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ORIGINAL PAPER

The Effect of Post Human Reproduction in Inheritance Relationships

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Abstract:
The rapid development of technology and medicine is posing a challenge to other sciences. This development has broken down the traditional boundaries of science and nature. The conception of a child by a natural and biological process is complemented by a technological and medical process. This fact is best observed in the case of artificial insemination, surrogacy, and post human reproduction. Post human reproduction represents the conception and birth of a child after the death of the parent. This way of conceiving a child has changed the conventional biological methods to date. Due to the conception of children after the death of the parent, a time vacuum is created that seems as if the child is separated from the parent. According to the legislation of North Macedonia, a woman can be fertilized for up to one year after the death of her husband. The issue of this time distance opens dilemmas in terms of gaining rights from the inheritance relationship, as the father of the child is considered the spouse of the mother who gave birth to the child during the continuation of the marriage or 300 days after the dissolution of the marriage. In the case of post human reproduction, the child will be born 300 days after the death of the father and will not be able to inherit the genetic father. Such an approach to legislation constitutes to child discrimination, in which case the law must change and adapt to the new circumstances of social relations. On the contrary, although the children biologically belong to the testator and must be the first-degree heir of the inheritance, due to such a legal provision the same is excluded.

Keywords: *post human reproduction; inheritance; legislation; biological; heir*

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Theoretical Concept of Post Human Reproduction

The dynamics of the development of medical technology sciences in recent years regarding the treatment of health problems and the improvement of human life has created the impression that we live in a time of biological revolution. The application of the biomedical assisted reproduction method imposes the need for the inclusion of technology, laboratory, biology and medicine methods in order to achieve the fulfillment of people's desire to have children through reproduction. Artificial fertilization and post-death implantation are made possible as a result of artificial reproductive technologies that include in vitro fertilization (IVF) and cryogenics (d'Almaine&Zaal, 2018:2).

Even in post human reproduction, the main role was the science of technology. Lazzaro Spallanzani the Italian biologist was the first to report on the effects of temperature on freezing human sperm, and Montegazza in 1866 was the first to suggest banks that freeze human sperm (Sazme, 2019:2). A major contribution to the rapid freezing of sperm and their successful use for the fertilization of the woman and the birth of a healthy child was given by Sherman and Bunge in 1953 (Swanson, 2012:260-265). These developments presented the beginning post human reproduction, which clearly seemed to break the traditional boundaries between science and nature. This idea came as a result of the desire of couples and especially women to have children with their husbands who went to war and were not sure they would come back alive.

Scientific practice and theory in the 20th century (not only in the biological sciences but also in physics) have contributed to the breakdown of boundaries and traditional ontologies (Bolter, 2016:3), that today the freezing of reproductive cells has become a common and highly successful issue and can be carried out by many specialized public and private health institutions.

Subsequent changes in medical sciences and legislative changes also changed the concept of family and inheritance relations. The true purpose of these sciences remains the creation of unconventional methods for health problems, as well as the treatment of methods for conception of the child and pregnancy that included artificial fertilization, surrogacy and post human reproduction. The concept of artificial fertilization, surrogacy and post human reproduction has been a taboo topic for our society, and until the end of the last century this topic has not been addressed almost at all in theoretical or in that normativeterms. The Human Body has had exclusivity in the case of conception of life and the continuity of human kind until eternity.

When we talk about post human reproduction, it should not be confused with assisted reproduction technology (ART). Assisted reproductive technology is broader in meaning and involves using methods with the aim of achieving a successful pregnancy or avoiding complications during pregnancy. The Assisted Reproductive Technology (ART)includes, but is not limited to, in vitro fertilization and embryo transfer, gamete intrafallopian transfer, zygote intrafallopian transfer, tubal embryo transfer, gamete and embryo cryopreservation, oocyte and embryo donation, and gestational surrogacy (F. Zegers-Hochschild & G.D. Adamson & J. de Mouzon & O. Ishihara & R. Mansour & K. Nygren & E. Sullivan &S. van der Poel, 2009:2685).According to Article 5 of North Macedonia's Biomedical Assisted Fertility Act, "Assisted biomedical fertility presents the medical procedure with which the union of female and male gametes with the aim of achieving pregnancy in a way different from sexual relations. Instead through post human reproduction the child's occupation as a natural and biological process is replaced by a technological and medical process. Post-human reproduction represents the child's occupation and birth after the parent's death. In this case the development of science

enables the taking and use of the dead person's gametes while alive and the creation of the child by the deceased genetic parent. Through post human reproduction the way the child is naturally conceived is completely changed and a longer time vacuum is created from the death of the parent to the birth of the child, with what case for the right creates dilemmas in regulating family relations and Inheritance. Therefore, we can say that the concept of post human reproduction will also impose the reconfiguration of human science, excluding the natural course of events and opening debates about the role of humans in natural processes.

