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ARTICLE

Legal regulation of assisted reproduction treatment in Russia

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Abstract Russia remains one of the countries with a most favourable approach towards human reproduction in Europe, allowing almost everybody wanting to have a child of their own through assisted reproduction treatment to fulfill their dream. The legal situation around assisted reproduction treatment in Russia is very favourable; surrogacy, gamete and embryo donation are permitted, even on a commercial level. Gestational surrogacy is an option for heterosexual couples and single women, although a court decision might be needed to register a 'surrogate' child born to a couple who are not officially married or a single woman. However, it is not explicitly allowed nor prohibited for single men.

KEYWORDS: legislation, reproductive tourism, Russia, single parents, surrogacy

Current situation

There is neither specific federal law regarding all aspects of assisted reproduction in Russia nor a regulating authority in this area such as the Human Fertilisation and Embryology Authority in the UK. Due to a critical demographical situation in Russia, drafting of a federal law on legal regulation of assisted reproduction treatment and reproductive rights has been resumed.

Today, the basis for legal regulation of assisted reproduction is Article 35 of the Basic Law of the Russian Federation as for Citizens' Health Protection (1993): 'Each adult woman of a childbearing age has the right to artificial fertilization and implantation of an embryo. Artificial fertilization of a woman and implantation of an embryo are carried out in establishments that have been licensed for that, upon getting a written consent of spouses (single woman). Information about carried-out artificial fertilization and implantation of embryos, as well as the donor's identity constitute a medical secret'.

Another document that regulates technical aspects of assisted reproduction treatment is Order No. 67 of the Russian Federation Ministry of Healthcare of 26 February 2003 'On Use of Assisted Reproductive Technologies for

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Infertility Treatment for Female and Male Patients'. This regulation is not a statutory law, but is followed by all IVF clinics.

There is no age limit for IVF treatment except that the female patient should be an adult (at least 18 years old) and of 'childbearing' age.

Marital status is irrelevant when arranging an assisted reproduction programme, as single women can be treated the same as married ones. The state has provided access to assisted reproduction treatment for single women since 1993, so securing the right to motherhood. Nevertheless, most Russian IVF clinics used to refuse to treat single women as patients eligible for gestational surrogacy programmes. This attitude started to change only after two recent landmark court decisions were taken in St Petersburg and Moscow in 2009. There is no such concept as 'the right to fatherhood': single men are not accepted as patients, although in theory single men applying for surrogacy to become fathers should be treated equally in accordance with Article 7 (state support is ensured to paternity), Article 19 (equality of rights and freedoms, regardless of sex and of other circumstances, man and woman enjoy equal rights and freedoms and have equal possibilities to exercise them) and Article 55 (no laws shall deny or derogate human rights and freedoms) of the Russian Constitution.

Gamete and embryo donation is allowed. Donors do not assume parental responsibilities. In contrast to the UK (Human Fertilization and Embryology Regulations 2004, 'Disclosure of Donor Information' enacted by Parliament), offspring don't have the right to know the identity of the donor. Birth of 20 children from the same donor per 800,000 residents in a particular region is a sufficient reason to stop any further use of the donor in that region. Commercial donation is a widely accepted practice. Recipients can choose between known (their own relatives or acquaintances) and anonymous (provided by the clinic) donation. There have to be certain medical or social (absence of a sexual partner for women) indications for donation. No such indication for oocyte donation for single men as absence of a female sexual partner is listed.

The legal mother is the woman who gives birth to the child. If she's married, the legal father is her husband (if he had previously given a written consent for the procedure). Fatherhood cannot be contested in such situations.

It is permitted to use frozen—thawed spermatozoa only after obtaining repeated (6 months after the spermatozoa is taken) negative results of tests for HIV, syphilis and hepatitis. Anonymous donors mustn't have pronounced phenotype manifestations. A sperm donor should be aged from 20 to 40 years. An oocyte donor should aged be from 20 to 35 years and she must have a healthy child of her own. Normally an egg donor's compensation is about US$ 1000 plus all related expenses.

Embryo donors can be IVF patients, who still have some cryopreserved embryos after childbirth and have given a written informed consent for that. These embryos can be donated to couples or single women. Embryos for donation can also be obtained through fertilization of donated oocytes with donated spermatozoa. The recipients are provided just with donor phenotypic portraits.

Preimplantation diagnosis and sex selection can be performed only when there is a risk of giving birth to children with hereditary pathologies. No sex selection for family planning is allowed.

Embryo reduction can be performed to prevent complications associated with multiple pregnancy (three or more embryos). Embryonic/fetal reduction can be performed only after the pregnant woman has given her written informed consent for that. It is recommended to transfer not more than three embryos, but normally one or two embryos are transferred.

Cryopreservation of spermatozoa and oocytes as well as embryos is allowed.

Surrogacy

Unlike Germany (Schreiber, 2002) or Italy (Benagiano and Gianaroli, 2004), gestational surrogacy is absolutely legal in Russia and some other 'post-Soviet' countries (e.g. Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kirgizia, Ukraine), but normally it is an option only for heterosexual couples and single women. No specific preliminary permission from any regulatory board or court, as is the case in Greece (Kriari-Catranis, 2003), is required. There have to be certain medical indications for surrogacy: absence of uterus; uterine cavity or cervix deformity; uterine cavity synechia; somatic diseases contraindicating child bearing; and repeatedly failed IVF attempts, when high-quality embryos were repeatedly obtained and their transfer wasn't followed by pregnancy. No social indications for surrogacy are taken into account.

