development of embryos are carried out outside the maternal body (including using donor or cryopreserved germ cells, tissues of generative organs and embryos, and surrogate motherhood). However, human decency, medical ethics, and the law turned to be especially unprepared for this specific, actively developing way of overcoming infertility [9]. The main reason, in our opinion, is that the use of the assisted reproductive technologies has its fundamental differences from conventional and traditional methods of medical treatment. Instead of the usual relationship that arises between two players — a provider of the services and a patient — a more complex relationship forms, the participants in which are at the first stage the donor of the generative organs and the healthcare organization, and then — the donor and the recipient (or the surrogate mother).

An important feature of relationships regarding the use of assisted reproductive technologies is that the success of this method of medical intervention depends primarily on the functional recovery of the transplanted organ (sex cells, embryos) and its survival in the recipient body (surrogate mother), while the use of assisted reproductive technologies, contraindications and limitations to their use are determined by the federal executive authority. The source base for regulating the corresponding relations is very modest. When studying and analyzing it, "it is important not only to study the law itself but also to track the most problematic areas in the practice of its application" [6].

According to the World Health Organization (WHO), the problem of infertility in the world affects up to 15% of the total number of couples of childbearing age. The prevalence of infertility in a number of regions of Russia exceeds the critical threshold of 15% determined by WHO [7]. According to domestic research, every fifth married couple in Russia cannot have children for health reasons. About 10 million Russians infertile for medical reasons were studied: 4 million men and 6 million women needed the use of assisted reproductive technologies in order to become parents. In this case, we are talking only about those couples who applied to the hospital [3]. Given this, it can be stated that infertility is an acute social problem in modern Russia.

Impressive achievements of medicine testify to positive trends in the application of the studied specific method of medical intervention: under the circumstances where the proportion of

people who do not have the natural capability for childbearing, according to statistics, is growing constantly, it successfully helps solve infertile problems, prevent danger to life and health of the mother and the child, if there are physiological deficiencies of the mother, if there is a biological incompatibility of spouses, or if they suffer hereditary diseases or have a predisposition to them. This clearly demonstrates the prospects and social significance of the use of reproductive technologies, and, consequently, the need to form a modern legal framework for the relevant relations [8]. Medical science and practice have made significant progress in recent decades. Many of the areas of medical activity have raised a number of unresolved moral, ethical, social and legal problems for society. One of them is the development and use of reproductive technologies. The main impetus to the rapid development of these technologies was the opportunity to address the problem of childlessness for many single women and couples. Sometimes, assisted reproductive technologies are the only way to have children and experience the joy of motherhood or paternity.

This convincingly demonstrates that the improvement of the special mechanism for the legal regulation of relations regarding the use of assisted reproductive technologies represents an essential and long overdue necessity. In addition, the lack of a sufficient legal basis significantly impedes further progress in this field of medicine.

## METHODS

While working on this paper, the coauthors used such methods of legal science as historical, dialectical, logical and comparative-legal ones. The historical method was used primarily in studying the history of the development of the practice of the use of assisted reproductive technologies, as well as legislation regulating social relations in the use of assisted reproductive technologies. The dialectical method contributed to the possibility of studying the legal mechanism for regulating relations regarding the use of assisted reproductive technologies in development, communication, and interaction with other institutions of law. The logical method was used, in particular, in the study and analysis of norms that represent an institution that regulates the use of assisted reproductive technologies. The comparative legal method allowed coauthors to analyze and compare foreign legislation in the field of the use of assisted reproductive technologies.

## RESULTS

**The general principles of legal regulation of relations regarding the application of assisted reproductive technologies**

Despite the fact that different methods of artificial insemination have long been developed and successfully applied

in medicine, many ethical and legal problems in this connection have not yet been resolved, which can entail either violations or abuses of the rights and interests of participants in the emerging social relations, or unreasonable restrictions in the use of appropriate methods of medical intervention.

