Chapter 11

Slovenia: Assisted Reproduction – Law, Policy, and Practice

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Abstract

Slovenian law, particularly the Infertility Act, establishes strict regulations to ensure that assisted reproductive technologies are carried out ethically and legally. The law mandates that all assisted reproductive technology procedures, including egg and sperm donation, must be performed with the explicit, written consent of both the donors and the intended parents. This ensures that all parties are fully aware of the legal and ethical implications involved. Additionally, the law requires the establishment of detailed medical records for every assisted reproductive technology procedure. These records document critical information such as the identities of donors, the methods used in the procedures, and other relevant medical data. The purpose of these records is to ensure the transparency and ethical use of assisted reproductive technologies while also protecting the rights of the children conceived through such methods. The Infertility Act aims to prevent any misuse of assisted reproductive technologies and ensure that the interests of all individuals involved, especially the children born from these procedures, are protected. These measures contribute to both legal clarity and ethical standards within the practice of assisted reproductive technologies in Slovenia. According to the CCRS ruling from October 2024, changes to the Infertility Act are anticipated. These changes will focus on expanding the eligibility for ART to include same-sex couples and single women. This will also present an excellent opportunity to incorporate other improvements and updates, such as the transfer of embryos between centres and the expansion of the child's right to know their origin.

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1. Policies Regarding Medical Help Through ART

1.1. Introduction

Fertility and reproduction are important for each individual, as well as for the family, society, and the State, as they represent a key element of the reproductive system. Fertility is also one of the key components of demographic development,[1] as it enables the continuation of the human race of the individual as well as the human species in the broadest sense. Both have received special attention both in the past and at present.[2] It is not surprising that infertility was viewed negatively, considered a social stigma, and often treated as a socially, mentally, and physically harmful experience for infertile women. Fatherhood was perceived more as a social concept than a biological one, and thus, the entire burden of infertility fell on women. Infertility was also a legitimate reason for divorce and a source of shame for women.[3]

Infertility is encountered in all parts of the world. The World Health Organization (hereinafter: WHO) defines infertility as 'a disease of the male or female reproductive system defined by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse'.[4] Infertility can further be divided into primary and secondary infertility. Primary infertility in a woman is defined as one who has never been pregnant and in a man as one who has never impregnated any partner. Secondary infertility in women refers to the inability of a woman to conceive again after a previous successful pregnancy. In men, it refers to the inability to fertilise a woman again after a successful fertilisation of the same or any previous partner.[5]

Achieving Sustainable Development Goals (SDGS 3) (ensure healthy lives and promote well-being for all at all ages) and SDGS 5 (achieve gender equality and empower all women and girls) is also related to infertility topics. Infertility is also acknowledged as being essential to fulfilling the human rights to the enjoyment of the

1 Bratuž Ferk, 2024, p. 3.
2 The importance of fertility and reproduction is also seen in the Bible, where it is written in Genesis 1:27-28: '...Then God blessed them, and God said to them, 'Be fruitful and multiply...'.
3 Sharma, Saxena and Singh, 2018, p. 10.
4 World Health Organization, 2024.
5 World Health Organization, 2023a; see also Kraljić, 2024, p. 711.

highest attainable standard of physical and mental health and to decide the number, timing, and spacing of one's children.[6]

Globally, the World Birth Rate (hereinafter: WBR) has been continuously declining. The first statistical data dates back to 1950, when the WBR was 37.844 births per 1,000 people. Interestingly, since 1950, there has been a consistent decrease. Since then, the WBR has not increased but has declined each year. For example, in 1960, there were 35.346 births per 1,000 people. In 1976, the WBR dropped to 29.682 births – this was the first time the WBR fell below 30,000. In less than 25 years, the WBR fell below 20,000, with only 19.991 births per 1,000 people recorded in 2010. By 2024, the WBR had further decreased to 17.134 births per 1,000 people. Predictions indicate that the decline will slow down, but it is still expected that the WBR will reach 11.497 births per 1,000 people by 2100.[7]

In the past 100 years, the number of live births in Slovenia has more than halved. The highest number of births occurred in 1923, while the lowest was recorded in 2024. The total fertility rate reached its last value of 2.1 in 1980, which is the rate essential for simple population replacement. After that year, it began to decline sharply.[8] The last generation with more than 30,000 births was born in 1979. In 2023, however, fewer than 17,000 children were born in Slovenia for the first time. By 2024, the number decreased further, with only 16,735 births recorded.[9]

Globally, or even just within Slovenia, it is important to note that more and more couples are facing challenges related to infertility. The causes of infertility are diverse and can affect both men and women, or even both partners. These causes can be temporary or permanent. The cause of infertility may be organic, functional, or environmental. An unhealthy lifestyle, such as smoking, excessive alcohol consumption, underweight, obesity, poor diet, and sexually transmitted infections, can negatively impact the fertility of both men and women. Additionally, reduced fertility can result from exposure to environmental pollutants, such as chemicals that disrupt the endocrine system or pesticides that can directly harm reproductive cells (eggs and sperm).[10]

It is therefore not surprising that reproductive medicine, or assisted reproductive technologies (hereinafter: ART), represent one of the rapidly developing fields of medicine. Although being a medical field, the impact of its development is of significant importance to both individuals and society. The regulatory approaches of countries to regulating ART vary greatly. Differences may exist regarding the eligibility criteria, the criteria for entitlement to (co)financing of reproductive technologies, the availability of reproductive technologies in the chosen country, etc.

6 World Health Organization, 2023b, p. 9.
7 Macrotrends, 2025.
8 Bratuž Ferk, 2024, p. 3.
9 M. Z., 2025.
10 Bart et al., 2024; Carson and Kallen, 2021; Sorensen et al., 2024.

1.2. Slovenian Policies

As referred to earlier, fertility is a key demographic element. In Slovenia, we are facing a decline in the overall fertility rate, which has more than halved in the past 100 years. The highest number of births occurred in 1923 (40,710 births).[11] In 2023, it was the first time in history that fewer than 17,000 children were born in Slovenia. A total of 8,677 boys and 8,312 girls were born, amounting to 16,989 children.[12] In 2024, we recorded an additional decline, with only 16,735 births.

Fertility in Slovenia is declining. Some people do not want to have children or do not want more than one or two. However, there are still many couples who have the desire for a child but are unable to achieve this due to infertility issues. Because of the failure to conceive naturally, they seek hope and solutions in the available reproductive technologies. The desire for a child can be powerful, and infertility can severely impact mental health, leading to anxiety, depression, and relationship difficulties.[13]

A key milestone for such couples (also including Slovenian ones) was the birth of Louise Joy Brown ('the first test-tube baby'), born on July 25, 1978.[14] Her birth was based on reproductive technology that, in the following years, allowed many couples who could not conceive naturally to have children. Despite the fact that scientists Patrick Steptoe and Robert Edwards made history with their achievements, the medical community at the time rejected their success, claiming that the procedures were unethical.[15] Regardless of the negative connotation, Louise's birth immediately received widespread public attention worldwide, as it was a medical phenomenon. Much less attention was given to the challenges that this medical phenomenon and the new possibility of having children posed for legislation, as courts and lawmakers had to confront these issues quickly.[16]

11 Bratuž Ferk, 2024, p. 3.
12 Žnidaršič, 2024.
13 Yusuf, 2016, p. 1340.
14 Petrushko, Piniaiev and Yurchuk, 2021, pp. 316, 318; Laurie, 2024, p. 143.
15 However, the origins of artificial insemination can be traced back even further. Sharma, Saxena, and Singh (2018) mention the earliest signs of artificial insemination techniques as far back as the ancient period (3500 BCE – 500 CE). They reference Vedic literature, which shows that the general population was familiar with the concept of artificial insemination, involving the manual injection of semen into the woman's reproductive tract. The creation of magical concoctions by sages for childless queens to help them conceive was a common practice during this time (Sharma, Saxena and Singh, 2018). A key milestone in the development of reproductive medicine is attributed to the priest and scientist Lazzaro Spallanzani, who discovered that the embryo develops as a result of physical contact between the egg and sperm. In 1780, he performed artificial insemination on a dog, resulting in the birth of puppies (Sharma, Saxena and Singh, 2018). In 1790, Scottish physician John Hunter used this same technique to treat the infertility of a married couple. He injected sperm into the wife's genitalia, and she became pregnant and gave birth to a healthy child (Petrushko, Piniaiev and Yurchuk, 2021, p. 316; see also Seiz et al., 2023, p. 24).
16 Crockin, Altman and Edmonds, 2021, p. 23.

The development of reproductive medicine has also influenced the policies of states, which have approached the issue in various ways. The diversity of approaches among individual states can be attributed to factors such as the political system of the country, the level of healthcare development and the accessibility of health services, historical and religious foundations, and the moral, philosophical, and other beliefs that prevail in a particular society or country.

