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SELECTED ETHICAL AND LEGAL ISSUES OF ASSISTED REPRODUCTION

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Abstract

In this paper, attention is paid to selected ethical and legal problems, which have been brought about by the artificially assisted reproduction. I am giving attention to human reproduction and the consequences of an "involuntary childlesness". In order to evaluate concrete methods of the AR from, it is necessary to explain various concepts and the substance of the relevant procedures.

Key wards: *Law, ethics, reproduction, family, children, methods of assisted reproduction, parentnood,dignit.*

INTRODUCTION

The proclamation of the United Nations Population Commission that one of the fundamental family right isto have as many children as they wish and to have them at the time considered the most appropriate dates back to 1972. It is possible to deduce from this proclamation that the UN Population Commission considers family as the most appropriate environment for birth and upbringing of children –that is traditional family consisting of persons who are biologically designed to have children and pass on to children the classic family model based primarily on emotional relationships between a man and a woman in addition to satisfy their biological needs within the institution of marriage or a similar union. Furthermore, it is possible to deduce that there are no restrictions on family planning except the biological and health ones. Family and parenting should be planned; it is in the interest of society to broadly contribute to family support and thus to promote the optimal environment for upbringing and versatile development of children. *´A long-term problem is the definition of the concept of family in social sciences. There are many different definitions of family. It is primarily characterized in terms of its position in a social system and in terms of relationships, social functions and basic social processes taking place in family´*.[2]Family is really a typical product of society; it forms a fundamental social group that is characterized by family and emotional relationships.

In the current society, the concept of family is based on a long-term development of social relations and old traditions, which created the family model accepted by law and morality. As the basis of family is considered a bond of persons of different sexes which enter into a long-lasting union on the ground of mutual affection in order to create the family environment to meet their emotional, economic and biological needs. The marriage based on the expression of free will of both parties by manner provided by law is considered the long-lasting bond. One of the natural and typical purposes of a permanent bond between man and woman is both satisfying sexual needs and reproduction. Reproduction is natural not only for humans but for the whole animal kingdom, including human

[2]HRUŠÁKOVÁ, M., KRÁLÍČKOVÁ, Z. *České rodinné právo.* 3., přepracované a doplněné vydání. Brno: Doplněk, 2006. p. 9.

beings. Unlike other animals which select individuals for the purpose of fertility intuitively, human reproduction depends not only on intuition but also on common sense; it is a conscious process.

What role does family provide in contemporary society? What is the status of family and what function does marriage (or similar family legal bonds) take? Whatever is the reason for the desire of people to have their own children? There are many reasons although the emotional ones prevail at the present so-called post-modern society, I think. It is possible to say that reproduction of people is only an option, not a matter of course or even a necessity. *´Since we belong as one of many species to the animal kingdom, biological rules apply to us. They predispose every individual to be an actor at least two phenomena ... own birth and death´.*[3]The way of human living from birth to death is completely individual. Each person develops physically, intellectually and emotionally; he himselfcreates the hierarchy of values, preferences and way of life, which is not constant throughout life. Moreover, society and social relations are subject to continual evolutionary changes. The mode of social intervention into individual behaviour has an incredible variety of forms - from the simple and immediate ones that are not usually realized until a clear societal pressure by law, statutes and rules of different levels and forms of coercion.[4]

As aforementioned, the decision whether human will give life to offspring or how many of them he/she will have is very individual. It is determined by a number of limits that can be divided into two groups - the biological, social, and environmental limits.

1. The biological limits include: fertility influenced by age; sterility caused by other factors than age restrictions; other health risks.
2. The social limits include: culture, customs, traditions; living standard; economic level; priorities etc.

With regard to the subject of this article, all limits of human reproduction will not be examined in detail.[5]Theattention will be paid to the biological causes of fertility limitations which may significantly affect the quality of human life in terms of psychological suffering and individual perception of meaning of life, in addition to possibilities of solution to infertility in accordance with the level of a development in medicine and other related fields.

´Globally, it is estimated that approximately every fifth marriage is considered infertileat present. The problem is at the side of woman in fifty percent of cases, at the side of man in forty percent, and the problem is two-sided in ten percent of cases. The general trend is the evidence of a declining male fertility. While WHO stated to 1 ml of ejaculate an average of 100 million sperm in early eighties,it states only 20 million now (Hanzelka 1999 - verbal communication)´.[6]Although these figures are based on a screening of couples, it is possible to assume that the results will be the same for unmarried couples. These findings give evidencethat the possibility of natural reproduction declines in postmodern human population.

[3]RABUŠIC, L. *Kde ty všechny děti jsou? Porodnost v sociologické perspektivě.* Praha: SLON, 2001. p. 21.

[4]RABUŠIC, L. *Kde ty všechny děti jsou? Porodnost v sociologické perspektivě.* Praha: SLON, 2001. p. 22.