Artificial insemination and embryo implantation are special types of transplantation. A special law regulating the relations arising in this respect is not accepted, and the Law of the Russian Federation "About Transplantation of Organs and (or) Tissues" does not apply to organs, parts, and tissue related to the process of human reproduction, including reproductive tissues (ovum, semen, ovaries, testes or embryos). The norms of Art. 55 of the Federal Law of the Russian Federation "About the Fundamentals of Protecting the Health of Citizens in the Russian Federation" are not able to answer the vast majority of issues concerning reproductive technologies.

The legislation of the Russian Federation in the field of legal regulation of assisted reproductive technologies is still far from perfect and requires further development. The existing legal norms regulating relations regarding the use of reproductive technologies are fragmentary; they only touch on certain aspects of the emerging problems, whereas only clear legislative regulation of all the conditions of artificial insemination, implantation of embryos, bearing and birth of a child, protection of his or her rights and interests after birth will allow the most complete use of these methods in solving such a complex problem as infertility. The ideal solution of the problem is the adoption of a special law about the use of reproductive technologies. A significant contribution to the development of legal regulation of the use of artificial methods of reproduction could be made by legal integration [4].

The operations of assisted reproductive technologies include those with which the husband's sex cell (homologous insemination) is applied artificially to a woman's body, or in vitro fertilization is used (*in vitro*), after which the embryo is transferred to the body of a biological mother or donor. Artificial insemination consists of the fertilization of the egg of a woman in the mother's body in the absence of sexual contact, i.e. by introducing sperm cells with the help of technical means. The second form of artificial insemination is performed outside the woman's body when conception occurs by the fusion of male and female sex cells in the laboratory with the subsequent introduction of a fertilized egg into the uterus. When using each of these technologies, special specific relationships arise that require special legal regulation.

The rights and duties of the participants in the relationship regarding the use of artificial methods of reproduction are formalized with the help of a civil law treaty, the subject of which are the professional actions of the healthcare provider executives aimed at achieving such a result as pregnancy. Lack of such a result, in our opinion, does not lead to an evaluation of the medical service as inadequate. However, if the absence of pregnancy or the birth of a child with impaired development resulted from default in the performance of obligations expressed in nonprofessionalism, the use of inappropriate techniques and methods of treatment, etc., the provider of health services should be held liable for improper performance of the contract and harm to health.

Under the concluded contract, the woman (patient) acquires the right to receive services for artificial insemination and transfer of an embryo of adequate quality, information about the procedure for artificial insemination and embryo transfer, medical and legal aspects of the consequences of such a service, about the medical genetic examination data, appearance and nationality of the donor, which are provided by a doctor. She can require information about the availability of licenses and certificates from the service provider. The patient, in turn, is

obliged to pay for the cost of the provided service for artificial insemination and implantation of the embryo, as well as to fulfill all the physician's requirements ensuring high-quality performance of the medical service.

The content of this agreement is predetermined by its purpose: the establishment of parental rights and responsibilities for the child, the conception of which was carried out in an unconventional way, using reproductive medical technologies. The application of civil law norms on contracts, obligations and liability can be applied to relations arising from this contract, if this does not contradict the substance of family relations, the basic principles of family law.

A couple who wants to have a baby with the help of assisted reproductive technologies, whether they are in a legal marriage or not, has the right to apply them on condition of mutual consent and full knowledge in this matter. Moreover, any single woman can have a baby using these technologies if she gives a voluntary consent to medical intervention and is informed of all the nuances.

First of all, we should dwell on the question of who specifically has the right to artificial insemination or embryo implantation. As follows from Art. 55 of the Federal Law of The Russian Federation "About the Fundamentals of Protecting the Health of Citizens in the Russian Federation", every adult female of child-bearing age has this right. However, in legal literature, there are justifiable doubts about the correctness of this approach. In the opinion of Maleina, "in our country, the artificial origin of children is permissible under medical conditions, with the condition of persistent infertility, illness of spouses, the danger of a natural way of birth for the health of a mother or a child. A woman (or spouse) who is able to have babies in a natural way cannot get this operation" [5]. This point of view seems to be worthy, and in this connection, special indications should be used to establish grounds for the use of artificial insemination or implantation of embryos, since in this case, it is a kind of medical intervention for the purpose of medical care. Healthy and capable of natural childbirth women (spouses) do not need such help. In the broad interpretation of the norms of Art. 55 of the Federal Law of The Russian Federation "About the Fundamentals of Protecting the Health of Citizens in the Russian Federation", one should satisfy the desire of all women (spouses) wishing for such kinds of interference, which, firstly, involves the use of objectively not required medical intervention, and, secondly, inevitably limits the possibility of providing appropriate medical assistance in really necessary cases.

