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## **PROBLEMS OF DETERMINING THE PATERNITY IN THE ASSISTED REPRODUCTION**

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### **Abstract**

*The institute of determining the paternity and the maternity should be seen also in the view of current developments in the field of technology regarding the assisted reproduction methods. The traditional concepts of the mother and father of a child appear to be not always responsive to the biological linkage criteria. As a consequence of the application of the assisted reproduction, the foundations which formed the basis of family law, seemed to be shaken. Thus, increasingly, the inability to give birth to a child on natural way, is compelling couples in which one or both are infertile, to address themselves to alternative ways of bringing a child in life. Faced with an ever-increasing tendency, there is the need to adopt or amend the legislation as to the definition of paternity and maternity is concerned. This is due to the fact that, having the participation of more than two persons in the procedure, may give rise to problems with the affiliation of the parents of the child. In Albania, the applications of the assisted reproduction methods, paved their way with the approval of the Law "On Reproductive Health" in 2002. Among other things, this law also envisions the meaning of assisted reproduction methods, the purpose for which they are applied, that is to give them the opportunity to give birth to children who cannot be born in the natural way. At the same time, in this law, there is a description of the assisted reproduction methods allowed in Albania. The law seems to have a liberal spirit in allowing the application of various methods, as it is expressed by the assisted reproduction method, meaning any form that allows reproduction outside of the natural process. However, the law is no less problematic and leaves room for different interpretations that need the intervention of the legislator through relevant changes.*

Keywords: *paternity, maternity, assisted reproduction methods*

## 1. Introduction

Assisted reproduction techniques brought a new approach to the defining of parent child relationships. By analyzing the provisions governing the determination of the child's paternity and maternity, based on his or her status as a child born in a marriage or out of a marriage, in our family code, we conclude that each of these ways is aimed at establishing and correcting of the biological relationship between the parent and his child.

While in heterologous reproduction techniques we leave the concept of biological bonding because the donor of the genetic material can be a third person who can be contracted by the couple or an unknown person, who in the ideal case, does not aim the parenting, and thus a determining criterion for paternity determination is the purpose of the person to be the parent of this child, and this is in most cases an inability of the latter to become a parent naturally.

Determining the paternity legal affiliation is important because of the lack of a consolidated doctrine in the field of family law, just as difficult because of today's scientific developments that have already shaken classical principles into the field of determination, confirmation and rejection of this legal fact.<sup>1</sup> Despite having a legal framework that allows the subjects set therein, access to assisted reproduction techniques, this law is no less problematic and leaves room for different interpretations. There is a need to intervene in legislation to adapt and answer all the questions that may arise as a result of the application of assisted reproduction techniques.

In Italian literature it is cited that: "it is certain that the essence of parenting relationship is related to a biological derivative situation that imposes on the one who gave birth and the provision of necessary care for the existence of the born; but the practices associated with new forms of biological donation have led to radically new perspectives even in the legal concept of paternity or maternity and in their legal definition: by fixing the legal relationship of the innate with the donor of his life, under a condition of total human responsibility, that is not limited to verification of the generating factor."<sup>2</sup>

Although in the existing legal landscape it is difficult to give a legal definition of the "father", and especially if this pretends to be unique, it is safe the specification and the definition of the father's status, from which they derive rights, obligations, choices, duties, and which marks the position of this person in the family and in the society.<sup>3</sup>

This evolution, coupled with the increased sensitivity of the newborn's legal situation, made possible by the contemporary developments of medical interventions at the stage of conception, has made possible the configuration of an interest toward the paternity,

<sup>1</sup> Fana, Mirela. Dissertation, for the title "PhD", "Theoretical Treatises on the Recognition and Opposition of Paternity", Tirana 2016, page 8

<sup>2</sup> Tarabucchi A., Family and the Right in the Horizon of the Eighties, Civil Rights Magazine, 1986, page. 166

<sup>3</sup> Fana, Mirela. Dissertation, for the title "PhD", "Theoretical Treatises on the Recognition and Opposition of Paternity", Tirana 2016, page 10

understood as the right to be a father, which precedes the birth of the child and is in charge of the spouse, starting from the stage of conception and during the moment of birth.<sup>4</sup>

## 2. Consent, as a very important element in determining paternity

A basic and very important element is the giving of the consent by all subjects that will undergo in these procedures. Consent can only be given by a person who is of the age of majority and fully capable to understand the importance of his/her action, as well as the legal consequences with which the law has bound him/her. Granting the consent, is of great importance in terms of claims for defining and opposing the paternity and maternity of the child.