[5]The issue of birthrate from the sociology point of view is addressed by RABUŠIC, L. *Kde ty všechny děti jsou? Porodnost v sociologické perspektivě.* Praha: SLON, 2001.

[6]Ibid., p. 99.

1 FAMILY AND PARENTHOOD AS SOCIAL VALUES

In the Czech legal order, parenthood is protected by statutes at thehighest legal force, specifically by Article 32 of the Charter of Fundamental Rights and Freedoms that guarantees the protection of parenthood and family as well as a special protection of children and young people, i.e.whose personality develops. In accordance with international conventions and with regard to the position of not legally competent, it is requiredto guarantee and secure their interest and welfare. Article 32 of the Charter also guarantees special care and status of pregnant women, equality of all children (born in and outside marriage), the right of parents to educate their children, and to state support for parents raising children. Furthermore, Article 10, Paragraph 2 of the Charter guarantees the right of everyone to protection against unauthorized intrusion into his/her private and family life. In our society and in the Czech legal order, family relationships are traditionally associated with the development of the whole society. This tradition is reflected in principles of family lawwhich express goals and principles of legal regulation. The central principle of Czech family law is welfare of a child. The Family Act[7] represents a special statute regulating family relationships. In accordance with the provision of Article 10 of the Constitution of the Czech Republic, international treaties ratified by the Czech Republic area part of our legal system. It is necessary to realize that a number of international treaties became a part of our legal system. In relation to family law (and other related) associations, it is primarily the issue of the Convention on the Rights of the Child. The Family Act and other legal rules are in accordance with this Convention and other international conventions adopted mainly by the United Nations and the Council of Europe. Respect for traditional family and family relationships follows from provisions of Section 1, Sub-section 2 of the Family Act that states: *´The main purpose of marriage is foundation of family and proper upbringing of children.´* Amendment to the Family Act of 1998 as well as later amendments and changes including the Registered Partnership Act[8] respected the principle that the basis of family law is the family based on marriage according to its definition in Section 1, Sub-section 1: *´Marriage is a permanent union of a man and a woman establishedin the manner provided by law´*.[9] The social purpose of marriage stems from its fundamental functions (biological, economical, and educational). Educational function is based on the main social purpose of marriage and comes to the fore (and actually it is applicable) where spouses educate minors, regardless of the fact whether the spouses are their parents (biological, legal). These functions are consistent with principles of realization of fundamental human rights set by the United Nations in the Universal Declaration of Human Rights (1948).

It should be stressed that theregistered partnership is similar to the institution of marriage. It is a permanent union of two persons of the same sex;its creation, content and termination is regulated by law. Partners also have parent duties in the sense that the parental responsibility of one of the partners shall apply to the other one. *´The existence of a partnership is not an obstacle to the exercise of parental responsibility towards his child or an obstacle to custody of his child into his care. The partner, who is the parent, is required to ensure the child's development and consistently protect its interests with using appropriate educational means so as not to affect the child's dignity and endangerhis health, physical, emotional, intellectual and moral development´* (Section 13, Sub-section 1 of the Registered Partnership Act). If one partner is the parental responsibility holder and lives in household with another partner, his/her partner shares upbringing and care of the child. These cases already exist; they will probably occur in practice more often. The adoption of the Registered Partnership Act entails other ethical and legal issues. In this respect, I agree with Elischer: *´It's not just*

[7]Family Act No. 94/1963 Coll., as amended.

[8] Registered Partnership Act No. 215/2006 Coll., as amended.

[9] HOLUB, M. *Zákon o rodině. Komentář a předpisy související.* Praha: 2005.

about adoption which is, and will be, a controversial issue, but especially the phenomenon of homoparentality, i.e. homosexual parenting that is created, and will be created,ex varii causarum. Life facticity will not wait until the legislator sets boundaries´.[10]

Proceeding from provisions of the European Convention on Human Rights, it is not possible to derive from them the right to the application of assisted reproduction methods in the form of the right to procreation or any order for States to ensure the application of these methods for unmarried heterosexual couples in case of giving this opportunity to married couples. In this regard, nothing canbe derived for homosexually oriented persons.[11] The Council of Europe let the national legislation of Member States opt for accepting traditions, beliefs, or even tolerance of their citizens. Dignity and welfare of child are highlighted in provisions of the Act; hence, I assume that the registered partnership is not a ´sub-category´ of marriage in our legal system but only its equivalent so it is not permitted to enter into the registered partnerships between persons of different sexes.[12]

Methods of assisted reproduction have been developed in order to satisfy parental desires of heterosexual couples which desire to have a child but for some reasons (primarily health problems) they cannot realize their desire naturally, without help. Although it is a kind of ´correction´ of nature, in these cases medicine only corrects what would be possible and natural under normal circumstances and reproductive health of a couple.

In the case of people of the same sex, however,it is not any small ´correction´. In plain terms, it is not possible to give life to offspring by fusion of gametes of the same sex in nature. Therefore, it is not natural to base family, whose main purposes are reproduction and joint education of children (not only common children), on a legal union of two persons of the same sex.