Many authors see the negative point of artificial insemination in the increase in the number of children in single-parent families and the deformation of a usual family, indirect support for homosexuality, devaluation of love, sweetheart, that "conception and birth will become independent of sexual contacts through artificial insemination that is contrary to all experience of human history and seems to be unnatural, it poses a risk of serious strain in relations between people, and possibly threatens the very existence a human" [5].

The moral aspect of such reasoning convincingly confirms our position that the natural reproductive processes in man should not be absorbed without special objective reasons by the development of the unlimited practice of artificial insemination. Interference in reproductive activity should have the goal of giving people the joy of motherhood and fatherhood, which is not available otherwise. A similar position is contained in the Statement about Artificial Insemination and Embryo Transplantation adopted in 1987 by the World Medical Association, according to which such medical assistance is justified in the case of untreatable infertility in cases of immunological incompatibility, insurmountable obstacles to the fusion of male and female sex gametes and other medical

indications.

Another important problem is the need to determine the special legal regime used for artificial insemination of transplants: sperm, ovum and the embryo especially. These are special objects of donorship that carry hereditary material, participate in the genetic formation of a person, determine a person's physiological and mental qualities and establish the biological relationship between a donor and a recipient. Therefore, the legislator should clearly define the status of the donor, who should not be the carrier of infections or the carrier of the hereditary disease. He should be obliged to report all known hereditary diseases or factors that indicate an aptitude for hereditary diseases. The most complex in this regard are the situations in which the question of the limits of the admissibility of artificial insemination based on genetic motives is being solved, because "here we are talking about artificial insemination, which is not done for the sake of getting rid of the consequences of the infertility of parents, but for the conception of a "more perfect" child than one who could have been born naturally from the parents' own genetic pool " [2].

Analyzing the specific features of a donor's legal status, it should be borne in mind that advances in in-vitro fertilization can effectively combat absolute infertility caused by the absence or unsuitability of gametes, with the help of donor programs. Gametes' donorship presupposes the existence of legal conditions, such as the suitability of the donor to perform his or her functions for health reasons, the donor's consent to the use of gametes, and compensation for the performance of donor functions.

The question of preserving the donor's anonymity remains controversial. From the point of view of ensuring the genetic protection of offspring, the identification of the donor is necessary. However, information about donor participation in the program of artificial insemination and embryo implantation is a medical secret and should not be disclosed.

Scientific literature actively discusses the question of whether donors have the right to decide who can use their gametes. We think that donors should give up all rights and duties about their gametes. The use of gametes should be done taking into account the interests of recipients by the decision of medical organizations. Thus, as a general rule, donors after the transfer of biological material to the bank lose ownership rights to it, which passes to the relevant medical organization.

The legislation should provide for mandatory requirements regarding the anonymity of the donorship of germ cells, which will help protect the interests of the donor, child and legal parents. The negative aspect of entrenchment of such a rule is the complete absence of information about heredity, which is extremely important for the child-raising parents, as well as the possibility of marriage between genetic relatives who are unaware of their blood relation. Appeal to the practice of foreign legislation makes it possible to note the following measures that limit the risk of such consequences: centralized registration of gamete donors, restriction of the number of pregnancies using gametes from one donor, ban on the commercialization of donors, which can be used in domestic legal practice.

When performing artificial insemination, medical interventions are possible in order to select the sex of the unborn child. It seems that the law should prohibit arbitrary interference in the choice of sex without special medical indications because the unjustified choice of gender can disrupt the natural (50/50) sex ratio with difficult predictable consequences – biological, demographic and social ones. Therefore, in accordance with Art. 14 "Prohibition on the choice of gender" of the Convention on Human Rights and Biomedicine, "the use of assisted medical technologies for procreation is not permitted in order to select the gender of the unborn child, except some cases to prevent the inheritance of a child with diseases related to gender".