Legislation should make it possible for each of these actors, to ensure the free expression of their will after having been fully informed of the application of these techniques and their effects.<sup>5</sup> The Code of Ethics and Medical Deontology stipulates that the patient should be informed about the medical techniques to be applied to him, and at the same time he must give consent for their application or not.<sup>6</sup>

But for the very specifics and features that carry the techniques of artificial reproduction, observance of the consensus in their application gets a wider meaning, since the application of these techniques involves more than one person, not just the woman on whom it will occur, but also the seed donor, who may be a partner or an anonymous donor, as well as other persons who will be affected by the results of these procedures (spouse or woman partner subject to fertilization).<sup>7</sup>

If the physically assisted fertilization technique forces the couple to express a consensus at the "embryo" moment, and moreover, this consensus does not appear to be required at the moment of birth but before it, from that moment it can be called configured an interest in charge of the male to be a father.<sup>8</sup>

Despite the great importance of "giving consent" to the application of assisted reproduction techniques, we do not have an explicit and clear regulation in the law "On Reproductive Health"<sup>9</sup> on this element and the implications it brings to every subject involved. However, it is mentioned sporadically by simply referring to the consent of the person who will be subjected to the techniques themselves, as an expression of autonomy in relation to their body or persons concerned, without clarifying who are these persons, on granting the consent of the donor without linking this consent to any consequence, but we do not have a prediction on granting

<sup>4</sup> Fana, Mirela. Dissertation, for the title "PhD", "Theoretical Treatises on the Recognition and Opposition of Paternity", Tirana 2016, page 11

<sup>5</sup> Zyberaj, Junada. Dissertation, for the title "PhD", "Bioethics. Determination of paternity in assisted heterologous reproductive methods of reproduction". Tirana, 2014, page 78.

<sup>6</sup> Article 25 and Article 28 of the Code of Ethics and Medical Deontology.

<sup>7</sup> Zyberaj, Junada. Dissertation, for the title "PhD", "Bioethics. Determination of paternity in assisted heterologous reproductive methods of reproduction". Tirana, 2014, page 117

<sup>8</sup> Fana, Mirela. Dissertation, for the title "PhD", "Theoretical Treatises on the Recognition and Opposition of Paternity", Tirana 2016, page 15

<sup>9</sup> Law No. 8876 dated Apr 04<sup>th</sup>. 2002 "On Reproductive Health".

consent to the spouse or partner of the mother, thus not solving their claims regarding parental rights.

In this context, changes to the law are needed in order to clearly define the consent of each subject and the consequences with which the law implies such consent.

It is stated in our law that "the implementation of reproduction techniques applies only after written consent has been obtained for each cycle from the interested individuals". But it is not defined in this way if interested subjects are to be considered only the couple who will be subjected to the reproduction techniques concerned or will be included in this classification also the donor in case the genetic material is not taken from the mother's spouse but from one third person.

Another moment in which consent is given is in the articles regulating artificial in vitro fertilization where it is foreseen that "participation in it is conditioned by the written consent of the woman who donates the eggs and the husband who donates the sperm". So, for this way of assisted reproduction, the law has explicitly provided that the written consent of the two donors should be given, as the woman who donates the eggs, as the man who donates his genetic material. However, the forecast stops with that. It seems as if the purpose of the law was to sanction the granting of consent in the context of the expression of the individual's freedom and autonomy in relation to the donation of genetic material and the manner of its usage, rather than linking this expression of will with certain consequences.

There is no definition in this definition, regarding the claims that these subjects may have for parental rights. It is not clear from the provision whether in the case where the genetic material is donated by another person who is not the mother's partner, gives rise to this person's right to claim parental rights or not. Also in this case, the law makes no provision regarding the consent of the mother spouse in the case of the donor being a third person and the consequences of such consent.

