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Bioethical Perspectives in the Matter of Medically Assisted Reproduction – The Surrogacy Situation

Loredana TEREC-VLAD[1]

[1] Ştefan cel Mare University of Suceava, Titu Maiorescu University of Bucharest

Abstract: *The new technologies experience a fast evolution and with it more and more ethical and bioethical problems arise. Throughout time, man has tried to copy the divine work and nowadays this goal seems to be closer than ever.*
The present article addresses the issue of the ethics of the new technologies of medically assisted reproduction that is the surrogacy. In this new context which is not yet legislated in Romania, the issue of the embryo/child as the object of a surrogacy contract is one that raises numerous bioethical issues.

Keywords: *bioethics; surrogacy; human rights; best interests of the child.*

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Introduction

The decryption of the human genome has opened various directions of analysis, highlighted by specialized studies within the fields and subfields that occurred as a result of the development of new medically assisted human reproduction technologies. The way in which biomedical scientists are concerned with solving problems related to infertility and heredity is important as well. Today we are faced with an avalanche of studies that look at man in all his fullness; most of the time the studies highlight the fact that the human being – as a personality – is often considered to be an object of study.

Before dealing with the medically assisted human reproduction, we will relate to the solo reproduction (a study that raised multiple question marks as it was carried out in the laboratory, on a male mouse from the epithelial cell of which reproductive cells were created (Cutaş & Smajdor, 2017). This study drew the attention of the international community to the question: could these studies be carried out in the future in the case of people who want to have a child without the need of a sex partner as well? The problem that arises is of bioethical nature, relating to the status of the natural person and which is increasingly considered an object of study for researchers.

The human being and its inherent rights

The human being has been considered since ancient times to be a subject of divine nature. As it was made from earth by God Himself, man was punished for the sin of disobedience. Since its descent to earth, the human being has constantly tried to regain his original state, that is, the state of Paradise. In its quest to recover its primordial state, the human being has always tried to copy the work of the divine through constant attempts of self-improvement. Nowadays, new bio-improvement technologies are used to overcome the human condition, which is an aspect highlighted predominantly by the trans-humanist trend (Vlad, 2019).

In addition to the above, another aspect that raises issues regarding the status of the human being relates to the medically assisted human reproduction in which people who cannot have children naturally resort to such techniques. Not only the attempts to reproduce raise questions, but also those related to the status of the human embryo; in our country's legislation its the legal status is undefined, since the status of a human being is acquired after one's actual birth. In accordance with the provisions of

article 654 of the Civil Code, on the date of opening the succession, the unborn child has succession capacity only if it is born alive. These provisions show that the Romanian legislation does not grant a special status to the unborn child except in the matter of successions.

In the bioethical literature, three directions of analysis aimed at the status of the human embryo have been outlined; over time in the bioethical and legal literature three currents of opinion have materialized as well: 1. the human embryo is a tissue, a conglomerate of cells, subject to the same rules as the donation of human tissues and cells; 2. the human embryo has an intermediate status, between being and non-being, and for this very reason, it must be given special respect, according to its potentiality as a human being; 3. the human embryo has the status of a human being from the moment the ovum is fertilized by the spermatozoid (a conception promoted by the supporters of "pro-life" theories and by the representatives of the religious bioethics – especially the Christian bioethics). Following the analysis of the international human rights legislation, the American Convention on Human Rights expressly states that the right to life is recognized since the convention, an aspect that is not obvious with regard to the European Convention on Human Rights – in this case the determination of the beginning of one's life is left at the discretion of the states.

Bioethical perspectives and dilemmas concerning the status of unborn beings

Starting from bioethical and moral considerations regarding the human being – an object or a subject of research, we bring to the fore the following aspects:

- The abortion is often considered an offense to the divinity, especially when a woman uses the services of a specialized clinic to avoid giving birth to an unwanted child; in some states the abortion is allowed only in specific situations, namely when the pregnancy endangers the life of the mother or when the pregnancy occurred as a result of rape/incest and so on.
- In the medically assisted human reproduction, several embryos are created to be implanted later; it is preferable to have more embryos created to have a higher chance of success in the case of in vitro fertilization – an aspect that raises many questions about the fate of embryos that have not been implanted.
- The option of donation for research of the embryos left after the in vitro fertilization procedures.

From the above given examples, which, certainly are not exhaustive, a series of bioethical issues arise and which divides the scientific community into two: on the one hand, there are those who believe that the embryo is considered a human being from its conception, and there are those who believe that a being can be considered a natural person only after its birth. Also, there are opinions that bring to the fore the fact that possible health problems that are hereditary can be controlled by means of new technologies and therefore we should not give up on performing such procedures. The best chances in life (Săvulescu, 2001, Vlad, 2019) are given to the people who have the best genes and our responsibility as parents is to make sure that when we bring a child into the world, to make sure that he or she will have all the chances necessary to be successful.

