

## ALTERNATIVE OR NONSTANDARD FORMS OF PARENTHOOD IN THE CONTEXT OF REPRODUCTIVE TECHNOLOGIES

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**Abstract:** *In the last decades, various forms of parenthood (alternative, non-standard) have been discussed as an important topic. The attention of human sciences experts is particularly focused on the quality of life of a child growing up in such a family. It is evaluated whether there is a reason for not accepting such a family constellation. The ways of creating such a family formations are rarely discussed, although they play an important role in the quality of life of children, families and the whole society. Ways to create such families are patchwork families, adoption, foster care and 3<sup>rd</sup> party reproduction. Our text concentrates mainly on using reproductive technologies. Alternative family formations have always emerged and will emerge in the future. However, our analysis shows that the institutional support of their creation (creation, not their functioning) brings serious legal, ethical and psychosocial problems, for example, trafficking in body parts, women and children.*

**Keywords:** *right, family, gamete donation, regulation, law*

### 1. INTRODUCTION

In the last decades, various forms of family and parenthood have been discussed as an important topics, family legislation is changing rapidly in many states. “From a sociological point of view, it is difficult to formulate a generally acceptable definition of a family. We perceive the family as a dynamic system and culture-conditioned system, changing in time and space. It is a relationship system with a complex internal structure and connections, even to the environment. At the same time, from the way the family looks and what its structure looks like, no conclusion can be drawn about its functionality. There is no single “right” model for healthy family functioning. The family, made up of parents - male and female – and their biological child/ren is currently just one of many existing and functional forms of family cohabitation. In addition, there are, for example, fully functional families divorced, monoparent or, conversely, with shared parenthood, reconstituted or just homoparental,” the authors of the amendment to the Civil Code point out in the 201/0 Parliamentary Press, the document known as “Marriage for all.”<sup>1</sup>

The title of this paper has been inspired by both the title of the symposium “Traditional and Alternative Parenthoods and the Quality of Life” at the Conference on Qualitative Approach and Methods in Human Science 2019,<sup>2</sup> and the title of a one-day pre-congress

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<sup>1</sup> Sněmovní tisk 201/0. In: *Poslanecká Sněmovna Parlamentu České republiky* [online]. [2021-04-10]. Available at: <<https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=201&CT1=0>>.

<sup>2</sup> The guarantor was Miroslav Popper from the Institute of Social Communication Research of the Slovak Academy of Sciences. POPPER, M. *Tradičné a alternatívne rodičovstvo a kvalita života. XVIII. ročník česko-slovenské konference Kvalitativní přístup a metody ve vědách o člověku. Hledání kvality*. České Budějovice: Zdravotně sociální fakulta Jihočeské univerzity, 2019, 28.–29. ledna 2019.

course at the European Society of Human Reproduction and Embryology (ESHRE) meeting in Istanbul, 2012, called “‘Non standard requests?’ – Ethical and legal aspects of medically assisted reproduction in singles, lesbian and gay couples, and transsexuals.”<sup>3</sup> The Symposium organized by Slovak colleagues in 2019 regards traditional forms of parenthood as forms which are connected with marriage, while in alternative forms, cohabitation and single parenthood are offered as examples. The seminar of ESHRE regards the requests of single persons, homosexual couples, and transsexual persons to be nonstandard. Thus, the request of a heterosexual couple can be regarded as standard, but it needs to be mentioned that the age of the parents planning parenthood, particularly women, plays an important role in the discussions on medically assisted reproduction (MAR).<sup>4</sup> Therefore, a heterosexual married couple where the woman is more than sixty years old can be regarded as a traditional family, however, if the couple wanted to give a birth to a baby (which is not possible in the natural way due to the woman’s age),<sup>5</sup> it would be regarded as a nonstandard request. On the other hand, an unmarried heterosexual couple in the reproduction age requesting for the MAR e.g. because of tubal obstruction can be, from a certain view, regarded as an alternative form of the family (they are not married), but most European countries will not regard them as nonstandard applicants for MAR since they do not need to be married to conceive a child (they just need to be healthy). Naturally, the reasons for the differences are different criteria: the former seminar takes into account social criteria (which sort of partner life is common and acceptable in the particular community), and the evaluating criteria of the latter seminar are biological (biological conditions to conceive and deliver a baby).

The attention of sociologists, psychologists, ethicists, pediatricians, political scientists, demographic scientists and social workers is particularly focused on the quality of life of a child growing up in such families. It is evaluated whether there is a reason for not accepting such a family constellation in the legislation of a specific country. The ways of creating such a family formations are discussed rarely. In our opinion, these ways play an important role in the quality of life of children, families in which they live and the whole society, too. Therefore, our text offers an analysis of the possibilities of the creation of such families and describes its legal, ethical and psychosocial contexts. The topic is extremely complicated in order to formulate good legislation it is necessary to have lawyers and politicians well oriented in it.

