Chapter 5

Czechia: The Regulation and Legal Practice of Assisted Reproductive Technologies and the Best Interests of the Child

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Abstract

In addition to increasing reproductive tourism, human infertility and rapidly developing assisted reproductive technologies are 'burning' issues not only for lawmakers, but also for the judges deciding on the recognition of a foreign public document when the registry office declines to register the birth of a child delivered by a surrogate mother for intended parents abroad. However, this topic must be seen in its broader context. It is about a new way of looking at family life, family law, parenthood and human rights, including the rights of the child in the case of the anonymity of germ cell donation and the best interests of the child born through surrogacy, in the context of family policy and public order.

Keywords: assisted reproduction technologies, health service providers, germ cell donation, anonymity, surrogate motherhood, 'gender neutral' parenthood, child, status, problems, case law, public order, family policy, designed law

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1. Introduction

In 1982, the first 'test-tube' baby was born in Czechoslovakia. It was also the first child conceived through assisted reproduction in the former Eastern Bloc. Although this new method of assisted reproduction was not regulated by law, it was widely welcomed. Medical science was ahead of the law in the 1980s.[1] It was only subsequently that the Czech or Czechoslovak legislators began to comprehensively regulate assisted reproduction methods, which was also reflected in the legal regulation of family status law in the former Act on the Family of 1963 and the civil registry regulations. The maternity of a child conceived through assisted reproduction was conferred by birth, although this was not explicitly done until an amendment to the Act on the Family in 1998. As assisted reproduction was possible only for a married couple. The husband of the child's mother, whether he was also the biological father, was considered to be the father of the child born through assisted reproduction, if he had given his consent to assisted reproduction. Subsequently, assisted reproduction was also made available to unmarried couples, which had to be supplemented by a new regulation on the determination of the paternity of the man from an infertile couple in the Act on the Family in 2006. The consent of a man from an infertile couple to assisted reproduction was again a key prerequisite of its performance and for establishing the legal paternity of the child. Germ cell donation was permitted on the principle of anonymity.

The development of assisted reproduction methods has continued, so have the ideas and needs of people struggling with infertility. Everyone has the right to respect for his private and family life according to the Convention for the Protection of Human Rights and Fundamental Freedoms (published under No. 209/1992 Sb. in the Czech Republic). However, people often have very different ideas about the forms family life takes. It is therefore very difficult to create a family policy and legal framework for the protection of the family and family life that suits everyone. The most important question is whether and how the legislature should respond to the new phenomena and proposals by intended parents and how to balance them with the rights of the child and the best interests of the child.

Should the law open up assisted reproduction to single or widowed women and create *de facto* 'social' orphans? The case law of the Constitutional Court of the Czech Republic speaks against it. Shall the legal order regulate surrogacy as a healing method of infertility? A proposal was made by the Ministry of Justice of the Czech Republic. Indeed, *de facto* surrogacy is as old as humanity itself, as human infertility and the desire to have a child at any cost are connected vessels. However, it must be stressed that the right to a child has not been established *expressis verbis* either within the legal order of the Czech Republic, nor by human right conventions, namely the Convention for the Protection of Human Rights and Fundamental Freedoms. And, apart from

1 Králíčková, 1990, pp. 12–17.

the human or human rights dimension of surrogate motherhood,[2] one must see its cultural, social, ethical, medical, religious, economic and sometimes even criminal aspects.[3] At the outset, it should be stated that no child may be the object of a contract, whether it is entered into altruistically, to help an infertile woman or intended parents, or even for payment, whatever form it may take. No child should be at the risk of having his/her status, or legal parenthood questioned.[4] The rights of the child must not be seen only as abstract rights arising in particular from the Convention on the Rights of the Child,[5] but as concrete rights to be protected.

And there are more key questions. Should the lawmaker abolish the anonymity of germ cell donation and thus allow the child to know and contact his/her 'genetic' mother or 'genetic' father? Is there a need for a radical change in family law concepts in the light of the possible 'plurality' of a child's parents? Should the rights of the child and the best interests of the child be respected more in the legislation on assisted reproduction and practice? The legislation on assisted reproduction may be seen as being parent-centred. However, if it were not for the intended parents, the child would never have been conceived. The principle of the best interests of the child is particularly manifested by the fact that a child born through assisted reproduction always has 'only' two 'legal' parents, the mother and the father, since assisted reproduction is *de lege lata* available to infertile couples of the opposite sex.

However, in reality, the traditional idea of 'one child, one mother and one father', which balances legal, social and especially biological and genetic parenting, is often undermined. Sometimes unconsciously, accidentally. It might be surprising that, following the case law of the Constitutional Court of the Czech Republic and the relevant practice of the Supreme Court of the Czech Republic, the traditional concept of status rights is gradually being eroded. That is why nowadays more and more new conceptual questions arise. Should the concept of the status rights regulated by the Civil Code be fundamentally changed? Is it constitutionally consistent or desirable to endorse a child having two 'legal' mothers or two 'legal' fathers, or just 'gender-neutral' parenthood?

The following segment is mainly devoted to the rather liberal regulation and the practice of assisted reproductive technologies, besides the general aspects of the concept of a family and family life in Czechia.[6] Although the status law regulating affinity and kindship is traditionally conservative, the 'burning' reality is a case law and a designed law.

2 Králíčková, 2010, p. 49.
3 Garayová, 2022, pp. 65–85.
4 Králíčková, 2022, pp. 83–100.
5 Published under No. 104/1991 Sb. in the Czech Republic.
6 Králíčková, 2014, pp. 71–95.

2. Family Policy and Practice Regarding Assisted Reproduction and Relevant Statistical Data

2.1. Family Policy Concept

In 2017, the Family Policy Concept was developed by the Ministry of Labour and Social Affairs in cooperation with the Expert Commission for Family Policy in order to ensure a long-term and systemic solution to family policy in the Czech Republic.[7] The Family Policy Concept was developed in parallel with the Report on the Family, which provides a detailed analysis of the situation of families in contemporary Czech society. According to the website of the Ministry of Labour and Social Affairs, the Czech Republic – like other EU countries – is at the end of the second demographic transition, which is characterised by low marriage and high divorce rates, higher age of mothers having their first-born child, low fertility, the loosening of forms of partnership and increasing life expectancy.[8]

The section entitled 'What do families need?' was supplemented by data on preparing for a demographic change.[9] Among other things, the need for access to assisted reproduction was emphasised in this context. Following the observation that the natural threshold for starting a family has shifted in recent decades to the age of 30, it was pointed out that the proportion of infertile couples is increasing with this age shift. It was stated that the cost of modern assisted reproductive techniques is a barrier to their use and that it is 'basically inaccessible' for low-income families. The cost of an *In vitro* Fertilisation (IVF) cycle, including medication, is about CZK 30 000 – CZK 50 000 and the woman involved generally pays one third of the cost even if reimbursed by public health insurance. Although assisted reproduction is now available to women up to the age of 49, the Czech Republic is one of the countries with the lowest proportion of older women undergoing IVF. Women's health status can vary greatly. It was also stated that under the current legislation, which allows assisted reproduction only to infertile couples, there is a negative practice: 'Some women who do not have a partner also tend to opt for an undignified and risky route to pregnancy'.[10] It is a common knowledge that sometimes they present a 'fake' partner to the decision-maker.

7 See Ministerstvo práce a sociálních věcí, 2017.
8 Ibid., p. 11.
9 Ibid., p. 47.
10 Ibid., p. 53.

2.2. Family Policy Strategy

Following the above-mentioned Family Policy Concept, the Family Policy Strategy for 2024-2030 was developed.[11] After the introductory part, a summary of the background and an evaluation of previous conceptual materials in the field of family policy and the current challenges facing families were formulated. Regarding the issue of assisted reproduction, it was noted that a fertility forecast table was devised.

years	**2019**	**2022**	**2023**	**2026**	**2027**	**2028**	**2030**
number of children annual growth	112 944	107 293	105 341	99 637	97 993	96 589	94 685
in the number of births	- 1 269	- 1 929	- 1 952	- 1 828	- 1 644	- 1 404	- 794
annual growth in %	- 1.1	- 1.8	- 1.8	- 1.8	- 1.6	- 1.4	- 0.8

Table No. 1
Fertility forecast for the Czech Republic[12]

According to the Family Policy Strategy the task of family policy is, on the one hand, to minimise barriers to parenthood for those who intend to have children and are mainly prevented by structural and institutional influences, and, on the other hand, to create conditions that motivate those who do not hold parenthood as a preferred value or are concerned about its costs, impacts, relational life, etc.[13]

2.3. Institute of Health Information and Statistics and National Reproductive Health Registry

In addition to the Ministry of Health of the Czech Republic responsible for public health and assisted reproduction, there is the Institute of Health Information and Statistics of the Czech Republic as an organisational unit of the state.[14] Furthermore, there is the National Reproductive Health Registry which includes five modules.[15] According to the web page of the National Registry of Assisted Reproduction ('NRAR') the main goal of an assisted reproduction cycle is – in accordance with the definition of assisted reproductive treatment – to use embryos to attain pregnancy, to give birth

11 For details see Ministerstvo práce a sociálních věcí, 2024.
12 Ibid., p. 56.
13 Ibid., p. 56.
14 See Ústav zdravotnických informací a statistiky ČR, 2024a.
15 See Ústav zdravotnických informací a statistiky ČR, 2024b.

to a healthy, living child, but the cycle does not always have to lead to pregnancy immediately.[16] That is why NRAR also records cycles where the use of retrieved oocytes or embryos to attain pregnancy, is planned for future use, for example in women undergoing ovarian cancer treatment. Similarly, NRAR records cycles of women who choose to store their oocytes in cryobanks for use when their ovaries are no longer able to provide quality oocytes due to their age. Finally, NRAR records the cycles of female donors separately from those of female recipients. Since NRAR records those cycles that do not have the immediate goal of attaining pregnancy at the time of their treatment, it is necessary to separate such cycles before starting the efficiency (pregnancy) calculations. It was stressed that, as a measure of the effectiveness of assisted reproductive cycles, birth is too distant in time from the assisted reproductive treatment of infertility, and the pregnancy itself is subject to many risks unrelated to the assisted reproductive treatment itself. Therefore, the basic outcome parameter of cycles leading to pregnancy is 'clinical pregnancy', i.e. pregnancy visible on ultrasound examination or proven laparoscopically or histologically.[17]

Regarding data, it was stated that the number of all assisted reproduction cycles is increasing year on year. However, in 2020, the number of assisted reproduction cycles performed decreased, probably due to the Covid-19 epidemic and related anti-epidemic measures (travel and centre restrictions).[18]

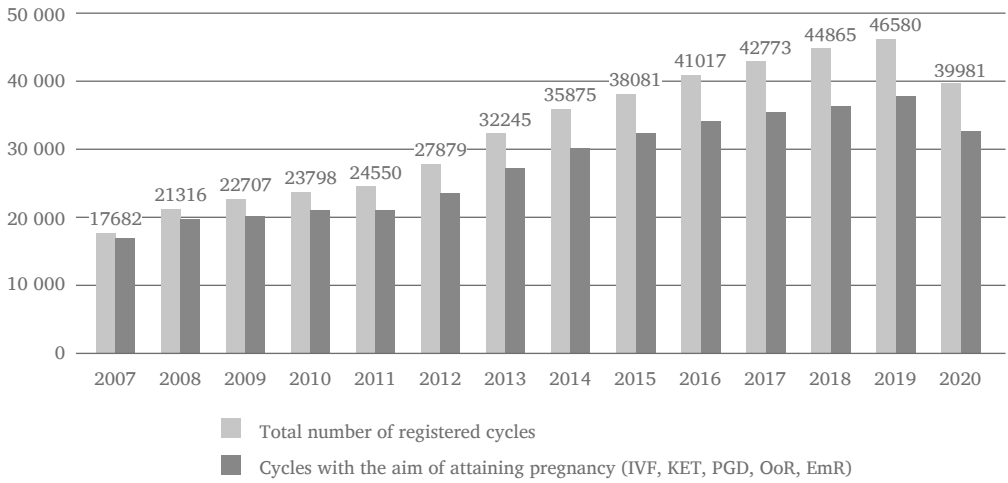


Table No. 2
Numbers of all assisted reproduction cycles[19]

16 See Ústav zdravotnických informací a statistiky ČR, 2022.
17 Ibid., p. 13.
18 Ibid., p. 18.
19 Ibid., p. 18.

As regards the details available from the webpage, it is evident that the number of 'classic IVF cycles' that are cycles aimed at treating infertility, is approximately stable (with the inclusion of cycles previously conducted under PGD). The IVF cycles in foreign women are slightly increasing.[20] It was published that while the donors are almost always women with their place of residence being the Czech Republic (99%), in contrast, the recipients of the eggs are foreign women in most cycles (85%). The trend corresponds to the well-known fact that the Czech Republic is sought by foreign women as a source of donated eggs, which is related to the availability of donors in the anonymous donation system, the quality of treatment in the Czech Republic, the intensive marketing of assisted reproduction centres and the fact that this treatment is legally permitted in the Czech Republic.[21] Finally, the 'Freeze All cycles' among women with their place of residence in the Czech Republic have increased sharply. The number of 'Freeze All cycles' is also increasing among foreign women, where the demand to maximise the chances of success and the birth of a healthy child seems to play a role, even though the reimbursement is mostly self-funded (without health insurance).[22]

It is surprising that the above-mentioned statistical data and the final summary do not provide any information about the implementation of surrogacy. This confirms the thesis that surrogate motherhood takes place behind so-called closed doors, without any official records. It is therefore not possible to say whether assisted reproduction for the purpose of surrogate motherhood concerns only Czech women, or whether it also applies to foreign women or whether it is altruistic or not.

