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Analysis of court decisions in cases on provision of in vitro fertilization services in Ukraine and Europe

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Abstract

The main reason for the rapid development and promotion of reproductive technologies is the desire to have children of people who, for certain reasons, create such an opportunity. When writing the article, such methods were used as: historical, analysis, synthesis, systemic, functional, special-legal. It is argued that two types of reproductive technologies are of particular importance for medical law: in vitro fertilization and surrogacy. It is argued that such reproductive technologies as in vitro fertilization are an auxiliary introduction of donor material (sperm or egg) into all forms of a woman. It is also noted that not all researchers today support and consider optimal the formulations established in the main legislative acts of Ukraine on health care, regarding the right of every woman capable of fertilizing and implanting an embryo. The conclusions emphasize the importance of providing legislative guarantees for the possibility of introducing certain reproductive technologies for people who need such interventions for medical reasons. It is proposed to classify the principles of donation of reproductive cells such as sperm, oocytes and embryos. For this purpose, court rulings in cases involving the provision of in vitro fertilization services were also analyzed.

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Keywords: reproductive technologies; surrogacy; donor; recipient; court rulings.

Análisis de las decisiones judiciales en casos sobre la prestación de servicios de fertilización *in vitro* en Ucrania y Europa

Resumen

La razón principal del rápido desarrollo y promoción de las tecnologías reproductivas es el deseo de tener hijos de personas que, por ciertas razones, crean tal oportunidad. Al escribir el artículo, se utilizaron métodos tales como: histórico, análisis, síntesis, sistémico, funcional, especial-legal. Se argumenta que dos tipos de tecnologías reproductivas son de particular importancia para el derecho médico: la fertilización *in vitro* y la maternidad subrogada. Se fundamenta que tales tecnologías reproductivas como la fertilización *in vitro* son una introducción auxiliar de material donante (esperma u óvulo) en todas las formas de una mujer. Se indica además que no todos los investigadores hoy apoyan y consideran óptimas las formulaciones establecidas en los principales actos legislativos de Ucrania sobre el cuidado de la salud, con respecto al derecho de toda mujer capaz de fertilizar e implantar un embrión. En las conclusiones se enfatiza en la importancia de brindar garantías legislativas para la posibilidad de introducir ciertas tecnologías reproductivas para personas que necesitan tales intervenciones por razones médicas. Se propone clasificar los principios de donación de células reproductivas como espermatozoides, ovocitos y embriones. Para ello, también se analizó sentencias judiciales en casos de prestación de servicios de fecundación *in vitro*.

Palabras clave: tecnologías reproductivas; gestación subrogada; donante; persona receptora; sentencias judiciales.

Introduction

Medical science and practice have made significant progress over the last decade. New technologies used in medical practice directly affect health care and human life, which is the highest social value in the state in accordance with the Art. 3 of the Constitution of Ukraine (Teremetskyi *et al.*, 2019). Reproductive technologies, which have been recently developing particularly rapidly is a good example. The main incentive for such a rapid development and spread of this type of technology is the desire of people to have children deprived of such an opportunity for some reasons.

Reproductive function with the use of medical technologies is a trend characterized by striking roots and continuous development in society (Tarasevych *et al.*, 2022). Unfortunately, not everyone can enjoy being a parent, since about 20% of couples in Ukraine suffer from infertility. There's no question, they have to fight for the opportunity to become parents. Modern medicine can significantly increase the likelihood of pregnancy (Kushnirenko, 2018). For such category of individuals, reproductive technologies can be a lifeline that can make them feel what it is like to be a mother or father.

Legal precedents of extracorporal fertilization services are illustrative in this respect. Analysis of the precedents shows the court's consistent adherence to the essential purpose of any proceedings in court, as well as of civil Justice Department in general, namely the protection of rights, freedoms, and legal interests of individuals, legal entities, and the state through a fair, impartial, and timely consideration and resolution of a court case.

Therefore, judicial agencies are an important subject for ensuring the realization of medical rights by citizens, since, pre-trial settlement of medical disputes (appeal to state authorities or local self-government agencies, self-defense) as practice shows, is less effective than judicial protection (Teremetskyi and Muliar, 2020).

1. Methodology of the study

The following methods were used in this scientific article: logical analysis, inductive, comparative-legal, logical, systemic-structural analysis, special-legal.