The realization of the right to use reproductive

technologies is limited by a number of normative bans, in particular, indicating that a surrogate mother can only be a woman between the ages of twenty and thirty-five who has at least one healthy child of her own (Article 55 of the Federal Law "About the Fundamentals of Protecting the Health of Citizens in the Russian Federation"). In addition, in the absence of consent of the spouse, the married woman does not have the right to use artificial methods of fertilization and implantation of the embryo, in other words, in order to realize this right in the appropriate situation, she should terminate the marriage.

It seems that such restrictions do not have any worthy arguments and should be excluded since they limit the woman's legal capacity. A woman's husband who does not consent to the use of artificial methods of fertilization and implantation of the embryo should be given the right to refuse paternity or to controvert the fact of its determination. It is the way of development of Quebec (paragraph 2 of Article 539 of the Civil Code of Quebec).

Thus, the legislation of the Russian Federation in the field of legal regulation of assisted reproductive technologies is still far from perfect and requires further improvement and development.

### **Features of legal regulation of relations regarding surrogate motherhood**

Surrogate motherhood is the bearing and birth of a child (including premature birth) under a contract concluded between a surrogate mother (a woman who has a fetus after donor embryo transfer) and potential parents whose sex cells were used for fertilization or a single woman for whom the bearing and birth of a child are impossible for medical reasons.

Surrogate motherhood from a medical point of view is one of the most effective ways to overcome the inability to procreate. At the same time, it is the most controversial method of assisted reproductive technologies in the legal and ethical terms.

For the first time, surrogate motherhood was mentioned in paragraph 4 of Art. 51 of the Family Code of the Russian Federation, as well as in Art. 16 of the Law of the Russian Federation "On Civil Status Acts" regulating the procedure for registering a child born with the help of a surrogate mother in the registry offices, and also in Order of the Ministry of Health of the Russian Federation of February 26, 2003, No. 67 "On the Use of Assisted Reproductive Technologies (ART) in Therapy of Female and Male Infertility", which provided for medical requirements for a surrogate mother, and indications that might serve as a basis for resorting to the services of a surrogate mother. In the Federal Law "About the Protection of the Health of Citizens in the Russian Federation", only two norms (paragraphs 9, 10, Article 55) are devoted to surrogate motherhood. In connection with this, jurists rightly emphasize that these normative acts are clearly insufficient to regulate such a complex legal phenomenon as the relationship of surrogate motherhood. This is due to the fact that when using methods of artificial insemination, not only legal, but also moral and ethical problems arise, in particular, the problem of a surrogate mother's choice to leave the child to herself or pass him or her on to the genetic parents.

Relationships regarding the definition of rights, duties, as well as the responsibility of the substitute (surrogate) mother and the genetic (future) parent-clients during the period of the necessary for conception medical intervention, pregnancy and after the birth of a child also require better regulation. There is an urgent need to regulate the relationship of participants in the surrogate motherhood program in case of birth of a dead or unhealthy child. It should also be borne in mind that, in addition to participants themselves, the surrogate motherhood agreement also substantially affects the rights and interests of persons who are not parties to such an agreement, primarily the child born after

the implementation of appropriate reproductive technologies, as well as the spouse of a substitute (surrogate) mother.

The issue related to the use of surrogate motherhood in the legal systems of different states is solved in different ways, which additionally indicates the rather complex and contradictory nature of this institution. There is both a complete prohibition of surrogate mothers' services and giving each legislator the opportunity to use methods of artificial insemination.

With the adoption of the Federal Law of the Russian Federation "About the Fundamentals of Protecting the Health of citizens in the Russian Federation", there is no doubt about the contractual nature of relations between the substitute (surrogate) mother and the spouses – the customers. At the same time, a surrogate mother can be a woman at the age of twenty to thirty-five who has at least one healthy child of her own, received a medical report with a satisfactory state of health and who gave a written informed voluntary consent to medical intervention.