1.1 Reproduction as nature of every human being

In short, it is natural to have children and fulfilreproductive mission in nature and human community that is its part. It is not a duty but a natural thing; hence nature has endowed some individuals with male and female sex cells. The fusion of male and female gametes (sperm and oocytes) is the only way to give birth to another human being.

Reproduction is one of the most natural features throughout the animal kingdom including human, through which the reproduction of the entire population is secured. However, the need to satisfy sexual needs of a person is not necessarily associated with the intention to realizethe reproduction simultaneously. The natural human desire to have children, to educate them, to point emotions (non-comparable to others) at themis very individual indeed. The desire to have a child is natural but the absence of this desire is not pathological. There may be numerous reasons; it is not necessary to discuss this issue in more details here. Anyway, the desire to have a child prevails amongst the majority of people.

The problem is when people are not able to have children for various reasons. It is proved that the inability to have children leads to lots of problems for many people. Nevertheless, it should be stressed that perception and evaluation of one's own or partner's sterility is very individual.

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[10] Ibid., p. 146.

[11] ŠANTAVÁ, S. Současná právní hlediska reprodukční medicíny. *Československá gynekologie,* 2003. Vol. 68, No. 5, p. 366-369.

[12] In more detail: ELISCHER, D. Několik zastavení nad úpravou alternativních forem soužití. In *Naděje právní vědy.* Býkov: 2006. p. 145 and following.

Sterility causes many psychological disorders such as hypersensitivity or severe depression, which may proceed to a chronic disease requiring professional medical care, not only the psychiatry one, because depression can cause a range of other diseases with psychosomatic origin. Reduced perception of life quality caused by deepening frustration may eventually lead to problems in partner life; in the case when a marital relationship gradually loses its original meaning, the basic functions of marriage are disrupted, which often leads to itsbreakup and divorce. Even similar relations disintegrate due to involuntary childlessness. Problems can grow over limits of personal life: it is confirmed that infertility, problems in dealing with the situation andfinding the optimum solution acceptable to all parties (potential mother and father) lead to a decreased ability to work. Therefore, impacts include adverse effects of economic character. After all, serious problems might occur in human relations in general. Finally, problems deepen mutually and the situation can become unbearable. If it is certain that the natural way, i.e. fertilization through sexual intercourse between a man and a woman cannot lead to procreation, partners must choose (after consideration of all circumstances and consultation with experts)as follows:

a) They decide for life without children. Of course, such a decision may not be definitive; it depends on the reason for sterility. In the case of marital or partnership break up, participants of these relations can choose another option. In the case of sterility only on the one side of a relationship, the desire to have a child can be fulfilled in a new relationship.

b) The couple opts for one of the foster care forms. Substitute family care and its possibilities are regulated by the Family Act; the form is chosen with regard to couple´s capabilities and availability of the options. It depends on the decision of partners,or alternatively individuals.

c) They use some assisted reproduction method. Currently, there are developed and applied numerous methods of assisted reproduction in practice; the methods have their own specifics so it necessary to opt for the form which is the most optimal for the infertile couple (or patient). Next chapters deal with these particular methods in detail.

1.2 Assisted reproduction as the solution forinfertile couples

Every person has individual ideas of needs for his/her comfort; it is essential to distinguish between health and social needs although both create well-being of human. Professor Edwards, who is credited with the birth of the first child conceived bymethod of in vitro fertilization (IVF), said that the desire for a child is genetically determined and that the desire is ranked among the most natural desires and needs of the vast majority of people and couples. Therefore, it is necessary to regard fertility as a basic human need that must be supported.[13] New variations of the original techniques of ART (artificial reproductive technology) are still expanding and individual procedures are chosen by teams of physicians and embryologists so as to ensure the best possible outcomein addition to eliminate any potential risk and burden of a mother and a child. Thenumber of healthy born children conceived by some of assisted reproduction methods (even in cases and diagnoses that were condemned to failure recently) gives evidence of success. Arguments pro and con regarding the development and application of new technologies are rising almost at the same rate. Schematic overview of various alternatives of human reproduction including the use of ART is mentioned for subsequent evaluation from law and ethics point of view.

[13] FRITH, L. Reproductive Technologies. In *The Concise Encyklopedia of the Ethics of New Technologies.* Academia Press, 2001. p. 352.

1.3 Variants after the decision of a couple (man and woman) to have a child

Hereinafter, the text is concerned with various reproductive options that are currently available for humans. The attention is especially paid to the issue of genetic parenthood, methods of fertilization, and the question of legal parenthood. Subject taken into consideration are represented by a man (M) and a woman (W) as the couple with the intention of having a child in addition to a donor of human gametes (D).