The method of logical analysis was used in the study of court decisions in cases regarding the provision of in vitro fertilization services in Ukraine. The inductive method made it possible to obtain the necessary knowledge, going from individual to general. With the help of the comparative legal method, an analysis of the legislation of Ukraine and foreign countries, which regulates the conclusion and execution of contracts on the provision of in vitro fertilization services, was carried out, which allows to identify gaps in the civil legislation of Ukraine, to resolve the issue of using foreign experience.

The method of system-structural analysis served to clarify the place of contracts for the provision of in vitro fertilization services in the general contractual classification and allowed to identify problematic aspects of the practice of application based on the study of case law materials in the form of court decisions. The application of a special legal method made it

possible to investigate the interpretation of the content of contracts on the provision of in vitro fertilization services using legal terminology.

The theoretical basis of the study was the work of domestic and foreign civilian scientists, specialists in the field of medical law.

The use of the above-mentioned methods in a complex was aimed at the most objective and accurate study of the specified problem. The research of the given problem was carried out through the prism of the combination of contractual freedom with normative regulation, which contributes to a more complete and adequate regulation of certain relations that are formed in the process of concluding contracts on the provision of in vitro fertilization services. In the process of research, theoretical approaches and practical conclusions were used, which were embodied in the works of domestic and foreign scientists.

2. Results and Discussion

2.1. Legal principles, study of doctrinal teachings and study of foreign experience regarding the conclusion of contracts for in vitro fertilization services

An invention is the result of a person's intellectual activity in any field of technology, in particular in medicine, which has novelty, inventiveness and industrial applicability. Types of inventions in medical practice are methods of human treatment; devices for human treatment and diagnosis; medicinal products; strains of microorganisms used for disease diagnosis or human treatment; biotechnological inventions (Teremetskyi *et al.*, 2019).

Reproductive technologies are methods of infertility therapy in which some or all of the stages of conception and early fetation take place outside the body. Order No. 787 of the Ministry of Health of Ukraine On Approval of the Procedure for the Application of Assisted Reproductive Technologies in Ukraine dated September 9, 2013 (hereinafter referred to as Order No. 787 of the Ministry of Health of Ukraine) (Order No. 787, 2013) defines the concept of "assisted reproductive technologies" as a treatment of infertility in which reproductive cell manipulation, some or all stages of reproductive cell preparation, fertilization and fetation processes are carried out in vitro before being transferred to the patient's uterus.

As has rightly been pointed out by R. A. Maidanyk:

Reproductive technologies are modern high-tech methods of treatment of infertility, in which some or all stages of conception and early fetation are carried out outside the body, in particular, ovum fertilization in vitro, implantation of embryos, and carrying of pregnancy if these processes can't happen biologically (Maidanyk, 2013: 5-6).

Ukraine is one of the countries in which assisted reproductive technologies are permitted at the legislative level. Thus, Art. 290 of the Civil Code of Ukraine (hereinafter referred to as the CC of Ukraine) guarantees the human right to donate reproductive cells (hereinafter referred to as DRC); in particular, a provision of Part 7 of Art. 281 of the CC of Ukraine entrenches the right to have DRC, stating, “Adult women or men have the right, based on medical necessity, to undergo treatment programs of assisted reproductive technologies in accordance with the procedure and conditions established by the law” (Civil Code of Ukraine, 2003).

Fundamentals of the Law of Ukraine on Health Care define in Art. 48 that at request of able-bodied women, methods of assisted insemination and embryo implantation may be applied (Fundamentals of the Law of Ukraine on Health Car, 1992). The conditions for the lawfulness of implementation of these methods of medical intervention according to the law are as follows:

- The subject of exercise of the right is an able-bodied adult woman.
- Written consent of the spouses.
- Donor confidentiality.
- Medical confidentiality.

Today, there are numerous types of DRC in the world used to treat infertility. The effectiveness of extracorporal fertilization (the proportion of patients who became pregnant on the first try) averages 45%; the figures differ significantly in different countries. For example, in Ukraine, it is 35%; in Poland – 55%; in Germany – 38%; in Israel – 46% (Medical tourism: how to choose a clinic abroad, 2013).