2.4. Section of Assisted Reproduction of the Czech Gynaecological and Obstetric Society and Website 'Female Infertility'

In 1991, the Section of Assisted Reproduction of the Czech Gynaecological and Obstetric Society was founded in Brno. The reason why the city of Brno was chosen was because on the 4th of November 1982 the first 'test-tube' baby was born there at the first gynaecological and obstetric clinic in Czechoslovakia and former Eastern Europe. At the meeting, data from the new assisted reproduction registry were presented, including the results of five centres performing assisted reproduction methods in 1991.[23]

Based on the 'partner' website 'Female Infertility', currently approximately 20% of couples in the Czech Republic are struggling with infertility, so it affects every fourth to fifth couple. It was published that while infertility used to be considered a female problem, current knowledge has changed.[24]

20 Ibid., p. 28, Graf 10a.
21 Ibid., p. 29, Graf 10d.
22 Ibid., p. 30, Graf 10e.
23 See Sekce asistované reprodukce, 2024.
24 For more see Zenska neplodnost, 2024.

3. Constitutional Provisions and Other Laws on the Human Rights Aspects of Assisted Reproduction

According to the Preamble, the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic is based on recognising the inviolability of the natural rights of man, of the rights of citizens, and of the sovereign character of law, proceeding from the universally shared values of humanity and from the democratic and self-governing traditions of the nation, remembering the bitter experience gained at times when human rights and fundamental freedoms were suppressed in the country, hoping that these rights will be safeguarded through the common effort of all free nations and recalling – among – others its share of responsibility towards future generations for the fate of life on this Earth.[25] In addition to these values and goals stated in the Preamble, the Charter enshrines other rights in its individual articles: from general to more specific ones.

First, within 'General Provisions' it is stated that 'All people are free and equal in their dignity and in their rights. Their fundamental rights and freedoms are inherent, inalienable, illimitable, and irrepealable'.[26] This introductory provision is followed by guaranteeing the other general rights and freedoms, especially through the statement that

> Fundamental human rights and freedoms are guaranteed to everyone irrespective of sex, race, colour of skin, language, faith, religion, political or other conviction, ethic or social origin, membership in a national or ethnic minority, property, birth, or other status,
> No one may be caused detriment to his or her rights because he or she asserts his or her fundamental rights and freedoms

and that

> Duties may be imposed only by law and within its limit and only if the fundamental rights and freedoms of the individual are respected. Any limits placed on fundamental rights and freedoms may be governed only by law under the conditions set by this Charter…

and

> Any statutory limitation of the fundamental rights and freedoms must apply equally to all cases meeting the set conditions.

25 Act No. 2/1993 Sb., as amended, further 'Charter'.
26 Art. 1 Charter.

And finally, there is a provision stating that

> When applying the provisions on the limits of the fundamental rights and freedoms, their essence and meaning shall be respected. Such limits may not be abused for other purposes than those for which they were instituted.[27]

The part devoted to 'Fundamental Human Rights and Freedoms' contains a key provision for the purpose of this book which is 'Everyone has the right to live. Human life deserves to be protected even before birth' and 'No one may be deprived of his or her life'.[28] It must be stressed that the wording of the provision 'human life is worthy of protection even before birth' was very ardently debated during the legislative process and is the result of a compromise between opponents and supporters of abortion. However, the provision was never recognised as a ban on abortions or as limitation to the legality of abortions.[29] For the rights of the *nasciturus* see Point 6.1.

Within the chapter devoted to 'Economic, Social and Cultural Rights' the Charter provides for the constitutional protection of pregnant women and all children as follows 'During pregnancy women are guaranteed special care, protection in labour relations, and appropriate working conditions'. Furthermore, 'Children born both in and out of wedlock have equal rights'. Finally, it must be emphasised that the Charter protects on a constitutional level family as such as it includes general rules by wording 'Parenthood and the family are under the protection of the law'.[30] There are no established definitions either for parenthood, or for the family. It is in full harmony with the wide concept of the protection of family life guaranteed by international instruments. It is particularly the Convention for the Protection of Human Rights and Fundamental Freedoms that guarantees that 'Everyone has the right to respect for his private and family life'.[31]

Regarding medical care, and its accessibility for everyone, it is necessary to add the constitutional provision that 'Everyone has the right to the protection of his/her health. Citizens are eligible under public insurance for free medical care and medical aids under the conditions set by law'.[32] It must be underlined, that this constitutionally enshrined principle applies to assisted reproduction in practice as well. As will be discussed in more detail below, it is the specific law that places certain limits on people's desire to have children.

Let us add that the human rights dimension of assisted reproduction is emphasised by the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: in short the

27 Arts. 3, 4 of the Charter.
28 Art. 6 of the Charter.
29 Holčapek et al., 2023, p. 131.
30 Art. 32 of the Charter.
31 Published under No. 209/1992 Sb. in the Czech Republic.
32 Art. 31 of the Charter.

Convention on Human Rights and Biomedicine, or the Convention on Biomedicine.[33] As the Convention's starting point is that 'the interests of human beings must come before the interests of science or society', which also includes the best interests of the child, the use of assisted reproduction methods and procedures shall not be permitted for the purpose of selecting the sex of a future child, except where the use of assisted reproduction methods and procedures can prevent serious genetically determined sex-linked diseases. See Points 4.3. and 4.8.

When it comes to the provisions of sub-constitutional law regulating medical care and health services, the Act on Public Health Insurance,[34] the Decree on the Transmission of Data to the National Health Information System,[35] the Act on Health Services[36] and the Act on Specific Health Services[37] should be mentioned in particular, being the basic sources regulating assisted reproduction, but not surrogacy, which is not regulated as a healing method of infertility in Czechia.

Furthermore, other acts related to this area should also be mentioned, primarily the Act on Quality Assurance and Safety of Human Tissues and Cells for Human Use and the amendments of related acts, in short Human Tissues and Cells Act[38] and the Act on Research on Human Embryonic Cells and related activities and on the amendment of certain related acts, in short Human Embryonic Stem Cells Research Act.[39] Additionally, there is the Act on the Artificial interruption of pregnancy, the so-called Abortion Act[40] and its implementing degree (Degree No. 75/1986 Sb.) which are relevant regarding the issue of human life before birth. See Point 6.1.

In this context the Civil Code must also be mentioned No. 89/2012 Sb., as amended, referred to as the 'Civil Code' or 'CC'. This Code regulates the civil status of the natural person and particularly the determination of motherhood and fatherhood, including adoption.[41] Besides, the Civil Code includes basic provisions regarding the autonomy of a person's will and his/her contractual freedom, and its significant limits: good manners, public order, status law and specifically the rule, that the 'Human body and its parts, even if separated from the body, are not a thing'.[42] Finally, the Civil Code regulates the 'Contract for Health Care', which is the basis

33 Published under No. 96/2001 Sb. m. s. in the Czech Republic.
34 Act No. 48/1997 Sb., as amended.
35 Decree No. 373/2016 Sb.
36 Act No. 372/2011 Sb., as amended, referred to as 'AHS'.
37 Act No. 373/2011 Sb., as amended, referred to as 'ASHS'.
38 Act No. 296/2008 Sb., as amended.
39 Act No. 227/2006 Sb., as amended.
40 Act No. 66/1986 Sb., as amended.
41 For general information on Czech Family Law, Králíčková, 2021, pp. 77–109.
42 Section 493, Civil Code.

for the provision of health services regulated by special acts referred to above[43] and the section 'Obligations Arising from Torts' expressly deals with 'Compensation for pecuniary and non-pecuniary harm'.[44]

Finally, there are public law instruments sanctioning malpractice both at the level of misdemeanours and crimes, namely the Act on Liability for Offenses and Proceedings,[45] the Criminal Code[46] and the Act on Criminal Liability of Juristic Persons and proceedings against them, in short, the Juristic Persons' Criminal Liability Act.[47] Regarding advertisements and the rules thereof in the field of (but not limited to) assisted reproduction, there is the Act on the Regulation of Advertising.[48] Finally, there are several other significant acts, among them the one regulating procedure law etc.

43 Section 2636, Civil Code – A Contract for Health Care
(1) With the contract for health care, the provider undertakes, in regard to the mandator and within the provider's scope of occupation or objects of activities, to take care of the patient's health, whether the patient is the mandator or a third person.
(2) The provider shall receive remuneration from the mandator, if so stipulated; this does not apply if another legal regulation provides that the health care is exclusively paid from other sources.
Section 2637, Civil Code.
Health care includes intervention, examination and advice, and all other services which directly relate to the patient and the purpose of which is to improve or maintain the patient's health condition. However, health care is not an activity merely consisting of the sale or other transfer of medicinal products.

44 Section 2913, Civil Code – Breach of a Contractual Duty
(1) If a party breaches a contractual obligation, this party shall provide compensation for the resulting damage to the other party or the person who was evidently intended to benefit from the fulfilment of the stipulated obligation.
(2) A tortfeasor is released from the duty to provide compensation if he/she proves that he/she was temporarily or permanently prevented from fulfilling his/her contractual obligations due to an extraordinary, unforeseeable and insurmountable obstacle arising through no fault of his/her. However, an obstacle arising from the tortfeasor's personal circumstances or arising when the tortfeasor was in default of performing his/her contractual obligations, or an obstacle which the tortfeasor was contractually required to overcome shall not release him/her from the obligation to provide compensation.

45 Act No. 250/2016 Sb., as amended.

46 Act No. 40/2009 Sb., as amended.

47 Act No. 418/2011 Sb., as amended.

48 Act No. 40/1995 Sb., as amended.

4. Medical Regulation of Assisted Reproduction

4.1. The Concept of Assisted Reproduction

In addition to the constitutional level analysed above, the medical regulation of assisted reproduction is primarily included in the Act on Specific Health Services.[49] This act defines the basic concepts such as assisted reproduction, infertile opposite-sex couple as beneficiary (married or *de facto*) and their informed consent, anonymous donor, mutual anonymity of the donor and the infertile couple, and especially the conditions and limits for its implementation, as follows.

According to law, the assisted reproduction means methods and procedures involving the collection and manipulation of germ cells, the creation of a human embryo by fertilisation of an egg with sperm outside the woman's body, the manipulation and storage of human embryos for assisted reproduction of the woman, namely (a) for medical reasons in the treatment of her infertility or the infertility of a man, if it is unlikely or unattainable for the woman to become pregnant naturally or to bear a viable foetus and if other treatments for her or the male's infertility have not led or are highly unlikely to lead to her becoming pregnant or (b) as regards the need for the early genetic testing of the human embryo, if the health of the future child is endangered because of a demonstrable risk of transmission of genetic diseases or defects carried by the woman or the man.

