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The scope and legal consequences of the use of gametes and embryos, including the legal situation of a child born as a result of a medically assisted procreation procedure

1 According to Art. 61^9 of the Act of 25 February 1964 – the Family and Guardianship Code *[in Polish: Kodeks rodzinny i opiekuńczy]* - the mother of a child is the woman who gave birth to it.

2 When the recipient's husband gives his consent, Art. 62 of the Family and Guardianship Code Act applies, according to which if the child is born during a marriage or in the period not exceeding three hundred days from the dissolution of marriage or marriage annulment, it shall be presumed that this is a child of the mother's husband. This presumption does not apply if the child was born after three hundred days of issuing a decision on separation. If the child was born in the period not exceeding three hundred days from the dissolution of marriage or marriage annulment, but after the date of the mother's second marriage, it shall be presumed that this is a child of the second husband. This presumption does not apply if the child was born following a medically assisted procreation procedure, to which the mother's first husband gave his consent. According to Art. 68 of the Family and Guardianship Code, a denial of paternity is not admissible if the child was born as a result of a medically assisted procreation procedure to which the mother's husband consented.

3 When consent is given by the recipient's partner in a partner donation (partner's and woman's gametes are used)
Pursuant to Art. 85 § 1 of the Family and Guardianship Code, it is presumed that the father of a child is a person who had intercourse with the child's mother in the period form the three hundredth to one hundred and eighty-first day before the child's birth, or a person who was a sperm donor in the case of a child born as a result of partner donation in a medically assisted procreation procedure.

4 When consent is given by the recipient's partner in a non-partner donation (an anonymous donor sperm or an anonymous donor eggs or an anonymous donor eggs and an anonymous donor sperm, or an embryo created with gametes from an anonymous donor are used)
According to Art. 75^1 §1 of the Family and Guardianship Code the acknowledgement of paternity takes place on the day of the child's birth, if before the transfer into the woman's body of anonymous donor sperm or an embryo created from an anonymous donor sperm or an embryo donation, the male partner declares before the head of the civil registry office that he intends to be the father of a child who will be born as a result of a medically assisted procreation procedure with the use of those gametes or that embryo, and the woman confirms at the same time or within three months from the date of the male partner's declaration that this male partner will be the father of the child. The above declarations are considered effective if the child was born as a result of a medically assisted procreation procedure within two years from the day the declaration was made by the male partner.
If the child was born after the mother's marriage to a man other than the one who acknowledged paternity, the provision of Art. 62 of the Family and Guardianship Code, according to which if the child was born during a marriage or in the period not exceeding three hundred days from the dissolution of marriage or marriage annulment, it shall be presumed that this is a child of the mother's husband, is not applicable. This means, that also in this case the father of the child will be the man who acknowledged the child according to the rules described above.
According to Art.81^1 of the Family and Guardianship Code, when acknowledgment of paternity has been made pursuant to Art. 75^1 (i.e. as a result of the procedure described above), withdrawing the acknowledgment of paternity shall be permissible only if the child was not born as a result of a medically assisted procreation procedure referred to in Art. 75^1 § 1.
In the case of making a declaration as to acknowledgment of paternity prior to the transfer into the woman's body of anonymous donor sperm or an embryo created from an anonymous donor sperm or an embryo donation, the head of the civil registry office

draws up a protocol which contains the data listed in Art. 63(11) of the Act of 28 November 2014. Law on Civil Status Records, among others the information that the declaration necessary for the acknowledgment of paternity was made before the transfer into the woman's body of anonymous donor sperm or an embryo created from an anonymous donor sperm or an embryo donation. This protocol is subject to disposal, if within two years from the date of the male partner's declaration necessary for the acknowledgment of paternity, the child has not been born. If the child is born, the protocol shall be attached to the collective file of the birth record and shall be made available at the request of the person to whom the record relates, after he or she has reached the age of majority or at the request of the court.