Reason for Application of Post Human Reproduction Technology

The reason for post human reproduction remains the desire of parents to have children together, even in the case of a loss of a partner. The motive in this case is simply the love of the partners for each other and the desire to have offspring together. Post human reproduction is a personal reproductive right, as family planning and creation is also a personal right of partners. Reproduction remains one of the basic human freedoms and as a right it is inseparable from the dignity and moral duty of man to realize one of the basic premises, which is the possession of descendants and the continuation of the species. The right to have children is a natural right, and the way posthuman reproduction helps to fulfill this right, simply by going beyond the action of nature as we also factor in human intervention through the methods of reproductive technology. If the right to have children is to be considered an absolute human right, then the use of artificial post human reproduction methods will also be a human right to use reproductive techniques with cryopreserved sperm.“Wife and husband who based on experience or medical knowledge from the medical sciences are at risk of infertility for medical reasons, may in an authorized medical institution with written consent preserve their sperm, egg cell, ovarian tissue or testicles, for personal use”, according to Article 13 of North Macedonia's Biomedical Assisted Fertility Act.

On the other hand, if post human insemination is not allowed while abortion is allowed (at the request of the woman abortion is allowed in almost all European countries in the first 10 to 12 weeks of pregnancy, and by court decision in the case of Roe v. Wade abortion is also allowed in the US), lawmakers would find themselves in an impossible and absurd situation; on the one hand they allow the destruction of a potential human creature, while on the other hand they prevent the birth of a human creature even against the desire of both parents for the child to be born (Mickovic, Ignovska, Ristov, 2016: 315-316).

This approach is also supported by the Tehran Declaration adopted on July 11, 1968, at the International Conference on Human Rights, according to which "family planning was considered a human right" and "it is a fundamental right of parents to decide on the number of children and the birth interval of children”. Apart from being the desire of the parents, the creation of the child through reproductive technology, as well as the conception of the child by the only woman with genetic material from the donor, remains part of the state's proprietary policy that aims at positive population growth due to declining rates of fertility and population aging. Even in Northern Macedonia, where parents have the exercise of free and responsible parental rights, parents are obliged to provide optimal conditions for healthy growth and development of their child in the family and society (Family Law, Nr.80/1992, 1992, paragraph 2, article 5). An even more advanced approach in this regard can be found in the decision of the US Supreme Court in the case Skinner v. Oklahoma ex rel. Williamson, according to

which it is considered a violation of Amendment 14 of the US Constitution, violent sterilization is provided for persons who commit "criminal offenses for violating moral issues", provided for in the Oklahoma Statute. According to this decision and in accordance with Amendment 14, equal civil and legal rights are guaranteed for all citizens and that marriage and reproduction represent fundamental rights for the existence and survival of the human race (SKINNER v. STATE OF OKLAHOMA, May 6, 1942, 316 U.S. 535). The desire to have children after the death of the spouse or the partner will create effects in family relationships in general, both in parental rights and in inheritance relationships. This is characteristic of countries with more liberal approaches and policies to increase the birth rate.

The causes which lead to the application of posthuman reproduction are various. It can come as a result of: the result of any disease, such as therapy against cancer which can cause infertility; not planning to have children in the near future; in cases of clinical death; in case of involvement in armed conflicts of any of the partners; or life dynamics that may impose increased circumstances of risk of loss of life of the partners, etc. In 1998, 19-year-old Jeremy Reno shot himself while playing Russian roulette and lost his life. His mother, Pam Reno, has asked doctors to take her son's sperm in order to enable her to become a grandmother. She had planned to look for a donor egg to conceive an embryo and the same would then be placed in a surrogate mother for embryo transfer. That was the only way to fulfill her wish to become a grandmother (Doroghazi, 2005:1598).

Until the birth of the first child through the reproductive medicine method of artificial insemination IVF, by Luis Broun in 1978, and until the first cloning applied by British sheep doctors Dolly 1996, the debate in scientific, religious and wider circles has been focused primarily on topics related to abortion, sterilization, or contraceptive use. The rapid development of reproductive technology completely changed the approach to the problems that were imposed in recent years.

We already live in permanent states of transition, hybridization and nomadic mobility, in emancipated, post-feminist, multi-ethnic societies with high degrees of technological mediation which, however, have not ensured justice for all, or resolved enduring patterns of inequality (Braidotti, 2013:1). Topics discussed were the dilemmas of whether regulation and legal restrictions on abortion and sterilization issues affect bodily integrity and morals of the individual in the concrete case of the woman.