It is important that assisted reproduction may be performed on a woman of child-bearing age, provided that she is under 49 years of age.[50] However, financing by the public health insurance is available only till the age of 40. For details see Point 4.7. It must be added that there is no age limit for the man of an infertile couple.

Regarding details on assisted reproduction, there is a definition of germ cells by the lawmaker: germ cells mean eggs and sperm for the purpose of the act. The act provides what germ cells can be used for the assisted reproduction of a woman. These are either (a) eggs obtained from the woman; or (b) sperm obtained from a man who is undergoing fertility treatment together with the woman; or (c) germ cells donated by another person, i.e. a donor who must be anonymous. Finally, it is stated that germ cells may be collected and used for assisted reproductive techniques and procedures if the medical suitability has been assessed for (a) the persons from

49 Act No. 373/2011 Sb., as amended, referred to as 'ASHS', Section 3. See English version of the ASHS: Parliament of Czech Republic, 2011.

50 Pursuant to the Act, the beneficiary – the woman – shall not be a person whose legal capacity is limited in such a way that she is incapable of assessing the provision of health services, or the consequences of their provision, or deprived of parental responsibility, even partially (note: a woman can be limited in her legal capacity in relation to parental responsibility only for a child who is already alive). A person in police custody, detention, imprisonment or pre-trial detention may not be a beneficiary, either. Unlike the donor, there are no special conditions or requirements against a man of the infertile couple. See Point 4.2.

whom the germ cells are to be taken, and for (b) the woman to be inseminated (a. i. 'the recipient'). This means that health suitability among both infertile couples and possible donors must be assessed by the provider of assisted reproduction before it is carried out.

There are additional methods of assisted reproduction according to the law. It is stressed that the assisted reproduction method for treating woman's infertility is (a) the introduction of sperm into the reproductive organs of a woman; (b) the transfer of a human embryo resulting from the fertilisation of an egg by sperm outside the woman's body into the woman's reproductive organs (that is '*in vitro* fertilisation' and 'embryo transfer', in short 'IVF' and 'ET').

A written request from a woman and a man who intend to undergo this medical service together is the key prerequisite of assisted reproduction: a so-called informed infertile couple of the opposite sex, married or *de facto*.[51] The request from the infertile couple asking for assisted reproduction must not be more than 6 months old; it shall form part of the medical records kept on the woman.[52] The request and then the written consent shall be repeated before each assisted reproduction is performed.[53] If assisted reproduction is defined very broadly, i.e. the methods and procedures for harvesting germ cells, manipulating them, creating a human embryo, it must be concluded that a written consent is required for all these individual services.

In case the request or consent is not given, or is withdrawn, assisted reproduction shall not be performed. As referred to above, the consent must be given by both parties: the woman and especially the man of the infertile couple. This provision is in line with the well-known case law of the European Court of Human Rights in Evans v. the United Kingdom.[54] It is very important especially in the case of a *de facto* infertile couple, and sometimes even a 'fake' infertile couple. It should be added in this respect that assisted reproduction comes into consideration by the nature of the matter only between the 'living' infertile couple, although it is not expressly prohibited in the event of the death of the husband or the partner of a woman of the infertile couple. In this respect, such a case law at the European Court of Human Rights has appeared in the *Pejřilová v. the Czech Republic* case.[55] For details see Point 4.9.

The Act on Specific Health Service regulates that prior to the commencement of assisted reproduction methods and procedures, the provider shall provide the

51 According to the Act, the assisted reproduction may not be performed on a woman who has a relationship with the man with whom she has submitted an application that precludes marriage under the provisions settled by the Civil Code: they are relatives in a direct line and siblings.

52 The infertile couple may request that a witness of their choice be present when the information is given. The record of the submission of the information shall be signed by the infertile couple, the attending physician and, where appropriate, the witness; it shall form part of the medical records kept on the recipient.

53 The consent given shall be recorded in the medical records kept on the recipient by the attending physician, who shall sign the record; the record shall also be signed by the recipient.

54 *Evans v. the United Kingdom*, Application No. 6339/05, Judgement of 10th April 2007.

55 *Pejřilová v. the Czech Republic*, Application No. 14889/19, Judgement of 8th December 2022.

infertile couple information on the nature of the proposed methods and procedures, their lasting consequences and possible risks, and the manner in which surplus human embryos may be disposed of, including the estimated financial cost and duration of their storage. The infertile couple shall also be provided with information on the determination of parenthood of the child under the Civil Code, if the child has been conceived by assisted reproduction. See below, Point 5.1.

4.2. About Donors and the Mutual Anonymity Between Them and the Infertile Couple

Regarding general conditions set for germ cell donors, the Act on Specific Health Services states that an anonymous donor may be (a) only a woman who has reached the age of 18 and has not surpassed the age of 35 and (b) a man who has reached the age of 18 and has not surpassed the age of 40.[56] There are no legal limits regarding the number of donated cells. There is no central registry of donors which is sometimes noted as being a 'risky' situation due to the possibility of one donor 'visiting' several health service providers.[57] However, according to the literature, all the eggs obtained from one female-donor are used in practice by one health service provider only for one recipient.[58]

As for the so-called quality of donors, or germ cells, it was published that donors are selected on the basis of age, health, medical and laboratory examination, medical and behavioural history as stated in the questionnaire, and based on a personal interview with the health service provider. The evaluation and selection also includes factors relevant to assessing the potential risk to the future child (e.g. risk of sexually transmitted diseases, genetic defects and diseases, etc.) and to the donor (e. g. risks associated with egg retrieval, etc.). It was added that donor screening includes testing for HIV 1 and 2, HBV and HCV and syphilis and, for male-donors, chlamydia trachomatis.[59]

Finally, the Act on Specific Health Services states that the person from whom the germ cells were taken is not entitled to financial or other compensation for the removal of the germ cells. However, the provider who carried out the donation shall reimburse the anonymous donor, on the basis of his/her request, for the expenses incurred in connection with the donation of germ cells in an efficient, economical and demonstrable manner. It was published that a male-donor may receive between

56 The Act on Specific Health Services provides further details stating that a person may not be an anonymous donor, (a) whose legal capacity is limited so that he/she is incapable of assessing the provision of health services or the consequences of their provision, (b) who is incarcerated in a police cell, in custody, imprisonment or pre-trial detention or in a detention facility for foreigners or in an asylum facility, (c) ordered to be isolated, quarantined or placed under inpatient protective treatment or (d) who is hospitalised without consent.

57 Mach et al., 2023, p. 471.

58 Kohoutová, 2023, p. 8.

59 Mach et al., 2023, p. 483.

CZK 2 000 and CZK 3 000 for sperm donation and a female-donor may receive a much higher reimbursement between from CZK 25 000 and CZK 28 000, for eggs donation, which is justified by the hormonal stimulation, the longer duration of the full procedure and general anaesthesia.[60] Reimbursement may be claimed from the recipient of the assisted reproduction or from the provider to whom the germ cells or human embryos were transferred for the purpose of assisted reproduction. The provider who received the germ cells or human embryos for assisted reproduction and who reimbursed the expenses may claim reimbursement of those expenses from the recipient of the assisted reproduction, i.e. the infertile couple.

The strict approach to donor anonymity by the Czech lawmaker is not only about the rights of donors for their identity to be kept anonymous, but it is also a necessity, or condition of assisted reproduction.[61] The provider who is authorised to perform assisted reproduction methods and procedures shall ensure that the mutual anonymity of the anonymous donor and the infertile couple and the anonymity of the anonymous donor and the child born from assisted reproduction is preserved. And finally, it is emphasised that a provider who has carried out a medical suitability assessment of an anonymous donor and a woman or man of an infertile couple shall be obliged to transmit the information on their health status necessary for assisted reproduction to the provider who carries out the assisted reproduction; this provider shall keep the information on the health status of the anonymous donor for a period of 30 years following the assisted reproduction and shall, on written request, provide the information on the health status of the anonymous donor to the infertile couple or the adult born from assisted reproduction.

As referred to in the introduction, the anonymity of donors is a rather controversial, topical issue in Czechia. There are a large number of supporters of the present concept, although the right of the child to know the origin, his or her roots is, pursuant to the law, limited to medical information, or health data. On the other side, some critics of the *de lege lata* regulation call for child open identity, sometimes with idealistic views. However, there are no European standards in this domain.[62] The European Court of Human Rights stated in many cases that the states have a relatively wide range of appreciation regarding the anonymity of donors.[63]

4.3. On the Other Limits of Assisted Reproduction

Regarding the limits of assisted reproduction, in addition to those settled by the international conventions referred to above, particularly by the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: the Convention on Human Rights and

60 Kohoutová, 2023, p. 9.
61 Sections 10 and 11, ASHS.
62 Ignovska, 2015.
63 Holčapek et al., 2023, p. 127, see case-law referred to.

Biomedicine, the Act on Specific Health Services provides that assisted reproduction methods and procedures may be performed if the requirements set out in the Human Tissues and Cells Act have been met.[64] The use of assisted reproduction methods and procedures shall not be permitted for the purpose of selecting the sex of a future child, except where the use of assisted reproduction methods and procedures can prevent serious genetically determined sex-linked diseases. And finally, germ cells and human embryos may be used only for assisted reproduction. This shall not apply in the case of human embryos not used for assisted reproduction which may be used for research on human embryonic stem cells under the conditions and for the purposes laid down in the law governing research on human embryonic stem cells by the Human Embryonic Stem Research Act.[65]

4.4. Surrogacy as a Healing Method of Infertility?

It must be stressed again that surrogate motherhood has never been regulated by medical law.[66] As referred to above, it is neither permitted nor prohibited in the current legal system. What are the limits or restrictions on surrogacy? Although it is not explicitly prohibited in the Act on Specific Health Services, it must be concluded that the prohibition on surrogacy for health service providers follows from the purpose of the Act.

First, assisted reproduction can only be performed on an infertile woman, or an infertile couple. However, the surrogate mother is not and must not be infertile by the nature of the case. Second, in the case of the donation of germ cells, the law strictly imposes the duty of anonymity. See above. Thus, it must be inferred that if the intended parents of the child and the surrogate mother know each other and have entered into a contract with each other, the law based on anonymity would be circumvented.

However, the interpretation of the Act on Specific Health Services is complicated by the fact that the Civil Code contains the words ‘surrogacy’, although only in the context of regulating the conditions of adoption, where it is expressly mentioned.[67] See below, Point 5.2.

As highlighted above, the statistical data and final summary by the Institute of Health Information and Statistics and the National Reproductive Health Registry do not provide any information about the implementation of surrogacy in Czechia. This confirms the thesis that surrogate motherhood takes place behind so-called closed doors, without any official records. See Point 2.3.

64 Act No. 296/2008 Sb.
65 Act No. 227/2006 Sb.
66 Haderka, 1986, pp. 917–934.
67 Section 804, Civil Code.

4.5. About Surplus Embryos

It is no secret that, in practice, an excess of human embryos is created due to hormonal stimulation, which raises a number of not only ethical questions. There are no limits regulated by the law. Some authors speak euphemistically about the 'reduction' of embryos,[68] others critically and directly about 'consumable' or even 'waste' material.[69]

The Act on Specific Health Services pays serious attention to the issue of unused human embryos.[70] The Act provides that if the assisted reproduction of the recipient has not used all the human embryos created for the benefit of the infertile couple, they may be preserved and used for their further assisted reproduction. This does not apply if the infertile couple declares in writing that they do not intend to use those embryos for their next assisted reproduction and consent to their use for another anonymous infertile couple or consent to the use of surplus embryos for research under the Human Embryonic Stem Cells Research Act or to their disposal. The declaration may be revoked by the infertile couple at any time; this does not apply if the human embryos have already been used by another infertile couple or disposed of in accordance with the declaration.