Biological parents	**Method of fertilization**	**Woman gives birth to baby (wife)**
a) W + M	naturally	W = legal mother
b) W + M	ID – donor insemination (donor M)	W = legal mother
c) W + D	ID (donor D)	W = legal mother
d) W + M	IVF a ET– in vitro fertilization + embryotransfer	W = legal mother
e) W + D	IVF a ET (sperms D)	W= legal mother
f) D + M	IVF a ET (oocyty D)	W = legal mother
g) D + D	IVF a ET (gametes D)	W = legal mother

a) The first option is the most ideal and natural way of human reproduction without any legal or ethical problem. Biological parents are a man and a woman who decided to have a child; nothing impeded them to conceive naturally. In the Czech Republic, the determination of legal parents is governed by the Family Act; the woman who gave birth to the child is the child´s mother, the father is determined according to three rebuttable presumptions of paternity.

b) The second option is the simplest method of artificial fertilisation in the cases when natural fertilisation is not possible for various reasons.Sperm cells are obtained from the spouse (partner) of the recipient. Indication is determined by a treating physician; the necessary prerequisite for this type of fertilization is the informed consent of both spouses (partners). There is no legal or ethical problem; legal parenthood is determined as in the previous version.

c) This is the situation of using donor sperm from an anonymous donor for the insemination of a mother. Anonymity is the prerequisite for this method. Records regarding donor are archived in the workplace where the insemination was performed for the case of a serious genetic disease; medical facilitymay provide a listing of the documentation regarding the donor under legal regulations. Informed consent of both subjects constituting the infertile couple with recommended the best practices in assisted reproduction constitutes the legal certainty for determining paternity under the Family Act.

d) Oocytes and sperm are collected from the infertile couple; IVF and ET method is practised for therapeutic reasons; the entire process proceeds like normal fertilization but only a part of it takes place in a laboratory. Similarly,it is necessary to obtain informed consent of an infertile couple with the whole procedure including possible variants (e.g. freezing of cells or embryos, their further use, risks, etc.). In the case of success, the infertile couple have a child that is the pairs´ child from a biological and legal point of view. Likewise, this method is *lege artis;* if conditions for the indication of this procedure are kept, there are no legal (only minimal ethical) obstacles. In this case, medicine only corrects that would be natural under ordinary circumstances and fertile abilities of a couple. Arguments against the application of this method is based on Vatican´s

reasoning that condemns all interference in the process of fertilization and calls them a trespass against the will of God.

e) The oocyte is obtained from a woman from an infertile couple, sperm from a donor. If legal requirements are fulfilled and the indication is proper, and on condition that the informed consent of the infertile couple is given, it is the therapeutic method of treating infertility of *lege artis*. Requirements for gamete donation are described above. Current legislation allows donation of male germ cells under conditions defined by law. In terms of ethics, the donation has always been a problem; it is a challenge even at present.

f) The oocyte is obtained from a donor and sperm cells are obtained from a man from an infertile couple. There are many cases of impossibility to use the oocyte of a woman for various reasons (as abovementioned) but the woman is able to undergo pregnancy and give birth to a healthy child. Therefore, it is the application of IVF and ET when donor´s oocytes are fertilized *in vitro* by the sperm of the man from the infertile couple. Similarly, this situation meets the requirements of *lege artis* procedures. However, it is absolutely necessary to respect the legal prerequisites fortissue and gametes donation of tissue and gametes *inter vivos*.

g) Human gametes for methods of IVF and ET are obtained from donors; biological parents of the child conceived this way are not identical with the infertile couple. As a matter of fact, this is the most serious and discussable situation from the ethical point of view. In accordance with the present legal regulation, determining of legal parenthood is the same; the informed consent of the infertile couple with realization of IVF and ET under these conditions is crucial. It is an affirmative expression of will of persons qualified to perform legal acts; the consent may be revoked no later than the method is finished, i.e. before the embryo is transferred into the mother's body. Hence, it is essential (especially in the interests of a future child) to strictly follow the rules for this option, which means well-defined indications, only on the basis of written request of a man and a woman creating the infertile couple, and the affirmative declaration of subscribers that they agree with this practice and the use of donor gametes. Ethical problems are almost identical to the previous two options. However, these options have the advantage that at least one of the couple is thebiological parent. Nevertheless, this option may be ethically acceptable, for example, if it is proven and well known that during pregnancy the mother-child interaction creates a deep emotional bond. The desire for a child,that brought a woman to the centre for assisted reproduction, is usually so strong that the realization of this desire overcomes any potential contradictory feelings out of the awareness that thebaby is not biologically their own child. Furthermore, the lifestyle in pregnancy, physical and psychological well-being, and a happy partnership are important factors affecting the relationship between the expected child and both parents.

1.4 Variants of giving birth by ´surrogate mother´

Special situations that may arise during the use of IVF and ET methods are the cases of impossibility to getpregnant due to serious health reasons threatening the life of mother or child, on the grounds of developmental disorders, or because of hysterectomy. Technologies of assisted reproductionenables that the child is given birth by another woman (surrogate mother), the so-called ´mother – hostess´. Hereinafter, I mention the possible variations that may occur in connection with IVF and ET, in which gametes of a person from an infertile couple or from third persons are used.