The starting point for the “alternativeness” or “non-standardness” in this paper will be the fact that a particular family formation cannot conceive and deliver a baby, because it is outside biological limits for doing it.

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<sup>3</sup> ESHRE SIG Ethics and Law ‘Non standard requests?’ – Ethical and legal aspects of medically assisted reproduction in singles, lesbian and gay couples, and transsexuals. *28<sup>th</sup> Annual Meeting of ESHRE*, Istanbul, Turkey, 1 July 2012.

<sup>4</sup> KOCOURKOVÁ, J., KONEČNÁ, H., BURCIN, B., KUČERA, T. How old is too old? A contribution to the discussion on age limits for assisted reproduction technique access. *Reprod Biomed Online*. 2015. Vol. 30, pp. 482–492.

<sup>5</sup> For example EIJKEMANS, M. J., VAN POPPEL, F., HABBEMA, D. F., SMITH, K. R., LERIDON, H., TE VELDE, E. R. Too old to have children? Lessons from natural fertility populations. *Hum Reprod*. 2014. Vol. 29, pp. 1304–1312.

## 2. WAYS TOWARDS PARENTHOOD OUTSIDE BIOLOGICAL LIMITS

Medical technologies have incredibly progressed during the last five decades. Nevertheless, the development of artificial gametes and the uteri is still in its infancy.<sup>6</sup> To create a child, a naturally developed egg, sperm and uterus are still necessary, i.e., a genetically and anatomically defined woman and man in the reproductive age are needed. These requirements are not met in elderly persons (the statistic limit of women's fertility is regarded to be the age of 40 years,<sup>7</sup> the men's age is being also discussed),<sup>8</sup> single persons, same-sex couples and family formations consisting of transsexuals. What are their pathways to parenthood?

### 2.1 Stepfamily – children from the previous heterosexual relationship are transferred to the complete or partial care of the newly developed family formation

So far, the most common way of how children get to another than heterosexual formation is the displacement of the child from the previous heterosexual relationship. This new formation is created without an intervention of institutions, naturally. The institutions just deal with the consequences of decisions of the partners from the original family, e.g. the arrangement of the contacts with children. If the new formation consists of a couple (the parent is not left alone with the child), the new partner becomes, more or less, a psychosocial, i.e. caring parent of the child; it depends on the organization of the relationships with the previous partner. This can bring about serious problems since the new partner has no legal relationship to the child. (It is not exceptional that the legal parent of the child will leave even this new partner, who will have no legal relationship to the child though his/her emotional relationship may be very strong.) In this aspect, the situation is not different in heterosexual and other partnerships. This situation and its problem is described in professional literature quite abundantly.<sup>9</sup> Lawyers know this issue very well, they meet it daily.

### 2.2 Adoption

A child can be adopted if he/she is orphaned actually or socially – i.e. in the case if his/her birth family cannot, does not want to or is not able to look after him/her. The adoption is decided by the court, it means that the origin of such a new family formation is

<sup>6</sup> SMAJDOR, A., CUTAS, D. Artificial Gametes. Nuffield Council on Bioethics. Background paper. In: *Nuffield Council on Bioethics* [online]. 2015. [2021-04-10]. Available at: <<http://nuffieldbioethics.org/wp-content/uploads/Background-paper-2016-Artificial-gametes.pdf>>.

<sup>7</sup> "Premature ovarian insufficiency is a clinical syndrome defined by loss of ovarian activity before the age of 40," ESHRE Guideline. Management of women with premature ovarian insufficiency. In: *European Society of Human Reproduction and Embryology* [online]. 23. 2. 2008 [2021-04-10]. Available at: <<https://www.eshre.eu/Guidelines-and-Legal/Guidelines/Management-of-premature-ovarianinsufficiency.aspx>>.

<sup>8</sup> For example BRANDT, J. S., CRIZ ITHIER, M. J., ROSEN, T., ASHKONADZE, E. Advanced paternal age, infertility, and reproductive risks: A review of the literature. *Prenatal diagnosis*. 2019, Vol. 39, No. 2, pp. 81–87.

