

Секция «Английский язык и право (на английском языке)»

The right to know parents

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Nowadays infertility is very important problem. Infertile couples use the process of artificial insemination in order to be able to have a child. During this process the reproductive cells both of parents and anonymous donors can be used. The biological parents in case of the use of anonymous reproductive cells during the process of artificial insemination would be those people who made a donation of their cells or embryos to medical organization. In this regard the question arises who should we regard as the parents of the child?

The aim of this research is to find the balance between the right of children to know their biological parents and the privacy rights of donors in case of anonymous reproductive cells and embryo donation, particularly, in Russia.

First, I would like to start with legislation of Russia. 56, 253 treatment cycles of ART were performed in Russia in 2011. [3] Russian legislation on artificial insemination is presented mainly in the Order of Ministry of Health, which establishes the pre-conditions for the procedure of artificial insemination, requirements for donors and future parents. It also establishes that donors may opt between anonymity and non-anonymity. Child born by artificial insemination can get access to only non-identifiable information about the donor. [5]

According to p. 2 of ar. 54 of Russian Family Code every child possesses the right as far as possible to know his/her parents. Unfortunately, the Family Code does not give us the notion of parents. So we do not know whom should we regard as parents. [4]

The right to know parents and procedures on keeping information about the donors are regulated in Russian Federation. While procedures on enabling access to identifiable information about the donor are absent. Even if the donor has chosen not to be anonymous, the child would still be unable to get information about him.

Unfortunately, the right to know (biological) parents is guaranteed neither to adopted child nor to donor-conceived ones. In case of adoption the child is unable to get information about the donor due to confidentiality of adoption, in case of artificial insemination - due to medical confidentiality. In both cases disclosure of such information leads to criminal responsibility.

Further, I want to study international law. There are two ways of realization of the right to know parents: the first one (which is used in Russia) is to give access to information on genetic characteristics (height, weight, color of eyes, genetic diseases and etc.) and second one is enable access to the identifiable data (which includes full name, address of the donor). Notions of identifiable and non-identifiable data can be found in UNESCO documents. In this work I am trying to understand whether the child has the right to get access to identifiable information about the donor within the meaning of the right to know parents.

Nowadays many international organizations, such as World Medical Association (WMA) and the American Society for Reproductive Medicine advice to give the child the access to information about the donor, stating that it will be in the best interests of the child.

The right to know parents is established in part 1 of article 7 of CRC, that “the child shall have as far as possible, the right to know his or her parents”. Unfortunately, Convention also does not give us any specifications of the word parents. [1]

General Comment No 14 of the Committee on the Rights of the Child is the most authoritative source in interpretation of the principle of the best interests of the child which is closely connected with all children rights. First, within the meaning of children identity in case of adoption the Committee states that is also includes the right of the child to have access to his family of origin and the opportunity to access information about biologic family in compliance with national law. Second, biological, adoptive and foster parents are included by the Committee in the definition of the “family”. [2]

General Comment No 14 singles out adoptive, foster and biological parents. To my mind distinguishing the biological parents as the part of the family means that the child possesses the right to know its biological parents. [2]

In my view the state is limited in its obligation on the right to know parents only in cases when the child was abandoned or found, but in case of artificial insemination and adoption the state possesses the information about the genetic parents of the child and is able to provide it to him/her.

In conclusion I want to say that both of mentioned rights are not of absolute nature, so it means that they can be limited in relation to each other, so the donor's right to confidentiality can be limited by the child's right to know biological parent, as well the right to know origins can be limited when the parents have convincing reasons for these limitations. To my mind the modern state of the legislation on artificial insemination is on its transitional stage and does not always correspond to existing social relationships. Even in countries where the legislation enabling the right to know parents exists, the level of compliance with it is still very low. The focus of modern legislation is on the right of adopted children, while the category of donor-conceived children is hardly ever presented in legal system, that's why their rights are not fully taken into account.

Источники и литература

- 1) Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990, UNGA Res. 44/25) (CRC) art 7
- 2) Committee on the Rights of the Child, General Comment No 14 (CRC/C/GC/14, 2013), para 56
- 3) European Society of Human Reproduction and Embryology, 'ART fact sheet (June 2014)' < <http://www.eshre.eu/Guidelines-and-Legal/ART-fact-sheet.aspx> > accessed 14 September 2014
- 4) Russian Family Code of 29.12.1995 No 223-FZ, as amended; Collection of Legislation of the Russian Federation (1996) No 1, ar 16; part 2 of art 54
- 5) Order of the Ministry of Health of the Russian Federation of 30.08.2012 No 107N 'On regulations of use of assisted reproductive technologies, including counter indications and restraints concerning its use', as amended; Russian Newspaper (11.04.2013) No 78/1 (special edition), para 34, 54