The prospective surrogate should be 20—35 years old. She must be mentally and somatically healthy and have at least one healthy child of her own. The marital status or nationality of the surrogate are irrelevant. A surrogate can be found and contacted through websites dedicated to surrogacy or through surrogacy agencies. Donor gametes or embryos might be used in surrogacy programmes. A written informed consent of all parties is mandatory.

Surrogacy is regulated by the Family Code. Clause 4 of Article 51 says: 'Persons who are married to each other and who have given their consent in written form to the implantation of an embryo in another woman for the purpose of bearing may be entered as parents of the child only with the consent of the woman who gave birth to the child (surrogate mother).' Apart from that consent, no adoption or court decision is required. The surrogate's name is never listed on the birth certificate. After the entry of parents in the book of birth registrations is made (normally 3—5 days after the birth, there is no need to apply and wait for months for a parental order like in the UK), the surrogate irrevocably loses all rights to the child.

There is no requirement for the child to be genetically related to at least one of the commissioning parents as in the UK (HFEA, 2009) or in Ukraine (Order No. 771 of Ukrainian Health Ministry)

Children born to heterosexual couples who are not officially married or single women through gestational surrogacy should be registered in accordance to analogy of jus (Article 5 of the Family Code). A court decision might be needed for that. On 5 August 2009, a St Petersburg court definitely resolved a dispute whether single women could apply for surrogacy and obliged the State Registration

Authority to register a 35-year-old single intended mother Nataliya Gorskaya as the mother of her 'surrogate' son who became the first woman in Russia to defend her right to become a mother through a court procedure. On 3 November 2009, a Moscow district court adopted the same decision on a similar case. After these landmark decisions authorities started registration of 'surrogate' children born to single women without waiting for a court ruling.

In contrast to the UK (Surrogacy Arrangements Act 1985) or Canada commercial surrogacy is not prohibited, so the surrogate can be compensated for actual expenses (medicine, travel, babysitting, missed time from work, etc.) and get remuneration for her service after the childbirth. Remunerations normally vary from US$ 15,000 to US$ 30,000, the upper known limit being US$ 100,000.

The surrogate parenting contract is enforceable as for parties' financial responsibility only. Any clause obliging the surrogate to give the child to intended parents is unenforceable. Prior consent of the surrogate to give the child to the intended parents — if given — is not binding. In theory, a surrogate can abort the pregnancy and even keep the child, although no such cases have ever been registered.

The first surrogacy programme in Russia was implemented in 1995 at the IVF centre at the Institute of Obstetrics and Gynaecology in St Petersburg. In general, public opinion is surrogacy-friendly and recent cases of a famous singer and a well-known business woman, who openly used services of gestational surrogates, received very positive news coverage.

Posthumous reproduction

Posthumous reproduction and posthumous gamete retrieval are not regulated by law in Russia.

A well-known posthumous programme was performed in Ekaterinburg. Ekaterina Zakharova used cryopreserved spermatozoa of her late son Andrei to 'create' her grandson Georgiy through a gestational surrogacy programme combined with anonymous egg donation. Before following a course of chemotherapy in Israel, 19-year-old Andrei Zakharov left a sample of his spermatozoa for cryoconservation. No instructions for disposition of his sperm deposit after his death were given. Eight years later, Andrei died single and childless. Mrs Zakharova faced a lot of problems when transporting her son's spermatozoa to Russia. According to the Israeli law, only Andrei's wife could use her husband's spermatozoa and a special will was to have been made up then. Nevertheless, the Israeli authorities allowed the intended grandmother to take all 25 tubes of her son's spermatozoa. In July 2004, 5 months after the young man's death when a gestational surrogate and egg donor were found, the programme started at the Centre of Family Medicine. In November 2005, the surrogate gave birth to a healthy boy. There has been a legal dispute as to the boy's origin (Leidig, 2006). To avoid further problems, Mrs Zakharova accepted to be listed as mother on the birth certificate along with her late son. Instead of that, Article 49 of the Russian Family Code should have been applied. It says that the origin of the child from a specific person (fatherhood) should be established in a judicial proceeding upon statement of a guardian taking into account any evidence confirming the origin of the child. After that, Mrs Zakharova would have been acknowledged as grandmother and would have been given custody of her grandson. Mrs Zakharova still keeps the rest of her late son's spermatozoa in case Georgiy would like to have a sibling.

A similar programme with two gestational surrogates is being arranged now by a St Petersburg clinic for 42-year-old Natalia Klimova who lost her son Artiom in October 2009.

Foreign citizens

Liberal legislation makes Russia attractive for reproductive tourists looking for techniques not available in their own country. Intended parents go there for oocyte donation, because of advanced age or marital status (single women) and when surrogacy is considered. Costs for assisted reproduction treatment are also lower than in the EU. Foreigners have the same rights to assisted reproduction as Russian citizens. If delivery in a gestational surrogacy programme takes place in Russia, commissioning parents obtain a Russian birth certificate with both their names on it. Genetic relation to the child (in case of donation) just does not matter.

After apostille according to the Hague Convention of 5 October 1961 was made, the legal fact of the childbirth and the child's origin established by Russian authorities should be recognized automatically in any country that signed this convention. Nevertheless, foreign patients should seek legal advice as to their home systems of law and how these interact with Russian law before proceeding with treatment.

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