5 Pursuant to Art. 38 (2 and 3) of the Act on infertility treatment dated 25 June 2015, a person born as a result of a medically assisted procreation procedure, as a result of donation other than partner donation of gametes or embryo donation, upon reaching the age of majority has the right to see information concerning the donor regarding the age and place of birth of the gametes donor or embryo donors and information on the health status of the gametes donor or embryo donors: the results of medical and laboratory examinations/tests to which the donor candidate was subjected prior to the collection of gametes or embryo donor candidates prior to embryo formation. However, the legal representative of a child born as a result of a medically assisted procreation procedure has the right to review the information concerning the health of the gametes donor or embryo donors: the results of medical and laboratory examinations/tests to which the donor candidate was subjected before the collection of the gametes or embryo donor candidates before the embryo creation, if this information may contribute to prevent an imminent danger to the life or health of that child. The physician responsible for the child's treatment determines the indications for reviewing the donor information and notes it down in the medical record. The above information shall be made available by the minister competent for health issues upon request of persons entitled to it.

6 Gametes and embryo donors who have donated their reproductive cells for non-partner donation or embryos for embryo donation do not have access to information about the subsequent handling of the donated embryos and gametes and any rights and obligations to the child who will be born as a result of the embryo donation or use of their reproductive cells. The recipient of gametes and embryos has the right to see the phenotypic data of gamete donors and embryo donors.

7 Embryos created from gametes collected for partner donation or non-partner donation shall be given for embryo donation in the event of the expiry of the period for storage of embryos specified in the contract, but not exceeding 20 years, counting from the date, on which the embryos were placed in the gamete and embryo bank for storage, or the death of both embryo donors, or, if the embryo was created in non-partner donation - the death of the recipient and her husband or a person cohabiting with her. The 20-year storage period for embryos created prior to November 1, 2015 is calculated from November 1, 2015. Embryos created and stored prior to the effective date of the Act (November 1, 2015) are given for embryo donation 20 years after the effective date of the Act on Infertility Treatment, unless they are given for embryo donation sooner or in the event of the death of the recipient and her husband or cohabitant.

Information on how personal data is collected and protected, on security measures leading to data protection and on medical secrecy.

In order to carry out the procedure of medically assisted procreation, the data of the persons involved in the procedure are collected. The collected data (in particular those contained in the submitted consents and statements/declarations) will be stored and processed by the Entity (Centre) exclusively for the purpose and to the extent provided for in the Act on Infertility Treatment of 25 June 2015. The Entity processes personal data in accordance with the provisions of the Personal Data Protection Act of 29 August 1997. As a data controller, it shall apply appropriate technical and organizational measures to ensure the protection of the processed personal data appropriate to the risks and categories of protected data, and in particular, it shall protect the data against their disclosure to unauthorized persons, from being taken by an unauthorized person, against their processing in violation of the Act, and from being altered, lost, damaged or destroyed. The Entity shall also keep the records required by the law.

In accordance with Article 37 of the Law of June 25, 2015 on Infertility Treatment

1 In order to identify donors and recipients of gametes given for non-partner donation and donors and recipients of embryos and to monitor the process of medically assisted procreation, a register of gamete donors and embryos shall be established, hereinafter referred to as "the register".

2 The following data shall be included in the register:

2.1 a unique identification marking of the gamete donor or embryo donors;

2.2 year and place of birth of the gamete donor or embryo donors;

2.3 information on the health status of the gamete donor or embryo donors: results of medical examinations and laboratory tests to which the donor candidate was subjected before the collection of the gametes or the embryo donor

candidates before embryo formation;

2.4 phenotypic data of the gamete donor or embryo donors defined in accordance with Art. 37(6) of the Act on Infertility Treatment of 25 June 2015, i.e. (eye color, hair color, hair shape, body build, race and ethnic group)

2.5 date of first registration of the gamete donor or embryo donors;

2.6 a list, unique identification marking and characteristics of gametes or embryos collected, processed, tested, stored and used in a medically assisted procreation procedure;