The range of ART is currently comprehensive. For example, it can include gamete (sperm and eggs) and embryo donation, pre-implantation genetic testing of embryos, surrogacy, as well as seemingly endless combinations of ART. ART has increased the number of people who can become parents, as well as the number of individuals, both men and women, who can genetically or gestationally contribute to the creation of children they do not intend to raise. These revolutionary ART techniques now enable many infertile couples, same-sex couples, and single individuals to become parents with a certain degree of genetic and/or gestational connection to the resulting child.[17]

Slovenia adopted its first law related to assisted reproduction even before the birth of Louise Joy Brown. The Act on Health Measures in the Exercise of the Right to Decide Freely on the Birth of Children'[18] (hereinafter: Childbearing Act) was already adopted in 1977 and is still partly in force today. The rapid development in the field of reproductive technologies, which also raised new legal questions, led in 2000 to the transfer of chapter IV. The Detection and Treatment of Reduced Fertility of the Childbearing Act into the newly enacted Infertility Treatment and Procedures of Medically-Assisted Reproduction Act[19] (hereinafter: Infertility Act).

Art. 1 stipulates that the Infertility Act governs the medical measures intended to assist eligible persons in conceiving a child and thereby enable them to exercise their freedom to decide on the birth of their children. According to Art. 2(1) of the Infertility Act, everyone has the right to infertility treatment in the manner and under the conditions specified by the Infertility Act. Art. 3 of the Infertility Act defines what constitutes treatment. Treatment under the Infertility Act includes diagnosing the causes of infertility or reduced fertility and medication, surgical interventions and the donation of reproductive cells. Treatment also includes the retrieval and storage of male and female reproductive cells where, according to the findings and experience of medical science, there is a risk that the person concerned will become infertile (Art. 3(2) of the Infertility Act).

The ART procedures are defined in Art. 4(1) of the *Infertility Act*, specifying that these are procedures for the insemination of a woman, carried out with the help of

17 Crockin, Altman and Edmonds, 2021, p. 23.

18 Act on Health Measures in the Exercise of the Right to Decide Freely on the Birth of Children (Childbearing Act – Slovene: *Zakon o zdravstvenih ukrepih pri uresničevanju pravice do svobodnega odločanja o rojstvu otrok*): Uradni list SRS, št. 11/77, 42/86; Uradni list RS, št. 70/00 – ZZNPOB; 90/25.

19 Infertility Treatment and Procedures of Medically-Assisted Reproduction Act (Infertility Act – Slovene: *Zakon o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo*): Uradni list RS, št. 70/00, 15/17 – DZ, 100/24 – odl. US.

biomedical science, with the aim of conception through means other than sexual intercourse. It is, therefore, evident from this that ART procedures under Slovenian legislation will be applied in cases where sexual intercourse is excluded and replaced by medical diagnostics and laboratory procedures. This, in turn, leads to the removal of intimacy between the prospective parents.[20]

In April 2001, an amendment to the *Infertility Act* was adopted, which, among other things, allowed artificial insemination for women without a partner. This provision was the main reason for the referendum held on June 17, 2001. The referendum question was: 'Are you in favour of the enactment of the Act on Amendments and Additions to the Infertility Treatment and Procedures of Medically-Assisted Reproduction Act (EPA 1318-II), adopted by the National Assembly on April 19, 2001?' In the referendum, which had a turnout of only 35.66%, 26.38% of voters (149,799) voted in favour, while 72.36%, or 410,856 voters voted against. Therefore, the majority of voters voted against the implementation of the Act on Amendments and Additions to the Infertility Treatment and Procedures of Medically-Assisted Reproduction Act (EPA 1318-II).[21]

In October 2020, a constitutional review of the *Infertility Act* was initiated. According to the applicants, the existing legislation was discriminatory toward single women and, therefore, unconstitutional. Despite three prior requests for constitutional review, the Constitutional Court of the Republic of Slovenia (hereinafter: CCRS) had never addressed the substance of the Infertility Act. The previous requests (of February and March 2013 and December 2014) were all rejected by the CCRS on procedural grounds. The applicant (Levica) argued that the existing legal framework was discriminatory because it forced women to go abroad for treatment. Treatment abroad is only available to those who can afford it. According to the applicant, this is a right that should not depend on the social or financial status of a woman.[22] The applicant argued that it was high time to eliminate the discrimination against single women, thus aligning Slovenia with European countries that have already done so (e.g., Belgium, Croatia, Germany, Finland, Hungary, Iceland, the Netherlands, Denmark, Spain, Portugal, Sweden, and the United Kingdom). However, Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom have already granted this right to lesbian couples.[23] The CCRS ruled on 16 October 2024 in the constitutionality review procedure:

1. Arts 5, 6, 8, 12, 22, 23, and 24 of the *Infertility Treatment and Procedures of Medically-Assisted Reproduction Act* (Official Gazette of the Republic of Slovenia,

20 Zadravec, 2023, p. 7.
21 Državna volilna komisija, no date.
22 Al. Ma., 2020.
23 Constitutional Court of the Republic of Slovenia decision ECLI:SI:USRS:2024:U.I.418.20, 16 October 2024, para. 36.

No. 70/2000) are in conflict with the Constitution, insofar as women who live in same-sex marriages or civil unions, and single women, are not entitled to medically-assisted reproduction.

2. The National Assembly shall abolish the identified inconsistency referred to in the preceding point within one year after the publication of this Decision in the Official Gazette of the Republic of Slovenia.[24]

The CCRS decision has thus opened the door to access to ART procedures for women living in same-sex marriages or civil unions, as well as for single women. The non-compliance of the existing legislation must be remedied within one year of the CCRS decision.[25] The CCRS decision thus also entailed a derogation from the principle of subsidiarity of ART procedures. ART procedures were only to be used if a couple could not conceive a child through sexual intercourse and there was a medical indication for their use (the so-called concept of medical infertility).[26] However, the CCRS decision of October 2024 derogated from this principle by allowing ART to be made available to women living in a same-sex marriage or civil partnership as well as to single women.

It is also important to mention the CCRS decision of 21 January 2021, which repealed the provision of the 'Rules on Compulsory Health Insurance'[27] (hereinafter: RCHI) setting the age limit for the right to assisted reproduction. Art. 37 of the RCHI sets an upper age limit of 43 years for women to be eligible for ART procedures. However, the Infertility Act did not provide for such age restrictions, stating only that 'a woman shall be in an age range that is suitable for childbirth'. Therefore, the Infertility Act did not exclude the possibility of granting (at least exceptionally) ART for a woman who had reached the age of 43, as long as there were no other proficiently justified (recognised) obstacles preventing the implementation of ART. The approval of ART for women aged 43 or older was, however, disallowed by Art. 37(2) of the RCHI. The argument for such an age restriction was based on medical expertise. The CCRS thus took the position that the subsidiary regulation[28] restricted

24 Constitutional Court of the Republic of Slovenia decision ECLI:SI:USRS:2024:U.I.418.20, 16 October 2024.

25 Since the inconsistency must be resolved by October 2025, the presentation and analysis of the legislative framework is based on the current legal arrangement as of December 28, 2024.

26 Constitutional Court of the Republic of Slovenia decision ECLI:SI:USRS:2024:U.I.418.20, 16 October 2024.

27 Rules on compulsory health insurence (RCHI – *Slovene Pravila obveznega zdravstvenega zavarovanja*): Uradni list RS, št. 79/94, 73/95, 39/96, 70/96, 47/97, 3/98, 3/98, 51/98 – odl. US, 73/98 – odl. US, 90/98, 6/99 – popr., 109/99 – odl. US, 64/00 – popr., 91/00 – popr., 61/00, 59/02, 35/03 – popr., 18/03, 30/03, 78/03, 84/04, 44/05, 86/06, 90/06 – popr., 64/07, 33/08, 7/09, 88/09, 30/11, 49/12, 106/12, 99/13 – ZSVarPre-C, 25/14 – odl. US, 25/14, 85/14, 10/17 – ZČmIS, 64/18, 4/20, 42/21 – odl. US, 61/21, 159/21 – ZZVZZ-P, 183/21, 196/21 – ZDOsk, 142/22 – odl. US, 163/22, 124/23, 82/24; 102/25; 601/26.

28 Art. 37 of the RCHI.

the right to ART[29] and therefore prevented the fulfilment of the right to decide freely about the birth of children, as guaranteed by Art. 55(1) of the CRS.[30] Consequently, the CCRS annulled the upper age limit for infertility treatment with assisted reproductive technologies.[31]

Consequently, the National Commission for ART has to assess on a case-by-case basis whether a woman falls within the age range acceptable for childbirth. However, it is essential to avoid procedures that are absolutely ineffective, where the treatment and consequently, the likelihood of success (in our case, due to age) are negligible. It is particularly important to consider the ethical unacceptability of such procedures (e.g., giving false hope). It would be rational to formulate such a legal provision and incorporate it into the Infertility Act.

According to the European Atlas of Fertility Treatment Policies,[32] Slovenia was rated significantly better in 2021 than in 2024. In 2021, Slovenia scored 71 points (71%) out of 100 attainable points, which placed it in the 'very good' category. In 2024, however, Slovenia was rated considerably lower, reaching only 59.6 points (59.6%).[33] Both in 2021 and 2024, Belgium ranked first. Given the decision of the CCRS, which opened the path to ART procedures for same-sex partners (spouses and cohabitants) and single women, we assume that Slovenia could regain some points in 2025, which could potentially improve its ranking again.