In the Russian legislation, there are several types of surrogate motherhood. The norms of the Family Code of the Russian Federation are oriented only to surrogate motherhood, in which the genetic material of the spouses is used (the so-called complete surrogate motherhood). However, this does not exhaust all its possible options, and the definition of a completely exhaustive list of such options is vital for the development of a special legal framework in order to take into account the specific features of each of them.

There are grounds for singling out at least 6 types of surrogate motherhood:

- 1) surrogate motherhood, which uses the genetic material of the surrogate mother and spouse (traditional or partial);
- 2) surrogate motherhood, which uses the genetic material of the surrogate mother and donor;
- 3) surrogate motherhood, in which the genetic material of the spouses (gestational or complete) is used;
- 4) surrogate motherhood, in which the genetic material of the spouse and donor is used;
- 5) surrogate motherhood, which uses the genetic material of the donor and the spouse;
- 6) surrogate motherhood, which uses the genetic material of donors.

In each of these types of surrogate motherhood, the rights and interests of various persons involved are affected, and the need for special legal regulation is dictated.

For the legal regulation of relations of surrogate motherhood, the correct definition of its purpose is of decisive importance. Its content is significantly influenced, on the one hand, by the actions of persons entering into a contract with a surrogate mother, and on the other hand, by the actions of the surrogate mother herself. Spouses act with the aim to become parents (in most cases, it is a genetically related child). A surrogate mother can be guided by the goal of making a profit, and the goal to help a barren couple.

All the legal positions of the participants arising in case of application of the surrogate motherhood program require the definition of bearing a child with a surrogate (substitute) mother in the agreement. As rightly pointed out in the legal literature, this kind of motherhood and paternity is based on a contract concluded between spouses pretended to be parents and a substitute mother who, at their request, gives birth to a child with the help of artificial insemination. The agreement creates a legal relationship between the parties but does not guarantee its implementation [1], which cannot be recognized as fair, since it does not achieve the goals set by the surrogate mother's services, that is, the parents of the child conceived artificially may not be persons who wish to overcome their infertility by using this method.

Thus, Russian legislation proceeds from the principle of priority of the rights of a surrogate mother. This position seems to

be incorrect, especially in cases when the sex cells of spouses are used for fertilization; they become biological parents then, and there is no genetic connection between the child born and the surrogate mother.

In our opinion, priority should be recognized for genetic connection in comparison with the placental connection that arises between the surrogate mother and a child.

In practice, some questions can arise concerning the right of a woman-donor (surrogate mother) to perform an artificial abortion. In our opinion, when resolving such a dispute, it is necessary to proceed from the substance of the relations between the surrogate mother and the persons who agreed to implant an embryo for the purpose of bearing and subsequently transferring them a child. By concluding a contract and assuming the responsibility to bear a child and hand him or her over to biological parents, the surrogate mother, it seems to us, voluntarily limits herself in the right provided for in Art. 56 of the Federal Law of the Russian Federation "About the Fundamentals of Protecting the Health of citizens in the Russian Federation" for the artificial interruption of pregnancy. Exceptions to this rule are possible in the presence of medical indications for the artificial termination of pregnancy, in particular in the event of a threat to the life or health of a surrogate mother or fetus.

There is one more relevant question of whether the donor woman should be held responsible for misconduct (smoking, drug use, failure to observe the instructions of the observing doctor, etc.), which is the reason for the birth of a child who is not complete (physically or mentally).

In view of the above circumstances, there is no doubt about the great importance of the legal nature, the content and the form of the contract concluded between the surrogate mother and the persons who gave their consent to implantation of the embryo for the purpose of bearing it. Under the conditions of the almost complete absence of a legal framework regulating the relations between these subjects, the agreement remains the only regulator that allows its participants to determine mutual rights and obligations in connection with the use of an appropriate reproductive technology. These circumstances dictate the need to address the problems of legal qualification of this agreement.

#### **Problems of legal qualification of the contract for embryo implantation with the aim of bearing and subsequent transfer to biological parents (surrogate motherhood contract)**

The Family Code significantly expanded the scope of contractual regulation of family relations. However, there are no special rules concerning the contract for embryo implantation for the purpose of bearing and subsequent transfer to biological parents. Nevertheless, there is no doubt about the family-legal nature of such an agreement, because, based on the goals pursued by its participants, it is meant to solve problems of family law.