Analyzing the content of Order No. 787 of the MOH of Ukraine, we can conclude that the following varieties of assisted reproductive technologies are used in Ukraine:

1. In vitro fertilization. It is a method of infertility treatment in which ovum fertilization is carried out outside the woman’s body. It is also called extracorporal fertilization or assisted insemination.
2. Intrauterine insemination. It is a form of infertility treatment and can be carried out by injection of prepared sperm cells into the uterine cavity during ovulation.
3. Donation of gametal cells or embryos. It is a procedure in which donors donate, based on a written and voluntary consent, their gametal cells – gametes (semen, oocytes) or embryos for otherwise use in the treatment of infertility.
4. Surrogacy. It is one of the types of infertility treatment.

5. Transfer of gametes, zygotes, or embryos to the fallopian tube (GIFT, ZIFT, and EIFT), etc. (Holovashchuk, 2012).

At the same time, the legislation of some countries places restrictions on certain types of reproductive technologies. For instance, Italian legislation on assisted reproductive technology is rather conservative. Italian Law No 40 On the Rules of Assisted Reproductive Technologies dated February 19, 2004, not only forbids utterly surrogacy but also substantially restricts other reproductive technologies. This Law prohibits reproductive programs involving a third party, i.e., surrogacy and donation (Dzhochka, 2007).

Instead, in 2016 the British Human Fertilisation and Embryology Authority (HFEA) approved giving birth to children by one man and two women, which, in their opinion, will prevent the birth of children with incurable hereditary diseases (BBC, 2016). In Germany, Austria, and Switzerland, egg donation is prohibited; in Turkey, one cannot choose the gender of the unborn child, while in Cyprus, one can (Medical tourism: how to choose a clinic abroad, 2013).

2.2. Analysis of legislative provisions and court practice in the form of court decisions regarding the conclusion of contracts for extracorporeal involvement services

Two varieties of reproductive technologies are of particular importance to medical law: extracorporeal fertilization and surrogacy. Such reproductive technology as in vitro fertilization is the assisted injection of donor material (semen or oocyte) into the genital tracts of a woman.

Not all researchers nowadays support and consider optimal the formulation, presented in the fundamentals of the legislation of Ukraine on health care, of the right of every able-bodied woman to assisted insemination and embryo implantation. It is important to provide legal guarantees for the possibility of implementing certain reproductive technologies for people who actually require such interventions on medical grounds.

The analysis of Order No. 787 of the MOH of Ukraine makes it possible to determine the following grounds for the validity of application of these reproductive methods:

1. Assisted insemination is carried out exclusively in accredited health care institutions according to the methods approved by the MOH of Ukraine.
2. Written consent of the spouses.
3. Use of sperm of both the husband and the donor. Donor semen is only used cryopreserved and not earlier than 3 months after the donor's blood has been sampled and re-examined for AIDS.

4. Sperm donors can be healthy men aged 20–40 years who meet clearly defined requirements, in particular: 1) have undergone a full examination; 2) have fertile sperm; 3) are not vehicles of HIV infection and hepatitis B virus; 4) had no urological, venereal, andrological, and hereditary diseases. In this respect, it should be noted that in practice, there are cases where assisted insemination is carried out without prior examination of the donor, which is a violation of both medical and legal requirements.

For example, Solomianskyi District Court of Kyiv considered Case No. 760/12830/13 involving a claim by PERSON_1 against Nadiya Clinic of Reproductive Medicine Limited Liability Company, third party PERSON_2, for termination of the contract and recovery of funds. The plaintiff gave as a reason for the claim that on April 2, 2012, spouses PERSON_2 and PERSON_1 and Nadiya Clinic of Reproductive Medicine LLC entered into Contract No 12314 for in vitro fertilization (IVF) and transfer of the embryo(s) into the uterine cavity (UC). He paid the defendant a total amount of UAH 25,400, which is confirmed by the receipts available.

The defendant was aware that such treatment was possible only in the absence of contraindications to the patient's DRC if diagnostic findings were available. The patient was not sent for such diagnostic examination. Contraindications, which were later found in his state of health, namely hepatitis B, made it impossible to fulfil the contract. He considers that the defendant's negligence led to early entering into the impugned contract, but his offer to terminate the challenged contract and to refund was not accepted.

The court found that Section 2 of the Instructions on the Procedure for Application of Assisted Reproductive Technologies, approved by Order No. 771 of the Ministry of Health of Ukraine dated December 23, 2008, determined the scope of examination for persons undergoing DRC treatment. Clause 2 of the Section provides that the scope of examination of a man is mandatory and consists of blood test for syphilis, HIV, hepatitis B and C; spermogram.