2. Constitutional Provisions

The Constitution of the Socialist Federal Republic of Yugoslavia,[34] stipulated in Art. 191, adopted on February 21, 1974, that 'it is the right of a person to decide on the birth of their children freely. This right may be restricted only for health reasons'. This constitutional provision of 1974 on the right to decide freely on the birth of children formed the basis of the adoption of an appropriate legislation in Slovenia in 1977 – namely, the Childbearing Act. At that time, the legal framework

29 Art. 6 of the Infertility Act.

30 Constitutional Court of the Republic of Slovenia decision Up-459/17–19, 21 January 2021, para. 19.

31 See also Rajgelj, 2021, pp. 39–41.

32 The European Atlas of Fertility Treatment Policies is designed to compare ART regulations across various perspectives: the presence of ART legislation, available treatments, public funding, and patients' perspectives. Each country is assigned a score between 0 and 100, with a score of 100 representing an ideal country. This includes having specific ART laws, a broad range of treatments accessible to most of the population (not just heterosexual couples, but also single women and same-sex couples), and coverage for multiple fertility treatments (Seiz et al., 2023, p. 26).

33 European Parliamentary Forum for Sexual and Reproductive Rights, 2024.

34 Constitution of the Socialist Federal Republic of Yugoslavia (*Slovene Ustava Socialistične federativne republike Jugoslavije*): Uradni list SFRJ, št. 9/74.

was among the most liberal ones not only in Yugoslavia but also in the European and global contexts.[35]

With the independence of Slovenia in 1991, a new Constitution of the Republic of Slovenia (hereinafter: CRS) was adopted.[36] The notion in the area of decision-making regarding the birth of children is already present in Art. 14, which refers to 'Equality before the law'. The first paragraph of this Art. lays down that 'In Slovenia, everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of... birth... or any other personal circumstances'.

The principle of equality before the law[37] is also associated with constitutional provisions in Art. 54(2) of the CRS, which explicitly states that children born outside of marriage are granted the same rights as children born within marriage.

This is followed by Art. 55 of the CRS, which defines the freedom to decide on the birth of children. The State shall guarantee the opportunities for exercising this freedom and shall create conditions that will enable parents to decide on bearing children. The provision of Art. 55 of the CRS thus regulates a fundamental freedom rather than a right, the realisation of which is provided by the State by creating conditions that allow parents to decide on the birth of their children freely.[38] Art. 55(1) of the CRS guarantees the individual the freedom to decide whether to have children during their lifetime, when to become a parent, and how many children to have.[39]

Furthermore, the CCRS emphasised that the right to freely decide on the birth of children, as outlined in Art. 55 of the CRS, is counterbalanced by the State's positive obligation to provide individuals and couples with access to reliable techniques developed by medical science in the field of ART. The legislator enjoys a certain degree of discretion when regulating the area of ART. However, the CRS does not impose a positive obligation on the legislator to provide everyone with (at a certain point in time, based on the state of science and expertise) all biomedically feasible ART procedures. Neither Art. 8 of the European Convention on Human Rights[40] (hereinafter: ECHR) nor Art. 55 of the CRS do not guarantee a 'right to a child'. Moreover, the ECHR does not explicitly refer to the concept of reproductive health or reproductive rights.[41] However, legislators must respect the principles of equality, the prohibition of discrimination, the protection of human dignity, and the protection of the best interests of the child when regulating ART.

35 Ženski lobi Slovenije, 2024.

36 Constitution of the Republic of Slovenia (CRS – *Slovene Ustava Republike Slovenije*): Uradni list RS, no. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121, 140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, 75/16 – UZ70a, 92/21 – UZ62a; 98/25 – UZ74a.

37 Art. 14 of the CRS.

38 VSRS sodba I Uv 22/96-4, 7 November 1996.

39 Constitutional Court of the Republic of Slovenia decision ECLI:SI:USRS:2024:U.I.418.20, 16 October 2024, para. 32.

40 European Convention on Human Rights: Uradni list, št. 33/94.

41 Schultz, 2024, p. 193.

Based on Art. 55 of the CRS, this is a general provision regarding the free decision on the birth of children. A significant step forward was made on March 3, 2024, when France enshrined the right to abortion in its constitution as a 'guaranteed freedom'. This was supplemented by Art. 66-2, stating: 'No one shall interfere with the right to voluntary termination of pregnancy and contraception. The law ensures free and effective access to these rights for anyone who requests them'.[42] This clearly communicated France's commitment to upholding the right to abortion, and that regression will not be possible. A regression did, however, occur in the United States, where it was decided that, as of June 24, 2022, each State could decide whether to retain the right to abortion or not. Within a year, 14 States had banned the right to abortion entirely, while seven others imposed restrictions.[43]

Thus, Art. 55 of the CRS grants individuals, regardless of their gender, the right to decide freely whether, when and how many children they wish to have. It is for the State to provide the conditions for the individual to decide on starting a family and to offer various ways of exercising this right, without hindering them. This provision enacts the positive aspect of the right to respect for family life and the right to privacy.[44] The State is obliged to provide the individual with conditions enabling him/her to decide freely on establishing a family. This obligation also derives from the provision of Art. 53 of the CRS. This concerns particular conditions in the areas of health, social protection, education, employment, labour law and housing. The State may not, however, interfere with the freedom to decide on the birth of children in order to implement a specific population policy.[45]

It is also important to mention Art. 17 of the CRS, which stipulates that human life is inviolable. However, this does not apply to the foetus, as its existence depends on the will of the mother. Nevertheless, although direct protection is not guaranteed, civil law already grants certain rights to the foetus, provided that the child is born alive.[46]

3. Medical Regulation of ART

The Slovenian legal framework for ART procedures is defined by the Infertility Act, which in Art. 2(1), stipulates that everyone has the right to infertility treatment

42 In French language: 'Art. 66-2. – *Nul ne peut porter atteinte au droit à l'interruption volontaire de grossesse et à la contraception. La loi garantit à toute personne qui en fait la demande l'accès libre et effectif à ces droits*'; for more on this, see Berlinger and Xu, 2024; Schultz, 2024, p. 193; Mujović and Šobot, 2024, p. 208.

43 See more Heller and Ziyirova Abdijalilovna, 2024, pp. 29–30.

44 Art. 35 of the CRS.

45 Končina Peternel, 2002.

46 See VSM sodba I Cp 102/2018, 14 February 2018.

in the manner and under the conditions specified by the Infertility Act. This infetility Act governs the healthcare measures aimed at assisting eligible persons in conceiving a child and thereby enabling them to exercise their freedom of decision regading the birth of their children.

3.1. Medical Technologies

Based on Art. 3 of the Infertility Act, treatment includes (a) determining the causes of infertility or reduced fertility; (b) eliminating these causes through professional counselling, surgical procedures, and the donation of reproductive cells; (c) the collection and storage of male sperm cells or female egg cells when, based on the findings and experience of medical science, there is a risk that the individual may become infertile.

Art. 4(1) of the Infertility Act defines ART procedures as ones for the insemination of a woman achieve with the help of biomedical science for the purpose of conception in a manner other than through sexual intercourse. It distinguishes between: (a) intrauterine insemination (also IUI; in vivo): (aa) insertion of sperm cells into the woman's reproductive organs; (ab) insertion of egg cells together with sperm cells into the woman's reproductive organs; (b) extra-corporal fertilisation procedures (also IVF; *in vitro*): (ba) the union of egg cells and sperm cells outside the woman's body; (bb) the insertion of early embryos into the woman's reproductive organs.[47]

ART procedures can thus also be divided into: (a) procedures in which the reproductive cells of the woman and the man who are involved in the ART procedure are used (homologous fertilisation); and (b) ART procedures in which the reproductive cells (either egg or sperm) are donated by a third party (heterologous fertilisation).

The Slovenian Infertility Act does not provide an exhaustive list of ART procedures, thus not precluding the possibility of performing other procedures that may be developed or will be developed in the future by biomedical science.

Art. 4(3) of the Infertility Act stipulates that an embryo is created by fertilising an egg cell. An early embryo is a zygote and an embryo that develops outside the uterus for less than 14 days or until the appearance of the primitive streak. However, the provisions regarding early embryos also apply, mutatis mutandis, to embryos of the same age obtained by uterine flushing and to isolated omnipotent stem cells, if they are capable of developing into a viable new embryo.[48]

As a general rule, for ART procedures, the reproductive cells (gametes) of the woman and man who are married to each other or who are cohabiting partners are used[49] (so-called, endogenous techniques). In this case, there is no differentiation between parenthood, which is regulated based on the provisions for motherhood

47 Art. 4(2) of the Infertility Act.
48 Art. 4(4) of the Infertility Act.
49 Art. 8(1) of the Infertility Act.

and fatherhood under the Slovenian Family Code[50] (hereinafter: FC). In this case, the parents are also the biological parents of the child, and the child is considered the biological descendant of the father and mother, as defined in the FC.