The most important practical significance is the clarification of the limits of contractual freedom when concluding such an agreement, in connection with which there is a need to clarify its legal nature, the possibility of classifying it as an already known form and type. The problem is that there is no unity in understanding the essence of the surrogate motherhood contract in legal science. Some authors believe that the agreement on surrogate motherhood cannot be regarded as a civil-law contract and, accordingly, it is inadmissible to apply civil legislation on contracts. Some others suggest naming such an agreement as a nondefined contract (*sui generis*) [10]. Still others refer it to mixed contracts. Some authors see the family-legal nature of this agreement.

We believe that the most correct way is to qualify a contract between a surrogate mother and spouses who pretend to be parents as a family-legal contract that has a special content and a special subject composition.

The peculiarities of this contract: it generates rights and obligations between its participants but does not guarantee its execution. The nonfulfillment can be associated not only with the case when the child is born dead, but also when the surrogate mother refuses to transfer the child to the parents-customers, since in the Russian legislation, the priority of the surrogate mother is given in determining the origin of such a child (paragraph 4 of Article 51 of the Family Code of the Russian Federation). We think it is reasonable to consider the right of a surrogate mother to refuse to consent to the recording of genetic parents as "real" parents of her born child in terms of Art. 310 of Civil Code, which provides for the right to unilateral refusal to perform the contract in cases prescribed by law. We are aware that the theory of the family-legal contract is still in its infancy. At the same time, the special subject composition, goals, and content of such agreements create necessary and sufficient signs for singling out such a theory; that will improve the relevant legislative and law enforcement practice.

The content of the study contract is predetermined by its purpose: the establishment of parental rights and duties in relation to the child, whose conception was carried out in an unconventional way, using reproductive medical technologies. Civil-law norms on contracts, obligations and liability can be applicable to relations arising from this contract, if this does not contradict the substance of family relations, the basic principles of family law.

The surrogate motherhood contract, which claims to be a full-fledged legal instrument in the legal regulation of relations, should contain:

- data about people participating in the surrogate motherhood program;
- place of residence of the surrogate mother in the period of bearing a child;
- rights and duties of the parties;
- consequences of the birth of a disabled child;
- terms and procedures of payment for the living expenses of a surrogate mother;
- the grounds and consequences of termination of the contract;
- responsibility of the parties for failure to comply with the terms of the contract;
- other conditions determined by agreement of the parties.

It seems that such a list of essential conditions is sufficient, in general. However, one should take into account that when a child is born, there is a risk to life and health of the substitute (surrogate) mother. Therefore, we consider it necessary to include the way to ensure the risk of harm to life and health of the surrogate mother in the number of essential conditions of the contract about surrogate motherhood.

Namely, when concluding a surrogate motherhood contract, it is necessary to establish a compulsory life and health insurance for a surrogate (substitute) mother for the period of the operation of artificial insemination, bearing and childbirth.

Recognition of the family-legal nature of the agreement will allow us to accurately determine not only the regulatory framework but we can also identify the content of the relevant legal relationship and the limits of freedom of its participants, the most effective ways to influence their behavior. Such an agreement can be regarded as consensual and reciprocal. The remuneration of this contract should be determined as an optional one, in our opinion. Any services or works as objects of civil rights have a certain property value.

The bearing of a child has certain significant costs (defrayment of expenses for medical care, food, alimentation during pregnancy, etc.). Despite the fact that it is difficult to assess a child or the help of a substitute (surrogate) mother, which she provides to a barren couple, a money reward can take place as

gratitude and as a reimbursement of property costs incurred by the surrogate mother.