<sup>9</sup> For example GANONG, L., COLEMAN, M. Studying Stepfamilies: Four Eras of Family Scholarship. *Fam Process*. 2017, Vol. 57, No. 1, pp. 7–24.

conditioned by an intervention of an institution and governed by the legislation of the state. In Europe, adoption is regarded to be a legal relationship virtually identical as a relationship in a naturally created family: it shall be permanent, with all parent rights and duties, including the hereditary rights (law of succession), etc. Previously, anonymity used to be preferred: none of the three concerned parties (child, birth family, adoptive family) used to have access to identification data about the others. The birth family was deleted from the child's documents so that the legal and psychosocial role of the family could be unified. Recently, non-anonymity has been preferred: at least the information of the birth family is offered and/or contacts with the birth family are enabled to the child at a certain age, individual countries have various legal and organizational adjustments.

In the Czech Republic, adoption is regulated by paragraphs 794–845 of the CC. From the point of view of law, the same family relations arise between the adoptive parents and the child as between the parents and the children. The child's family relations with the original family are terminated by a court decision on adoption. Adopters are registered in the child's birth certificate at the place of his birth parents and become the child's legal guardians with all parental responsibility. The child acquires the surnames of the adopters. In the EU, acceptable family formations vary, in the Czech Republic and the Slovak Republic, individuals (regardless their sexual orientation) can, besides heterosexual couples, ask for adoption. But it is not possible for homosexual couples, adoption is based on the logic that only a female and male can have a child together. Individual countries have various age limits of the adoption applicants, the natural difference in age between the applicant and the child is preferred. So far, this condition has also been respected by the European Court for Human Rights.<sup>10</sup>

The in the CR, child has the right to know his or her genetic origin, see § 836 and § 838 of the Civil Code (CC).<sup>11</sup> Adoptive parents are exclusive legal parents of the concerned child; however, the exclusiveness of their psychosocial role is at risk. Thus, although the CC formally brought the institute of adoption to the level of a naturally occurring family, even experts in the Czech Republic point out that in the system of new interpretation of children's rights<sup>12</sup> and in connection with changes in characteristics of children free for adoption, adoption has approached foster care.<sup>13</sup> The terms „multiple parenting“, „shared parenting“, etc. are beginning to be used for this. We will describe it in more detail later.

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<sup>10</sup> Case no. 25762/07.

<sup>11</sup> CC considers adoption as a parental relationship equivalent to a normally established parental relationship (§ 794): *Acquisition means the acceptance of a foreign person as one's own*, but it is not completely consistent in that equivalence. On the one hand, it stipulates that the adopter is obliged to inform the child about the fact of adoption (§ 836): *The adopter is obliged to inform the adoptee about the fact of adoption as soon as it seems appropriate, but no later than the start of school*, on the one hand, it enables the child to know the identity of at least the biological mother (§ 838): *As soon as the adoptee becomes independent, he acquires the right to become acquainted with the contents of the file which was kept in the proceedings on his adoption*. In the proceedings on his adoption.

<sup>12</sup> The right to know one's parents, as formulated in the Convention on the Rights of the Child, is understood as the right to know all persons involved in bringing a child into the world.

<sup>13</sup> For example PALEČEK, J. *Osvojování dětí v České republice*. Praha: SNRP, 2017. In: *Středisko náhradní rodinné péče* [online]. [2021-04-10]. Available at: <[https://www.nahradnirodina.cz/sites/default/files/osvojovani\\_deti\\_v\\_ceske\\_republice\\_0.pdf](https://www.nahradnirodina.cz/sites/default/files/osvojovani_deti_v_ceske_republice_0.pdf)>.

The experience with international adoptions has shown that children adopted by single women ask for the contacts with their birth families more frequently than children adopted by heterosexual couples.<sup>14</sup> However, the presented experience is small, and has not concerned single men or homosexual couples.

### 2.3 Foster care and guardianship

Foster care represents another form of alternative family care conditioned by an institutional intervention. It is regulated primarily by Act No. 89/2012 CC and Act No. 359/1999 Coll. (on social and legal protection of children). In the foster care, for a limited time, the foster takes care of the child and is responsible for his/her upbringing, there is no legal parent-child relationship. If the child's legal guardian agrees, the child's surname may be given to the child. The children have the right to meet their birth families and the birth families have the right to meet their children, and such contacts are highly institutionally supported. The fosters have the right to represent the children and administer their affairs only in common matters. They do not have any obligation to pay maintenance. If they arrange special matters (e.g. apply for a passport), they need to ask the legal parents, or the court, for the consent. Individuals or couples, but no homosexual couples in the Czech Republic and the Slovak Republic, can become fosters.

Fostering is a professional form of family care, foster care does not pretend to be a naturally created family. From the legal point of view, it needs to be asked why foster care is not possible in homosexual couples, naturally under conditions completely identical as in heterosexual couples.

