



## **In Vitro Fertilization. The Rights of the Unborn Child according to the Regulations Contained in the National and European Legislation**

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**Abstract:** The in vitro fertilization procedure involves rigorous knowledge of the category of human rights which concerns, in particular, the right to life and health of the child and women. The protection of human life and dignity are part of the primary obligations of any rule of law, and this protection includes prenatal life, respectively the protection of the rights of the unborn child. Both European norms and national criminal legal provisions ensure the existence and observance of a functional legal framework to protect in case of need the rights of the fetus, the in vitro fertilization procedure being especially likely to give rise to legal situations involving the knowledge and observance of all the rights associated with the human being.

**Keywords:** in vitro fertilization; human rights; right to life; unborn child; human dignity; human being

### **1. Introduction**

The in vitro fertilization procedure is a complex procedure that proves once again the creative and infinite power of medical science and which, in relation to its innovative character, enters into connections with various other branches, including that of the law, and in particular with the rights of the unborn child, thus we can call the fetus.

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The respect due to the human being in general is the moral principle on the basis of which the concept of the rights of the unborn/ unthinkable child was born.

Since the primitive aspects that need to be examined in order to be able to determine whether the fetus can have rights that are circumscribed to a legal relationship, have a complex scientific component, the approach to this topic is a delicate one, the subject being able to be developed and uniformized in a long time.

The birth of a person and implicitly of life is a process consisting of several stages. According to some opinions, man was considered to be alive from the moment when the fetus acquired through birth the independent ectopic existence, a moment marked by the child's breathing.

Expressing his opinions regarding the beginning of the person's life, it was also shown that it was shown that not necessarily the moment of the child's breathing is important, but the very moment when the child is preparing to go through the birth process, before the expulsion and the beginning of his ectopic existence. [135].

This point of view was reaffirmed by other authors who have demonstrated that the suppression of the child after the start of the birth process, even after the expulsion of the child did not take place, constitutes a crime and is punished by the criminal law (offense against life).

Therefore, the right to life implies the existence of life, or this can be talked about from the moment when the child is expelled and ectopic life begins.

## **2. National and International Legislation on the Rights of the Unborn Child**

National legal regulations do not currently include the notion of an unborn child and are therefore not assigned rights during the preconception period.

The Civil Code regulates in article 36 the rights of the conceived child in relation to the moment of acquisition by him/her of the capacity to use, as defined by articles 34 and 35 of the Code.

This regulation is closely related to the provisions of Art. 412 of the Civil Code regarding the calculation of the legal time of the natural conception, as being the interval between three hundred and one hundred and eighteenth day before the birth of the child.

According to Art.654 of the Civil Code, it is necessary for a person to exist at the time of the opening of the succession, in order to be able to inherit. These legal provisions of our civil legislation are the ones that outline the legal framework regarding the rights of the conceived child and the moments when these rights are born and extinguished, being especially about rights related to the family to which he belongs, respectively patrimonial rights.

Also, Article 49 of the Romanian Constitution speaks about the Protection of Children and Young People, specifying that they “enjoy a special regime of protection and assistance in the realization of their rights”, the regulation being a general one.

The aforementioned legal regulations, as well as all the others that have to do with the definition of the rights of the child in the legislation of our country, do not also refer to the possible rights that the unthinkable, unborn child may have, in relation to its quality as a human being and to the rights inherent in the human being.

This can be justified by the fact that there are multiple aspects that are analyzed in order to be able to associate the fetus with a human being without a doubt, especially scientific aspects.

However, internationally we can identify states that have devised norms that have tried to define the fetus as a human being that is no different from the conceived child. In the opinion of the judgments of the Supreme Court of Portugal, “the unborn child is not a biological mass, it is not an object nor a component part of the mother's body, but is a living man in the proper phase of his life, who is in continuous development, just like those already born.”

Also, the legislation of the Republic of Moldova specifies that the unborn child may have a potential quality of heir.

According to art.2167 Civ.- Successional capacity – Basically, the fundamental legal requirement to be an heir is to be alive at the time of the opening of the inheritance.

The text of the law comes and regulates one of the conditions of the appearance of the right to inheritance, namely the successional capacity of the heir. "It defines the capacity of succession as a species of civil capacity, and, in substance, equals the capacity of succession with the capacity to use. He also provides for the classic exception of the conceived but unborn child (*nasciturus*). This is merely a legal fiction and has no value of recognizing as a subject of law a conceived fetus, but not yet born (art. 2167 Code civ.)

A particularly important international document that speaks in concrete terms about the rights of the unborn child in relation to his/her quality as a human being with inherent dignity, however, is the International Covenant on Civil and Political Rights adopted on 16 December 1966 by the UN General Assembly.

Art.6 of this Pact refers to the right to life as inherent in the human being, and in art.6.5 is incriminated the act of condemning to death a pregnant woman, this provision being interpreted in the document as a protection of the rights of the unborn child. At the same time, there are other UN Treaties that provide in detail issues that may be associated with the unborn child, such as the Declaration on the Rights of the Child (1959) and the Convention on the Rights of the Child (1989).