There is one more controversial question. How should we classify this agreement? Is it permissible to consider gratuitous service or work as a subject of this agreement? It is obvious and indisputable that a child cannot be regarded as property, as well as a surrogate mother cannot be identified with the object of rent, as an incubator for the storage and cultivation of a fertilized egg. Therefore, this contract does not fall under the type of contracts aimed at the transfer of property. It is incorrect to consider the comparison of substitute (surrogate) motherhood with the type of labor activity called "abdomen for hire". The contract for the bearing of a child by a substitute (surrogate) mother is the closest to the contracts for the provision of services. Services are defined as actions, the useful result of which does not have an embodied expression and is embodied either in the actions themselves or in their actual or legal consequences of a legal nature. The provision of services can lead to the appearance of results in monetary terms, but such a result has only an auxiliary meaning, i.e., it is a means of achieving the basic (ideal) result.

Fertilization, the bearing and birth of a child is the desired result of the "service" of the substitute (surrogate) mother. Simultaneously, this means to achieve the main result – the acquisition of parental rights and duties by parents-customers, establishing a legal relationship between them and a newly-born child. At the same time, this similarity cannot serve as a basis for referring a surrogate motherhood contract to subspecies of a contract for the provision of services in view of the fact that it can be done free of charge. It is wrong to determine a nongratuitous contract for surrogate motherhood as one type of civil law contracts, and a gratuitous one – as another type. Providing such a "special service" as bearing a child assumes that a surrogate mother can agree to this service not only because she wants to be paid but to help a barren couple as well. Thus, the contract for bearing a child by the surrogate mother should be viewed not as a kind of contract for the provision of paid services, but as a separate, independent type of family-legal contract. In accordance with the content of this obligation, a woman (patient) acquires the right to receive services for artificial insemination and transfer of an embryo of adequate quality; right for information about the procedure for artificial fertilization and embryo transfer; for medical and legal aspects of the consequences of such a service; for the data of medical genetic testing, external data and nationality of the donor, which are provided by the doctor; right to require information about the availability of licenses and certificates from the service provider. The patient, in turn, is obliged to pay for the cost of the provided service for artificial insemination and implantation of the embryo, as well as to fulfill all the physician's requirements ensuring high-quality performance of the medical service.

The surrogate mother undertakes to comply with the terms of the contract, providing for compulsory medical examinations, adherence to the regime, fulfillment of all the prescriptions of the doctor chosen by the spouses and other conditions ensuring normal childbearing. The main duty of the surrogate mother is to transfer the child after his or her birth to the parents – customers. We believe that if the surrogate mother does not comply with the terms of the contract for the transfer of the child, then she will be obliged to return the spouses' incurred costs under the contract according to Art. 782 of Civil Code of the Russian Federation.

The legal status of the woman who gave consent to implantation of someone else's impregnated cell for the purpose of bearing and giving birth to the child with subsequent transfer to his or her biological parents who provided biological material called a female donor or surrogate mother is still vague.

Such a woman, by prior arrangement with the future

parents of the child, provides her body for embryo implantation and assumes the responsibility of bearing the child and handing him or her over to the future parents. At the same time, she should have the right to full compensation of expenses related to pregnancy: medical supervision and assistance, nutrition, special clothing, etc., as well as lost profits associated with temporary disability.

In addition, a surrogate mother's right to remuneration as compensation for certain inconveniences caused by pregnancy, and for the risk of deterioration of her health should be ensured. The responsibility for reimbursement of expenses and payment of compensation is assigned to biological parents. However, in this case, they should be guaranteed the right to demand the transfer of a child who was born under the relevant agreement, but the legislator solves this issue differently: in accordance with Part 2, Clause 4, Art. 51 of the Family Code of the Russian Federation, people married to each other and giving their consent to implantation of the embryo to another woman for the purpose of its bearing, can be recorded as parents of the child only with the consent of the woman who gave birth to the child (surrogate mother).

The position of the spouse of the surrogate mother remains unclear. The law does not provide for consent from him for implantation of the embryo and those legal consequences that will occur in the case of the refusal of the surrogate mother to transfer the child to persons who have agreed to embryo implantation. It seems that the spouse of a female donor can be recorded as the father of a child born as a result of embryo implantation, only if there is a joint statement of the spouses.