It would be necessary, because of the importance of the principle, but also of the consequences of its disregard, that the definitions would be clearer and differentiated for each of the participants. Thus, for the donor, the way of giving consent and its consequences should be clearly defined, even if he is an anonymous donor, even when he is a friend of the couple or of the woman who is using reproductive techniques. It is necessary to determine whether giving the consent of the donor brings after his or her withdrawal from the claims on parental rights. It is also necessary to sanction the right of the wife / partner to give consent to the application of reproductive techniques, as well as the consequences and the parental rights deriving therefrom.<sup>10</sup>

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<sup>10</sup> Zyberaj, Junada. Dissertation, for the title "PhD", "Bioethics. Determination of paternity in assisted heterologous reproductive methods of reproduction". Tirana, 2014, page 118.

### 3. Position of the donor, in the assisted reproduction techniques

Determining the position of the donor in assisted reproduction techniques is of a crucial importance. In the provisions of the Albanian law regulating assisted reproduction, we do not have a specific prediction regarding the position of the donor. It is not clear to us, whether the donor can be a private donor, contracted by the parties themselves, or a donor found through donor banks. In most cases we can say that the donor, in the case of a third person and not a spouse or partner of a mother, is a person who donates the genetic material based on different personal reasons of his, which are not of an interest to be studied, and does not have the purpose of parenting for himself.

However, a clear definition of his position and his rights or obligations, is indispensable to precede the situation of raising any possible claim of parental rights toward the child in the future, as the current law "For reproductive health" including the applicable Family Code provisions, leave room for discussion and can cause numerous problems in interpretation. Such a situation may be problematic in the case when, despite the fact that, the law has not explicitly recognized the right, the couple, referring to these techniques is a couple of domestic partnership. Upon the born child, the donor can claim the right of paternity. While in the case of a legally married couple who will bring their child to life through an assisted reproduction technique, the issue is less complicated because in such a case, upon this child acts the presumption of paternity in favor of the mother's spouse and no other person who claims to be a biological father, can oppose the presumptuous paternity in court procedure. The Act on Embryology and Human Fertilization stipulates that the donor cannot be treated as a child's legal father if he has been a donor contracted by the sperm banks and if he has given his consent at the time of performing these procedures.<sup>11</sup>

Our legislation doesn't include an expressed stance even on the issue of preserving the donor's anonymity. Many of the European countries have regulated the issue of the donor's anonymity or not-anonymity in their domestic legislation. So, there are countries that guarantee an absolute donor's anonymity, such as France which foresees a complete anonymity of the donor by denying him at the time he has given his consent at the beginning of the procedure, to any claim he might have for the child in the future.

By contrast, other countries have maintained a more liberal approach, such as Great Britain and the Netherlands, which stipulate that the donor not only is not anonymous, but also enjoys the right to claim at any time the establishment of parental relations with the child, on condition that the paternity to him has not been decided in favor of the mother's domestic partner or spouse. Meanwhile, there are also countries that recognize the right of a child to become acquainted with the donor when the child reaches adulthood but, on the other hand, do not charge the latter with any parental responsibility.

Two very important rights recognized and sanctioned in international acts are thus in balance between them. Thus, on one hand, we have the right to the donor's anonymity which is part of

<sup>11</sup> Human Act of Embryology and Fertilization Schedule 5, para. 3 of the HFEA 1990

the right to respect the private and family life envisaged by the European Convention on Human Rights<sup>12</sup> and on the other hand the right of the child to know its biological origin envisaged by the United Nations Convention "On the Rights of the Child"<sup>13</sup>, which guarantees, inter alia, the right of the child to establish and maintain family relationships. Article 8 of the ECHR sanctions the right of a person to maintain anonymity in all actions that he performs with his body, including the right of the donor to donate sperm. But, on the other hand, in front of this right lies the right of the child to be informed about his genetic origin. The right to know the genetic origin is an important determinant element of the identity and personality of the person, thus constituting a form in which the right to have a private life is expressed.<sup>14</sup> While the Council of Europe has not come to a definite conclusion regarding the issue of donor's anonymity, leaving the solution of this issue to the member countries. However, in its jurisprudence the Court emphasized the need to maintain a balance between the interest of the person seeking access to the data relating to him and the interest of the person to whom these data belong and in a more general context, the rights of other persons associated with them.<sup>15</sup>

#### **4. Problems of paternity determination in assisted homologous reproduction.**

The assisted homologous reproduction is the kind of reproduction in which the genetic materials belong to the couple itself to be subjected to one of the assisted reproduction methods, but for one reason or another cannot bring in life a child through natural reproduction.