If the human embryos have not been used or the infertile couple has not made a written declaration about their disposal in accordance with above rules, the provider may, after 10 years of storing those embryos, repeatedly request the infertile couple in writing[71] to provide a statement on the continued storage of those embryos, including consent to their disposal. If the infertile couple does not respond to the repeated written request from the provider, the human embryos may be disposed of without the infertile couple's statement.[72] Finally, the Act states that on the basis of a written declaration or written consent given following a request, the provider shall arrange for the destruction of the stored frozen human embryos in the presence of at least 2 healthcare professionals.[73]

68 Šnédar, 2023, p. 25.

69 Valc, 2017, p. 21.

70 Section 9, ASHC.

71 Repeated written notice shall mean its verifiable mailing through a postal service provider to the address of the infertile couple known to the provider, on at least two occasions, at least 60 days apart. The time limit for the infertile couple to make a statement based on the second invitation shall be 30 days from the date of its receipt.

72 The summons is delivered on the day when the addressee receives it, otherwise it is deemed to have been delivered upon the expiry of the period of 10 days from the date of notification of its deposit with the postal service operator. If the summons is undeliverable due to a change in address of the infertile couple or if its receipt has been refused, the summons shall be deemed to have been served on the date of its return to the provider. The same procedure shall apply if the notice is undeliverable to only one person of the infertile couple.

73 The medical records kept on the recipient shall include a written declaration or written consent, or, where applicable, a delivery note or other document certifying that the written invitation was sent to the infertile couple and a record of the disposal of the human embryos; the record shall be signed by the health professionals who were present at the disposal of the human embryos.

4.6. On the Providers of Assisted Reproduction

As regards providers of assisted reproduction, the Act on Specific Health Services states, that treatment by assisted reproduction methods may only be carried out by a provider who has been granted an authorisation to provide health services in the field of reproductive medicine or, in the case of assisted reproduction in the field of gynaecology and obstetrics.[74] In accord with the freedom of enterprise, there are several providers of the treatment of assisted reproduction, both natural and legal entities in line with the private or public law without any legal distinctions. Some of these entities are divisions of university (teaching) hospitals as their contributory organisations.[75]

It was released that in 2020 there were 48 providers of assisted reproduction, or registered centres in Czechia. The increase in the number of centres serves the significant request of foreign women coming to the country for treatment.[76]

4.7. Financing of Assisted Reproduction

In addition to the constitutional level presented above, there is a sub-constitutional law regulating medical care, in particular the Act on Public Health Insurance.[77] This act stipulates that health insurance covers health services on assisted reproduction provided on the basis of a recommendation from a registered provider in the field of gynaecology and obstetrics in connection with assisted reproduction in the form of *in vitro* fertilisation (a) women with bilateral fallopian tube incompetence aged 18 years and over until the date of their 40th birthday, (b) other women aged from 22 years to the date of reaching the age of 40 years, but not more than three times in a lifetime, or, if in the first two cases not more than one human embryo resulting from the fertilisation of an ovum by sperm outside the woman's body has been transferred into the woman's reproductive organs, four times in a lifetime.[78]

This means in practice that health insurance covers the hormonal stimulation and *in vitro* fertilisation (IVF) cycles referred to earlier, but no additional and above-standard services such as cryopreservation of gametes and embryos, their prolonged cultivation, preimplantation genetic testing and other cycles.[79] As referred to above, the cost of an *in vitro* fertilisation (IVF) cycle, including medication, costs CZK 30 000 to CZK 50 000 and the woman generally pays one third of the cost even if reimbursed by public health insurance. It was stressed that the cost of modern assisted reproductive techniques is a barrier to their use and that it is 'basically inaccessible'

74 Section 4, ASHS. For details see Decree No. 99/2012 Sb., on the minimum requirements of the technical and material equipment of medical facilities and home care contact workplaces.
75 Golčapek et al., p. 20.
76 See Ústav zdravotnických informací a statistiky ČR, 2022, p. 15.
77 Act No. 48/1997 Sb., as amended, 'APHI'.
78 Section 15, para. 3, APHI.
79 Mach et al., p. 495.

for low-income families. See Point 2.1. It must be added that assisted reproduction is available for woman till the age of 49. This means that if the woman is over 40 years old, the infertile couple must pay for all the services according to the conditions set by the provider. The same rules apply to the infertile couple if surrogacy is involved.

4.8. Malpractice and Sanctions

The Act on Specific Health Services provides for an appropriate sanction for virtually every breach of the administrative obligation set out in the Act. This act is *lex specialis* in relation to the Civil Code and its regulation of a 'Contract for Health Care', 'Obligations Arising from Torts' and especially rules for 'Compensation for pecuniary and non-pecuniary harm'. See Point 3.

Regarding the topic of assisted reproduction, it is regulated that the provider carrying out assisted reproduction methods commits an offence by (a) disposing of human embryos violating the rules referred to above, (b) failing to ensure the common anonymity of the anonymous donor and the infertile couple and the anonymity of the anonymous donor and the child born from assisted reproduction, and (c) failing to keep data on the health status of the anonymous donor for a period of 30 years after the assisted reproduction has been carried out.[80]

The offence is punishable by a fine of up to CZK 100 000 – CZK 500 000, depending on the type of offence. The Act on Specific Health Services sets out the criteria to be taken into account in determining the amount of the fine. According to the commentary to the Act on Specific Health Services, a legal or natural person whose administrative offence is the subject of administrative proceedings before the competent authority must be proven in those proceedings to have breached the relevant administrative obligation under the Act on Specific Health Services. However, it is not necessary to prove its fault or harmful consequence. A legal or natural person, as a party to administrative proceedings for the imposition of a penalty for an administrative offence, may be exempted from liability if it proves that it has made every effort that could be required to prevent the breach of the administrative obligation. The burden of proof of this fact shall be on the legal or natural person concerned – the party to the administrative proceedings. The Ministry of Health is authorised to take administrative proceedings in the event of a breach of law, that is in the case of verification of non-established methods of providing health services and breach of the rules laid down by law for this activity. Furthermore, the Ministry of Health is competent to impose a sanction for an administrative offence in connection with the performance of external clinical audits. In the case of all other administrative offences, the competent administrative authority that issued the authorisation to

80 Section 90, sub-section 2, ASHS.

provide health services to the relevant provider, which is the regional authority or the Prague City Hall, is competent to deal with them.[81]

Administrative offences and penalties imposed are decided in administrative proceedings under the special Act.[82] Appeals against the decision of the administrative authority may be lodged with the Ministry of Health. Appeals against decisions of the Ministry of Health may be lodged with the Minister of Health or the Chairman of the Office. Decisions are reviewable by a court under the special Act.[83]

Criminal penalties are also regulated by a special law.[84] In relation to the topic of assisted reproduction, particularly relevant are offences related to the unauthorised handling of human tissues and organs, human embryo and human genome regulated in the section on offences against life and health; namely (a) the unauthorised removal of tissues and organs, (b) the unlawful disposal of tissues and organs, (c) the removal of tissue or organs and the performance of transplantation for consideration, and (d) the unlawful disposal of the human embryo and the human genome. It may also be an offence under the offences against liberty: namely (a) trafficking in human beings and (b) entrusting a child to the authority of another. The criminal procedural regulation is laid down in a special law.[85]

4.9. About the Case-Law on the Limits of Assisted Reproduction: Solely Inter Vivos

Recently there was a case dealt with all court instances of the Czech Republic and by the European Court of Human Rights. The result can be comprehended as 'sad' from a human point or view, but it was made in accordance with the law. The case law speaks for the 'good' practise in Czechia. However, in literature the issue was noted as 'controversial'.[86]

The facts were as follows.[87] The applicant and her husband got married in 2012. They were unable to conceive a child naturally. The applicant's husband had a serious disease, so the couple sought the help of a centre for medically assisted reproduction ('the Centre'). In June 2014 the applicant's husband had his sperm cryopreserved, signing a consent form agreeing to such preservation for the purpose of having infertility treatment. The consent form included, *inter alia*, information indicating that further written consent would be required before each occasion when sperm would be thawed for the assisted reproduction procedure, and that unless clearly determined otherwise, storage of the sperm would be discontinued in the

81 Mach et al., 2023, pp. 770–771.
82 Act No. 500/2004 Sb., Administrative Procedure Act, as amended.
83 Act No. 150/2002 Sb., Administrative Court Procedure Act, as amended.
84 Act No. 40/2009 Sb., the Criminal Code, as amended.
85 Act No. 141/1961 Sb., Criminal Procedure Code, as amended.
86 Holčapek et al., 2023, p. 125.
87 Information processed on the basis of the European Court of Human Right's case of *Pejřilová v. the Czech Republic*, Application No. 14889/19, Judgement of 8th December 2022.

event of the donor's death. In December 2014 the applicant and her husband signed informed consent forms agreeing to infertility treatment using *in vitro* fertilisation (IVF), and to the thawing of the applicant's husband's sperm and its use in intracytoplasmic sperm injection. In signing the forms, they agreed to notify the Centre of any changes in their relationship which could cause the treatment to be terminated. Subsequently, the applicant's husband's health deteriorated and he died in June 2015, before any further steps had been taken (namely, the file did not indicate that the applicant had started the necessary hormone treatment or had her ova collected). In September 2015 the applicant asked to have her eggs fertilised with her late husband's cryopreserved sperm. The Centre refused, stating that such a procedure would be contrary to the law, and suggested that the applicant instigate court proceedings in which they could reach a settlement.

Regarding court proceedings, the applicant lodged an action with a District Court in October 2015, seeking to compel the Centre to perform the treatment and, in accordance with her late husband's wishes as demonstrated by the above consent forms, fertilise her eggs with his sperm. At a hearing both parties expressed their readiness to reach a settlement. On the same day the District Court did not approve such a settlement, since it would have been contrary to the law which required that consent to the treatment be less than six months old. See Point 4.1.

There followed a series of legal vicissitudes, including an extraordinary appeal to the Supreme Court of the Czech Republic.[88] Then, in November 2018, the Constitutional Court of the Czech Republic dismissed a constitutional appeal by the applicant. It considered that the lower courts had adequately examined the applicant's arguments and provided detailed reasoning for their findings, and that the Supreme Court had duly taken into account the constitutional dimension to the case as well as the Court's case-law.[89]

Finally, in March 2019 the applicant submitted an application to the European Court of Human Rights arguing that the Czech Republic should respect her choice of the father of her child, as well as her late husband's wish to have a child with her and should allow her to continue with the assisted reproduction procedure using her late husband's frozen sperm. She relied on Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In her view, the national courts' decisions had been formalistic.

The European Court of Human Rights ('Court') admitted that in the field of medically assisted procreation in general, legal provisions are developing quickly, as demonstrated by a comparison between the Council of Europe study of 1998 and the Survey conducted by the International Federation of Fertility Societies in 2007. However, it was stated that the present case raises specific ethical questions linked to the issues of public interest, allowing for the States' wide margin of appreciation.

88 The Ruling of the Supreme Court of the Czech Republic of 21st February 2018, No. 21 Cdo 4020/2017.

89 The Ruling of the Constitutional Court of the Czech Republic of 8th November 2018, No. I. ÚS 1099/18.

It was stressed that in the Court's view, the Czech legislature's decision to enact such provisions, and their interpretation by the domestic courts, reveal the intention to respect human dignity and free will, as well as a desire to ensure a fair balance between the parties involved in assisted reproduction, so that every person donating gametes for the purpose of such treatment would know in advance that no use could be made of his or her genetic material without his or her continuing consent. The Court has already held that such general interests are legitimate and consistent with Art. 8 of the Convention. This is all the more so, that the Czech Republic has to be afforded a wide margin of appreciation in this respect, which it did not overstep. In view of the foregoing considerations, the Court is of the view that there has been no violation of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.[90]

5. Family Law Regulation on Affiliation

5.1. Law in Books: 'One Child, One Mother and One Father' as a Principle

Statutory law is regulated by mandatory rules in the Civil Code. It is stated that 'Kinship is a relationship based on a blood tie or originated by adoption'.[91] According to the Czech legal order, the child, as a rule, can have only two 'legal' parents of the opposite sex: the mother and the father. For exceptions, see below.