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Genetic parents	**Method of fertilization**	**Woman gives birth to baby ‚mother – hostess' (S)**
a) W + M	IVF a ET	S = právní matka
b) W + D	IVF a ET	S = právní matka
c) D + D	IVF a ET	S = právní matka
d) D + M	IVF a ET	S = právní matka
e) D + M	ID (oocyty D = S)	S = právní matka

Under the Family Act, themother of a child is the woman who gave birth to the child. The amendment to the Health Care Act (through adopting Act No. 227/2006 Coll.) legalizedthe possibility of using surplus embryos of an infertile couple for artificial insemination of another woman, provided that the infertile couple claims that they do not intend to use the embryo for further artificial insemination and that they gives consent to the use of the embryo. The consent shall be recorded in the medical documentation regarding the recipient; it shall be signed by all the participants.

2 THE MOST IMPORTANT CURRENT PROBLEMS OF ASSISTED REPRODUCTION

As early as 1985 International Federation of Gynecology and Obstetrics (FIGO)[14] created a Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health and so the international forum for the research of ethical aspects of assisted reproduction came into existence with the attendance of obstetricians and gynaecologists, paediatricians, other medical staff members, and lawyers to represent the widest possible spectrum of religious, cultural and geographic points of view. Since that time the most acute current questions in connection with the progress of reproduction technologies and further related areas have been dealt with.

These are the most discussed ethical problems at present:

1, Surrogate motherhood

FIGO has reservations about the question of surrogate motherhood especially based on prevailing opinion that the practice of surrogate motherhood could disrupt specific traditional family values. If this practice is used, then it is necessary to pay strict attention to the fact that surrogate motherhood (and above all the surrogate mother) not become the aim of commercial interests of individuals or agencies. When state legislation enables the practice of surrogate motherhood, then it is necessary for it to be in specified limited cases and on the condition that every individual case will be judged and approved by an ethical commission.

2, Research on human embryonic cells

Research on embryos and pre-embryos[15] is possible, from the ethical point of view, to evaluate the gain of new findings concerning the progress of processes which are useful for the improvement of the treatment of infertility, for control of reproduction and also for the enabling of genetic screening necessary for the prevention and cure of congenital diseases. The research is subjected to quite detailed oversight both on the international level and on the internal level in the Czech Republic. It is

[14] International Federation of Gynecology and Obstetrics. Available from WWW <http://www.figo.org/> [cit. 07.03.11].

[15] Pre-embryonic stage can be defined as the period from conception to 14 days.

necessary to remind ourselves of the fact that without embryo and pre-embryo research it could not have been possible to reach the current level of reproduction technologies and pre-natal and preimplantation diagnostic,[16] which by the way enable the prevention of many abnormalities in the embryo progress with all the consequences these abnormalities bring. Thanks to present research it was found that embryonic stem cells are the most advantageous for use in so called therapeutic cloning, which represents further specific ethical problems concerning not only the research but even the moral status of the embryo, its manipulation and further usage. We can consider research to be ethical if embryos are not produced for research purposes. Moreover such research is not necessary with regard to the reality that assisted reproduction centres have at their disposal a relatively great number of spare embryos available for transfer to a woman's womb for the purpose of pregnancy. Transfer of the embryo to another animal body and vice versa is unacceptable as well as manipulation of the genome for the purpose of creating clones, hybrids and chimeras. Embryo research is ethically acceptable on the condition that the informed permission of reproductive cell donors has been obtained in advance.

3, Reduction of multiple birth pregnancy

This type of pregnancy very often occurred in connection with assisted reproduction. Even if it seems, especially in cases of assisted reproduction, incomprehensible, multiple birth pregnancy is not always welcomed by parents and doctors. Objectively, multiple birth pregnancy represents a bigger risk for mother and child, which is why every kind of such pregnancy is considered to be risky at present. Unfortunately it often ends, in spite of all special care, in spontaneous abortion. Current pre-natal diagnostics are on such a level that it is moreover possible to recognize precisely if all embryos are generated normally. In spite of the fact that there are more than two embryos it is almost certain that children will be born prematurely with a very low birth weight which brings great risks. Ethically it seems reasonable if multiple birth pregnancy is reduced to avoid health damage to child and mother. In cases where abnormalities of developing embryos are found, selective reduction is understandably acceptable. Ethically disputed are those cases where there are no abnormalities but the mentioned dangers threaten. In such cases the doctor should consider the most suitable procedure. In cases where there is no serious danger but the mother wishes reduction, or in cases where the doctor himself hesitates, it is necessary for an ethical commission to decide about the prospective reduction. Informed permission of the mother is necessary. Preimplantation and pre-natal genetic screening enables the prevention of many serious physical and emotional problems which the birth of a dead or disabled child brings, and also enables selective reduction of multiple birth pregnancy, which means the healthy development and successful delivery of a healthy child who might otherwise be endangered. On this problem of multiple birth pregnancy FIGO has expressed itself to the intent that reduction cannot be considered as an artificial termination of pregnancy, because the aim of the procedure is not to end pregnancy but to ensure its successful continuation.[17]