In this way, reproduction occurs with the genetic material of each of the parents who have had the purpose of parenting and the child inherits the genetic material of both his parents. The problem of determining the paternity of the child in such a reproduction manner is solved depending on the mother's status, at the moment of child birth. Thus, if a child was born during the mother's marriage period, his paternity will be determined on the basis of the paternity presumption. The presumption of paternity also applies if the child was born during a period of 300 days from the moment of marriage dissolution or marriage declared invalid.

At the same time in the case of the conflict of paternity presumption when the mother is married immediately after the divorce or marriage declared invalid and the child was born during the second marriage, the paternity is presumed in favor of the second spouse of the mother.

<sup>12</sup> European Convention on Human Rights, 1950, Article 8.

<sup>13</sup> United Nations Convention on the Rights of the Child, 1989, Article 7.

<sup>14</sup> Mikulić v. Croatia, no. 53176/99, §§ 53-54, ECHR 2002-I

<sup>15</sup> Zyberaj, Junada. Dissertation, for the title "PhD", "Bioethics. Determination of paternity in assisted heterologous reproductive methods of reproduction". Tirana, 2014, page 118.

Thus, in the absence of special provisions in the Family Code which regulate the way of determining paternity in the case of assisted reproduction techniques, paternity will be determined basing on the general rules governing this institute.<sup>16</sup>

##### **5. Determination of paternity in cases of assisted heterologous reproduction.**

The assisted reproduction is a heterologous case when the genetic material is not the spouse or maternal partner but of a third person who is literally known as the donor of the genetic material. A child born to life by a heterologous assisted reproductive technique, inherits biological material from that of his donor and mother. The determination of paternity will again refer to the general provisions of the Family Code in the absence of special provisions. Thus, determining the paternity of the child, will vary depending on the status that the mother will have at the moment of child birth.

A child born from a married mother: If a child is born from an assisted reproduction method, he will have as a mother, a carried a mother at his moment of birth, and will have as a father her mother's spouse. So automatically the paternity is determined based on the legal presumption of paternity, which means that the mother's spouse at the moment of child birth gains the status of his father.

The Albanian legislation does not contain any requirements regarding the moment of child's conceiving. Thus, the child can be conceived at any moment, even before the marriage, being enough to have been born within the time frame of the duration of the marriage.

A different arrangement in this regard involves the Italian legislation, which requires that the child should, not only be born during marriage, but also should be conceived during it. Thus, for the purpose of enforcing the presumption of paternity, the child should be born within a period of not less than 180 days from the moment of the marriage, to be considered as conceived during it. Presumption will also apply to a child who will come to life in a period of no more than 300 days from the moment of a marriage dissolution or proclaimed an invalid marriage.

In the case of the conflict presumptions, the same abovementioned solution will apply, according to which the child's father will be presumed to be the mother's spouse from the actual marriage and in the event of a potential contravention of paternity on his way to court the presumption in favor of the mother's spouse is in effect from the first marriage as the child was born within 300 days of the end of the first marriage.

The Family Code has recognized the right to the presumed father to oppose paternity on a lawsuit, in all those cases when he has established the conviction that the child for whom he has acquired the father's status because of the law, is not actually his biological child.

This prediction is fully acceptable in the case of natural births by giving to the presumed father the possibility of "legally healing" a situation that does not correspond to the reality.

<sup>16</sup> Family Code of the Republic of Albania, Articles 180 – 191

The discussion is raised if the mother's spouse who has previously consented to the application by his wife of one of the assisted reproduction methods, will then challenge his paternity through a court suit. The Albanian legislation has a total lack of regulation in this regard and interventions are necessary. It is therefore necessary to clarify the effect that the mother's spouse consent will have to the claim of parental rights, as well as the fact that he can oppose the presumptive paternity despite the fact that he has already given his free and fair consent and if such a thing will only be permitted in exceptional cases to express explicitly what these cases will be?

The European countries have regulated in their legislation the question of the presumed father's ability to oppose his paternity by providing different solutions.