If from a medical perspective we bring the bioethics to the fore, from a moral perspective things are different, in the sense that the human nature can be perverted by the interference of new technologies in the human life, even when we relate to the research carried out on reproductive cells. Altering the human nature by activating or deactivating genes can generate certain behaviors in the adult life, an aspect that removes the person's free will, as he or she reacts according to the genes that have been activated.

The object of the surrogacy contract

In order to avoid complex (bio) ethical and legal issues, most states have adopted legislative solutions, with surrogacy contracts having as their object the children born through this procedure. However, the social attitude towards this procedure is not unanimous, as the differences of opinion are given by religious, moral influences and so forth.

The states that have chosen to legislate in this area still face problems, prompting some legislative caution. From this viewpoint, most states have adopted legislative policies according to which the surrogacy contracts are valid.

In addition to the formal and substantive conditions of such contracts, a series of issues are also raised regarding the following aspects: what are the rights that prevail – of the child born through this procedure, of the infertile parents or of the surrogate mother; in case of conflict?; how the rights of the surrogate mother can be transferred to the prospective parents?; is there a possibility that such a contract can be enforced? If from a legal perspective the legislators could find valid answers, from a bioethical perspective the problem is thorny because every human being has inherent

rights, and from this standpoint we cannot state that the rights of the surrogate mother, of the infertile parents or of the child are more important than the rights of the other party involved.

On the one hand, given that in surrogacy the object of the contract is the future child, in this case, from the subject of law he or she becomes the object of a contract. On the other hand, if the surrogate mother refuses to voluntarily surrender the child, how could one tell who is the parent who will have rights and duties? These questions can be answered according to the specific legislation of the countries that have legislated in this field, but from a bioethical perspective we cannot say that we will unanimously apply a theory of utilitarianism, principlism or Kantian ethics to all cases. From our viewpoint, the Kantian ethics can provide the best answers for such cases. The Kantian ethics can be summarized as follows:

- it acts only according to that maxim by which one can also want it to become a universal law;

- it acts so that "the maxim of one's will can always at the same time be valid as a principle of a universal law";

- it acts so as to use the humanity, both in one's person and in the person of anyone else, always as an end, and never only as a means (Kant, 1972).

From the Kantian categorical imperative perspective, we deduce the fact that in surrogacy the actions of each of the parties to the surrogacy contract must take into account that their actions have a universal character, that the human being is an end and never a means for selfish interests.

On the other hand, in the specialized literature, the quotation asked is whether the surrogacy is a dehumanizing act. Situations may differ from case to case, but when the surrogacy is carried out for altruistic reasons, the birth of a child cannot be described as dehumanizing, especially if the surrogate mother continues to play an important role in the life of the child she will bear (van Nielerk, van Zyl, 1995). Also, the surrogacy cannot be considered as work because the motherhood per se is assumed to be a continuous involvement, i.e. 24 hours/7 days/week, not just 8 hours/day as it could be considered against any other type of work performed. Furthermore, the finished product is not an object of such labor, but a living human being (Marway, 2018).

Another problem of a bioethical nature refers to the exploitation of women's reproductive capacity. Leaving aside the feminist side of the argument, the legal vacuum can be seen as a way for human traffickers to make money, which goes against or subverts the ultimate purpose of

surrogacy because again, it exploits the women's reproductive capacity, so, from a subject of law, the human being becomes an object of exploitation.

Another aspect related to the surrogacy relates to the remuneration of the surrogate mother for carrying the pregnancy. The exploitation – we believe it deals not only with the surrogate mother, but also with the infertile couple and the profit is earned by intermediaries or clinics specializing in medically assisted human reproduction. Such a medical system lacks transparency and most of the time even infertile parents fall victim thereof. Moreover, the lack of crystal clear legislation to protect both the infertile couple and the surrogate mother leaves room for speculation by those who want to profit from such activities.

As one can see the practice of surrogacy remains controversial, regardless of the social acceptability of such a practice. The disputes that arise are far from being concluded, since on the one hand there is the problem of helping the infertile couple, and on the other hand of exploiting the reproductive capacity of women.

Conclusions

In the field of surrogacy it is difficult to find valid answers for all situations that both the surrogate mother and the partners of the infertile couple might face. Even more so when it comes to international surrogacy law, the legal mechanisms are empowered to make the best decisions for the people involved in such a dispute. But when it comes to having a bioethical perspective on the rights of the people involved, the situation gets complicated.

In the present article we have brought to the fore a series of bioethical dilemmas that are topical and that should be resolved in the shortest possible time. As we have previously stated, it is necessary that as the technique and technology advance, the bioethics and the legal framework align with these innovations, so as to avoid possible problems such as those that we have analyzed above with the aim of avoiding abuses by third parties who want to profit from the needs of other people, whether we are talking about the infertile couple or the surrogate mother.

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