4, Donation of gametes and embryos

Donation of gametes and embryos is a much discussed ethical problem. It would not be possible to solve many cases of infertility even with the help of assisted reproduction without using donated reproductive cells. From the ethical and medical point of view the donation of sperm cells represents the smallest problem. Nevertheless donation of sperm cells is definitely not free from ethical

[16]Preimplantation genetic diagnostics must not be confused with pre-natal diagnostics which includes all diagnostics before the birth of the child regardless of natural conception or in vitro. In more details e.g.: FRITH, L. Reproductive Technologies. In *Ethics of New Technologies.* 2001, s. 352 and folowing.

[17] Attitude of FIGO committee, 1989. In *International Journal of Gynecoogy & Obstetrics.* London: FIGO, 1999.

objections. It is still a donation of gametes which primarily requires moral acceptance by the donor. If the donation is acceptable to the donor himself and he is a person who fulfils all medical and psychological criteria for donation of *reproductive cells*, there is no reason to refuse it. The conditions of donation oocytes are from the point of view of a woman donor the same as those of a sperm cells donor, but for a woman donor the taking of reproductive cells represents the overcoming of a moral barrier and a quite unpleasant medical procedure, demanding medical examination and preparation. But if a woman, who fulfils all criteria for donation, decides to help an infertile couple, there is no doubt about her ethical objection. From the ethical point of view the most complicated situation is that where infertile couple are donated by embryo. It is a situation where the relationship between mother and child is based on pregnancy, delivery, and subsequent attitudes and emotions. As was mentioned above, this emotional relationship can be decisive for the further life of the child, mother and father, but there are the greatest risks of possible conflict caused by different genetic potential. In connection with embryo donation it is necessary to deal with the question of the moral status of the embryo. It is evident that the embryo as the subject of donation has the status of a thing, not a human being. According to the Czech legal code a thing cannot be the subject of law but the object. If the personal status of an embryo were admitted from the very beginning of fertilization a problem could arise about right of disposal and its usage. In spite of this it is necessary to perceive the embryo as a potential human being and to provide it with special legal protection from the beginning of its existence. In all donation cases it is necessary to request a clear token of goodwill of the donor and the infertile couple, who will be the future legal parents, and to observe donor anonymity. If these conditions are not fulfilled, we cannot talk about ethical acceptable procedures, and ART would be outside the bounds of ethics and morality. In order not to overstep this boundary, law and state authority which forms law, must be respected. There must be definite consensus between state authority, morality, law and justice.

5, Moral status of the embryo

There are many questions concerning human life, and many different answers to them in connection with the beginning of human life. At present from the biological point of view there is agreement on the idea that human life starts with cell nucleus fusion of oocyt and sperm. It is not possible to find out in the first 20-24 hours if oocyt after fertilization develops. When should the moral status of the embryo be admitted and when should the subject legal protection start? Answers differ and are related to moral, world opinion and professional attitudes to the subject, which express an opinion on this problem or take a stand on it. If we could define the nature of the human embryo in existence it would be easy to determine its status. To allow someone ontological status means to involve him in the human moral community and to assign him all moral laws including the right to life and not to be killed. [18] In modern applied philosophy the question of the moral status of the embryo started to be a topical issue by the beginning of the seventies of last century when legalization of abortion and ethical problems connected with the progress of reproductive technologies came to the fore.[19]

There are two current concepts in bioethical discussions:

- *Ontological personalism* - the pre-embryo and embryo are human beings

[18] HOLM, S. *The Moral Status of the Pre-personal Human Being. Conceiving the Embryo.* Ed. by Evans, D., Hague: Martinus Nijhoff Publishers, 1996. p. 193 – 221.

[19] HOLM, S. Emryology , Ethics of. In *Ethics of New Technologies.* 1998. p.87 and folowing.

- *Empirical funkctionalism* - a human being becomes a person during pregnancy or a certain time after delivery.[20]