As referred to above, assisted reproduction is available for both married and unmarried infertile couples. Informed consent of a man and a woman – 'intended parents' – is a key prerequisite which is a base for assisted reproduction, both homologous and heterologous. See Point 4.

The Civil Code provides that 'The child's mother is a woman who gives birth to the child',[92] regardless of who the donor of the egg, or the embryos was. Legal motherhood is thus identical with biological motherhood and in the case of egg or embryo donation the genetic motherhood is irrelevant. As referred to above, the regulation of assisted reproduction is included in the Act on Specific Health Services. This Act provides the rules for implementation of assisted reproduction, but also sets various limits, or restrictions. For the sake of completeness, assisted reproduction is available only for infertile couples of the opposite sex. That is why the child cannot have two 'legal' mothers according to the Czech law on assisted reproduction, or filiation.[93]

90 Pejřilová v. the Czech Republic, Application No. 14889/19, Judgement of 8th December 2022.
91 Section 771, Civil Code.
92 Section 775, Civil Code.
93 If a woman in a partnership with another woman concluded according to the Civil Code gives birth to a child conceived by means of assisted reproduction, the man who consented to the assisted reproduction is deemed to be the father of the child.

Regarding surrogate motherhood, it is not regulated in the Czech legal order, either in the Act on Specific Health Services, or in the Civil Code, except for 'one note' in connection with adoption among close relatives. The Civil Code provides that adoption is excluded between persons who are relatives in the direct line and the siblings 'except for kinship based on surrogate motherhood'.[94] This 'supplement' to the traditional concept of motherhood, or adoption was included into the draft Civil Code by a 'the last-minute' proposal.[95] It should be added that an adoption is the only 'legal' way for a woman to become a 'legal' mother of the 'ordered' child.

Denial of maternity is not explicitly regulated in the Civil Code. However, in the practice of the Czech courts there have been cases where this issue has arisen, for example, in the case of switching babies in the maternity ward or the birth of a surrogate mother who proved her identity in the maternity hospital by the ID of her sister, a woman of the 'intended' couple.

Regarding the legal rules on fatherhood, it is provided by the Civil Code that the child's father is a man whose fatherhood is based on one of the three legal rebuttable presumptions of paternity.[96]

The first presumption is in favour of the mother's husband, if the child is born in wedlock or within 300 days since its end.[97] Generally, a husband may deny his paternity in court within six months from becoming aware of the facts constituting reasonable doubt that he is the father of a child born to his wife, but no later than six years after the birth of the child.[98] A child's mother may, within six months of the child's birth, refute that the child's father is her husband.[99] The child has no right of denial.

There are special rules regarding assisted reproduction. It must be stressed that any sperm donation is irrelevant if the husband has given his consent to assisted reproduction in accordance with the law. However, paternity may not be denied with respect to a child born during a period between the one hundred and sixtieth day and the three hundredth day after the assisted reproduction was carried out with the consent of the mother's husband, regardless of the genetic substance used. This does not apply if the child's mother got pregnant in a different way.[100] This means that a husband may deny his paternity even in the case of assisted reproduction by donation, if he has given his consent to it, but only if he proves that his wife has become pregnant in a different way: i.e. if he proves in particular that she had sex with another man and that the child is genetically linked to that man by a DNA test.

The second presumption respects the autonomy of will of the child's non married parents and provides that the man who has stated so, together with the child's

94 Section 804, Civil Code.
95 Králíčková et al., 2020, p. 491.
96 Section 776, Civil Code.
97 Section 776, Civil Code.
98 Section 785, Civil Code.
99 Section 789, Civil Code.
100 Section 787, Civil Code.

mother, is the father of her child.[101] The law provides that a man whose paternity has been determined by an affirmative statement of both parents may only deny the paternity of a child if it is impossible that he could have been the father of the child. He may do so within six months from the date on which the paternity was so determined; where the paternity is determined before the birth of the child, the time limit shall end no earlier than six months after birth.[102] The child's mother may deny that the man whose paternity has been determined by an affirmative statement of both parents is the child's father within the same time limit as the man.[103] Again, the child has no right of denial of the fatherhood.

Let us add that any sperm donation is irrelevant if the man of the infertile unmarried couple has given his consent to assisted reproduction in accordance with the law. The Civil Code provides that if a child conceived through assisted reproduction is born to an unmarried woman (or the woman is registered in a civil partnership with another woman), the man who gave consent to the assisted reproduction is presumed to be the child's father.[104] Similarly, as in the case of a married man, denial of paternity is also possible if the unmarried mother of the child becomes pregnant in a way other than as a result of assisted reproduction. This means that a man from an unmarried couple may deny his paternity even in the case of assisted reproduction by donation, if he has given his consent, but only if he proves that the child's mother has become pregnant in a different way: i.e. if he proves in particular that she had intercourse with another man and that the child is genetically linked to that man by a DNA test.

It must be emphasised that it is the second presumption, i.e. the consenting declaration of the man and the surrogate mother, that is often used in practice as a 'legal' way for a man from an infertile couple to become the 'legal' father of an 'ordered' child. The other option is a adoption, which, however, is only permitted by law for married couples (or recently for the same-sex partners who entered into civil partnership according to the Civil Code).

As referred to above, the child is not allowed to deny paternity of his or her 'legal' father *de lege lata*. However, there are special legal rules protecting the rights of the child and the best interests of the child. In this respect, the Civil Code provides that

> if an application for the denial of paternity is filed after the time limit for denial has elapsed, a court may decide that the elapsed time limit is waived if required by the child's interest and public order.[105]

101 Section 779, Civil Code.
102 Section 790, Civil Code.
103 Section 791, Civil Code.
104 Section 778, Civil Code.
105 Section 792, Civil Code.

and that

> if required by the evident interest of the child and in order to fulfil the provisions guaranteeing fundamental human rights, a court may, even of its own motion, initiate proceedings on a denial of paternity if paternity has been determined by an affirmative statement of both parents, but the child's father determined in this manner cannot be his/her father. At the same time, the court shall also typically suspend the exercise of parental responsibility.[106]

To conclude the issue, the third presumption is based on the sexual intercourse in the so-called critical period: the father of an unmarried woman's child is considered to be the man who had intercourse with her within the period of 160 days up till the birth and within the period not exceeding 300 days before the birth unless his fatherhood is excluded by fundamental reasons.[107] The court will decide on the 'legal' parenthood of a man, in practice through DNA testing.

Let us add that there are some exceptions to the above-mentioned rule of 'one child, one mother, one father'. As of 1st January 2025 an amendment to the Civil Code comes into force,[108] which verifies same-sex partnerships besides marriage designed only for opposite-sex couples and besides same-sex registered partnership regulated by a special Act.[109] According to the novelty of the Civil Code, the provisions governing marriage and the rights and obligations of spouses apply in principle to the rights and obligations of partners of the same sex entering into partnership according to the Civil Code.[110] However, it will not concern the establishment of parenthood, except for so-called stepparent adoptions. This means that it is possible for a child to be adopted even by the same-sex partner of his/her parent, male or female, living in a marriage or a partnership. That is why the only way for the child to have two 'legal' same-sex parents would be adoption or the recognition of the same-sex parenthood established abroad. For details, see below, Point 5.4.

5.2. Surrogacy as 'Burning' Issue

It is no doubt that surrogacy raises several issues, particularly legal ones.[111] Since the current legal regulation of assisted reproduction is rather liberal and the Civil Code does not prohibit surrogacy explicitly, a Pandora's Box is gradually opening. It is common knowledge that surrogacy occurs in the Czech Republic with the silence of the legislator, both factually, i.e. naturally, but also with the help of assisted

106 Section 793, Civil Code.
107 Section 783, Civil Code. Králíčková, 2008, pp. 275–282.
108 Act No. 123/2024 Sb.
109 Act No. 115/2006 Sb., on Registered Partnership, as amended.
110 Recently, the same-sex persons entering into a partnership according to the Civil Code will have, for example, community property, family dwelling protection etc.
111 Scherpe et al., 2019.

reproduction technologies at the clinics of health service providers.[112] We emphasise that the Act on Specific Health Services does not include surrogacy among the methods of treatment for infertility and makes it possible to carry out assisted reproduction only with an infertile couple. For details, see above, Point 4.

It should be noted that in the course of drafting the Civil Code the necessity of regulating surrogate motherhood was not originally discussed at all. It should be reminded again, that the primary authors of the draft Civil Code, as well as the professional public, have favoured the preservation of the traditional concept of the status of the child in the Czech Republic.[113] The aim of the drafters of the Civil Code was to follow the above principle of the origin of the child from the mother who gave birth to him/her and to expressly state that 'an action of the genetic mother against the mother who gave birth to the child cannot be successful'.[114] Nevertheless, this 'addendum' was deleted and the provision 'against' surrogacy was not included in the final version of the Civil Code. It is disappointing that the ministerial team turned away from the original aim of the drafters and several co-operators and did not deal with this issue in more detail as it was done, for instance, in the Slovak Republic.[115] However, the 'prohibition' of private law surrogacy agreements derives from the general part of the Civil Code, which states that 'stipulations contrary to good morals, public order or the law concerning the status of persons, including the right to protection of personality, are prohibited'.[116] Finally, another 'ban' against surrogacy agreements is provided by the wording that 'the Human body and its parts, even if separated from the body, are not a thing'.[117]

In general, there could be practical 'problems' associated with the enforceability of surrogacy contracts, or arrangements.[118] It may be the case that the 'intended' parents, or even an individual, change their minds about the whole 'transaction' and do not take custody of the 'ordered' child or do not seek to 'reconcile' the genetic, biological, social and legal parenthood. Although infrequently, but it nevertheless happens that the 'ordered' child is born disabled or lifeless. This raises a few more questions. Additionally, it is now a well-known fact that surrogacy is a 'global' business which can often result in difficulties concerning the establishment or recognition of the 'legal' parenthood of the 'ordered' child born as a result of the arrangement, sometimes rendering the child parentless.[119]

However, it must be repeated that surrogacy is recognised in the Civil Code. Almost near the end of the legislative work the term surrogacy was entered into the government bill in spite of the express disagreement of many experts and the

112 Nováková et al., 2018, p. 32.
113 Eliáš and Zuklínová, 2001 and 2005.
114 Eliáš and Zuklínová, 2001, p. 167.
115 Section 83, Act No. 36/2005 Z. z., the Slovak Act on the Family. For more Pavelková, 2001, p. 504.
116 Section 1, Sub-Section 2, Civil Code.
117 Section 493, Civil Code.
118 Valc, 2023, p. 12.
119 Towards inter-country issues, Wells-Greco, 2016.

main drafters and is used in the context of the regulation of adoption. The Civil Code states that 'adoption is excluded between persons related to each other in the direct line and between siblings. This does not apply in the case of surrogacy'.[120] The aim of this provision is to 'break' the ban on adoption between close relatives, i.e. all relatives in the direct line and between siblings. The reason given was that 'in practice it happens' and therefore needs to be 'legally' treated. As referred to above, after passing the Civil Code in 2012, surrogacy was not introduced as a method of treatment of infertility into the Act on Specific Health Services of 2011.

It is relevant to raise the question of how 'intended' parents can acquire an 'ordered' child? If we exclude an exchange of the identity cards of the 'legal' mother and the 'intended' mother in the maternity hospital, adoption is the only option, but not only among relatives. As referred to above, the 'legal' mother of the child is the woman who – even if upon an order – gave birth to him/her.[121] After giving birth, she may consent to the adoption of her child. We should emphasise that due to international conventions the consent is only valid after the expiry of puerperium and may be withdrawn! For details, see Point 6.4. below. If the promises on both sides are kept, a direct adoption may be implemented. But, if the mother who gave birth to the child fails to keep her promise to consent to the adoption and hand the child over to the 'intended' parents, the adoption does not take place. And if the 'intended' parents change their minds refusing to adopt the child, their decision must be fully respected. During the fairly long process of adoption, there can be a number of twists and turns and unexpected problems. The court practice shows that if there are informal private law surrogacy agreements among the relatives, the conception usually takes place in a natural manner which may sometimes disrupt a fragile family situation. There are no known cases of child 'litigation' from current court practices and no official statistics are available. If there was a 'dispute' over the child, the 'legal' mother of the child would be the woman who gave birth to the child, regardless of any egg or embryo donation, which is based in a standard situation on the anonymity of donors.