So, there are countries that deny any possibility of the presumed father to oppose paternity<sup>17</sup>, with small exceptions, while other countries allow the presumed father to oppose paternity in certain situations<sup>18</sup> such as situations in which the expressed consent was as a result of an unproductive free will or in cases when the spouse has expressed the will for a certain assisted reproduction method while the child has come into life by applying another method.

What is worth stressing, is the fact that all countries, some with a tighter arrangement, and some with a slightly liberal attitude, agree at some points in terms of denying the father's presumption of opportunity to oppose the presumed paternity in a situation when he has given his consent, subject to no restriction<sup>19</sup>. So, he can only do so by subjecting the restrictions provided for each in the relevant legislation.

Taking present the importance of the problem as well as the possibility of harmonizing the principles that will govern the institute of paternity and maternity, the Council of Europe through the "Committee of Experts on Family Affairs" in 2006, drafted a report which was called "Report on Principles Linked to the Defining and Contradicting of Paternity ". This document would serve as a guiding document for EC member states. The report sanctioned important principles regarding the father's ability to oppose the presumed paternity and the general principles that should govern the paternity determination in the case of a child brought to life through the application of assisted reproduction techniques. It was foreseen that paternity presumption should act equally in the application of artificial reproduction techniques as it does for the natural reproduction. If it is not possible to apply the presumption, paternity can be established according to the rules of its recognition or its judicial confirmation. Thus, this principle affirms the idea that even for children born as a result of assisted reproduction, the paternity is determined basing on the traditional rules of paternity determination such as the presumption of paternity for children born of a marriage and the voluntary recognition or the judicial confirmation of children born out of marriage.

<sup>17</sup> France, Italy

<sup>18</sup> Great Britain

<sup>19</sup> Zyberaj, Junada. Dissertation, for the title "PhD", "Bioethics. Determination of paternity in assisted heterologous reproductive methods of reproduction". Tirana, 2014, page 95.



Regarding the principle of opposing the presumed paternity, Principle 10, paragraph 2, provides that "the mother's spouse or her domestic partner who have consented to the application of the techniques may not contest the paternity unless it is proved that the child was not born as a result of the practices for which the consent was given".<sup>20</sup> Thus, the father's opposition of paternity is permitted only when the child is born as a result of the application of an assisted reproduction technique other than that for which the consent of the spouse or mother has been granted.

The report has been cut off on this issue by providing only an exceptional case in which the presumed father can oppose paternity, and this serves precisely to protect the child's highest interests because if the presumptive father would be allowed to oppose his unworthy paternity, it would endanger the child's interests.

In determining the paternity of a child born as a result of the application of reproductive techniques, the purpose of using these techniques should also serve as an essential element in determining paternity.<sup>21</sup> So, the purpose of their use is to give to the couples the opportunity to become parents in those cases when they cannot do it in the natural way. And this is precisely the purpose of the spouse or mother's cohabitor when he gives the consent to his wife to bring to life a child with any of the heterologous methods of the assisted reproduction.

His initial desire to become a parent should correspond to even the assuming of the proper responsibilities for the child brought to life. It is not thus possible to be recognized to the presumed father the ability to give up obligations that arise as a consequence of the acquisition of the father's status, without criteria, but only in certain situations which also have a legal logic. In an illustrative manner, for the member states, the report also envisaged cases that may be justifiable by law to oppose the paternity presumed by the father, in cases where he has consented to the application of the reproductive techniques but the child has not come to life as a result of them, or when the father has consented to the use of reproductive techniques through the usage of his genetic material, but another person's material is used, or when the father has not consented to the usage of reproductive techniques.<sup>22</sup>

As for legitimate subjects to oppose paternity, the law recognizes the presumed father and the child himself or his/her representative as the directly concerned persons.<sup>23</sup> It is worth underlining the fact that the report serves as an orientation for member states regarding the principles to be selected for the determination of paternity and maternity in the case of assisted reproduction techniques, but nevertheless it remains in the internal discretion of each relevant state will select, even though the report aims toward a unification of principles.

<sup>20</sup> The Committee of Experts on Family Law, CE, "Report on the Principles of Establishment and Legal Consequences of Parentage" - The White Paper, 15-17 November, 2006.

<sup>21</sup> Law No. 8876 dated Apr 04<sup>th</sup>. 2002 "On Reproductive Health".