According to the first group the embryo is a substance, because it can develop (dependent on the mother, of course) it has got its own existence, autonomy, it grows and develops as a particular individual.[21] ‚*The human embryo is entitled to all rights allowed to a human being. It has the right to life, bodily and genetic integrity, and the right to have a family.*'[22] The Catholic Church also holds this attitude. For the second group a typical view is that the embryo starts to be a human being from the moment of fertilization, this being becoming a person at a specific developmental stage. The biological description of the embryo is irrelevant to the presumed definition, because it was given in advance. We cannot distinguish a *human being* from a *personal being* according to biological arguments, but on the basis of the presumed definition of a person.[23] Even the supporters of this concept do not reach agreement on when a man is assigned the status of a person. They have still not reached any consensus. For all that, in many countries, women were free to choose termination of pregnancy up to the end of the 12th week. A woman's right to decide about her child's existence or non-existence, about the right to decide freely about her maternity, was preferred to the embryo's moral status from the moment of fertilization. However from the 12th week of pregnancy the woman's rights make concessions to the embryo's rights. After the end of the 12th week of pregnancy abortion is possible only on the basis of genetic tests which confirm disability of the fetus. The embryo is a potential human being with the right of protection to a certain extent until it reaches the moral status of a human being. And as a potential human being, the position of the embryo should be respected until it is interrupted by other social or maternal concerns.[24] *'The question what a man is, if an embryo is a human being, has not been given any satisfactory answer that could be accepted by everybody, either by natural sciences or philosophical anthropology. The still unclear status of the embryo allows one to express a request: if it has not yet been proved that the embryo is not a human being, we should consider it a person.'*[25] In spite of considerable differences among theories of the embryo's moral status and questions concerning the beginnings of human life, it is necessary to grant certain legal protection. In most democratic countries, in cases where the development of the human embryo takes place in the mother´s body, strengthened protection of the pregnant woman is provided as well as of the health and development of the embryo. It is the woman who decides about further development up to a certain period of time. In connection with IVF absolutely different situations arise than in cases of natural fertilization. Oocyte is fertilized outside the woman's body, and for purposes of assisted reproduction more embryos are created and conserved for further usage. If we admit the personal status of the embryo from the very beginning of its existence, it would not be possible to accept its donation, experimentation and further usage for therapeutic purposes and research.

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[20] PALAZZANI, L. The Nature of the Human Embryo: Philosophical Perspectives. In *Ethics and medicine.*1996. Vol. 12, No 1.

[21] LAJKEP, T. LAJKEP,T. Status lidského embrya z hlediska filozofické antropologie. In *Bioetika.*

Available from WWW <http://www.volny.cy/bioetika/clanky/status_embrya_2003_4.html> [cit. 23.01.08].

[22] Ibid., p. 2.

[23] Ibid., p. 2.

[24] PILKA, L. Status embrya z hlediska asistované reprodukce. In *Sborník k interdisciplinární konferenci Status embrya.* Brno: MU, 1999. p. 23 – 27.

[25] LAJKEP,T. Status lidského embrya z hlediska filozofické antropologie. In *Bioetika.*

Available from WWW <http://www.volny.cy/bioetika/clanky/status_embrya_2003_4.html> [cit. 23.01.08].

6, Manipulation with embryos

Pre-natal diagnostics and genome intervention of an unborn child on account of congenital and serious hereditary diseases can be positively evaluated when we compare the interventions with concrete hereditary transmitted diseases which represent great suffering (physical and mental) as well as many further negative impacts for the afflicted individual, the family, and the society. Economic expenses for suitable conditions to enable dignified life, medical expenses, the very complicated social position, problems with reproduction and seeking a partner represent only a plain enumeration of problems concerning the afflicted individual´s life. The awareness of hereditary disease impacts does not mean that we would try to separate them from society as unwanted. As long as we can minimize their suffering it is necessary to take into account all pros and cons of methods which provoke controversial opinions related to their development and application. We need to ask if such technologies are good and fair in relation to affected individuals and the whole present and future population. We can also ask how would affected individuals perceive the reality, that there would exist a contingency i.e. possible intervention into their genome, which would be ethically controversial but could prevent their disability, but parents and other persons who decided about possible intervention, did not decide to intervene and left it all to nature.

I am sure these people would react in a different way if they had to come to terms with the awareness that somebody, mostly parents, had decided they will be exposed to a sure and high risk of hereditary disease even if there was a certain possibility of choice. The possibility would represent ethically problematic intervention into their genetics, but it would totally change all their life which could be different from the very beginning. Risk of genetically transmitted diseases has represented and still represents one of the most compelling reasons for man to have his own children. Thanks to medical genetic methods it is possible to find out reliably the risk of transmission of hereditary diseases these days. In case there are hereditary diseases or their symptoms in the family of potential biological parents it is natural that these persons should be tested for preventive genetic examination on the basis of which they can know the probability of having healthy children. At present genetic counseling and examination are accessible to everybody and thanks to the use of various methods, and knowledge about diseases and their heredity, it is possible to determine risk of disease transmission to descendants. When we find certain genetic abnormality in predictive genetic examination it need not always mean the individual, in our context the descendant, will get ill. Then genetic examination needs to be combined with genetic counseling where persons or couples together with specialists consider further possibilities and solutions according to the kind of disease and extent of risk. After the conception of a child, with the help of pre-natal diagnostics we can find if there is any disability or probability of disability, then parents (especially the mother) have the right to decide if the pregnancy will be or will not be terminated.[26] This decision must be in accordance with the moral conviction of both parents, above all the mother. This is the only way to reduce impacts on their psyche. The mother's situation is in any case incomparably extraordinary because she is going through psychological and physical changes during her pregnancy and she is in constant contact with a child. There are cases where the mother felt apathy during her pregnancy or felt her child as something which brings only problems, worries and limitations, but most pregnant women feel a deep bond from the very beginning of their pregnancy.[27]

[26] Detailed conditions of termination of pregnancy see the law about induced abortion (Act No. 66/1968Coll., as amended).