ART techniques can also involve a third party. For ART procedures, donor egg cells or donor sperm cells (i.e., exogenous techniques) can be used, provided that, pursuant to Art. 14(1) of the Infertility Act, the donor must be of legal age, healthy, and of sound mind. Starting out fom the Slovenian legal regulations, donor reproductive cells (ova or sperm) will be used if: (a) according to the experience of biomedical science, there is no possibility of achieving pregnancy using the reproductive cells of the eligible persons; (b) where other ART procedures provided by Infertility Act have been unsuccessful; (c) if a woman and a man who are married to each other or are unmarried partners, where such procedures may prevent the transmission of a serious hereditary disease to the child; (d) a same-sex female couple who are married to each other or are unmarried partners; or (e) a single woman.[51]

Although the Slovenian Infertility Act does not provide an exhaustive list of ART techniques, leaving it open to developments in the field, it does define which ART techniques are prohibited under Slovenian law: (a) donation of human embryos is prohibited;[52] (b) the use of a mixture of sperm cells from two or more men, or egg cells from two or more women in ART procedures is not permitted either;[53] (c) the use of the donor's sperm cells to fertilise a woman who, due to consanguinity, could not legally marry the donor is prohibited. Similarly, egg cells from a donor may not be fertilised with sperm cells from a man who, due to consanguinity, could not legally marry the donor.[54]

Furthermore, Art. 3(2) of the Infertility Act provides that the collection and storage of sperm or egg cells shall also be considered as a treatment if, based on the knowledge and experience of medical science, the individual is at risk of becoming infertile. The collection and storage of reproductive material is, therefore, permitted only if there are medical indications that a person may become infertile. In Slovenia, so-called 'social freezing'[55] is not permitted, which involves the storage of egg cells by women who wish to delay motherhood for an indefinite period.

The Infertility Act also does not allow posthumous fertilisation. It is prohibited to perform ART with the sperm or egg cells of a donor who is no longer alive at the time of the insertion of the donated cells or early embryos into the woman's body. Before a doctor inserts the donated sperm or egg cells, or early embryos formed using the

50 Family Code (Slovene: *Družinski zakonik*): Uradni list RS, št. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI, 94/22 – odl. US, 94/22 – odl. US, 5/23, 34/24 – odl. US.

51 Art. 8(2) of the Infertility Act.

52 Art. 13(1) of the Infertility Act.

53 Art. 13(2) of the Infertility Act.

54 Art. 14(2) of the Infertility Act.

55 Social freezing (also Elective egg freezing – EEF) allows young women to freeze their eggs as a way to prevent age-related infertility, giving them the option to have children when they are prepared later in life (Nakou, 2024, p. 11).

donated cells, into the woman's body, they must determine whether the donor is still alive.[56]

3.2. The Beneficiaries of ART

The Slovenian Infertility Act explicitly provides that ART procedures can only be performed with the intention of achieving the birth of a child.[57] According to Art. 5(2) of the Infertility Act, the beneficiaries of ART procedures are: (a) a woman and a man who are married to each other or are unmarried partners and who, according to the experience of medical science, cannot reasonably expect to achieve conception through sexual intercourse and cannot be assisted by other infertility treatments; (b) a woman and a man who are married to each other or are unmarried partners, where such procedures may prevent the transmission of a serious hereditary disease to the child; (c) a same-sex female couple who are married to each other or are unmarried partners; (d) a single woman.The marriage or cohabitation must exist at the time of the insertion of the sperm cells or early embryos into the woman's body.[58]

However, on October 16, 2024, the CCRS found that the Infertility Act is inconsistent with the CRS insofar as it excludes women living in same-sex marriages or cohabitation, as well as single women, from access to assisted reproductive technology procedures. On the other hand, the identified inconsistency will only be resolved through an amendment of the Infertility Act. Until the identified inconsistencies are remedied, the current legislative framework will continue to apply. The CCRS has mandated that the identified inconsistency should be rectified within one year from the publication of the decision in the Official Gazette of the Republic of Slovenia.[59]

Furthermore, beneficiaries of ART procedures must be of legal age, mentally competent, and of an appropriate age for undertaking parental responsibilities, as well as in a psychosocial condition according to which they can reasonably be expected to be able to exercise parental care in the best interest of the child. Additionally, a woman must be in an age range suitable for childbirth.[60]

The concept of 'age of eligibility for childbirth' represents an undefined legal term, which is to be determined in each specific case. The CCRS has annulled the provision of Art. 37(2) of the 'Rules on Compulsory Health Insurance' (hereinafter: RCHI), as well as the judgement of the Supreme Court of the Republic of Slovenia (hereinafter: SCRS), which had rejected a claim for the reimbursement of ART procedure costs incurred abroad.[61] The annulled provision of the RCHI stipulated that only women up to the age of 43 were eligible for ART procedures. The CCRS, in its

56 Art. 28(3) of the Infertility Act.
57 Art. 5(1) of the Infertility Act.
58 Art. 5(4) of the Infertility Act.
59 Constitutional Court of the Republic of Slovenia decision ECLI:SI:USRS:2024:U.I.418.20, 16 October 2024, para. 65.
60 Art. 6 of the Infertility Act.
61 Constitutional Court of the Republic of Slovenia decision Up-459/17–19, 21 January 2021, para. 19.

reasoning, emphasised that the by-law act (RCHI) had went beyond its authority, which could only derive from the law itself. A by-law can only regulate in more detail the rights derived from the law, but does not have the power to establish an absolute age limit. Such a limit would be permissible only if the legislator had delegated this authority to the Health Insurance Institute of Slovenia, which did not happen in the present case.[62] With the removal of the upper age limit, there is no restriction at the legislative level. However, the suitability of the candidate is determined through clinical analysis in each individual case.

The ART procedures, as defined by the Slovenian Infertility Act in Art. 4, can only be performed with the written consent of the beneficiaries.[63] Before providing a written consent for ART, the beneficiaries must be informed by the doctor about the ART procedure, the chances of success, the potential consequences, and the risks of the procedure for the beneficiaries and child, and receive counselling. The doctor will also inform them of the purposes for which their personal data will be collected and processed and explain that it will be protected as professional confidentiality.[64] If necessary, the doctor will refer the beneficiaries to psychological-social counselling regarding the intended ART procedure.[65]

The doctor must also explain the rules on the storage of reproductive cells (gametes) and embryos, ask about their intents concerning the duration of storage, and their decisions regarding any unused embryos.[66] Additionally, the doctor must explain other options that might resolve or bypass their infertility cause, including those not provided by the centre, and reveal non-medical choices such as adoption or the cessation of treatment.[67]

Written consent is required for each ART procedure individually.[68] The consent form for the ART procedure shall include, in cases where donated reproductive cells are used, a statement of the legal consequences of such procedure.[69]

Each of the beneficiaries of ART procedures may withdraw their consent and withdraw from the ART procedure before the sperm cells, unfertilised eggs, or early embryos have been inserted into the woman's body.[70] The centre must record the statement of revocation and, at the request of either of the spouses or cohabiting partners, issue a certificate to this effect.[71] The doctor must ensure that the consent has not been revoked before inserting the sperm cells, unfertilised eggs, or early embryos into the woman's body.[72]

62 Rajgelj, 2021, p. 39.
63 Art. 22(1) of the Infertility Act.
64 Art. 22(2) of the Infertility Act.
65 Art. 22(3) of the Infertility Act.
66 Art. 22(4) of the Infertility Act.
67 Art. 22(5) of the Infertility Act.
68 Art. 22(6) of the Infertility Act.
69 Art. 22(7) of the Infertility Act.
70 Art. 23(1) of the Infertility Act.
71 Art. 23(2) of the Infertility Act.
72 Art. 23(3) of the Infertility Act.

3.3. Providers of ART

ART procedures in Slovenia are carried out in public health services – in centres for ART's procedures (hereinafter: centres), which are specifically licensed for this activity.[73] A team of biomedical experts shall carry out the ART procedures under the direction of a medical doctor who shall be responsible for ensuring that the ARTs are performed in accordance with the Infertility Act. Currently, these procedures are carried out at three public centres located in UKC Ljubljana,[74] UKC Maribor, and the Hospital for Women's Diseases and Obstetrics in Postojna.

Every first ART procedure shall be subject to the prior approval of the Centre's expert advisory body.[75] The decision of the Centre's expert advisory body on ARTs may be appealed. The appeal shall be decided upon by the National Commission for ARTs, deciding on the appeal within 90 days. The National Commission for ARTs may reject the appeal as unfounded or overrule the decision of the expert advisory body of the Centre for ARTs and decide itself.[76] The laboratory part of the ART procedures may only be carried out on the basis of a decision by a medical practitioner.[77]

3.4. Financial Support of the State

Based on Art. 37(3) of the RCHI, a woman has the right to assisted reproduction under the conditions set out in the Infertility Act within the framework of specialised outpatient services. In the case of *in vitro* fertilisation, a woman is entitled to a maximum of six procedures for the first live birth and a maximum of four procedures for each subsequent birth. For women under 35 years of age, the first two *in vitro* fertilisation procedures involve the elective transfer of one high-quality embryo. The assisted reproduction procedure with frozen embryos counts as part of the *in vitro* fertilisation procedure in which the embryos were frozen. However, this issue should be transferred from the RCHI by-law and included in the Infertility Act.