Posthuman reproduction has sparked heated debates in the circles of scientists, philosophers, religious circles, the media, NGOs, as well as lawmakers and legal practitioners, over whether to allow post human reproduction and if it is, how should the normative adjustment of the same be made. These issues include, *inter alia*, the ownership of gametes, the inheritance rights and benefits of posthumously conceived children, and the social construction of families. (Simana, 2018:1).

Regarding the terminology used is also the difference between post human reproduction and in vitro fertilization, where in post human reproduction of the biological material used by the parents is taken from the man or woman who are known to each other and are in a marital or extramarital relationship. Concerning in vitro fertilization, the donor of sperm or egg cells is a man or woman who has given prior consent to the use of their reproductive material for the fertilization of a person with whom he is not a spouse or extramarital spouse. In this case the identity of the donor remains secret and the donor cannot be registered as the parent of the child and has no rights and obligations towards the child.

Post human reproduction has opened many dilemmas regarding the traditional and exclusive role of man in the process of childbearing. For some authors this method is considered quite extreme and morbid due to the way and circumstances in which it is applied. The method of post human reproduction excludes sexual intercourse as a way of conceiving a child and alienates the role of woman and man from the fundamental role they played in the birth of a child. This way excludes the traditional meaning that the child should have a mother and a father and he should be born from their sexual relationship. The only exception from the religious point of view that can be mentioned is in the case of Jesus, who is believed to have been born without having sexual intercourse, by only one parent (Brown, 1973:49). Post human reproduction is one of the most challenging and sensitive topics in the field of medicine, also for the fact that the beginning of a new life begins after the end of the parent's life. Receiving and storing biological material (sperm, embryo or egg cells) is an emotionally sensitive issue that creates consequences with moral and normative effects.

The death of the spouse and the use of biological material for post human reproduction by the surviving spouse presents a rather difficult moment to make a fair and rational decision. The dilemmas are whether the gametes of the deceased person can be used without his consent, either at the request of the cohabiting partner, or at the request of his parents. Depending on the country, there also exist different legal regulations. According to the current legislation of Northern Macedonia, this can only happen with the prior consent of the person who due to any intervention risks sterility or due to the existence of circumstances that endanger the loss of life. Although it is not known exactly how many years the sperm can remain frozen so that it can be successfully used for fertilization and the baby is born. It is assumed that sperm can be successfully stored for several years. For example, in March 2001, an IUI was performed by Dr. Nancy Durso of Mid-Atlantic Fertility Center in Bethesda, Maryland, the sperm used for this insemination had been frozen for 28 years, 11 months (Joseph Feldschuh, James Brassel, Nancy Durso, Allen Levine, 2005:1). The first case of post-mortem sperm application was reported by urologist Cappy Rothman in 1970, in which a 30-year-old man was involved who was in clinical death after a motor vehicle accident and the family sought custody of sperm. In cases of brain injuries (due to trauma caused by lack of oxygen or progressive brain infections), the person is unable to judge. When the person is in a constant vegetative state, he is unable to judge and manifest the desire to give biological reproductive material if he has not given this before coming to this state, therefore it should be given by family members. This issue is even more controversial from an ethical and legal point of view. This is because the desire to have children and to become a parent must be manifested by both parents together. Family planning is the exclusive right and duty of future parents. This rule has an exception only in the case of cloning and in the case of post human reproduction when the biological material is obtained without the consent of the deceased person. But cloning is banned as a process by most countries in the world, and even the Council of Europe in 1998 amended the Additional Protocol to Prohibit Cloning of Human Beings to the Council of Europe Convention on Human Rights and Biomedicine which prohibits “any intervention that aims to create a human being genetically identical to another human being, whether alive or dead”.

Another issue is whether the realization of the right to post human reproduction within the procedure for biomedically assisted fertilization can be applied only between married and extramarital spouses or even between other persons who are not in this

report. According to the Law on Assisted Biomedical Fertilization in Northern Macedonia, this right can be exercised only by persons who are married or having an extramarital union.