[27] Analogous is the case where a pregnant woman is not the biological mother of a child, which is great ethical problem - the so called 'mother – hostess'.

From the above mentioned reasons a pregnant woman who is sure a child will be disabled can decide not to terminate pregnancy. The reasons can be subjective (moral persuasion, emotional relation etc.) or external. There can be another person who represents authority and whose attitude and opinions influence the parents' decision, it can even be a certain social conservative group (often with religious influences), it can be an unsuitable advertisement supporting the right to life come what may. If parents who decide not to bring a disabled, excluded child into the world (by the decision of others) are morally judged it is necessary to underline that by this decision those people do not respect the right of every man to his own dignity (see agreement about human rights and dignity). These standards have been formed for a very long time they come from human experience with various kinds of human suffering, experience restricting human rights even in the name of positive right and ideology, scientifically justified. The conception of basic human rights and freedom stand in confrontation with categorical imperatives and it is not ethical to restrict the human dignity of one who freely decides on the basis of very serious arguments even if he ends the possibility of the origin or continuation of human life, which would not be free from suffering and probably not fully dignified. It is very important to distinguish preventive precautions which enable pre-implantation and pre-natal gene diagnostics from the approach to disabled people. The international organization Disabled People International (DPI) which concerns itself with the safeguard of disabled peoples' rights and supports their socially equal position, published in 2000, with the assistance of the European Union, its position on bioethics and human rights as regards the threat of new genetics.[15] As emerges from their position, embracing many statements, disabled people feel endangered by new methods of genetic diagnostics which effect the genetics of a future man. They feel discriminated against by society's concentration on preventing the origin and birth of disabled people instead of making their life equal and useful.

'Today's society prefers performance, career, success, health, youth and beauty to man's dignity and usefulness. The mainstay of European culture has always been the ethical principle of reciprocal help and responsibility. Slowly but surely, quite inconspicuously the main criterion becomes what is useful for society (as much well-being as possible for as many people as possible) and quality of life becomes a significant conception. But it is taken from a hedonistic point of view and moreover it is judged externally not by the man himself but by someone who is not involved. Such a person cannot see someone else in all interconnected dimensions. If such life quality is considered to be an absolute value then it is evident that some life will be perceived as useless or even inhuman. The utilitarian mentality endangers not only disabled, but all human beings. It is illustrated by modern models of euthanasia. There life quality is connected with its value – unworthy of life.'[28] It is necessary to agree with much, but if the effort of researchers and medicine to reduce people's suffering, improve their life, reverse their endangered destiny, is to be evaluated only from this aspect, then we have to condemn old and respected methods as for example vaccination, plastic surgery, ultrasound, bodily organ transplantations, incubators and many other achievements which the human population takes for granted. What is the answer of disabled people to the question of having a disabled child? I know some of them who did absolutely everything to have a healthy child. The quality of life of ill and disabled people will always be in all aspects restricted when we compare them with healthy people with full use of their powers. Naturally it is up to society how approachable it will to them and which employment it will find for them. It is not only a moral question but political too. On the other hand it is up to everybody to decide about his future, at least in many respects.

[28] MUNZAROVÁ, M. *Lidé s postižením, bioetika a lidská práva.* Available from WWW <http://www.cdk.cz/ts/clanky/23/lide-s-postizenim-bioetika-a-lidska-prava/> [cit. 23.01.08].

CONCLUSION

As has been described, involuntary childlessness causes misery. Fertility is one of the aspects of the physical condition and health of a man. That is why the care of sterile persons is a part of medicine. Robert Winston, the leading British specialist on fertility problems, has declared *'sterility is a current and serious illness influencing our sexuality and well-being.'*[29] If health is defined as the optimal state of a physically and mentally functioning human organism – the definition of WHO, then it is necessary to put sterility on the list of illnesses. Researchers are obliged to go all out to reduce the suffering of people caused by illnesses and provide help for them in accordance with current medical methods. In 1977 The World Health Organization expressed the necessity among other things of concern over the reproductive health of individuals and the whole society. Assisted reproduction represents the optimization of solving the involuntary childlessness of those people who ask their doctors for help. Everybody can freely decide whether to have children (under which conditions and circumstances) and whether to undergo some steps for ensuring their development, or alternatively, if he leaves everything to nature or God, to be responsible for his moral convictions. As legal norms are binding on all without regard to religious belief, moral standard etc., it is necessary for all medical methods and new technologies to be compared with respect to all most important social normative systems and for legislators to form legal regulations with knowledge and understanding.

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[29] Ibid.

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