To sum it up, we hold the view that uncertainty for the 'surrogate' mother as well as the 'intended' mother constitutes uncertainty for the 'ordered' child from the very beginning. There is a trivialisation of the fact that a 'legal' mother, or a 'surrogate' mother – is instrumentalised, that her womb is factually leased for considerable financial amounts and that the human embryo is being degraded to a mere subject-matter of a contract. Numerous problems are also caused by the fact that the Czech Republic is becoming a so-called promised land in this area, even for many women from countries where surrogacy is explicitly prohibited and criminalised. That is why drafts were lodged to 'solve' the situation as described hereunder.

120 Section 804, Civil Code.
121 Section 775, Civil Code.

5.3. Proposals on the Designed Law on Surrogacy[122]

It is a common knowledge that mostly private clinics provide surrogacy without any legal regulation. It should be recalled that surrogacy has never been regulated or prohibited in the territory of the present-day Czech Republic. Nor has it ever been anchored as a method of treatment for infertility by the Act on Specific Health Services. However, it must be said that historically, the courts in the Czech Republic dealt with the problems associated with surrogacy, which has been reported with criticism in the literature.[123] Today, in the context of the European reality,[124] i.e. legal regulations mostly prohibiting surrogacy, the Czech legislator is making an effort to regulate this 'burning' issue.[125]

In 2023, a proposal by a group of MPs of the Czech Republic to amend the Civil Code and the Criminal Code was submitted.[126] According to the authors, the aim of the bill is to prevent surrogacy as a specific form of human trafficking, both of women who are used as surrogate mothers and of the children they give birth to. As far as the Civil Code is concerned, it was proposed to repeal the provision allowing adoption between relatives if surrogacy was used.[127] The Government of the Czech Republic discussed and considered the draft law and finally took a disagreeing position. It was published that a ban on surrogacy may not lead to the desired goal, i.e., that surrogacy will not be implemented, as 'intended' parents will be able to undergo surrogacy abroad, often in countries that have very benevolent or no regulation of surrogacy. Such 'reproductive' tourism then entails additional difficulties and legal uncertainty not only for the 'intended' parents and the 'surrogate' mother, but above all for the child born through surrogacy. One cannot but agree with this general statement.

Later on, in 2024, in contrast, it was reported on the web page of the Ministry of Justice of the Czech Republic that the Minister of Justice submitted to the Government of the Czech Republic a plan for a comprehensive legal regulation of surrogacy titled 'Analysis of the Institute of Surrogacy'. According to press information 'The aim of this initiative is to create a clear and legally secure framework for surrogacy, which still lacks explicit legal regulation in the Czech Republic'.[128]

Regarding details, the proposed legislation on surrogate motherhood is based on the following principles: (a) altruism, which means that surrogacy will only be possible on a non-commercial basis, with no financial remuneration for the surrogate

122 Previously in short Králíčková, 2024.
123 For details Haderka, 1986, pp. 917–934.
124 Garayová, 2022, p. 65.
125 For more, see Valc, 2024, pp. 24–40.
126 Parliament of the Czech Republic, Chamber of Deputies, Parliamentary term no. IX., Draft No. 424. For the original text see ODok Portál, 2024.
127 Section 804, Civil Code.
128 The Government of the Czech Republic discussed the material on 21st August 2024. For more see Ministerstvo spravedlnosti České republiky, 2024.

mother, except for the reimbursement of costs associated with pregnancy and childbirth; (b) infertility, or adverse health conditions or health indications or health obstacles on the part of the 'intended' mother; (c) strict medical and other conditions for the surrogate mother, including age, and the rule that the surrogate mother's own eggs must not be used to fertilise the surrogate mother; (d) genetic link to the 'intended' parents which means that the germ cells of at least one of the 'intended' parents must be used; (e) the prior court approval of surrogacy which means that the 'intended' parents will be legally recognised as the child's parents from the moment of birth and the surrogate mother will not have a 'legal' parental relationship with the child. Unfortunately, it was not possible to find more official details or specific provisions that regulate the issue and those should be incorporated into the Civil Code and the Act on Specific Health Services, or into procedural regulations.

We must add that this 'new' approach of establishing motherhood, or parenthood, will totally change the concept of status law in the Czech Republic as regulated traditionally in the Civil Code. In particular, the fact that the 'intended' mother of the child will become the 'legal' mother of the child directly on the basis of a court decision will contradict the concept of legal regulation of status rights not only under the Czech legal system, but also the concepts of the legal regulations of neighbouring states, European standards, and finally the Advisory opinion of the European Court of Human rights calling for adoption as the only 'legal' way of becoming 'legal' parents.[129]

5.4. Law In Action: One Child and Two 'Gender-Neutral' Parents in Special Cases[130]

As referred to above, the so-called gender-neutral marriage was not discussed during the drafting of the Civil Code at all, despite recent developments in many European countries.[131] Nevertheless, there was a pending draft lodged by a group of deputies in the Parliament of the Czech Republic in the last parliamentary term, which was in favour of marriage for all.[132] The draft was seen by some as being progressive and modern, while others viewed it as a step undermining traditional family values, or as referred to above, 'traditionally marriage-centric family laws with fixed perceptions of gender roles'. As this legislative proposal was not approved in the latest legislature, a new legislative proposal submitted to the Parliament of the Czech Republic in the current legislature has built on its theses.[133] The question is whether

129 Advisory opinion of 10 April 2019 in Request No. P16-2018-001. See European Court of Human Rights, 2019.

130 Previously Králíčková, 2024, in print.

131 Scherpe, 2016, p. 40; Sörgjerd, 2012, p. 167.

132 Parliament of the Czech Republic, Chamber of Deputies, Parliamentary term No. VIII., Draft No. 201/0.

133 Parliament of the Czech Republic, Chamber of Deputies, Parliamentary term No. IX., Draft No. 241/0.

it will be passed into law. As referred to above, as of 1st January 2025 an amendment to the Civil Code comes into force, which establishes same-sex partnerships and opens space for so-called stepparent adoption even for same-sex partners.[134]

As announced in the abstract, it is now a reality that Czechia is faced with requests from its citizens to register a foreign-born child, particularly through surrogacy. These often involve married homosexual couples as assisted reproduction and its 'new' forms are a challenge for all. It is not just the academic controversial issue of surrogacy, but much more about solving the predicaments of specific people. No doubt that the following decision of the Constitutional Court of the Czech Republic was quite crucial for the development of Czech family law and especially for the interpretation of the rights of a child conceived through assisted reproduction and born by a surrogate mother abroad. It influenced the practice or decision-making of the Supreme Court of the Czech Republic in relation to the best interests of the child and the practise of vital registrars in Czechia. The facts of the decision are as follows.[135]

In 2013, a child was born through a surrogate mother under a contract with two married men as 'intended' parents in the USA. The embryo was created through assisted reproduction with the egg being from an anonymous donor and the sperm of 'intended' parents. Since the child was conceived through assisted reproduction, neither of the men were unable to find out how things were going. However, by the nature of things, only one of the men was also the 'biological' or 'genetic' father of the child. If 'legal' parenthood is involved, prior to the birth of the child, the Superior Court of the State of California for Los Angeles County has declared that pursuant to the surrogacy agreement between 'intended parents' and the surrogate mother, the surrogate mother is not the 'legal' parent of the then unborn child, and that these two men are 'legal' parents. It further ruled that these men would be listed as 'legal' parents on the child's birth certificate when the child is born. Thus, after the birth of the child one man was listed in the 'father/parent box' and the other man was listed in the 'mother/parent box' on the child's birth certificate issued by the State of California. Because one of the men was a Czech citizen, who visited the Czech Republic regularly with his Danish husband and the child and was interested in maintaining contacts with 'his country', he sought to register the child in the Czech Republic as well. It was not only a matter of registering both 'legal' parents of the child in the Czech registry office and issuing a birth certificate to the child in accordance with the American birth certificate, but also that the child should have a Czech citizenship. However, the registry office in Prague refused to register the child and urged the parents to appeal to the Supreme Court of the Czech Republic to uphold the California court's decision in harmony with the rules settled by a special Act.[136]

134 Act No. 123/2024 Sb.

135 The Ruling of the Constitutional Court of the Czech Republic of the 29th June 2017, No. I. ÚS 3226/16.

136 Act No. 91/2012 Sb., the Private International Law Act, as amended, referred to as 'PILA'.

In 2015, the Supreme Court of the Czech Republic partially recognised the judgement of the California court on parenthood, but only in relation to 'one' father. According to the Supreme Court, it was not conflicting with public policy if the child was conceived through surrogacy (Sic!). However, from the court's reasoning, it was stated that the parenthood of the 'second' father was not recognised being manifestly contrary to public order and thus in breach of law.[137] The child was subsequently issued a birth certificate with only one 'legal' father listed and the 'mother's box' was left blank.

In 2017, based on a constitutional complaint, the Constitutional Court of the Czech Republic overruled the judgement of the Supreme Court of the Czech Republic. The Constitutional Court of the Czech Republic declared a violation of the right of the child to take his/her best interests as a primary consideration in decision-making. Status rights of the child to continuity of the civil status established abroad were emphasised, as well as the best interest of the child in his/her right to family life established on the 'legal basis'. According to the Constitutional Court's ruling, a foreign judgement establishing the parenthood of a child of two persons of the same sex should be recognised in a situation where the family relation and bounds have already been established between them both *de facto* and *de iure* on the basis of surrogacy. It was held that

> the non-recognition of a foreign decision which was to determine the parenthood of a child of two persons of the same sex in a situation where the family life had been effectively and legally constituted between them in the form of surrogacy, on the grounds that Czech law does not permit parenthood between two persons of the same sex, is contrary to the best interests of the child protected by the Article 3(1) of the Convention on the Rights of the Child.

It was concluded that

> If family life between persons, established on a legal basis, already exists, all public authorities must act so that this relationship can develop, and the legal safeguards that protect the relationship between the child and his or her parent must be respected.[138]

It should be added that the Supreme Court of the Czech Republic currently recognises foreign decisions on the 'legal' parenthood of two men or two women, following the just analysed decision of the Constitutional Court of the Czech Republic.[139] In connection with this case law of the Constitutional Court of the Czech Republic on the recognition of 'same-sex' parenthood towards a child born through a surrogate

137 Section 15, para. 1, e, PILA.

138 Ibid. Paragraph No. 55, Conclusion.

139 The relevant decision of the Constitutional Court provoked a great deal of emotions and was met with a negative evaluation. For instance, see Telec, 2017, p. 670.

mother established abroad, the public law regulations have been amended. The new decree established the possibility of registering same-sex parents in the birth register where the child is registered: It is now possible for a child to have 'gender-neutral' parents in the birth register and birth certificate: 'father/parent' and 'mother/parent' instead of the 'mother' and 'father'.[140]

6. On the Rights of the Child

6.1. The Human Life Before Birth

As referred to above in the section focusing on the human right dimension of assisted reproduction, the Charter of Fundamental Rights and Freedoms in its part devoted to 'Fundamental Human Rights and Freedoms' contains a key provision for the purpose of this book, which is 'Everyone has the right to live. Human life deserves to be protected even before birth'. 'No one may be deprived of his or her life'.[141] It was stressed that the wording of these provisions was very vehemently debated during the legislative process and is the result of a compromise between opponents and supporters of abortion.[142] The wording of the provision 'human life is worthy of protection even before birth' was never interpreted as a ban of abortions or as a limitation to the legality of abortions[143] or challenging the legal rules on handling surplus embryos within the process of assisted reproduction. See Point 3 and Point 4.5. However, there is still the question of when human life begins and how it is and should be protected before birth.[144] No doubt, this is a controversial issue, which is difficult to deal with, because the rights of the mother to protect her privacy and her

140 Decree of the Ministry of the Interior No. 174/2023 Sb., which amended the Decree implementing Act No. 301/2000 Sb., on Civil Registers, Names and Surnames and on amendments to certain related acts, as amended.