In such circumstances, the court considers that the requirement of a compulsory examination of a man, in particular, for hepatitis B before treatment, is statutory. In violation of requirements of the Instruction, Nadiya Clinic of Reproductive Medicine LLC did not carry out such mandatory actions. In connection with this court decision dated October 4, 2013, claims for termination of Contract No 12314 dated April 2, 2012, entered into by and between Nadiya Clinic of Reproductive Medicine Limited Liability Company and PERSON_1, PERSON_2 for in vitro fertilization (IVF) and transfer of the embryo(s) into the uterine cavity (UC) were satisfied (Case No 760/12830/13).

5. Consent to be a sperm donor is confirmed by a letter of voluntary consent to sperm donation.
6. Taking into account indications (of the wife, husband, spouses) for application of methods of assisted insemination and implantation of the embryo(s) and contraindications to application of these methods to the recipient.

Principles of donation of such reproductive cells as sperm, oocytes, and embryos are:

1. Medical confidentiality, namely:
 - 1.1. Donor confidentiality.
 - 1.2. Confidentiality of information regarding the fertilization procedure itself. It should be noted that Order No. 787 of the MOH of Ukraine provides for the procedure of coding and marking of semen in order to ensure the confidentiality of both the donor and recipients but states that the established code is entered into the individual donor card and the outpatient's card of the recipient. Then the question is, how to ensure the principle of preservation of medical confidentiality, guaranteed by the standard setter, in this context, as it is not difficult to establish the identity of the codes in the above cards.
2. Awareness, i.e., the husband and wife are entitled to information, including medical information, on the findings of the donor's medico genetic examination, his looks, nationality (if donor sperm is used for fertilization), etc.
3. Donor and recipient voluntary involvement:
 - 3.1. Volunteer men are involved in donation.
 - 3.2. Assisted insemination is carried out at the request of a woman.
4. Selection of semen for fertilization, namely:
 - 4.1. The married couple's wishes regarding the nationality of the donor and the main features of his appearance are taken into account.
 - 4.2. The compatibility of the donor with the recipient by blood type, rhesus factor, and main features of the body type of the donor are taken into account (Stetsenko, 2008).

One of important aspects in the legal regulation of the issue under study is the determination of the age limit for persons who may be subjected to DRC. Currently, the use of assisted reproductive technologies in Ukraine is allowed for persons who have reached the age of 18 years, but no upper age limit has been established beyond which DRC is not applied. Such a necessity is, first of all, aimed to protect the interests of the unborn child,

since it would be difficult for prospective parents at a sufficiently mature age to take good care of the child.

A factor of reduction of their social activity should also be taken into account. For example, in the Republic of Belarus, extracorporeal fertilization and assisted insemination do not apply to a patient who has reached 50 years of age. We believe that a 49-year age limit for women has to be also established in Ukraine. Because according to medical data, a woman's child-bearing (fertile) age can last up to the said age.

An important issue in the legal regulation of DRC is the requirement for prospective parents to be married when undergoing the DRC program. In Ukraine, there is no actual prohibition for a single woman to use DRC, in particular, the assisted insemination method. In the Republic of Poland, the Law on Assisted Insemination (In Vitro) was adopted in 2015, according to which this procedure was allowed to couples whose marriage was registered and to people who were not in registered relations but could provide evidence that they were living together in a civil marriage. Instead, in the Republic of Belarus, only women who are married are allowed to use DRC.

The surrogacy situation is much more complicated, because in most cases, clinics refuse to carry out a surrogacy program and recommend that women marry. In our view, such a refusal is a violation of the woman's right to motherhood and the rights of the patient. If the woman has medical indications for a surrogacy program, she may benefit from it regardless of her marital status (Holovashchuk, 2012). Medical indications for the use of assisted reproductive technologies are defined in Order No. 771 of the MOH of Ukraine dated December 23, 2008.

Article 123 of the Family Code of Ukraine (hereinafter referred to as the FC of Ukraine) provides for the procedure for determining the origin of the child from the father, mother at assisted insemination and embryo implantation. Thus, according to Part 2 of Art. 123 of the FC of Ukraine, in case of implantation into the body of another female of an embryo conceived by spouses, the spouses are considered to be the parents of the child. If an embryo conceived by a married man and another woman was implanted in the body of his wife, the child is considered to have originated from the spouses (Family Code of Ukraine, 2002). Challenging maternity is not allowed in this case.

