

New Russian Legislation on Assisted Reproduction

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Abstract

Sometimes Russia is called a reproductive paradise, a country where almost everybody willing to have a child through ART may fulfill their dream. A draft of a new Health Protection law called also Russia's Medical Constitution, upholds that reputation, but nevertheless puts certain limits for intended parents. It should be mentioned that the draft bill is progressive and quite liberal, but far from perfection and leaves some legal loopholes and grey areas.

Keywords: Assisted reproduction; Legal regulation; Limited reproductive possibilities; Reproductively disabled (Challenged); Russia; Single parents; Surrogacy

Introduction

There has never been a specific federal law regarding all or most of aspects of human reproduction in Russia. Given the current demographic situation in Russia (according to the official data in 2010 there were 1,788,948 live births in Russia, 1,186,108 induced abortions and 2,028,516 deaths [4]) on November 01st, 2011 Russia's State Duma (the lower chamber of the parliament of the Russian Federation) approved a draft bill "On the basis of health care protection of the citizens of the Russian Federation" [5] in the third – and crucial – reading.

The draft law provoked a vivid discussion in the country if there is a right to have children and who and how can use assisted reproduction techniques – and which techniques – to become parents.

When discussing such issues we must appreciate that there are "two types of infertility: biological and social. The first type arises from a situation in which a couple or individual cannot reproduce due to certain physiological problems. The second one is due to a socially determined inability of certain groups of the population to become parents [12]." Infertility, childlessness, lack of somebody to care about leads to moral suffering, lower social status and even premature death.

There are millions of people with limited reproductive possibilities who can become parents only through assisted reproduction techniques. ART is a panacea, a fertility drug enabling anyone to overcome childlessness to become a parent.

Refusing to allow people with limited reproductive possibilities to become parents if they can have children through assisted reproduction techniques including surrogacy, means discrimination. Depriving reproductively disabled, reproductively challenged people of existing reproductive technologies we exclude them from reproductive process, washing out their unique genes from the gene pool of humanity.

One of the main principles of modern bioethics is that interests and welfare of the individual should have priority over the sole interest of science or society [13]. And Russian legislators really did their best in an uneasy political situation immediately before the election to follow that principle.

The bill introduces more clear regulation of surrogacy, explicitly allows the application of assisted reproductive technologies including surrogacy not only for couples, but also for men and women who are not officially married and also for single women willing to become mothers.

To fight abortions, a special clause regulating induced abortion was introduced stipulating a sort of a waiting list for women who have an intention to abort their children. If the pregnancy is 4-7 or 10-11 weeks, induced abortion can be arranged not earlier than 48 hours from the moment of getting an application for an abortion. Being on the 8th-10th week of pregnancy, the woman must wait for seven days (so called "week of silence") to have an abortion made.

According to the bill, a medical doctor has the right to refuse to carry out an abortion, giving a written statement about that.

The draft bill puts a ban on human cloning and euthanasia.

The bill went to the Council of the Federation (upper chamber of the parliament) and, being the approval almost technical procedure, would be signed by President Dmitry Medvedev quite soon and should come into force on January 01, 2012.

Today the basis for legal regulation of assisted reproduction in Russia is still the Basic Law as for Citizens' Health Protection: Each major 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) [2].

The current regulation doesn't specifically precise if a man and a woman living together or a single woman could apply for a surrogacy program, a circumstance leading to many conflicts at IVF clinics or when registering children born through surrogacy for such patients. Most Russian IVF clinics used to refuse to treat single women as patients eligible for gestational surrogacy programs. The new law changes that. It's clear that "the birth of a child to a single parent creates a new family, the vertical family, which is the real basis and structure of any stable society [12]."

Another document regulating technical aspects of ART now is Order No 67 of the RF Ministry of Healthcare [6]. This regulation is not a statutory law, but is followed by all IVF clinics. This document

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will be soon changed by a new regulation made in accordance with the new health law.

In the article 55, dedicated exclusively to assisted reproduction the new draft bill defines assisted reproductive technologies as methods of infertility treatment, the application of which presupposes that some or all the stages of conception or these of initial embryo development don't take place in the organism of the mother (including the usage of donated and (or) cryopreserved gametes, reproductive tissues and embryos, as well as surrogacy).

The order of the application of assisted reproduction technologies, contraindications for the application of them and restrictions on applying them according to the bill are to be approved by an authorized federal executive authority.

Man and woman either married or not have the right to the application of assisted reproduction technologies upon voluntary signing a mutual informed consent to a medical intervention. Single woman has the right to the application of assisted reproduction technologies on the base of her voluntary informed consent to a medical intervention.

Clause 4 stipulates that sex selection can be performed only when there is a risk of transmitting a hereditary sex related disease to an offspring. No sex selection for family planning in contrast to the USA is allowed, though no responsibility is set for offenders.

Clause 5 proclaims the right of citizens to cryopreservation and storage of their gametes, reproductive tissues embryos.

No human gametes, reproductive tissues or embryos can be used for industrial purposes according to the clause 6.

Gamete and embryo donation have been always permitted in Russia, even on a commercial level. The law says that potential donors should be 18-35 years old, be physically and mentally healthy and pass a medical-genetic examination. Currently it's allowed to be a sperm donor until you turn 40.