141 Art. 6, Act No. 2/1993 Sb., Charter of Fundamental Rights and Freedoms, referred to as 'Charter'.

142 Abortion law is very liberal in Czechia. See Act No. 66/1986 Sb., on the Artificial Termination of Pregnancy. It is provided that 'A woman's pregnancy will be artificially terminated if she requests it in writing, the pregnancy does not exceed twelve weeks, and there are no health reasons preventing it' and that 'A woman can have an artificial abortion for health reasons with her consent or at her request if her life or health is at risk, or if the healthy development of the foetus is at risk, or if there is a genetically defective development of the foetus'. Regarding minor women it is stated that 'A woman who has not reached the age of sixteen can have an abortion with the consent of her legal representative or the person to whom she has been entrusted for upbringing. If a pregnancy is artificially terminated for a woman aged between sixteen and eighteen, the healthcare facility shall inform her legal representative'. It must be added that the parents are legal representatives if they are holders of parental responsibility and allowed to exercise all the rights and duties within the scope thereof, particularly decide on medical issues. For details Holčapek et al., p. 130.

143 Ibid., p. 131.

144 Valc, 2017, p. 23.

bodily integrity and the child's right to life stand against each other. Once natural conception or *in vitro* fertilisation and embryo transfer occurs, human embryo is considered a part of the mothers' body.[145]

In contrast with the Convention on the Rights of the Child, which has been a part of the legal order of the Czech Republic since 1991,[146] the Civil Code does not define who child is. However, it can be inferred from the rules on the establishment of the kinship. For details, see Point 5.1. above. Nevertheless, there are special rules regarding the passive legal capacity of *nasciturus* as follows. The Civil Code provides that

> A conceived child is considered to be already born if it suits the child's interests. A child is presumed to have been born alive. However, if the child is not born alive, he or she is considered never to have existed.[147]

6.2. The Right of the Child to be Registered and to Know the Mother, and Possibly the Father

Pursuant to the Convention on the Rights of the Child, every child has the right to be registered immediately after birth. This means that the book of births and the birth certificate must, as a matter of principle, indicate who the child's mother and father are (in addition to the date of birth, name, surname, sex etc.). The child has the right to know his or her parents and be in their care, as much as possible.[148] The State must not create or blindly tolerate any obstacles that would enable the separation of the child from his/her parents or relatives.[149] The care by relatives in the family environment should take place before adoption by strangers or even abroad.[150] The principle of the best interests of the child should be applied when taking all the measures and it shall be a primary consideration.[151]

In this relation, it is necessary to recap the status conception of motherhood in the Czech Republic. The ancient Roman law principle of *mater semper certa est* respecting the fact of birth has been traditionally considered as the basis for creating the status relationship of mother – child, although it was expressly introduced into

145 According to the European Centre for Law and Justice, unlike embryos, to which both persons who had provided their genetic material had a certain right, gametes were only linked to the person who had provided them; the applicant had no rights over her late husband's gametes, and the absence of such rights was intended to protect his rights. For details see case law of the ECHR, *Pejřilová v. the Czech Republic*, Application No. 14889/19, Judgement of 8th December 2022, Point 40.

146 Published under No. 104/1991 Sb., referred to as 'CRC'.

147 Section 25, Civil Code; Šnédar, 2023, p. 9; Valc, 2017, pp. 18–38.

148 Art. 7, Sub-Section 1, CRC.

149 Art. 9, CRC.

150 Arts. 20, 21, CRC.

151 Preamble, Art. 3, Sub-Section 1, CRC; Public law aspects are regulated by Act No. 301/2000 Sb., on Civil Registers, Names and Surnames, as amended, and the implementing Decree of the Ministry of the Interior No. 207/2001 Sb., as amended, particularly by the Decree No. 174/2023 Sb.

the Czech legal order only in 1998. The Civil Code of 2012 builds on this concept and explicitly states that 'the mother of the child is the woman who gave birth to the child'.[152] As referred to above, during the preparation of the Civil Code the necessity of regulating surrogate motherhood was not originally discussed at all. The aim of the drafters of the Civil Code was to follow the above-mentioned principle of the origin of the child from the mother who gave birth to him/her and to expressly state that 'an action of the genetic mother against the mother who gave birth to the child cannot be successful'.[153] Nevertheless, this 'addendum' was deleted and the provision 'against' surrogacy was not included in the final version of the Civil Code. It must be stressed that without a 'legal' mother, the 'legal' father of the child cannot be established and registered. See Point 5.1., above.

6.3. On the Special Rights of the Child Conceived Through Assisted Reproduction

In the section devoted to the medical aspect of assisted reproduction it was mentioned that assisted reproduction can be provided in both a homologous and a heterologous form when germ cells are donated by a third person, i.e. an anonymous donor. It was stressed that germ cells and human embryos may be used only for assisted reproduction according to the informed consent of infertile couple and given legal exceptions. The above-mentioned legal prerequisites and limits of assisted reproduction provide for the protection of unborn life in accordance with the Charter of Fundamental Rights and Freedoms. If the infertile couple, or one of them decides to decline assisted reproduction, the whole process will end. There are special rules regarding unused, surplus embryos. See above, Point 4.5.

However, once *in vitro* fertilisation and embryo transfer takes place, the human embryo is considered a part of the mothers' body. As already referred to, the legal regulation of abortion is very liberal in Czechia. This means that abortion can be provided both in the case of assisted reproduction, as well as in the case of natural conception. The conflict between the rights of the pregnant woman and the unborn child is resolved by a law in favour of the pregnant women.

If a child is born from assisted reproduction, he/she is registered like any other child. See above. The fact that the child was conceived using assisted reproduction technologies, or even possible gamete donation, is irrelevant. However, there is only one controversial issue in the game, namely the anonymity of donation. The Act on Specific Health Services states that a provider who is authorised to perform assisted reproduction methods and procedures shall ensure that the mutual anonymity of the anonymous donor and the infertile couple and the anonymity of the anonymous donor and the child born from assisted reproduction is preserved. Finally, the Act on Specific Health Services stresses that a provider who has carried out a medical

152 Section 775, Civil Code.
153 See Eliáš and Zuklínová, 2001, p. 167.

suitability assessment of an anonymous donor and a woman or man from an infertile couple shall be obliged to transmit the information on their health status necessary for assisted reproduction to the provider who carries out the assisted reproduction; that provider shall keep the information on the health status of the anonymous donor for a period of 30 years after the assisted reproduction has been carried out and shall, on written request, provide the information on the health status of the anonymous donor to the infertile couple or the adult born from assisted reproduction.[154]

To conclude the issue, the child born from assisted reproduction only has the right to know the fact of assisted reproduction and the health data of the donor. This precludes any 'plurality' of the child's parents, contacting the donors etc. As there are no European standards in place in this field, we can assume that this rather controversial issue is very reasonably resolved in favour of the 'intended' parents.[155] Should the proposal on the drafted law on surrogacy be passed, the child's rights conceived through assisted reproduction technologies and especially by using donation of eggs, would lead to the child having 'three' mothers: in addition to a 'legal' mother established by 'prior court approval', a 'birth' mother (the surrogate mother) and a 'genetic' mother (the egg donor). See above, Point 5.3. This 'multiple' motherhood cannot be regarded as being in favour of the child.

6.4. About the 'Myth of Anonymity' of Adoption

To complete the picture, let us add some more information about the adoption of minor children. According to the Civil Code, adoption of minors is understood as taking a person of another person to be one's own. That is why adoption is the only 'legal' way not only for the children left in so-called baby-boxes[156] or for children from 'hidden' births,[157] but also for children from surrogate motherhood to have 'legal' parents. Adoption must be always taken as a benefit for children.

However, on the other hand, the Civil Code protects the mothers against impetuous or immature actions while also protecting their underage children or their right to live in their family of origin in harmony with the above-mentioned principles of the Convention on the rights of the child. We emphasise that the previous legal regulation along with the current Civil Code also guarantee full protection for underage parents, especially for underage mothers older 16 years.[158]

The law distinguishes two types of consent, namely: (a) the so-called direct consent which is given by a 'legal' mother in the court proceedings on adoption after

154 Section 10, ASHS.

155 Radvanová, 2015, pp. 55–57.

156 There are 88 baby-boxes in Czechia at the end of March 2025. They 'saved' 272 new-born children. For more, see Babybox, 2025. Regarding critics, see United Nations, 2011. In detail Zuklínová, 2005, p. 250.

157 As for data, see Kuchařová, 2024. For critics, see Hrušáková and Králíčková, 2005, p. 53.

158 Section 811, Civil Code; Králíčková, 2003, pp. 125–142.

the expiry of at least 6 weeks from the birth of the child[159] and by a 'legal' father after the delivery of the child (only if the fathership is legally established);[160] however, there is a possibility to withdraw the consent within 3 months; so-called direct consent is used in case of surrogacy or adoption by the step-parent for instance; let's add that there are no special rules for the 'surrogate' mother regarding the conditions, the protection of the puerperium period etc.; (b) the so-called blank or indirect consent given by a 'legal' mother after the expiry of at least 6 weeks from the birth of the child and by a 'legal' father after the childbirth (if he is legally established) with the same possibility of withdrawal as above; subsequently, the administrative proceedings on obtaining the adoption by the state may commence; the so-called blank consent is used in case of adoption by strangers.[161] As referred to above, if the 'legal' parents do not give their consent or are indifferent about the child's future, the court may decide in a special procedure, a so-called proceeding on adoptability.[162] If the court establishes their so-called unconcern,[163] the child does not become 'legally' free, but be adoptable.

In general, the legislation on minor children is regulated only in the form of full adoption in accordance with the principle of *adoptio natura imitatur*. The adopted child will become a member of the new adoptive family when the court decision becomes final. All ties to the family of origin cease, including maintenance obligations and any inheritance rights.[164] Registration in the book of births and the issue of the new birth certificate is necessary. The adoptive parents have a duty to inform the child about the adoption when it is appropriate, but at least before the child begins his/her compulsory school education. However, the 'myth of the anonymity' of adoption is still common knowledge. Nonetheless, the adoptive parents and, after the age of 12, the adoptee may discuss the collection of documents, unless the court has decided to keep the adoption file confidential; if the court has decided to keep the adoption confidential, the adoptee may consider the collection of documents only after he/she has acquired full legal capacity.

There are no special rules regarding surrogacy in this respect. The adopted child is allowed to consult the civil registry records to find out who the mother who gave birth to him/her is. However, as referred to above, the identity of the possible donor of the germ cells will be kept secret from the child due to the need to respect the anonymity of the donor. And finally, should the proposal on the drafted law on surrogacy be passed, the child should have the right to see the 'prior court approval' and learn who his/her 'birth' mother (the surrogate mother) was. See Point 5.3., above.

159 Section 813, Civil Code.
160 Ibid.
161 Králíčková, Hrušáková, Westphalová et al., 2022, pp. 195–197.
162 Section 821, Civil Code.
163 According to Sections 819 and 820, Civil Code.
164 Section 794, Civil Code.

7. Conclusion

It is a paradox that some women undergo artificial termination of pregnancy, i.e. abortion, ask for 'hidden' motherhood or give away a child and occasionally even murder their new-born. Other women go along a rather lengthy, emotionally demanding and burdensome treatment to conceive and give birth to their desired child through assisted reproduction. It may be the case that these women agree to conceive and give birth to a child to another woman. These 'risky' practices question the status rights of the child from the very beginning. This is also the case in Czechia, where the legal regulation of both the artificial termination of pregnancy and assisted reproduction have been traditionally relatively liberal.

There are also assisted 'openings' for subjects other than an infertile heterosexual couples, those calling for surrogacy as a method of infertility treatment for 'all'. It would be naïve to think that if the above-mentioned proposition by the Ministry of Justice of the Czech Republic to regulate altruistic surrogacy was passed, it would not be circumvented, especially by single persons, partners of the same sex and by foreigners, in whose countries surrogacy is strictly forbidden. For them, the Czech Republic has been the so-called promise land. As generally known, surrogacy is an acceptable option for many infertile people under 'any' condition. No doubt that surrogacy is as old as humanity itself and it will remain a 'burning' issue.