73 Art. 15(1) of the Infertility Act.

74 Statistical data for the UKC Ljubljana centre: from 2001 to 2018, the centre obtained 139 sperm donors. A total of 286 recipient couples were involved in the procedures. By 2017, 217 children were born to 159 recipient couples through ART procedures with donated sperm in procedures involving the transfer of 'fresh' or 'frozen' embryos. Additionally, from 2001 to 2017, the centre obtained 66 egg donors. A total of 113 recipient couples were included in these procedures. By that time, 21 children had been born through ART procedures using donated egg cells in procedures with the transfer of 'fresh' or 'frozen' embryos, benefiting 18 recipient couples (Univerzitetni klinični center Ljubljana, no date).

75 Art. 15(2) of the Infertility Act.

76 Art. 15(3) of the Infertility Act.

77 Art. 15(4) of the Infertility Act.

The fundamental regulation for mandatory health insurance in Slovenia is the 'Health Care and Health Insurance Act'[78] (HCHIA). Under the compulsory health insurance, insured individuals are entitled to be reimbursed for healthcare services, including those related to reproduction, such as contraception, healthcare services related to pregnancy, childbirth, infertility treatment, artificial insemination, sterilisation, and abortion.[79] In these cases, the payment is guaranteed at a minimum rate of 99 percent.[80] Compulsory health insurance also covers healthcare services provided abroad,[81] reimbursed at a rate of 95 percent.[82] However, the Slovene Health Insurance Institute (ZZVZZ) does not have any additional provisions regarding the provision and treatment of reduced infertility or assisted reproductions.

3.5. Surrogacy

Surrogacy covers a practice where the surrogate mother agrees to become pregnant and give birth for the purpose of then forfeiting any parental rights over the child in favour of another person or couple (so-called 'intended parents').[83] A pre-conception agreement is based on the assumption that the child will pass to the intended parents at or shortly after birth.[84] A distinction is therefore also assumed between the 'positive' intention of the intended parents to acquire legal parenthood and the 'negative' intention of the surrogate not to become a parent.[85]

Surrogacy can be divided into two categories: (a) traditional surrogacy, (b) gestational surrogacy (also 'IVF surrogacy' or 'host surrogacy'). In traditional surrogacy, a surrogate mother is artificially inseminated, either by the intended father or an anonymous donor, and carries the baby to term. The child is thereby genetically related both to the surrogate mother, who provides the egg, and to the intended father or anonymous donor. In gestational surrogacy, an egg is removed from the intended mother or an anonymous donor and fertilised with the sperm of the intended father or anonymous donor. The fertilised egg, or embryo, is then transferred to a surrogate who carries the baby to term. The child is thereby genetically related to the

78 Health Care and Health Insurance Act (HCHIA – *Slovene Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju*): Uradni list RS, št. 72/06 – uradno prečiščeno besedilo, 114/06 – ZUTPG, 91/07, 76/08, 62/10 – ZUPJS, 87/11, 40/12 – ZUJF, 21/13 – ZUTD-A, 91/13, 99/13 – ZUPJS-C, 99/13 – ZSVarPre-C, 111/13 – ZMEPIZ-1, 95/14 – ZUJF-C, 47/15 – ZZSDT, 61/17 – ZUPŠ, 64/17 – ZZDej-K, 36/19, 189/20 – ZFRO, 51/21, 159/21, 196/21 – ZDOsk, 15/22, 43/22, 100/22 – ZNUZSZS, 141/22 – ZNUNBZ, 40/23 – ZČmIS-1, 78/23; 32/25 – ZZDej-N.

79 Art. 23(1)(2) of the HCHIA.

80 Art. 104(1)(1) of the HCHIA.

81 Art. 23(1)(3) of the HCHIA.

82 Art. 104(1)(2) of the HCHIA.

83 European Court of Human Rights, 2024, p. 1; Horsey, 2024.

84 Kneebone, Hammarberg and Beilby, 2024, p. 1.

85 Lima, 2024, p. 246.

woman who donated the egg and the intended father or sperm donor, but not the surrogate.[86]

Greece was the first European country in 2002 to legalise surrogacy and establish a legal framework for the rights of parents involved in the process.[87] The Greek legal framework for surrogacy provides an exception to the traditional rule '*mater semper certa est*', which states that the biological mother of a child is always the one who gives birth to the child. Greek law stipulates explicitly that the parents who commission the child (so-called commissioning parents) become the legal parents of the child immediately upon its birth, just like the biological parents.

According to Art. 1464 of the Greek Civil Code, in cases of artificial insemination using a surrogate mother, the commissioning mother can obtain a court decision recognising her as the mother of the child even before his/her birth, provided that the conditions of Art. 1458[88] are met.[89] However, both the surrogate mother and the commissioning mother have the right to challenge the legal recognition of motherhood within six months after the child's birth, if they can prove that it is a case of traditional surrogacy, where the surrogate mother contributes both the womb and the egg cell, while the commissioning mother's partner contributes the sperm.[90]

In the event the either the surrogate mother or the commissioning mother challenges the legal parentage, the court will decide on the case, and if the decision becomes final, the surrogate mother will be recognised as the legal mother of the child retroactively, i.e., from the child's birth (*ex tunc*).[91] This provision allows for a precise determination of parental responsibility, even in cases of traditional surrogacy, where the biological parents are actually different individuals from the ones who carried and gave birth to the child.

Unlike Greek legislation, Slovenian legislation is negative towards surrogacy, as Art. 7 of the Infertility Act explicitly mentions surrogacy, but with a negative connotation. This is because a woman who intends to give her child to a third party for free or without compensation after birth (i.e., surrogacy) is not entitled to ART procedures.

86 European Court of Human Rights, 2024, p. 1; Horsey, 2024.

87 Greece was followed by Cyprus (2015) and Portugal (2016).

88 See Art. 1458 of the Greek Civil Code: 'Art. 1458. The transfer of a fertilised ova into the body of another woman (the ova should not be hers) and the pregnancy by her is allowed by a court authorisation granted before the transfer, given that there is a written agreement, without any financial benefit, between the persons wishing to have a child and the surrogate mother and in case that the latter is married, of her spouse, as well. The court authorisation is issued after an application of the woman who wants to have a child, provided that evidence is adduced not only in regard to the fact that she is medically unable to carry the pregnancy to term but also to the fact that the surrogate mother is in good health and is able to conceive'.

89 Lowe, 2016, p. 120.

90 Hatzis, no date.

91 Ibid.

Surrogacy is also referred to in Art. 121(3) of the Slovene Criminal Code,[92] which stipulates that anyone who unlawfully carries out a procedure of assisted reproduction for surrogacy will be punished with imprisonment for up to three years. Slovenia, therefore, belongs to the group of countries that do not allow surrogacy through ART procedures.[93] However, following the wording of the law, it can be concluded that surrogacy is therefore not explicitly prohibited in Slovenia. What is forbidden or criminalised is biomedical assistance in performing surrogacy, which means that, in practice, it is impossible to carry out surrogacy. However, it is not a criminal offence for a Slovenian couple to go abroad and, if the surrogacy procedure is admissible there, to have a child with the help of surrogacy.[94]

Slovenia, in terms of its approach to surrogacy, follows the stance of most European Union countries, but this does not mean that the issue has not arisen in Slovenian judicial practice. The Supreme Court of the Republic of Slovenia (hereinafter: SCRS) has also encountered a case involving surrogacy. A same-sex couple adopted a girl in the United States, who was born through surrogacy. The couple then sought recognition of the foreign court decision in Slovenia. The District Court in Ljubljana recognised the legal validity of the foreign judgement based on the submitted evidence. However, the Supreme State Prosecutor's Office filed a request for the protection of legality against the judgement, arguing that recognising a foreign court decision contradicts the public order of the Republic of Slovenia, as the country does not allow adoption by same-sex couples. In its judgement, the SCRS clarified that recognition of the foreign court decision did not imply that the court was ruling on the adoption of the child by two same-sex partners, but rather that it was solely recognising and protecting the already acquired rights.[95] The amendment to the FC, which took effect on January 31, 2023, legalized same-sex marriage and extramarital partnerships, thereby granting same-sex couples in Slovenia the right to jointly adopt children.

3.6. Handling Gametes or Early Embryos

The Infertility Act provides a relatively high level of protection for embryos, as it protects them from the zygote stage onward. Specifically, Art. 2(2) of the Infertility Act explicitly states that special care must be taken to protect the health, welfare, and rights of the future child in infertility treatments and ART procedures. Furthermore, Art. 4(4) of the Infertility Act defines an embryo as one created through the fertilisation of an egg cell. An early embryo, according to the Infertility Act, is a

92 Criminal Code (Slovene: *Kazenski zakonik*): Uradni list RS, št. 50/12 – uradno prečiščeno besedilo, 6/16 – popr., 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22 – ZZNŠPP, 16/23, 107/24-odl. US; Deisinger, 2017, p. 145.

93 Constitutional Court of the Republic of Slovenia decision ECLI:SI:USRS:2024:U.I.418.20, 16 October 2024, para. 25.

94 Jerič, 2018.

95 VSRS sklep II Ips 462/2009, 28 January 2010.

zygote or an embryo developing outside the uterus for less than 14 days or until the primitive streak appears.