In general, the position can be accepted that from a moral point of view, that posthuman reproduction should be allowed, because it represents respect for the principle of individual freedom of partners, and at the same time the principle of utility, that with the birth of a child the interests of not only partners are realized, but also the interests of the child and of society (Dejan Micković, Elena Ignovska, Angel Ristov, 2016:310). Despite this approach, there is also the opinion that through post human reproduction, the born child will be deprived of the right to live in a family composed of both parents, which may cause repercussions in psychological and economic terms. Furthermore, for the child, from the moment he realizes that he has come to life and is conceived by a deceased parent can present an emotional shock. This fact can cause deep psychological problems, not only in the child but also to the mother. Also children born through Assisted Reproduction Technology (ART) had a higher risk of being born with defects compared to children conceived naturally. The risk increased further when the data were limited to defects of large birth or just single (Hansen, Kurinczuk, Milne, Bower, 2013: 1). Given this uncertainty that is directly related to the health of the child, dilemmas arise as to whether or not to support this method.

An issue that needs to be harmonized and specified in the normative aspect is the way of proving the paternity of the child and gaining rights from hereditary relations and social security. Because of these uncertainties, the principle of special protection of children, or the protection of the best interests of the child, as recognized by the UN Convention on the Rights of the Child, which in paragraph 1 of Article 3 provides, "In all decisions concerning the child, whether taken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Article 7 of the same convention states that as soon as a child is born, if possible, he has the right to know his parents and to have their care. If the child were to be conceived through post human reproduction, we would be violating precisely this right of the child.

If the right of the partner to preserve the reproductive material, for the purpose, of post human reproduction is honored, in addition to being enabled after giving prior consent in writing, should the same be allowed with a will which would have the same effects? This is because the deceased person, just as he would have all the rights to disposable of his property by his will, with the exception of the necessary part of the inheritance, would similarly have to be allowed to dispose of his reproductive body cells in order produce a child after death, and with the prior consent of the surviving partner. I say this because even in the case of post human reproduction, the written statement of the deceased partner alone does not oblige the surviving partner to post human fertilization, but it also depends on the desire that he must manifest for such a thing. We have a similar situation with the testamentary inheritance, wherein the heir is not obliged to accept the inheritance, he even has the right to give it up. The same thing can happen with biological reproductive material. Whether or not the surviving partner will accept it in this case also depends exclusively on the will of the cohabiting partner, in addition to the testator's wish. The problem in this case arises when the testator has to deposit his biological reproductive material, as the protocols and the requirement of law is that the same can be done in specialized medical institutions and under strict conditions provided by law that include the written statement of the person. By this we mean that, without

such a declaration, the biological reproductive material for post human fertilization cannot be deposited, which excludes the possibility that the same be done through the will, as the effect of the will would be consumed by the declaration. The other reason is because the will based on the form as a unilateral legal act is more discreet, and its content is often completely unknown until the day of its opening, while the written statement on post human fertilization to the public may be discreet, but for the surviving partner the content of the request is known from the moment of drafting. In terms of the time interval of how long before the testator's death or how long before the death or undergoing any therapy the patient giving written consent can deposit the reproductive biological material, this issue remains unspecified, as neither the moment of death nor the moment of the onset of disease or infertility are circumstances that may be known in advance. This issue is not a problem if we take into account the longevity of biological reproductive material, such as: sperm can be used successfully during fertilization therapy, even 40 years after cryopreservation (Rozati, Handley, Jayasena, 2017:1). Another dilemma that may arise is that the LFB allows for the possibility of post human fertilization for up to one year after the death of the partner, whereas if it were allowed to be done by will, there is a risk that the inheritance review procedure, in which the testamentwill be opened, one year after the testator's death, or the document will be found some time later after the examination of the inheritance or it will not be found at all, because Northern Macedonia does not have a database where wills are evidenced.

Normative Regulation of Post Human Reproduction

If we look at the legislations of different countries that regulate the issue of post human reproduction, we will notice that not all countries regulate this issue in the normative aspect. Post human implantation is permitted by a small number of countries such as Austria, Belgium, the Czech Republic, Germany, Norway, Greece, the Netherlands, the United Kingdom, Spain and Northern Macedonia. In most European legislations, artificial insemination is prohibited (Bulgaria, Denmark, France, Bulgaria, Croatia, Slovenia, Sweden, Switzerland, Lithuania, Finland and Portugal), while in other countries this issue is not regulated at all (Dejan et al., 2016: 300).

Even countries that regulate this issue with their own legislation have features and differences from meeting the formal requirements to gaining rights. This shows that each country has distinctive features, however there are three elements in common: legal uncertainty, the requirement for prior consent and authorization for the partner, but not the parents, and to retrieve and use the gametes of the deceased. The science of law in general, creates the impression that it is very slowly adapting to these changes, which occur as a result of the development of other sciences, such as biotechnology, medicine and technology. Even in some under developed countries, including Northern Macedonia, there is a belief that the normative regulation of these phenomena occurs much later after they occur, and that the norms do not precede the occurrence of these situations.

