Assisted Reproductive Technologies in same-sex couples

Guerrero Bautista, Sergio, tutored by Vidal Domínguez, Francesca

INTRODUCTION

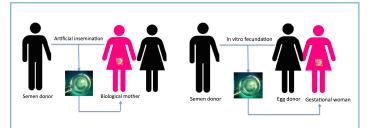
The dissociation between genetic and gestational maternity that Assisted Reproductive Technologies (ART) offer is in direct conflict with the legislations based in the Roman principle according to which the mother is always right

From the proliferation of ART and the increasing legal recognition of same sex couples, legislations such as the Spanish have started to accept – under certain conditions – the establishment of the double maternity in favour of the expectant and the woman with who she agrees to ART.

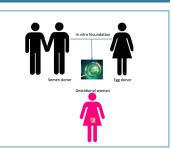
Regarding two men couples, although double paternity is legal in Spain any ART through surrogate gestation with in vitro fertilization or artificial insemination is not. That is why a lot of homosexual couples decide to go through these procedures in countries where the legislations allow them.

BIOLOGICAL REQUIREMENTS FOR THE SAME-SEX COUPLES. GAMETES AND EMBRYOS DONATION

WOMAN COUPLES POSSIBILITES



MAN COUPLES



DONATION

The donation of gametes is a free and confidential contract that can only be revoked in case the donor needs it, and providing the gametes are available.

The selection of the semen donor can only be done by a medical team that will have to choose the semen according to its quality.

The embryos that remain unclaimed by couples can be donated in the same way semen and cocytes are donated. All processes related to the donation of gametes are subject to a free and confidential contract.

NECESSARY LEGAL REQUIREMENTS FOR A SAME-SEX COUPLE

DOUBLE MATERNITY

The first autonomous law to authorize joint adoption for homosexual couples was floral law 6/2000, 3^{rd} of July, of legal equality to stable couples in the Floral, followed by the law 2/2003, 7^{th} of May, that regulated civil partnerships in the Basque CountryCommunity of Navarra.

These initial legislative reforms were followed by legal resolutions that, through adopting the child of her partner, recognized the biological mother's partner as legal mother of the child. In both cases, the minors that the biological mother's partner wanted to adopt had been conceived during the relationship, from the expectant mothers eggs and third party's sperm. During the processing of the Law of Assisted Reproductive Human Technologies (LAHRT), the law 13/2005, 1st of July, became effective – a code modification on the subject of matrimony – legalizing marriage between same sex individuals.

Once the LAHRT were effective, the DA $1^{\rm o}$ of the law 3/2007, $15^{\rm th}$ of March, added a third section to the $7^{\rm th}$ article that specifically admitted the possibility to determine double maternity to two married women.

DOUBLE PATERNITY

The Resolution of the General Directorate of Registries and Notaries of 18.2.2009 concluded that double paternal affiliation can only be established through adoption, and the prohibition of surrogacy contracts is discriminatory since it impedes the access to ART to homosexual couples of two men. Even though the double paternal affiliation is already possible in Spain – since the admission of the establishment of adoptive affiliation in favour of two men – and even though double affiliation through artificial fertilization is possible for two married women, the GDRN decision is nevertheless questionable, because it has to do with a biological difference the inequality of treatment is considered to be justified.

The last option for most couples is then to go to other countries where this procedure is allowed. They can then register the child in the consular civil register provided that at least one of the applicants is Spanish and a legal resolution dictated by the country of origin is presented – alongside the application – to the person in charge of the register. This legal resolution has to guarantee the

ECONOMICAL ASPECTS

ASSISTED REPRODUCTIVE TECHNOLOGIES IN SPAIN

- In vitro fertilization (IVF)
 - o In vitro fertilization: between 3.000€ and 4.000€
- In vitro fertilization with oocyte donation: between 6.000€ and 7.000€
- Intracytoplasmic sperm injection (ICSI)
 - o ICSI: between 4.000€ and 5.500€
 - o ICSI with oocyte donation: between 7.000€ and 8.500€

GESTATIONAL SURROGACY IN OTHER COUNTRIES

- Illegal: Spain, France, Portugal, China, Japan and Italy.
- Legal under the condition of an altruistic contract: Canada, Mexico, Brazil, Belgium, UK, Greece, Australia and Holland.
- Legal regardless of the contract being altruistic or not: Israel, India (around 23.000\$),
 Panama (around 55.000\$), Thailand (around 35.000\$), Iran, Romania, Ukraine (between 40.000\$ and 60.000\$), Russia (between 40.000\$ and 60.000\$), New Zealand, South

CRITERIA TO DETERMINE AFFILIATION

The possibility to establish double maternity as a result of ART consolidates will – formalized from the legal consents – as the basic criteria to establish affiliation in this context. This way, if the child was conceived by a woman married to another woman but this last one did not give her consent, the child will only be registered as son/daughter of the expectant mother. ¹⁴Opposite to the case of a man not married to the mother – in which a medical document expressing consent to the fertilization is enough -, the mother's partner who also wants to be considered affiliated previous to the birth has to communicate this will to the person in charge of the civil register. In Catalonia, however, a woman – married or not to the mother – is allowed to give her consent to artificial fertilization in order to determine affiliation in her payour through

REFERENCES