Many questions are raised in this matter, especially in connection with the child's right to live and to know his/her roots, origin, identity. However, these rights of the child may be seen 'suppressed' not only in the case of the anonymity of the donation of germ cells, but also due to the possibility of 'hidden' births and the reality of so-called baby-boxes, silently tolerated by the State. When it comes to germ cell donation, it is traditionally based on anonymity. The best interests of the child can be seen in the fact that the legal regulation of parenthood is predictable: 'one child, one mother, one father' as a rule. It prevents 'multiple' parentage. We fully agree with the view that some limits are necessary in the field of assisted reproduction. However, the restrictions must be well balanced. We believe that the Czech regulation on assisted reproduction *de lege lata* meets reasonable standards and protect both infertile couples and the child even though the law can be interpreted as being 'intended' parent-centred.

The European Centre for Law and Justice asserted that in most countries, assisted reproduction was only available to heterosexual couples where both persons were alive and of fertile age. Fertilisation post-mortem distorted the therapeutic aim of the procedure and became a tool in the right to have an orphaned child, interfering with the rights and interests of children conceived that way. Therefore, it is harmonising with the Convention for the Protection of Human Rights and Fundamental Freedoms to prohibit certain forms of assisted reproduction.[165]

165 Cited according to the case law of the ECHR, *Pejřilová v. the Czech Republic*, Application No. 14889/19, Judgement of 8th December 2022, Point 40.

A similar argument can be made in the case of individuals, single persons. The state should not support the birth of children into single-parent families, to create *de facto* 'social' orphans. This primarily relates to the child's rights to a complete family and a happy childhood.

A special chapter deals with the issue of the parenting of same-sex couples, or 'gender-neutral' parenthood. We are of the opinion that if these couples became 'legal' parents of the child abroad pursuant to the law, the continuity of the status of these children should be maintained as set by the Constitutional Court of the Czech Republic.[166] The same attitude should apply in the case of adoption, particularly step-parents' adoption. It is true that these 'new' phenomena are redefining the forms of family and family life, or family law as such. However, all the traditional abstract rules must give priority to the best interests of the child in individually assessed cases.

166 Králíčková and Nový, 2017, pp. 524–530.

References

Babybox (2025) 'BabyBox' [Online]. Available at: http://www.babybox.cz/ (Accessed: 19 March 2025).

Eliáš, K., Zuklínová, M. (2001) *Principy a východiska nového kodexu soukromého práva.* Praha: Linde.

Eliáš, M., Zuklínová, M. (2005) *Návrh občanského zákoníku.* Praha: Ministry of Justice.

European Court of Human Rights (2019) 'Advisory opinion of 10 April 2019 in Request No. P16-2018-001' [Online]. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22003-6380464-8364383%22]} (Accessed: 17 July 2024).

Garayová, L. (2022) 'Surrogate Motherhood-The European legal Landscape', *Law, Identity and Values,* 2(1), pp. 65–83 [Online]. Available at: https://doi.org/10.55073/2022.1.65-83 (Accessed: 31 December 2024).

Haderka, F. (1986) 'Náhradní mateřství', *Právný obzor*, 69(10), pp. 917–934.

Holčapek, T., Šustek, P., Šolc, M. (2023) *Czech Health Law.* Praha: Wolters Kluwer.

Hrušáková, M., Králíčková, Z. (2005) 'Anonymní a utajené mateřství v České republice – utopie nebo realita?', *Právní rozhledy,* 2005/2, pp. 53–57.

Ignovska, E. (2015) *Sperm Donation, Single Woman and Filiation.* Cambridge–Antwerp–Portland: Intersentia.

Králíčková, Z. (1990) 'Děti ze zkumavky.', *Universitas,* 1990/2, pp. 12–17.

Králíčková, Z. (2003) 'Adoption in the Czech Republic: Reform in the Light of the Child Welfare Laws' in Bainham, A. (ed.) *The International Survey of Family Law.* Bristol: Jordan Publ. Limit., pp. 125–142.

Králíčková, Z. (2008) 'Tension between Legal, Biological and Social Parentage in the Light of the Best Interest of the Child', *Legal Studies and Practice Journal,* 2008/3, pp. 275–282.

Králíčková, Z. (2010) *Lidskoprávní dimenze českého rodinného práva.* Brno: Masarykova univerzita.

Králíčková, Z. (2014) 'New Family Law in the Czech Republic: Back to Traditions and Towards Modern Trends' in Atkin, B. (ed.) *The International Survey of Family Law 2014 Edition.* Bristol: Jordan Publishing, pp. 71–95.

Králíčková, Z. (2021) 'On the Family and Family Law in the Czech Republic'. In Barzó, T., Lenkovics, B. (eds.) *Family Protection from a Legal Perspective.* Budapest – Miskolc, pp. 77–102.

Králíčková, Z. (2022) 'The Rights of the Child at Risk', *Law, Identity and Values,* 2(2), pp. 83–100 [Online]. Available at: https://doi.org/10.55073/2022.2.83-100 (Accessed: 31 December 2024).

Králíčková, Z. (2024) 'The Status Rights of the Child and Search for the New Paradigm in Czechia', *Law, Identity and Values,* 21(1), pp. 193–212 [Online]. Available at: https://doi.org/10.46941/2025.eisl.193 (Accessed: 31 December 2024).

Králíčková, Z., Nový, Z. (2017) 'Dvě matky, jedno dítě, nejlepší zájem dítěte a veřejný pořádek', *Právní rozhledy,* 25(15–16), pp. 524–530.

Králíčková, Z., Hrušáková, M., Westphalová L. et al. (2020) *Občanský zákoník II. Rodinné právo.* 2. vyd. Komentář. Praha: C. H. Beck.

Králíčková, Z., Hrušáková, M., Westphalová L. et al. (2022) *Rodinné právo. Učebnice.* 3rd ed. Praha: C.H. Beck.

Kohoutová, M. (2023) 'Vybrané právní nástroje ovlivňující počty dárců zárodečných buněk', *Soukromé právo,* 2023/2, pp. 7–14.

Kuchařová, T. (2024) 'Rodí tajně, ale bezpečně. Každý rok v porodnicích zůstane bez matky přes deset dětí' [Online]. Available at: https://ct24.ceskatelevize.cz/clanek/domaci/rodi-tajne-ale-bezpecne-kazdy-rok-v-porodnicich-zustane-bez-matky-pres-deset-deti-352736 (Accessed: 10 November 2024).

Mach, J., Buriánek, A., Záleská, D., Steinlauf (Vráblová), B., Stieranková, A. (2023) *Zákon o zdravotních službách. Zákon o specifických zdravotních službách. Komentář.* 2nd edn. Praha: Wolters Kluwer.

Ministerstvo práce a sociálních věcí (2017) 'Koncepce rodinné politiky' [Online]. Available at: https://www.mpsv.cz/documents/20142/225508/Koncepce_rodinne_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253 (Accessed: 03 November 2024).

Ministerstvo práce a sociálních věcí (2024) 'Strategii rodinné politiky 2024–2030' [Online]. Available at: https://www.mpsv.cz/documents/20142/225508/Strategie+rodinn%C3%A9+politiky+2024-2030.pdf/f256340c-9229-a4de-6f0a-90f7ad343fef (Accessed: 09 November 2024).

Ministerstvo spravedlnosti České republiky (2024) 'Pavel Blažek předložil vládě záměr právní úpravy náhradního mateřství' [Online]. Available at: https://justice.cz/web/msp/rozcestnik/-/clanek/pavel-bla%C5%BEek-p%C5%99edlo%C5%BEil-vl%C3%A1d%C4%9B-z%C3%A1m%C4%9Br-pr%C3%A1vn%C3%AD-%C3%BApravy-n%C3%A1hradn%C3%ADho-mate%C5%99stv%C3%AD (Accessed: 18 September 2024).

Nováková, K., Konečná, H., Sudová, M. (2018) 'Náhradní mateřství v České republice: způsob hledání náhradní matky', *Časopis zdravotnického práva a bioetiky,* 8(2), pp. 32–42.

ODok Portál (2024) 'Návrh poslankyň Zuzany Ožanové a Heleny Válkové na vydání zákona, kterým se mění zákon č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů a zákon č. 40/2009 Sb., trestní zákoník, ve znění pozdějších předpisů (sněmovní tisk č. 424)' [Online]. Available at: https://odok.cz/portal/veklep/material/ALBSCR7AXEQM/ (Accessed: 12 August 2024).

Parliament of Czech Republic (2011) 'Act of 6 November 2011 on specific health services' [Online]. Available at: https://sujb.gov.cz/fileadmin/sujb/docs/legislativa/zakony/373_2011_Coll.pdf (Accessed: 12 March 2025).

Pavelková, B. (2013) *Zákon o rodine. Komentár.* Praha: C.H. Beck.

Radvanová, S. et al. (2015) *Rodina a dítě v novém občanském zákoníku. Praha: C.H. Beck.*

Scherpe, J.M. (2016) *The Present and Future of European Family Law.* Cheltenham–Northampton: Edward Elgar.

Scherpe, J.M., Fenton-Glynn, C., Kaan, T. (eds.) (2019) *Eastern and Western Perspectives on Surrogacy.* Cambridge–Antwerp–Chicago: Intersentia.

Sekce asistované reprodukce (2024) 'Aktuality' [Online]. Available at: https://www.sarcgps.cz/ (Accessed: 5 November 2024).

Sörgjerd, C. (2012) *Reconstructing Marriage. The Legal Status of Relationships in Changing Society.* Cambridge–Antwerp–Portland: Intersentia.

Šnédar, L. (2023) *Nenarozený lidský život a jeho pojetí v českém právním řádu.*. Praha: Wolters Kluwer.

Telec, I. (2017) 'Kritický pohled na nález Ústavního soudu: uznání kaliformského rodičovského statusu stejnopohlavního manžela', *Právní rozhledy,* 2017/19, pp. 670–674.

United Nations (2011) 'Committee on the Rights of the Child reviews report of the Czech Republic' [Online]. Available at: https://www.ohchr.org/en/press-releases/2011/06/committee-rights-child-reviews-report-czech-republic (Accessed: 15 July 2022).

Ústav zdravotnických informací a statistiky ČR (2022) 'Asistovaná reprodukce v ýR 2020' [Online]. Available at: https://www.uzis.cz/res/f/008420/asistreprodukce2020.pdf (Accessed 02 November 2024).

Ústav zdravotnických informací a statistiky ČR (2024a) 'Sbíráme a zpracováváme statistická data pro zkvalitnění našeho zdravotnictví' [Online]. Available at: https://www.uzis.cz/ (Accessed: 5 October 2024).

Ústav zdravotnických informací a statistiky ČR (2024b) 'Národní registr reprodukčního zdraví (NRRZ)' [Online]. Available at: https://www.uzis.cz/index.php?pg=registry-sber-dat--narodni-zdravotni-registry--narodni-registr-reprodukcniho-zdravi (Accessed: 5 October 2024).

Valc, J. (2017) 'Asistovaná reprodukce a její vliv na právní status (nad)počatého embrya či dospívajícího dítěte', *Časopis zdravotnického práva a bioetiky*, 2017/3, pp. 18–38.

Valc, J. (2023) 'Soukromoprávní aspekty smlouvy o náhradním mateřství', *Soukromé právo,* 2023/4, pp. 12–21.

Valc, J. (2024) 'Budoucnost náhradního mateřství v českém právu', *Soukromé právo,* 2024/7–8, pp. 24–40.

Wells-Greco, M. (2016) *The Status of Children Arising from Inter-country Surrogacy Arrangements*. The Hague: Eleven International Publishing.

Zenska neplodnost (2024) 'Novinky' [Online]. Available at: https://www.zenska-neplodnost.cz/ (Accessed: 5 November 2024).

Zuklínová, M. (2005) 'Několik poznámek k právním otázkám okolo tzv. baby-schránek', *Právní rozhledy,* 2005/7, pp. 250–253.