

Biomedically Assisted Fertilization in the Republic of Slovenia

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SUMMARY

The purpose of this short article is to present the Slovenian legal regulation of BMAF and the problems we face in this field. The aim of the article is to determine whether Slovenia is one of the countries with a small circle of entitlements and whether Slovenia is competitive in the field of biomedical assisted reproduction compared to other European countries

Keywords: Infertility; Biomedically Assisted Fertilization; Germ Cell Donation; Surrogacy; European Legal Aspects of BMAF; BMAF Procedures Contractors

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BMAF procedures are procedures to impregnate a woman using biomedical science to achieve conception by means other than sexual intercourse [1]. The BMAF procedure is regulated in detail by the Infertility treatment and procedures of biomedically-assisted procreation act. As a general rule, BMAF procedures use the gametes of a man and a woman who are in a marital or cohabiting relationship, but if conception cannot be expected to occur using their gametes, the gametes of a male or female donor may be used [2]. The law provides that a woman and a man who are married or cohabiting and who, according to medical experience and professional opinion, cannot be expected to achieve conception through sexual intercourse and cannot be helped by other infertility treatments are eligible for the BMAF procedure. They are also entitled to the procedure if the procedure can prevent the transmission of a serious hereditary disease to the child [3]. The spouses or cohabiting partners must be of full age, of sound judgement, of suitable age and in such a psychosocial state that they can be expected to be able to perform their parental duties [4].

A woman who intends to give her child to a third party after birth, whether for payment or not, is not eligible for BMAF [5]. Nor may payment or any other benefit be given or accepted for donated gametes, except reimbursement of travel expenses incurred by the donor in coming to the BMAF centre [6]. The referendum on the amendment to the Infertility treatment and procedures of biomedically-assisted procreation act (ZZNPOB), which was rejected in 2001, also rejected the possibility of simultaneous use of biomedically-assisted donated gametes for infertile couples, artificial insemination for single women, and, consequently, the possibility of surrogacy in Slovenia [7].

Legal Regulation in the Republic of Slovenia

Article 55 of the Constitution of the Republic of Slovenia, as the fundamental and hierarchically supreme legal act in the country, stipulates that in Slovenia the decision on the birth of children is free and that in order to exercise this freedom, the state shall provide opportunities and create conditions that enable parents to decide on the birth of their children [8]. Infertile couples can become parents through biomedically-assisted fertilization procedures

(BMAF) or adoption. While surrogacy is not directly prohibited, the prohibition of biomedical assistance in its implementation makes it impossible in practice [9]. Surrogacy is summarized in Article 7 of the ZZNPOB, which stipulates that a woman who intends to give her child to a third party after birth, whether for payment or not, is not eligible for BMAF. Sanctions are laid down in the Infertility treatment and procedures of biomedically-assisted procreation act in Article 43 [10]. The Criminal Code provides for a prison sentence of up to three years for anyone who unlawfully implements a BMAF procedure for surrogacy, in Article 121(4) in conjunction with Article 121(3) of the Criminal Code [11].

Surrogacy is also defined in Slovenia in the Code of Medical Ethics, which states in Article 24 that in the case of reduced fertility, the doctor shall offer counselling and the reasonable use of biomedical treatment procedures to those affected. Surrogacy is not allowed [12]. "Although it is not explicitly prohibited by Slovenian law, it is not possible to implement it in practice [13]." Article 112 of the Family Code defines a mother as a woman who has given birth to a child [14]. This definition also makes surrogacy legally impossible, since the mother of the child will therefore always be the woman who gave birth to it.

Establishing Parentage in a Biomedically-Assisted Fertilization Procedure

Biomedically-assisted fertilization is regulated by the ZZNPOB, while the parentage of children born during the procedure is regulated by the Family Code. Spouses or cohabiting partners who are of full age, of sound judgement, of suitable age and in a good psychosocial situation to be able to perform their parental duties are eligible for a biomedically-assisted fertilization procedure [15]. The BMAF procedure shall be carried out with the partners' gametes or with one gamete from the partner and one donated male or female gamete. Donation of both gametes or donation of an embryo is not allowed. A child conceived with biomedical assistance must genetically descend from at least one person in the couple requesting the BMAF procedure [16]. If the child is conceived with an ovum from a donor, then her maternity cannot be established [17]. The mother of a child conceived with a BMAF procedure is the mother who gave birth to the child. This applies in both cases – if she is the genetic mother of the child, and also if she is not the genetic mother of the child. If the mother has given her consent to the procedure, she has thereby assumed the duty of care for the child [18].

The father of a child conceived with biomedical assistance is the mother's husband or her cohabiting partner, who has formally consented to the BMAF procedure. The father is considered to be the father whether or not he is genetically related to the child. No one is allowed to establish the paternity of the donor, who must

remain anonymous [19]. The child may, for medical reasons, request the competent centre to provide them with medically relevant information about the donor. He may do so if he is at least 15 years old and is capable of understanding the meaning and legal consequences, i.e. is of sound judgement [20]. In this case, the Slovenian legislation therefore restricts the child's right to know their origin. Although the Constitutional Court of the Republic of Slovenia has not yet encountered in practice the question of the rights of a child conceived with biomedical assistance, it is questionable whether the provision in question would survive a constitutional review. The Court has in the past already ruled on the right to know one's origins, which it classifies as a constitutionally protected right.

Even if Slovenia were to enact an open regime, the fear that this might lead to a reduction in the number of donors would certainly be unnecessary. The law excludes legal and other obligations or rights of the donor towards the child [21]. As already mentioned, one of the key elements for the development of an individual's personality is the knowledge of one's origins. If an individual does not know it, this can be a serious burden and uncertainty [22]. A German court decision that upheld the claim of a woman who was conceived with the BMAF has caused quite a stir. She had asked for information about her biological father to be disclosed. The Court was confronted with a clash of two rights, and judged primarily on the basis of the case-law of the German Constitutional Court, which had previously taken the view that the right to know one's origins enjoys constitutional protection. In its judgement, the Court also considered the applicant's interest in knowing her biological father and any half-brothers or half-sisters, as well as hereditary diseases. The Court also considered the rights of the donor and the clinic in the specific case. Given that the donation of gametes is anonymous, the donor could not have foreseen the possible legal consequences (inheritance, maintenance). However, weighing up the interests of all parties, the Court held that the child's right to know their origins was paramount, since knowledge of biological parents is central to the development of the child's personality [23-27].

Conclusion

The beneficiaries of the BMAF procedures in Slovenia are married or cohabiting couples who are unable to achieve a pregnancy through natural means or other procedures, and therefore the circle of beneficiaries can be said to be narrow, as the ZZNPOB does not allow the biomedically-assisted fertilization procedures for single women and same-sex couples. The problem in Slovenia arises in the case of donated gamete procedures, as there are too few donors, so the waiting times for donated gamete procedures are unacceptably long and many couples would no longer be age-appropriate if they were to wait for donated gametes in Slovenia. We believe that Slovenia should move with the times and broaden

the range of those eligible for BMAF, as same-sex couples and single women can also meet the criteria of best interests of the child. Discrimination in this area should be eliminated on the basis of the right to free choice in childbirth, the principle of equal treatment and the principle of equal opportunities.

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