Sperm cells, unfertilised egg cells, and early embryos can only be used for ART procedures. They must be handled and examined in such a way that, based on the current state of biomedical science and experience, pregnancy is achieved.[96]

However, sperm cells, unfertilised egg cells, and early embryos may also be used for scientific research.[97] Scientific research on gametes and early embryos obtained for the purpose of performing ART is permitted solely for the purposes of protecting and improving human health.[98] Early embryos may be subject to research only with the written consent of the beneficiaries undergoing ART procedures, with the permission of the National Commission for ART, and with the approval and under the supervision of the Medical Ethics Commission.[99]

Early embryos can only be researched with the written consent of the beneficaries undergoing ART procedures, with permission from the National Commission for ART, and with the approval and under the supervision of the Medical-Ethical Commission.[100]

Based on the listed permissions, research on early embryos is permitted if, according to the findings and experience of biomedical science, they are not suitable for implantation into the woman's body or for storage, as well as those stored embryos that would otherwise need to be discarded.[101] In the research of early embryos, the contemporary findings of medical science, experience, and established global practices must be taken into account, as well as the principles of general medical ethics.[102] Approval and supervision by the designated committees are also required for the introduction and use of any new ART methods as long as they are considered to be in the experimental phase.[103]

Art. 35(1) of the Infertility Act stipulates that sperm cells, unfertilised egg cells, and unused early embryos are to be stored for as long as the beneficaries undergoing ART procedures wish, but for no longer than ten years. If the beneficaries do not agree on the duration of the storage, the National Commission for ART will make a decision. Upon expiry of the ten years period, the storage of sperm cells, unfertilized ova, and early embryos may, with the permission of the National Commission for ART, be extended until the age considered appropriate for childbearing and the performance of parental responsibilities. Such an extension shall be granted on the basis of medical or other justified reasons, such as serious illness, medical treatment, or other exceptional personal circumstances. An application for an extension shall

96 Art. 30(2) of the Infertility Act.
97 Art. 30(2) of the Infertility Act.
98 Art. 38(1) of the Infertility Act.
99 Art. 38(2) of the Infertility Act.
100 Art. 38(3) of the Infertility Act.
101 Art. 38(4) of the Infertility Act.
102 Art. 38(5) of the Infertility Act.
103 Art. 38(6) of the Infertility Act.

be submitted by the eligible person from whom the reproductive cells originate.[104] After the specified period, sperm cells and unfertilised egg cells must be discarded, and early embryos must be left to perish.[105]

An egg cell must not be fertilised with a sperm cell that is specifically chosen to determine the child's sex unless it is intended to prevent a severe sex-linked hereditary disease (Art. 31(1) of the Infertility Act). Interference with the hereditary composition of sperm cells or embryos to alter the genetic changes of the child is not permissible.[106] The genetic testing of early embryos is only permitted in the case of the risk of a severe hereditary disease or if it is necessary for the success of the ART procedure.[107]

All egg cells obtained in one procedure may be fertilised outside the body. The number of early embryos that are transferred to the woman's body must not exceed the number, based on professional findings and experience, that is expected to lead to a successful ART outcome and the risk of multiple pregnancies must be limited as much as possible. No more than three embryos may be implanted into the woman's uterus in one procedure.[108] Any remaining early embryos from the initial procedure are to be stored and may later be implanted into the woman's body. The implantation may be carried out only upon the joint written request of the beneficiaries or upon a written statement by the eligible person (a single woman) who has given her own written consent to the commencement of the ART procedure.[109]

Art. 33 of the Infertility Act stipulates that the following actions are prohibited in ART procedures: (a) allowing the external development of an embryo that is older than 14 days, or after the primitive streak has developed; (b) creating an embryo solely for research purposes; (c) creating human embryos from gametes with induced changes to the genetic composition and transferring such embryos into a human or animal body; (d) using parts of embryos obtained in ART procedures unless explicitly specified; (e) creating embryos with identical genetic composition or embryos genetically identical to another living or deceased individual (cloning); (f) fertilising a human egg cell with animal sperm or animal egg cells with human sperm, or altering embryos by transplanting parts of other human or animal embryos (creating hybrids and chimeras); (g) implanting an embryo created through the processes described under items e) and f) into a human or animal body; (h) introducing human gametes or a human embryo into an animal; (i) introducing animal gametes or an animal embryo into a human; (j) intentionally altering the genetic composition of cells that are part of the embryo.

Sperm cells, unfertilised egg cells, and early embryos are stored for ART procedures as defined by the Infertility Act. They may only be stored by specially

104 Art. 35(2) of the Infertility Act.
105 Art. 35(3) of the Infertility Act.
106 Art. 31(2) of the Infertility Act.
107 Art. 31(3) of the Infertility Act.
108 Art. 32(1) of the Infertility Act.
109 Art. 32(2) of the Infertility Act.

authorised centres. In doing so, they must consider modern medical findings and established medical practice.[110]

Neither the individuals from whom sperm cells, unfertilised egg cells, and early embryos originate, nor any third parties are entitled to dispose of or handle these. The centre is not permitted to hand them over to anyone.[111] The transfer of such reproductive material between ART centres requires the consent of the National Commission for ART. The beneficiaries from whom the reproductive cells originate shall submit a written application for the transfer to the ARTcentre storing them. In the case of the transfer of early embryos, the two beneficiaries shall submit a joint written application, whereas a single woman shall submit an application on her own. The ART centre shall forward the application, which shall also contain the consent of the receiving ART centre, to the National Commission for ART.

It is not permissible to mediate the collection, storage, and use of sperm cells, unfertilised egg cells, and early embryos. Furthermore, it is prohibited to trade in stored sperm cells, unfertilised egg cells, and early embryos.[112]

3.7. Gametes Donations

For ART procedures, the gametes of a woman and a man who are in a marital or cohabiting partnership are typically used. However, donor eggs or sperm may be used when, based on the experience of biomedical science, pregnancy is not possible using the gametes of the couple or if previous ART procedures have failed, or if it is necessary to prevent the transmission of a severe hereditary disease to the child.[113]

A sperm donor is a man whose sperm is used for the fertilisation of a woman who is not his wife or cohabiting partner. An egg donor is a woman whose eggs are used for the fertilisation of another woman.[114]

It is not permitted to give or receive payment or any other benefit for donated gametes. Agreements to this effect are void. However, the donor of gametes has the right to reimbursement for the costs incurred in connection with travelling to the ART centre, for the accommodation, for the return trip, for examinations, and gamete retrieval and reimbursement of expenses due to lost earnings for the duration of the ART procedures.[115] Gamete donors may donate their eggs or sperm only to one and the same ART centre.[116]

Each ART procedure using the gametes of a donor is carried out at the request of a specialist in gynaecology and obstetrics (hereinafter: the doctor) after obtaining the consent of the professional advisory body of the ART centre and with the

110 Art. 34 of the Infertility Act.
111 Art. 36 of the Infertility Act.
112 Art. 37 of the Infertility Act.
113 Art. 8 of the Infertility Act.
114 Art. 9 of the Infertility Act.
115 Art. 10 of the Infertility Act.
116 Art. 11(2) of the Infertility Act.

permission of the State Commission for ART procedures. This professional advisory body consists of a doctor, an expert in embryology, a social worker, and a lawyer appointed by the director of the ART centre.[117] Before the ART procedure is performed using the gametes of a donor, the beneficiaries must attend psychological and social counselling.[118] The beneficiaries must be informed about the legal consequences of their consent to ART with the gametes of a donor and the legal consequences of the birth of a child conceived through ART. They must be informed about these legal consequences by a lawyer.[119]

Art. 13 of the Infertility Act stipulates that the donation of human embryos is not permitted. Additionally, the use of a mixture of sperm from two or more men, or egg cells from two or more women is not allowed in ART procedures.

The egg donor and sperm donor must be of legal age, healthy, and of sound mind. The sperm of the donor cannot be used to fertilise a woman whom, due to consanguinity, he could not legally marry. The egg of the donor cannot be fertilised with sperm of a man whom, due to consanguinity, she could not legally marry.[120]

4. Family Law Regulation

4.1. General

National legal frameworks of parenthood, that is, the legal rules governing the legal relationship between parents and children, still largely rely on the idealised image of the standard/traditional family – a married man and woman with their biological children. English terminology has also adapted to these changes. The term 'parentage' is used to refer to the genetic connection between a child and the person who provided the gametes that led to the child's conception. Thus, the term

117 Art. 12(1) of the Infertility Act.
The Supreme Court of the Republic of Slovenia, in its 2021 ruling, decided: 'The approval of the State Commission for Biomedical Assistance (ART) is not a condition that limits access to treatment abroad in terms of prior approval, but rather represents a condition required by national legislation for the authorisation of any heterologous ART procedure in the home country. If this condition is not met – if there is no approval, because the request for it has been rejected or has not been issued – heterologous ART cannot be performed in the Republic of Slovenia, regardless of the age of the insured person, nor at the expense of compulsory health insurance, nor in any other way (as it is not freely available). This means that, due to the link between the right to reimbursement for treatment abroad and the recognition of the right under national regulations, non-fulfilment of the conditions for access to heterologous ART in the home country indirectly constitutes a condition for obtaining the right to reimbursement for treatment abroad'. (Supreme Court of the Republic of Slovenia, judgment VIII Ips 21/2021, 21 December 2021).