2.7 the name (business name) and address of the healthcare facility where gametes or embryos were collected, processed or tested, and the date on which these activities were performed;

2.8 the name (business name) and address of the gamete and embryo bank where the gametes or embryos are stored and the date on which the storage began and ended;

2.9 name (business name) and address of the centre of medically assisted procreation which used the gametes or embryos in the medically assisted procreation procedure;

2.10 the PESEL number of the recipient of gametes or embryos and, in the case of a person who has not been assigned a PESEL number, the name, surname, series and number of the identity card, passport or other document proving identity;

2.11 date and type of the medically assisted procreation procedure applied to the recipient of gametes or embryos;

2.12 information on the course and outcome of the medically assisted procreation procedure for the recipient of gametes or embryos, including information on the number of embryos created or transferred;

2.13 information provided by the recipient to the centre of medically assisted procreation about the course of the pregnancy, date of birth, sex and health status at the time of birth of the child born as a result of the medically assisted procreation procedure;

2.14 information about the withdrawal of the donor's consent to the use of gametes collected from him/her or withdrawal of the embryo donors' consent to embryo transfer.

3 The data referred to in paragraph 2 shall be anonymized in a manner that allows for technical acquisition of data made available by the minister responsible for health matters to persons referred to in Article 38 paragraph 2 and 3.

4 The minister competent for health matters shall make the data referred to in paragraph 2 available to the centres for medically assisted procreation, upon their request, to the extent necessary for the selection of donors with respect to medical and phenotypic aspects in the course of the procedure for medically assisted procreation.

5 The minister competent for health matters is the collector of data collected in the register.

6 Data processed in the register shall be subject to high-level protection referred to in the regulations issued pursuant to Article 39a of the Act of 29 August 1997 on the protection of personal data (Journal of Laws of 2014, item 1182 and 1662) and shall be protected from access by unauthorized persons.

7 The register shall be operated in the ICT system. The entity responsible for the functioning of the register's ICT system shall be a unit subordinate to the minister responsible for health matters, competent in the field of health care information systems. (...)

Pursuant to the wording of Art. 38(1), data collected in the register are subject to secrecy and can be made available only to authorized persons and within the scope resulting from the provisions of the Act.

However, according to Article 47(1) of the Act, a centre for medically assisted procreation and a gamete and embryo bank are required to keep records of the activities performed, including the types and quantities of gametes and embryos collected, tested, preserved, processed, stored and distributed or otherwise used and also concerning their origin and destination, necessary to monitor gametes and embryos at all stages for 90 years from the date of their creation for use in humans in a medically assisted procreation procedure, in a manner allowing identification of donors and recipients of gametes and embryos.

In the case of moving of gametes or embryos between gamete and embryo banks, the storage records of the gametes or embryos shall be transferred together with the gametes or embryos.

Medical secrecy is regulated in Article 40 of the Act dated December 5, 1996 on the professions of physician and dentist (uniform text, Journal of Laws of 2015, item 464).

Art. 40. 1. The doctor is obliged to keep secret and confidential the information relating to the patient, and obtained in connection with the practice of the profession.

2. The provision of paragraph (1) shall not apply if:

1) the Acts so provide;

2) the medical examination was performed at the request of authorities and institutions authorized under separate acts; then the doctor is obliged to inform exclusively these authorities and institutions about the patient's health condition;

3) maintaining secrecy may pose a danger to the life or health of the patient or others;

4) the patient or the patient's legal representative consents to the disclosure of the secret after having been informed in advance of the consequences adverse for the patient of its disclosure;

5) there is a need to provide necessary information about the patient to a forensic physician;

6) there is a need to transfer necessary information about the patient related to the provision of health care services to another physician or authorized persons involved in the provision of these services.

2a. In the situations referred to in paragraph 2, a secret may be disclosed only to the necessary extent.

3. A doctor, subject to the situations referred to in paragraph (2)(1-5), shall also be bound by secrecy after the patient’s death.

4. A doctor shall not make the patient identification data known to the public without the patient's consent.