A person recorded as the father of the child is not entitled to challenge paternity if, at the time of registration as the child's father, he knew that he was not the father.

For example, Kyiv District Court of Odessa considered court case No. 520/12514/18 involving a claim by PERSON_1 against PERSON_2, non-party intervener Prymorskyi District Civil Registrar's Office in Odessa

of the Main Territorial Department of Justice in Odessa Region, for deletion of information on being the father from the child's birth record.

The plaintiff requested the deletion of information about him being the father from record No. 858 dated 12.09.2008, on the birth of child PERSON_3, referring to the fact that he generally denied being the birthfather of the child, the parties had never been married, all he wanted to do was to help PERSON_2 get pregnant and have a baby, therefore, he underwent tests at the REMEDI Clinic twice and travelled with the defendant to the Institute of Reproductive Medicine in Kyiv twice; after the child was born, the defendant asked him to get recorded as the father in the birth certificate of the child, and he agreed to do that so that the defendant did not have the status of a single mother; however, it was arranged only to donate them biological material for in vitro fertilization /IVF/ of the defendant.

During the consideration of the case, the court found out that the child had been born with the help of assisted reproductive technologies, and the parties did not deny the fact, namely on 26.11.2007, the defendant underwent the in vitro fertilization /IVF/ procedure, as confirmed by the medical documents of the Institute of Reproductive Medicine PJSC. The medical documents attached contain a referral from the REMEDI Center for Reproductive Medicine dated November 24, 2007, to PERSON_2 for an IVF procedure at the Institute of Reproductive Medicine PJSC, and other documents that really indicate the surname of PERSON_1, his year of birth, and his blood and ejaculate test data. The plaintiff confirmed in court that he visited the REMEDI Center for Reproductive Medicine twice and went to Kyiv together with the defendant to the Institute of Reproductive Medicine PJSC twice to help the defendant get pregnant for the purpose of giving birth to a child.

Having examined the case files, the court found that pursuant to Part 1 of Art. 126 of the Family Code of Ukraine, the origin of the child from the father had to be determined upon the application of a woman and a man who were not a married couple. Such an application may be submitted to the public registrar both before and after the birth of the child. The explanations provided at the court hearing and the arguments of the claim suggest that the plaintiff has agreed to be recorded as the father in the birth certificate of the child.

According to the child's birth certificate and full extract from the State Civil Register on the birth record dated 18.08.2008, PERSON_1 is indicated as the child's father. The ground for the record of information about the father is a joint paternity acknowledgment statement of the parents dated 12.09.2008. State registration of birth was carried out in accordance with Art. 126 of the Family Code of Ukraine.

The record was signed by the parents. In addition, the court examined a copy of the full extract from the State Civil Register on the birth record of PERSON_3, issued by Suvorovskiy District Civil Registrar's Office in Odessa of the Main Territorial Department of Justice in Odessa Region under No. 00020953118, which suggests that the request was made by demand of plaintiff PERSON_1 on 11.09.2018. It is evident from the extract that the state registration of birth was made in accordance with Art. 126 of the FC of Ukraine – upon the joint paternity acknowledgment statement of the parents dated 12.09.2008.

Considering all the circumstances of the case, the court decision dated April 9, 2019, dismissed the claim by PERSON_1 against PERSON_2 for deletion of information on being the father from the child's birth record (Case No. 520/12514/18).

Also, a person who has consented to the assisted insemination of his wife has no right to challenge the paternity.

For example, the court decision of Simferopolskyi District Court of the Autonomous Republic of Crimea dated April 23, 2012, dismissed the claim in Case No. 2-2567/11 on the establishment of the fact of the absence of relationship, deletion of the record about the plaintiff being the father, obligation to amend the Birth Registry and to provide a new birth certificate with the child's surname changed. The plaintiff stated that he did not know anything about the fact that the defendant had become pregnant with the help of assisted insemination. He did not give any consent to it and did not sign anything. The court, having considered all the evidence adduced in the case, concluded that the plaintiff had not provided proper evidence to support the claim.

The court is critical about the argument that the signature has been made by a person other than the defendant insofar as the plaintiff's representative provided to the court certificates and spermograms, which, as the plaintiff's representative explained, testified to the plaintiff's inability to have a biological child of his own, which refutes once again his argument that he initially thought he was the birthfather of that child and was unaware that the defendant had applied for assisted reproductive technologies (Case No. 2-2567/11).