The issue of post human reproduction in Northern Macedonia is normatively regulated by the Law on Assisted Biomedical Fertilization (RNM, 37/08). According to paragraph 2 of Article 33, it is provided that in case of the death of the husband, post human assisted biomedical fertilization is allowed, with his prior written consent, up to one year from the day of his death. Partners can decide on their own volition whether to conceive a child through post human reproduction, if there are justifiable reasons for it. The woman has no moral or legal obligation to agree to become pregnant if she does not

want to. The husband's unilateral decision has no legal and moral significance for the wife.

The Effects of Post Human Reproduction on Hereditary Relationships

Posthuman reproduction due to the effects it creates on family relationships, will undoubtedly be reflected in hereditary relationships as well. For a person born through post human reproduction, in order to gain the right to inherit a deceased parent, the normative requirements and conditions for the realization of such a right must be met in advance.

Inheritance relations in material terms in Northern Macedonia are regulated by the provisions of the Law on Inheritance. The right to inherit is acquired by law and by will. When it comes to testamentary inheritance, the person who declares that with his biological material the child is conceived with the surviving partner, may, in the capacity of testator, foresee by testament the acquisition of certain inheritance rights for the child to be conceived and will be born after his death.

If the child conceived through posthuman reproduction will not be able to inherit by will, because the testator did not leave a will or did not include this child in the will he left, then the right to inherit will have to be won under the law. But, because from the death of the parent to the conception of the child a time vacuum is created, this seems to sever the connection of the child with the parent. According to the Law on Assisted Fertilization of Northern Macedonia, a woman can be fertilized for up to one year after the death of her husband. The issue of this time distance opens dilemmas in terms of gaining inheritance rights, as the father of the child is considered the spouse of the mother who gave birth to the child during the continuation of the marriage, or 300 days after the dissolution of the marriage (Family Law, 80/1992, article 50). In the case of post human reproduction, the child will be born 300 days after the death of the father, in which case the child will not be legally considered an heirs and will not be able to inherit the genetic father. In the extramarital union, the father of the child will be considered the person who accepts the paternity of the child, while in the case of the death of the father previous to the birth of the child, the paternity would be recognized if the father had previously left a will accepting the paternity of the child which is expected to be born.

The right to post human reproduction is also allowed between persons who are not married to each other, respectively between extramarital spouses. Even for the issue of inheritance, the child born through post human reproduction could gain the right to inherit by will, but not according to the law, as here too we will be presented with a time distance of more than 300 days between the death of the father until the birth of the child. The positive law of the RMV does not regulate the issue of inheritance in post human reproduction at all. Such an approach to the legislation, specifically the Law on Inheritance, constitutes discrimination against the child born through post human reproduction, in which case it must be changed, clarified and adapted to the new circumstances of social relations. Thus, for example, the heir can only be a person who is alive at the time of the opening of the inheritance, except in the case of nasciturus, when the child who was conceived at the time of the opening of the inheritance, is considered born, if they are born alive(Inheritance Law, 47/1996, article 122). According to this provision, the conception of the child must have taken place while the father was alive and the child was born no later than 300 days after the death of the father, for him to be considered the child of the testator and able to acquire the status of

heir. In contrast, for children conceived through the method of post human reproduction, positive legislation does not specify whether paternity will be recognized even if the child is born 300 days after the death of the father. However, the written statement of the deceased biological parent should also have the effect of acknowledging paternity. This is because by making this statement, he is supposed to be aware that this action will bring about the birth of his offspring whom he desires.

Based on the legal provisions, even though the child biologically belongs to the testator, he is excluded from the right to inherit under the law. A child born through post human reproduction must be enabled to acquire the status of first-degree heir. In fact, this child should be the necessary heir of the inheritance, in front of the deceased father. Necessary heirs according to the Law on Inheritance of RMV are: the children of the testator, his adopted child and the spouse(Inheritance Law, article 30).But the fact of the birth of a child at a distance of more than 300 days after death excludes him from this right. This fact has opened many dilemmas for notaries as trustees of the court or the judge during the review of the inheritance procedure, in cases where the deceased has deposited biological material for reproduction in a specialized bank that aims to fertilize the surviving partner. However, they should be careful as it is the legal norm that excludes this child from this right.

Unlike in Northern Macedonia, in the USA, the parent who applies for the right to posthuman reproduction submits the request to the Social Security Administration (SSA). The Social Security commissioner approves the application based on whether the child could inherit personal property from the deceased as his or her natural child under state inheritance laws based on the U.S. Social Security Act.

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