Nevertheless the bill doesn't deal with anonymity issue and doesn't precise if there are any parental responsibilities for donors or if there is a right for an offspring to know the identity of the donor, his or her genetic parent, like in the UK [9].

When applying for the usage of donated gametes and embryos, you have the right to get information on results of a medical, medical-genetic examination underwent by the donor, his/her race and nationality and also on his/her appearance.

The new bill doesn't say anything as for the age limit for the IVF, the regulation in force still stipulates that female patient should be "major" (at least 18 years old) and of the "childbearing" age.

Surrogacy

It's the most controversial part of the draft. Some critics, especially clerics of the Russian Orthodox Church ardently insisted on complete ban on surrogacy. Probably they forgot that surrogacy is as old as human history itself and is mentioned in the Bible. The first known infertile couple to use services of a surrogate are Abraham and Sarah. Sarah was barren and hired her maiden Hagar to carry a child (The Genesis, 16.1-15).

It happened in 1910 BC. Ishmael was the first child in history born as a result of a "traditional" surrogacy.

The arguments against surrogacy were based on ethical issues. A clear misconception, as most arguments refer to traditional surrogacy and do not extend to the gestational one [12].

The draft bill defines surrogacy as carrying and delivering a child (including premature childbirth) on terms specified in an agreement concluded between the surrogate mother (a woman who carries a fetus after a donated embryo is transferred to her uterus) and the intended parents, whose gametes were used for fertilization, or a single woman, who can't carry and deliver a child due to medical reasons.

This definition leaves a great deal to be desired. "Surrogacy can be defined as bearing a child on request for another family a person. This is the essence of this phenomenon: a child is born not as implementation of the surrogate's maternal instinct, but due to the commissioning couple's or individual's intention to become parents [12]."

There is a clear requirement for a gestational surrogacy contract in the bill. Nevertheless "the surrogate parenting contract is enforceable as for parties' financial responsibility only – same as before. 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 [10]."

The phrase concerning intended parents' gametes is not so good from the legal point of view. The legislators clearly tried to introduce a requirement for the child to be genetically related to at least one of the commissioning parents as in the UK [8] or in Ukraine [7]. But intended parents can easily avoid that requirement by buying gametes from the IVF clinic's database (practice possible in Russia) so that they become "theirs". A single woman who has medical indications for surrogacy according to the draft bill can in theory arrange her gestational surrogacy program using donated sperm and egg or donated embryos without any genetic link to her.

As for the moment medical reasons for surrogacy as stipulated by Order 67th of the Russian Health Ministry are as follows: absence of uterus; uterine cavity or cervix deformity; uterine cavity synechia; somatic diseases contraindicating child bearing; repeatedly failed IVF attempts, when high-quality embryos were repeatedly obtained and their transfer wasn't followed by pregnancy [6].

No other indications for surrogacy, such as fear of pregnancy, or social reasons are taken into account, same as before.

Clause 10 of the above cited art. 55 stipulates that a prospective surrogate should be 20 - 35 years old and should have at least one healthy child of her own. That requirement to have a "healthy child" is quite ambiguous as might be interpreted that a woman whose child got for instance a flu cannot pretend to be a surrogate.

She should have a medical certificate stating that her health condition is satisfactory. A written voluntary informed consent to a medical intervention is mandatory. The marital status or nationality of the surrogate is still irrelevant, but this draft becomes law, a written consent from the surrogate's husband if she's married would be required, a contradictory requirement that has never existed before.

There are two types of surrogacy: traditional, when the surrogate's oocytes are used, and gestational, when there is no genetic link between the surrogate and the child she carries.

Well, from now on traditional surrogacy would be outlawed in Russia. When the draft bill becomes law there would be impossible to use the surrogate's oocytes to create the embryo she'd be carrying.

We can't but support that requirement as traditional surrogacy is a real legal and ethical minefield hard to cross and should be avoided. Intended parents who would like to save on egg donation when arranging a surrogacy program might go to Armenia, the only post "soviet" country where it's explicitly allowed to use surrogate's eggs [1].

The law doesn't explicitly allow nor prohibit surrogacy for single men. Normally children born through surrogacy to heterosexual couples who are not officially married or single intended parents are registered in Russia in accordance to analogy of jus [10]. On 5 August 2009, a St Petersburg court obliged the State Registration Authority to register a 35-year-old single intended mother Natalia Gorskaya as the mother of her "surrogate" son [10].

On 4 August 2010, a Moscow court ruled that a single man who applied for gestational surrogacy (using donor eggs) could be registered as the only parent of his newborn son, becoming the first man in Russia to defend his right to become a father through a court procedure [11]. The surrogate mother's name was not listed on the birth certificate. After that five more identical decisions concerning single men who became fathers through surrogacy were adopted by different courts in Moscow and St. Petersburg listing men as the only parents of their "surrogate" children. These landmark decisions confirmed that prospective single parents, regardless of their sex or sexual orientation, can exercise their right to parenthood through surrogacy in Russia [11].

Commercial surrogacy has never been prohibited by law in Russia, a new law doesn't change that. The surrogate can be compensated for actual expenses (medicine, travel, baby-sitting, missed time from work etc.) and get remuneration for her service after the childbirth.

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