#### DISCUSSION

The improvement of the special mechanism for the legal regulation of relations regarding the use of assisted reproductive technologies represents a significant and long overdue necessity, and the lack of a sufficient legal basis hinders further progress in this field of medical science and practice. There is a need for more detailed regulation of issues related to the definition of legal rights and obligations of participants in the use of artificial reproduction methods, which are formalized with the help of a civil-law contract, problems of not achieving such a result as pregnancy, their legal consequences, and criteria for assessing medical services as improper.

The issues of the definition of a special legal structure used for artificial insemination of transplants: semen, ovum and an embryo especially, require immediate solution, because they are the special objects of donorship that have hereditary material, participate in the genetic formation of a person, determine some physiological and mental qualities and establish the biological relationship between the donor and the recipient. In this regard, the legislator should also clearly define the status of the donor of transplants, which should not be the carrier of infections or hereditary disease. He should be obliged to report all known hereditary diseases or factors that indicate an aptitude for hereditary diseases.

There is a need to consolidate mandatory requirements regarding the anonymity of germ cell donorship, which will help protect the interests of the donor, child, and legal parents. The negative aspect of entrenchment of such a rule is the complete absence of information about heredity, which is extremely important for the child-raising parents, as well as the possibility of marriage between genetic relatives who are unaware of their blood relation. The practice of foreign legislation provides for the following measures that limit the risk of such consequences: a central system of accounting of gamete donors, limitation of the number of pregnancies using gametes from one donor, prohibition of commercialization of donorship, which can be used by national law.

It is necessary to put an end to the problem of priority of the rights of a surrogate mother in relation to a child born with the use of reproductive technologies. This position seems to be incorrect, especially in cases when the spouses are used for fertilization of sex cells, thus becoming biological parents, and there is no genetic connection between the child born and the surrogate mother. We believe that the priority should be recognized for genetic connection in comparison with the placental connection that arises between the surrogate mother and the child.

It is necessary to unequivocally resolve the issue of the legal nature and content of the contract on the use of assisted reproductive technologies and the surrogate motherhood contract, in particular, which are proposed to be considered as a self-contained version of the family-legal contract (*sui generis*). It is proposed to consolidate the mandatory conditions developed by the coauthors, as well as the grounds for the responsibility of its participants.

#### CONCLUSION

An attempt was made in this paper to theoretically substantiate the need for further improvement and development of the institute for the use of assisted reproductive technologies.

It is established that the current legal norms regulating relations on the use of reproductive technologies are fragmentary, touching only certain aspects of problems. The need to adopt a special law about the use of reproductive technologies was proved, providing for a clear legislative regulation of all conditions for artificial insemination, implantation of embryos, bearing and birth of a child, protection of his or her rights and interests after birth, and allowing the complete use of these methods in solving such a complex problem as overcoming infertility rights.

The necessity of consolidating the base (indications) for the application of artificial fertilization or embryo implantation in the special legislation is grounded, because in this case, it is a kind of medical intervention for the purpose of providing medical assistance. Some healthy and capable of natural childbirth women (spouses) do not need such help.

It is established that the realization of the right to use reproductive technologies is limited by a number of normative rules. Proposals concerning the need to eliminate such restrictions on the right to become a surrogate mother are justified, such as the age of 20 to 35, the presence of her own child, and the written consent of her spouse.

It was revealed that there are several types of surrogate motherhood in medical practice. The norms of the Family Code of the Russian Federation are oriented only to surrogate motherhood, in which the genetic material of the spouses is used (the so-called complete surrogate motherhood). However, this does not exhaust all its possible variants, which are reflected in the work and it is proved that the definition of a complete exhaustive list of such options is vital for the development of a special legal framework for regulating the features of the relevant relations.

The coauthors proceed from the fact that it is necessary to once again discuss the content of the citizen's rights to life and health at the stage of reforming the civil legislation, including the reproductive health, the possibilities of disposing of these benefits when deciding on the use of assisted reproductive technologies, and ensuring the proper legal protection of rights and interests of all participants of such relations, and, first of all, the child born as a result of the use of such technologies.

We hope that the legislator will take into account our conclusions and proposals. We will be grateful to everyone who will take part in the discussion of the issues of this paper.

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