In this case, there is no doubt as to the origin of the child from the persons recorded as the child's parents, although, the child's biological data, including genetic origin, will be different. This suggests an adverse legal effect that may arise in the future, when marriage is concluded, because we can boil it down to such a concurrence of circumstances when the future spouses will have a common biological origin. Art. 39 of the FC of Ukraine stipulates that a marriage registered between the persons who are direct line ascending relatives as well as between siblings is invalid. The record

is cancelled upon application of the interested person (Kostin and Bondar, 2009).

It is worth noting that there are currently no uniform requirements regarding the structure and content of the contract for assisted insemination and embryo implantation. A contract for services of extracorporal fertilization is an arrangement under which one party – a doctor (or a medical institution) undertakes to provide the corresponding medical service at the request of the other party (a patient) using assisted reproductive technologies, during which the oocytes are fertilized with sperm outside the body, and the patient undertakes to pay for it an amount of money agreed upon by the parties.

We believe that this contract must consist of the following parts:

1. *Mandatory part.*

The mandatory part must specify the following:

- definition of the subject of the contract;
- rights, obligations, and liability of both parties to the contract;
- grounds for cancellation and termination of the contract;
- terms of medical service provision;
- characteristics of the medical service.

2. *The conciliatory part* of the contract for services of extracorporal fertilization is the patient's written consent for the specific procedure. Or it could be an application from the patient for a particular type of procedure. This part of the contract must contain the most important information about the future procedure, its possible complications, consequences, and the possibility of a negative result.

3. *The information part* of the contract for services of extracorporal fertilization. The information part must provide true and complete information on the methods of assisted reproduction in an understandable and acceptable form for the patient. It must be indicated what the medical procedure is about, what stages it includes, what its possible complications are, and which factors determine the desired effect.

4. *The financial part* of the contract for services of extracorporal fertilization. The financial part contains information about the cost of the procedures and payment terms. It is worth noting that all medical consultations and infertility examinations before starting the treatment cycle are separate medical services and are not included in the cost. In this context, it is interesting that, for example, in Germany,

three free attempts of in vitro fertilization are offered to citizens of the country, while in Poland, Belgium, and the Netherlands, one free attempt is offered. Unfortunately, Ukraine does not offer its citizens free in vitro fertilization procedure today.

It should be noted that the legislation of Ukraine does not explicitly regulate the requirements for the form of the contract for services of extracorporal fertilization. In our opinion, the general provisions of civil law should be followed in this case. Thus, according to clause 2 of Part 1 of Art. 208 of the CC of Ukraine, transactions between an individual and a legal entity must be concluded in writing, except for the transactions stipulated by the CC of Ukraine.

Pursuant to Part 4 of Art. 209 of the CC of Ukraine, at the request of an individual or legal entity, any transaction to which they are parties may be notarized. Note that the systematic analysis of provisions of the CC of Ukraine, the FC of Ukraine, other acts of civil law governing the emergence, modification, and termination of relations concerning the carrying of a pregnancy by means of reproductive technologies, including the Procedure for Application of Assisted Reproductive Technologies, approved by Order No 771 of the Ministry of Health of Ukraine dated 23.12.2008, suggests that the law does not provide for mandatory notarization of the contract.

Thus, based on the aforementioned legal provisions, it is mandatory to enter into a contract for services of extracorporal fertilization in writing, which, in turn, is a criterion for performing the assisted insemination procedure. In addition, the contract for services of extracorporal fertilization must be executed in duplicate. Only in this case one can monitor the proper performance of the medical service provided.

In this context, the following case law example is illustrative. The Shevchenkivskyi District Court of Kyiv considered court case No. 2610/22368/2012 involving a claim by PERSON_1 against the Institute of Genetics of Reproduction Limited Liability Company and Italian citizens PERSON_3 and PERSON_4 for invalidation of a joint contract for assisted reproductive technologies (ART) using a surrogacy method, entered into by and between PERSON_3 and PERSON_4, a married couple of Italian citizens, as well as surrogate mother PERSON_1 and the Institute of Genetics of Reproduction Limited Liability Company healthcare establishment on 20.11.2009.

In support of the claim, the plaintiff referred to the fact that a joint contract for assisted reproductive technologies (ART) using the surrogacy method was entered into in writing at the Institute of Genetics of Reproduction LLC by and between PERSON_3 and PERSON_4, a married couple of Italian citizens, as well as surrogate mother PERSON_1 and the Institute of Genetics of Reproduction LLC healthcare establishment.