118 Art. 12(2) of the Infertility Act.

119 Art. 12(3) of the Infertility Act.

120 Art. 14 of the Infertility Act.

'parentage' focuses on genetic truth or the presumed genetic truth. On the other hand, the term 'parenthood' refers to the person who raises the child. In addition to these two terms, the concept of 'legal parenthood' pertains to the person whom the law recognises as a parent.[121]

The development of reproductive medicine, and consequently ART procedures, has significantly shaped the field of family law as well. ART procedures allow couples and individuals to fulfil their desire for a child, something that once seemed impossible. However, advancements in reproductive medicine and the involvement of third parties in the fertilisation/conception process have called into question long-standing fundamental legal principles of family law, including the legal presumptions of motherhood and fatherhood and genetic relatedness as a prerequisite for parenthood. In this context, we can highlight the axiom that while the ART procedure can create children that were previously unimaginable, only family law can create a legally recognised family, including defining the ensuing rights and responsibilities among the various individuals involved and the descendants arising therefrom.[122]

4.2. Affiliation

The field of family law in Slovenia is governed by the FC, which was adopted in 2017 and came into effect in April 2019. The issue of parentage (motherhood and fatherhood) of children born through ART procedures is now regulated in the FC. Previously, these provisions were included in the Infertility Act, but with the enactment of the FC, they were transferred into it.

4.2.1. Motherhood

While in the past the presumption of motherhood was considered irrebuttable, the development of medical science in the field of biomedicine and reproductive medicine concretely led to the understanding that a mother who gives birth to a child is not necessarily the child's biological mother. A woman who is expecting a child (a pregnant woman) typically shows physical changes on her body that have historically been recognised as signs of pregnancy (e.g., a large belly, awkward gait, weight gain, childbirth, etc.). Although deviations from the legal presumption of motherhood could have occurred even in the past (e.g., a child being swapped in a hospital, a deliberately swapped or substituted child), it is only with the development of biomedicine that significant deviations from this classic legal presumption have emerged. With the development of biomedicine and the revolution in reproductive medicine, various ART procedures (e.g., *in vitro* fertilisation (IVF), egg and embryo donation, and surrogate motherhood) have also developed.[123]

121 Gilmore and Glennon, 2018, p. 351.
122 Crockin, Altman and Edmonds, 2021, p. 23.
123 D'alton Harrison, 2015.

The meaning of motherhood is already rooted in the CRS, as Art. 53(3) stipulates that the State protects motherhood and creates the necessary conditions thereof. This constitutional provision concerning motherhood is further supplemented by the content of Art. 55 of the CRS, which states that the decision regarding the birth of one's children is free and that the State shall ensure the possibilities for realising this freedom and create conditions that allow parents to decide on the birth of their children.

Regarding the legal regulation of motherhood, the FC follows the traditional framework, where the legal affiliation of a child to the mother, or motherhood, has traditionally been based on natural circumstances that led to such a conclusion based on certain natural experiences.[124] Motherhood, as the legal bond between a mother and a child, was traditionally established with the birth of the child. Therefore, the FC, regarding motherhood, is still based on the classic legal presumption *mater semper certa est*[125] (the mother is always certain).

Art. 112 of the Family Code stipulates: 'The mother of the child is the woman who gave birth to him/her'. This is a novelty, as its predecessor, the Marriage and Family Relations Act[126] (hereinafter: MFRA) of 1976, did not contain a legal presumption of motherhood at all. In 1976, there was generally no doubt regarding motherhood. Traditionally, this legal presumption was considered irrefutable. The mother was the one from whose womb the child came.

In most cases, someone observed or attended the birth of the child. Birth thus represented the constitutive element of the legal relationship between the woman (mother) and the child. Therefore, the woman who gave birth to the child was, as a rule, genetically, legally, and socially connected to her child. The legal presumption of motherhood was absolute, as it was not possible to provide evidence to the contrary.

This is precisely why the previous Slovenian MFRA did not contain the legal presumption of motherhood in its provisions, as it was assumed that the biological mother was the woman who gave birth to the child. Additionally, earlier family law textbooks showed that little attention was given to motherhood, as it stemmed from the irrefutability of the legal presumption *mater semper certa est*.[127] The current provision in Art. 112 of the FC, therefore, represents a cogent provision, as it does not allow for autonomy (e.g., spouses cannot determine for themselves who will be the mother of the child).[128]

The development of reproductive medicine has, as referred to previously, made it possible for many to fulfil their desire for a child. On the other hand, it has led to

124 Lüderitz, 1999, p. 243.

125 Paulus: Digeste 2.4.5; see also Scherpe, 2016, p. 85.

126 Marriage and Family Relations Act (Slovene *Zakon o zakonski zvezi in družinskih razmerjih*): Uradni list RS, št. 69/04 – uradno prečiščeno besedilo, 101/07 – odl. US, 90/11 – odl. US, 84/12 – odl. US, 82/15 – odl. US, 15/17 – DZ, 30/18 – ZSVI.

127 Kraljić, 2022, p. 43.

128 Lüderitz, 1999, p. 243.

what is known as 'split motherhood' (German: *gespaltene Mutterschaft*[129]). This means that a woman can give birth to a child, even though she is not genetically related to it. This is particularly relevant in the case of egg donation, embryo donation, and surrogate motherhood. Donating female gametes (eggs) and donating embryos allow a woman to give birth to a child who is not genetically connected to her. This has led to a separation between 'genetic motherhood' and 'gestational or medical motherhood'. The first is related to the origin of the egg, while the second concerns pregnancy and carrying the child to birth.[130] This distinction is particularly prominent in the case of surrogate motherhood.

As referred to earlier, with the enactment of the FC, the provisions relating to the motherhood of a child conceived through ART procedures were transferred. A woman who has consented to an ART procedure and signed a corresponding declaration is considered to be the mother of the child, and her motherhood cannot be contested. The prohibition against contesting motherhood applies to anyone, not just the mother herself.

4.2.2. Fatherhood

On the other hand, fatherhood was long believed to be unviable to verify. In verifying or contesting fatherhood, courts relied on both expert opinions and actual facts (for example, fatherhood could be disputed if it was proven that the father was not in the country at the time of conception). On the other hand, if the father had sexual intercourse with the mother at the time of conception, he was considered the father, even if it was proven that the mother had relations with several men (e.g., 20).[131]

Regarding the fatherhood of a child born within marriage, the Slovenian FC also follows the classic legal presumption *pater est quem nuptiae demonstrant* (the father is the one designated by marriage). Art. 113(2) of the FC stipulates, 'The husband of the child's mother is considered the father of a child born in marriage'. This legal presumption also applies to a child born within 300 days of the dissolution of the marriage. However, this only applies if the dissolution took place due to the death of the child's mother's husband and the child is born within 300 days after the dissolution of the marriage. In this case, the deceased husband of the mother is considered the father of the child.[132] The case may be that the mother enters into a new marriage within 300 days after the dissolution of the previous marriage, and a child is born in this new marriage. In that case, the mother's new husband is considered the father of the child, regardless of the reason for the dissolution of the previous marriage.[133]

129 Adapted from Dethloff, 2015, p. 282.
130 Lüderitz, 1999, p. 243; Dethloff, 2015, p. 282; Kraljić, 2019, p. 383.
131 Cretney, 2000, pp. 193–194.
132 Art. 113(2) of the FC.
133 Art. 113(3) of the FC. Kraljić, 2019, p. 386.

The father of a child who is not born in marriage or within 300 days after the dissolution of the marriage due to the death of the child's father is the man who acknowledges paternity or whose paternity is established by a court decision.[134]

For the father of a child conceived with biomedical assistance, the mother's husband or her cohabiting partner is considered the father, provided that both have appropriately consented to the ART procedure.[135] It is not surprising that the mother's husband or cohabiting partner is regarded as the father of a child conceived through ART, as the execution of an ART procedure requires written consent from both prospective parents. It is not sufficient for only one partner to consent. If a partner decides to withdraw his/her consent, this decision must be respected.[136] Before the ART procedure is carried out, the doctor must ensure that mutual consent still exists.

The paternity of a child conceived through ART procedures cannot be contested except in cases where it is claimed that the child was not conceived using ART.[137] If the child was conceived using donor sperm, the paternity of the donor cannot be established.[138] It should be emphasised that the legal presumption of paternity is conditional upon valid expressed consent. If it turns out that the consent was not in accordance with the provisions of the Infertility Act, the legal presumption will not apply. In the case of heterologous ART procedures, it is not permitted to establish the paternity or maternity of the donors. Legal and social bonds, therefore, exist only within the family.