<sup>22</sup> The Committee of Experts on Family Law, CE, "Report on the Principles of Establishment and Legal Consequences of Parentage" - The White Paper, 15-17 November, 2006

<sup>23</sup> The Committee of Experts on Family Law, CE, "Report on the Principles of Establishment and Legal Consequences of Parentage" - The White Paper, 15-17 November, 2006

The Albanian law "On Reproductive Health" does not provide a correct prediction whether to the assisted reproduction techniques can be directed only the married couples who could not become parents naturally within a period of 2 years efforts or if even the couples who consume domestic cohabitation between them and aim to become parents, without having the intention of marrying can turn to assisted reproduction techniques to fulfill their desire to bring in life a child.

In the case of a child born to life by one of the heterologous alternative methods of assisted reproduction we would have a child who, for the sake of law, is considered a child born out of marriage. And for the determination of his paternity we must address to the provisions of the Family Code which regulate the paternity determination in the case of children born out of marriage. So the paternity of the child can be determined through voluntary recognition or through judicial paternity verification. A very important element in the concrete situation is the consent of the mother partner and his intention to become a parent. Consent, does not refer to the realization of the concrete procedure so that the law should link it to the consequences that have led to the paternity of the child. However, it is not only necessary to be given the consent from the cohabitation partner of the mother, but it is also necessary to follow the entire procedure provided by the Code for the voluntary recognition or judicial determination of paternity.<sup>24</sup>

Thus, the mother partner who has given the initial consent that his partner brings into existence a child through assisted reproduction, should follow this with the child's voluntary recognition procedure. Voluntary recognition can be done before the registrar or by will, and it is conditioned by the consent of the mother. The obligation to notify the mother about voluntary recognition is provided by the Civil Registrar. The mother is given a one-month deadline to express herself, and in the event of the mother's refusal, it may be addressed to the court through a legal lawsuit.

In the absence of voluntary recognition, the court may file a claim with the lawsuit for the paternity certificate within three years from the birth of the child or when the child reaches the age of majority.

Another moment to stop, is in the position of the donor. It needs to be clarified whether the donor can claim parental rights over the child based on his biological connection with him and if so on what conditions or restrictions he can do so.

It may in any case require the placement of his paternity over the child or may require it only if the paternity over a child born out of marriage is not placed in any of the ways recognized by the Family Code such as voluntary recognition or judicial paternity certification. Also in the case of a single mother, even though the law does not explicitly recognize the right to bring a child into existence through assisted reproductive techniques, the problem arises if at some point the donor wishes to be recognized as the father of the child. The purpose of the mother who only personally decided to address herself to one of the assisted reproduction techniques has been

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<sup>24</sup> Family Code of the Republic of Albania, Article 181

clearly the single parenthood, taking into account all the responsibilities that would arise for her from this status. It is obvious that if the donor wants to determine his paternity through the voluntary recognition of paternity the mother will not give her consent. However, it is still a matter of court settlement through the lawsuit for paternity, where its biological connection with the child needs to be verified, which can be easily verified during the trial. Such a situation would be undesirable because it would conflict with the purpose, the law would have, in determining as the subject of such an individual to address to the assisted reproduction methods. A clarification of the law is also needed in this regard.

## 6. Determination of paternity in the case of eggs donation

Another method of assisted reproduction is that of eggs donation. Through this method which is known differently and as *ovodonation*, a woman who intends to be a mother of a child uses the egg cells of another woman. The genetic material may be of her spouse or her partner or of a third person. With this method of assisted reproduction, problems arise because they put a question mark both on the baby's mother and the father. The discussion that arises in this case, is the fact of who will be considered the mother of the child, the woman who donates the egg or the woman who actually gives birth to the child. There are countries in Europe that do not allow eggs donation because they put in doubt the principle *mater semper certa est*, while there are countries that allow it expressly.

Meanwhile the Albanian law seems to have a positive attitude towards allowing different assisted reproduction techniques when it states that "the assisted reproduction involves clinical and biological practices that enable in vitro conception, embryo transfer and artificial insemination as well as all other equivalent techniques that allow reproduction outside the natural process".<sup>25</sup>

Using the term all other techniques, we conclude that the law does not exclude the application of either of the assisted reproduction methods. However, the law needs a much more detailed provision regarding the facility, given that the great social vulnerability that implies numerous social and moral problems, but also with the change of principles that have so far been taken as irrefutable as it is the one mentioned above "*mater semper certa est*". In this way, provisions are needed to specify in more detail the various assisted reproduction methods to be allowed in Albania and the conditions under which they are allowed to be realized.