However, the contracting parents did not fulfil the terms and conditions of the contract, did not submit to the registrar the notarized consent of the surrogate mother for registration of the Italian citizens as parents of the children and did not register as parents of the children delivered by PERSON_1. The parties failed to specify in the contract the date of its signing and failed to notarize it, which is believed by the plaintiff to be the ground for its invalidation.

It was found at the court session that PERSON_1 gave birth to twins (two boys) in Barskyi Maternity Hospital No 1 of Vinnytsia Region. However, after the birth of the children, PERSON_1 did not give a notarized consent to registration of the plaintiffs as parents of the children, did not give the children to Italian citizens PERSON_4 and PERSON_3, the contracting parents; instead, she applied to the Vital Statistics Department of Barskyi District Justice Department of Vinnytsia Region and, withholding the information that the children had been born as a result of the surrogacy program, applied for registration of her as the mother and her husband, PERSON_9, as the father of the newborns.

It was also found out that the decision of the Barskyi District Court of Vinnytsia Region dated 13.03.2012, established that PERSON_1 and her husband PERSON_9 did not deny and acknowledged the fact of voluntary participation of PERSON_1 in the surrogacy program, did not deny and acknowledged the fact of consent of PERSON_1 to the transfer of embryos into her body, recognized the fact of embryo transfer and the voluntariness of such transfer, recognized that there was only one procedure of extracorporeal fertilization that took place on 27.04.2010, which excludes other cases of probable IVF in relation to PERSON_1 from customers other than Italian citizens PERSON_3 and PERSON_4 in the same or different period of time; PERSON_9 acknowledged that his wife PERSON_1 had participated in the surrogacy program to help the plaintiffs, the Italian citizens, have their own children.

In addition, as was established by the decision of the Barskyi District Court of Vinnytsia Region in Case No 2-1316/2011 dated March 13, 2012, PERSON_1 provided written consent for embryo transfer after entering into the Joint Contract, namely on 27.04.2010, which further certifies the subsequent fulfilment by PERSON_1 of her obligations to the citizens of Italy.

Taking into account the circumstances of the case and the evaluation of the evidence provided by the parties, the court concluded that the disputed transaction was concluded on 20.11.2009 and subsequently executed, since the plaintiff carried and gave birth to the children precisely in order to fulfil her obligation to Italian citizens PERSON_3 and PERSON_4. The court takes into consideration that in clause 7.1 of the disputed contract, the parties stipulated that the contract shall enter into force on the day of its

signing. The plaintiff's party has not provided any evidence to support the statement of any claim by PERSON_1 for notarization of the transaction since November 20, 2009.

Thus, assessing the appropriateness, admissibility, and credibility of each evidence individually, as well as the sufficiency and reciprocal relationship in their totality, and considering that the circumstances relied upon by the plaintiff had not been confirmed at the court session, the court concluded that the claim was not subject to satisfaction (case No. 2610/22368/2012).

Thus, there are many controversial issues related to the use of reproductive technologies in science, in medical and judicial practice. Therefore, the problem of the ethics of inventions in medical practice is a separate area of research in medical law and medical deontology (Teremetskyi *et al.*, 2019).

Conclusions

Summarizing all the above, we believe that the problems of legal regulation of assisted insemination in Ukraine which are unresolved today are:

- obtaining information about the donor who provided material for assisted insemination;
- rights, obligations, and liability of donors and recipients;
- rights of children born as a result of assisted insemination to information relating to their birthfather;
- age criteria for all participants in the assisted insemination procedure;
- requirements for the form and content of the contract for services of extracorporal fertilization.

Taking into account the above, we can conclude that today, there is a need in Ukraine for proper legal regulation of assisted reproductive technologies. The current legislation does not regulate a number of important aspects, and therefore, there is a need to adopt the law, which will be aimed at identifying the legal and organizational foundations of application of assisted reproductive technologies and ensuring the rights of individuals that the technologies are applied to.

We consider it necessary to support the opinions of those scholars Teremetskyi and Podzirov (2022), who note that attention should be paid to the following issues in the context of the intensification of the development of domestic medical tourism:

- 1) to improve the state of the organization and activity of subjects in the field of medical tourism;
- 2) to normatively improve the registration and permit procedures in this area in order to improve the further effective development of the entire medical sector.

These are perspective directions for further scientific research.

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