The Slovenian Infertility Act and the FC remain silent on the fate of embryos in the event of a separation between partners. The only reference to this issue is related to the consent required from both partners at the time of the embryo transfer into the woman's body. Furthermore, a marriage or a cohabitation must exist. The doctor is required to verify that both the partnership and the consent exist at the time of the transfer. The current regulation thus provides a satisfactory situation. However, it would be appropriate for the legislator to address this issue explicitly, particularly considering the decision of the CCRS from October 2024, which opens the possibility of ART procedures also for single women and same-sex partners. In such cases, a situation may arise where the partnership has dissolved, but the woman still wishes to proceed with fertilisation through ART. In this case, only her consent would be required for fertilisation. Therefore, the legislator should also address, *de lege ferenda*, the situation regarding the fate of embryos in the event of the dissolution of a partnership. This would further ensure predictability and legal certainty.

134 Art. 114 of the FC.

135 Art. 134(1) of the FC.

136 The European Court of Human Rights also addressed this issue in the case of *Evans v. the United Kingdom* (App. No. 6339/05, 10 April 2007).

137 Art. 134(2) of the FC.

138 Art. 134(3) of the FC.

4.3. Right of the Child to Know His/Her Origin

The right to know one's origins is considered a fundamental right of the child, yet it has not been explicitly recognised in either the CRS or the FC since 2017. It seems as though the Slovenian FC prioritises the interests of biological parents, allowing them to maintain anonymity. However, in 2007 the CCRS already took a clear position, stating that an individual's right to know their origins is part of personal rights, which are protected by Arts. 34 and 35 of the CRS. Human personality is a composite of various personal goods that are protected by specific personal rights inherent to an individual. By guaranteeing personal rights, elements of an individual's personality not protected by other provisions of the CRS are safeguarded, and together with them, the individual is provided with the opportunity to freely develop and shape their life according to their own decisions. One of the key elements crucial to the development of an individual's personality is knowing their own origins, meaning knowing who their biological parents are. This is an essential aspect of an individual's self-conception and their place in society. Knowing one's origins also significantly influences family and kinship bonds. The inability to determine one's own origins can impose a severe burden and uncertainty on the individual. Therefore, the right to know one's origins falls under the scope of personal rights.[139]

The State bears the responsibility of adopting appropriate legislation in the field of family law. It must ensure that gamete donors do not bear parental responsibilities for children conceived with their gametes. Following Art. 27 of the Infertility Act, donors have no legal or other obligations or rights to children conceived through ART procedures. On the other hand, the State has an obligation to ensure the maintenance of registries and records, such as those of donors.[140]

Donors must be fully informed about the consequences of donating with an open identity and the fact that they may be committing to updating their records for life and potentially meeting their genetic offspring one day. This also means that parents must be advised and made aware that they should carefully consider the implications of having a child conceived with donated gametes. They should also consider allowing their children access to such information, should they desire it, and reflect on the potential impact disclosure may have on their family.[141]

So Art. 18(3) of the Infertility Act further stipulates that the child may request medically necessary information about the donor after reaching 15 years of age, provided that he/she is mentally competent. The child's legal representative may be given such information only with permission issued by a court in cases of exceptionally important medical reasons (for example, in the case where a child has leukaemia and needs a bone marrow transplant to survive, the donor could be anonymously

139 Constitutional Court of the Republic of Slovenia Decision, No. U-I-328/05-12, 18 October 2007, para. 8.

140 Art. 39 of the Infertility Act.

141 Ravitsky, 2017, p. 3.

asked to donate bone marrow, but they would not be obligated to help). The child's doctor has the right to access information in the donors' registry for reasons related to health. The court and administrative body have a right to access information in the registry if that is absolutely necessary for carrying out their official obligations under this law.

The consideration of removing the anonymity of donors raises the question of how this would impact donation rates in Slovenia. The concern is that this could lead to a shortage of potential donors, which would not be in the best interest of individuals who require third-party assistance to conceive a child. However, the positive experiences of other countries have shown that much can be achieved through carefully managed campaigns that promote the altruism of donors.[142]

5. Rights of the Child and ART

5.1. Before Birth

The Slovenian legal framework (outside of the Infertility Act) is quite limited in terms of specific provisions related to the protection of embryos. There are no provisions regarding the healthcare of embryos in the RCHI or HCHIA. An embryo's healthcare is achieved through the mother, not independently, as it is not yet a child and thus does not possess legal subjectivity.

Embryo protection can, for example, be found in Art. 17 of the Childbearing Act, which allows for the artificial termination of pregnancy as a medical procedure that can be performed at the request of the pregnant woman if the pregnancy does not surpass ten weeks.

In general, embryos, according to Slovenian law, are not bearers of rights and obligations. However, there are exceptions. For example, Art. 119(2) of the FC refers to the prenatal acknowledgment of paternity or the recognition of the *nasciturus*. The acknowledgment of paternity of an unborn child shall have legal effect only if the child is born alive. A special provision is found in Art. 119(2) of the FC, which also allows for the acknowledgment of a stillborn child or a child who died immediately after birth (i.e., posthumous recognition). A stillborn child does not acquire legal subjectivity; however, there may be a need and legitimate interest to establish a legal relationship between the parents and the stillborn child this way. This can have certain legal consequences, especially in the area of personal rights regarding parental care for the deceased (e.g., exercising religious rights in relation to the proper

142 Ravitsky, 2007, p. 3.

burial of the deceased child). The recognition of paternity for a stillborn child also allows for registration in the civil registry.[143]

Art. 125(2) of the Slovene Inheritance Act[144] states that a child who has already been conceived at the time of the initiation of inheritance shall be deemed to be born, provided they are born alive. Art. 202 of the Inheritance Act also refers to an unborn child:

> If the birth of a child who would be entitled to inheritance is anticipated, the probate court shall inform the competent social services centre thereof. 2. Unless the aforementioned centre decides otherwise, one of the child's parents shall take care of the child's rights.

Additionally, it is important to highlight the wording of Art. 35(3) and Art. 38(4) of the Infertility Act. Both Arts. use the phrase referring to 'allowing early embryos to die'. This phrasing is appropriate and reflects respect for the dignity of embryos, as it does not use terms such as 'destroy' or 'terminate'.

5.2. After Birth

An embryo is thus considered to have the potential for life, and even constitutional theory recognises certain rights for it (e.g., the right to dignity). However, the Slovene FC, apart from the cited Arts., refers to a child, which is defined in Art. 5 of the FC: 'For the purposes of this Code, a child shall be a person under the age of 18 unless they have obtained full capacity to contract before that age'. The FC follows the definition of a child provided by the Convention on the Rights of the Child. In this context, legal protection, except in the mentioned cases, applies to the child from his/her birth onward.

Once a child is born, their birth must be registered in the civil register within 15 days. This is followed by an entry in the civil register.[145] The birth of a child shall be entered in the civil register by the registrar of the competent authority in whose territory the place of birth is located.[146] This ensures the implementation of Art. 7(1) of the Convention on the Rights of the Child, which stipulates that a child shall be registered immediately after birth and shall have the right from birth to a name. The provision on the determination of a child's personal name is contained in the

143 Kraljić, 2019, p. 403; Novak IN Novak, 2019, p. 380; Felc IN Weber, 2024, p. 335.

144 Inheritance Act (Slovene Zakon o dedovanju): Uradni list SRS, št. 15/76, 23/78, Uradni list RS, št. 13/94 – ZN, 40/94 – odl. US, 117/00 – odl. US, 67/01, 83/01 – OZ, 73/04 – ZN-C, 31/13 – odl. US, 63/16, 102/24.

145 Art. 8(1) of the Register of Deaths, Births, and Marriages Act (hereinafter: Register Act). Register of Death, Births and Marriages Act (Register Act – Slovene *Zakon o matičnem registru*): Uradni list RS, št. 11/11 – uradno prečiščeno besedilo, 67/19.

146 Art. 6(1) of the Register Act.

Personal Name Act,[147] specifically in Art. 6. The personal name of a child shall be determined by their parents, who must report the name to an administrative unit within 30 days of the child's birth.

Art. 7 of the Slovene FC defines the fundamental principle of the best interests of the child. According to this principle, parents shall consider the best interests of the child in all their actions concerning the child. They are obliged to raise the child in a manner that respects their person, individuality, and dignity.[148] Parents have priority over any other person in terms of responsibility and actions in the best interests of the child.[149] It is considered that parents act in the best interests of the child if, particularly taking into account the child's personality, age, developmental stage, and wishes, they meet the child's material, emotional, and psychosocial needs appropriately through actions that demonstrate their care and responsibility towards the child, providing proper educational guidance, and encouraging the child's development.[150] State authorities, public service providers, holders of public powers, local government bodies, and other natural and legal persons must ensure the best interests of the child in all activities and procedures related to the child.[151] The State must provide special protection to children whenever their healthy development is at risk or when it is necessary to safeguard other interests of the child.[152] These provisions underscore the paramount importance of the child's well-being and the obligation of both parents and the State to ensure their protection and development.

147 Personal Name Act (*Slovene Zakon o osebnem menu*): Uradni list RS, št. 20/06, 43/19.
148 Art. 7(1) of the FC.
149 Art. 7(2) of the FC.
150 Art. 7(3) of the FC.
151 Art. 7(5) of the FC.
152 Art. 8 of the FC.

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