Regarding the current regulation as we have a provision that we can extensively interpret and on the other hand we do not have a ban on any other provision regarding the usage of egg donation as a reproduction method, we can say that it is entirely permissible. Meanwhile, for problems that may arise regarding the determination of paternity and maternity, the solution will be that provided by the Family Code. Specifically, the mother of the child is considered the woman who gives birth to the child, regardless of whether the egg cell is of another woman.

<sup>25</sup> Law No. 8876 dated Apr 04<sup>th</sup>. 2002 "On Reproductive Health".

According to the Family Code, the mother of the child is considered the woman who appears in the act of birth as such, that is, who declares the child as her own.<sup>26</sup> While for paternity determination will apply the same rules that were treated regarding the homologous and heterologous assisted reproduction.<sup>27</sup>

Specifically, if the mother of a child is married, the father of the child will be presumed to be the mother's spouse. Likewise, if the child is born no later than 300 days from the divorce or the declaration of marriage invalidity, the child's father will be presumed to be the mother's ex-consort. On the other hand, if the child is born of an unmarried mother, the partner of the mother can make the voluntary acknowledgment of paternity by taking also the consent of the mother or otherwise can be addressed to the court for obtaining the judicial confirmation of the paternity. Even for this assisted reproduction method, it is necessary to make a clear adjustment of the donor's position in relation to the couple that will bring the child into life by addressing this method which may be a couple of spouses or even though the law does not define it so clear a couple living together or a single mother.

### **7. Determination of paternity in the case of surrogacy application**

Surrogacy is the method of assisted reproduction in which the mother who gives birth to the child is in fact only her mother during pregnancy, without having her any parenting purpose for herself. Birth is therefore performed on an account or commissioned by a couple or by a single individual if the legislation recognizes such a right.

Rights and obligations between the parties are regulated by the surrogacy agreement. Surrogacy can be *complete*, and such is considered when the ordering mother donates her egg and the biological material belongs to her spouse or to her partner, but can also belong to a third donating person, and *partial* when the surrogate mother uses its egg cell for reproduction and the genetic material belongs to the spouse or to the partner of the ordering mother or may also be a third donor-a free third party without any relation to the parties. In the last case described, the born child would have no biological connection with any of the ordering parents.

Being an adoption procedure after the birth of the child, it means that until the birth of the child, his mother is considered the woman who gives birth to him and his father, her spouse, basing on the paternity presumption of paternity if she is married. After receiving the "parenting order" the paternity and maternity passes respectively to the ordering parents.

As far as the Albanian law is concerned, it does not make any arrangements regarding the application of surrogacy, which is mentioned only in one article<sup>28</sup> and only within the delegation of competences to regulate the conditions and procedures for its regulation to the Ministry of Health. Being an issue that brings together important social, legal interests, but also with regard

<sup>26</sup> Family Code of the Republic of Albania, Article 175

<sup>27</sup> Zyberaj, Junada. Dissertation, for the title "PhD", "Bioethics. Determination of paternity in assisted heterologous reproductive methods of reproduction". Tirana, 2014, page 87.

<sup>28</sup> Law No. 8876 dated Apr 04<sup>th</sup>. 2002 "On Reproductive Health", Article 36.

to the autonomy of the individual in relation to his body, cannot be left only to the sublegal acts, but the necessary changes in the legislation should be made, to give a solution to necessary problems encountered in practice.

In the current framework of developments in family law, the issue of paternity and maternity affiliation established by a surrogate mother will refer to the general rules applicable to natural births. Since the surrogacy agreement is not regulated by law, we cannot say that it is forbidden, however, it cannot have consequences unless it is followed by a child adoption procedure after his birth.

A legal adjustment is needed also in order to recognize a more accelerated adoption procedure because it will serve to better protection of the interests of the child. Arrangement is also needed in terms of giving consent to all subjects involved in the procedure and the consequences it brings to them including the spouse or the partner of the mother.

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