### **3. Regarding the New Technologies of Medical Assistance of Human Reproduction**

In recent years, bio-medical progress has far exceeded the classical treatments, opening new possibilities in the direction of conducting bio-medical research of therapeutic or non-therapeutic nature on human beings, trials. According to the legislation of the Republic of Moldova, the new technologies of medical assistance of human reproduction do not have an express regulation.

According to Law nr. 138/2012 on reproductive health, they constitute a medical act that includes all treatments and procedures regarding artificial insemination or in vitro fertilization, medical manipulation in the laboratory of female and male genetic material for the purpose of artificial fertilization of eggs and their implantation.

The question arises, the recognition of the right of inheritance of the child born from artificial insemination or in vitro fertilization by the woman who was either his wife or partner (within the meaning of Law 138/2012). After opening the inheritance, she makes the decision to resort to this technology using the sperm left by the *cujus* when he was alive. From the content of art. 9 of Law nr. 138/2012 results in the principle of his consent to *cujus*, which would make it illegal to use the technology after his death by *cujus*.

The use of technologies for medical assistance of human reproduction is possible only on the basis of the informed written consent of the patients, which will include real and complete information regarding:

- a) the essence of the technologies of medical assistance of human reproduction to be used; b) the medical and legal aspects of the procedures to be carried out;
- c) associated risks, side effects and possible complications;
- d) the expected results of the treatment performed and the factors on which the result depends.

We have the following situations, when:

- a) The woman and the man in marriage registered in the manner established by the law have the right to the use of technologies for the medical assistance of human reproduction on the condition of mutual consent of the spouses.
- b) Woman and man who are not in marriage registered in the manner established by law have the right to use technologies for medical assistance of human reproduction provided the mutual consent of the partners.
- c) Solitary women have the right to use technologies for medical assistance of human reproduction with the use of donor sperm based on the application signed by them.

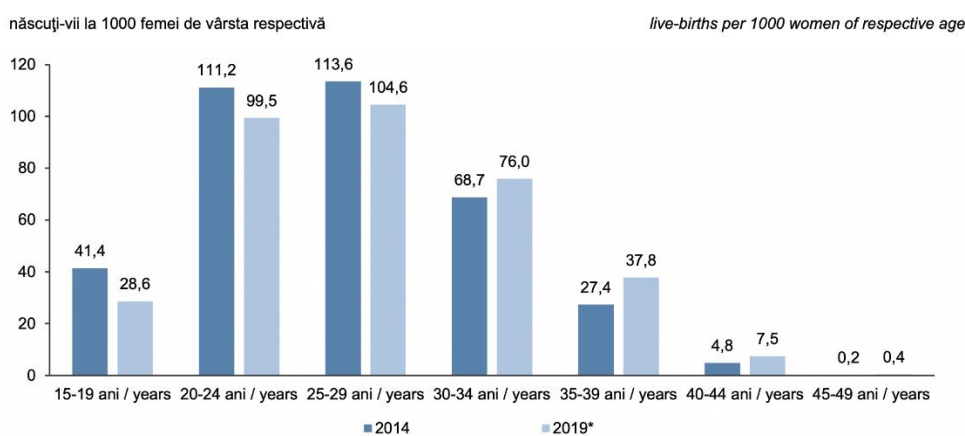
Regarding the use of technologies for the medical assistance of human reproduction, we show that persons who have given their informed written consent for the use of technologies for the medical assistance of human reproduction, in the case of the birth to them by this method of a child, register as parents of this child under the conditions stipulated by the Family Code and are not entitled to challenge motherhood and paternity, referring to these circumstances.

In the following, we will present data on the main statistical indicators, namely the fertility rate by age groups, in the Republic of Moldova during 2014-2019.

	născuți-vii la 1000 femei de vârsta respectivă							<i>live-births per 1000 women of respective age</i>	
	Vârsta mamei								
	Age of mother								
	15-19 ani / years	20-24 ani / years	25-29 ani / years	30-34 ani / years	35-39 ani / years	40-44 ani / years	45-49 ani / years		
2014	41,4	111,2	113,6	68,7	27,4	4,8	0,2		
2015	34,5	109,1	117,2	75,5	33,6	6,5	0,3		
2016	34,8	106,5	118,4	79,8	35,4	6,2	0,2		
2017	32,1	100,1	111,6	78,0	36,0	7,1	0,4		
2018	31,4	101,2	108,0	79,2	36,7	7,4	0,3		
2019*	28,6	99,5	104,6	76,0	37,8	7,5	0,4		

\*date provizorii

\*provisional data



\*date provizorii

\*provisional data

Children born following artificial marking or in vitro fertilization have the same rights as children born by natural reproduction.

In the same situation, they do not have the right to challenge the paternity the husband who gave his written agreement to artificial fertilization or implantation of the wife's embryo (according to art. 49 paragraph (3) letter a) of the Family Code).

#### 4. Conclusions

Given the aspects we have spoken of in this article, it should be noted that we cannot ignore as lawyers that we cannot exclude the possibility of attributing a series of rights, only by reporting and limiting us at the sphere of legal capacity, respectively without considering the fact that we cannot separate the fetus from its human side, by the fact that it is a conception of man.

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