Guardianship is regulated by Act No. 89/2012 Coll., CC, in § 928–942. The guardian will be appointed by the court to the child if there is no parent who has and exercises full parental responsibility towards his or her child. The guardian has in principle all obligations and rights towards the child as a parent, but she has no maintenance obligation towards the child, which, of course, does not mean that s/he must not materially support her/him. By law, the relationship between the guardian and the child does not arise as between the parents and the child. A guardian can only be a fully independent person who, in the way of his life, guarantees that he is able to perform the given function properly and in the interest of the child. It can be two people, usually a spouse.<sup>15</sup> We consider it absurd that a homosexual couple cannot apply for foster care together in the CR, but they can together apply for guardianship.

### 2.4 3<sup>rd</sup> party reproduction

Usually, the MAR as the pathway to the child, has been preferred to fostering, adoption and guardianship. The birth of the first baby using MAR in 1978 meant a real breakthrough. It was enabled both by the possibility to use hormones and by the possibility to handle gametes (sperms and oocytes) and embryos out of the body. (The possibility to manipu-

<sup>14</sup> LARSEN, J. Bioroots. In: *Konference „Cesta za rodinou – Příběhy mezinárodní adopce. Právo, trendy a zkušenosti.”* Brno: Office for International Legal Protection of Children, 2019.

<sup>15</sup> CC, § 932 (2) *The court may also appoint two persons to the position of guardian; they will usually be married.*

late sperms had existed for a long time; however, this paper does not deal with “non-institutional” ways.) The very handling gametes and embryos gave birth to the specific sub-discipline of MAR, the use of donated parts, so-called 3<sup>rd</sup> party reproduction. Currently, donated uteri, mitochondriae and surrogate motherhood can be used besides donated gametes and embryos, which naturally opens new opportunities for infertility treatment not only in the traditional biological sense (fertility disorder as a disease of a heterosexual couple in the reproduction age) but also in the social sense, such as overcoming natural biological limits for giving birth to a baby (e.g. high age, missing heterosexual partner).

In the Czech Republic, homosexuals have access to MAR due to the abolition of the condition of a married couple. The Act on Specific Health Services, No. 373/2011 Coll., stipulates in § 6: *(1) Artificial insemination may be performed on a woman of childbearing age if her age does not exceed 49 years, at the written request of a woman and a man who intend to undergo this medical service together ...* There is no mention of the applicant's sexual orientation or partnership status, there is no requirement for the permanence or legitimacy of the relationship, except *(2) Artificial insemination may not be performed on a woman who has a family relationship with a man with whom she has submitted an application pursuant to paragraph 1, which excludes the conclusion of marriage pursuant to another legal regulation.*

While in the case of the biological infertility definition, the 3<sup>rd</sup> party reproduction is needed only exceptionally (cca 4 % ART female patients under age of 35, not general population, need a donor egg,<sup>16</sup> similarly for male),<sup>17</sup> it is always needed in the non-biological definition.

An extremely lively and current topic is the child's access to information about his genetic and biological (in the case of surrogacy) origin. One by one, countries are moving to abolish the anonymity of gamete donation, enacting the possibility for a child to find out the identity of the donor when the child reaches adulthood.<sup>18</sup> As far as the Czech Republic is concerned, gamete donation is anonymous by law.<sup>19</sup> With regard to cell donation, the Czech legislation is bound by the Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation,

<sup>16</sup> CDC & ASRM. *2016 Assisted Reproductive Technology National Summary Report*. Atlanta (GA): US Dept of Health and Human Services, 2018.

<sup>17</sup> SHERINS, R. J., THORSELL, L. P., DORFMANN, A., DENNISON-LAGIS, L., CALVO, L. P., KRYSA, L., (...), SCHULMAN, J. D. Intracytoplasmic sperm injection facilitates fertilization even in the most severe forms of male infertility: pregnancy outcome correlates with maternal age and number of eggs available. *Fertil Steril*. 1995, Vol. 64, No. 2, pp. 369–375.

<sup>18</sup> Sweden, the UK, Australia, Portugal, the Netherlands, Switzerland and Germany, among others.

<sup>19</sup> The Act on Specific Health Services, No. 373/2011 Coll. § 10: *(1) The provider, who is authorized to perform the methods and procedures of assisted reproduction, is obliged to ensure the preservation of mutual anonymity of the anonymous donor and infertile couple and the anonymity of the anonymous donor and the child born from assisted reproduction. (2) A provider who has performed an assessment of the medical fitness of an anonymous donor and a woman or a man from an infertile couple is obliged to hand over the data on their health condition necessary for artificial insemination to the provider who performs artificial insemination; this provider is obliged to keep data on the health status of the anonymous donor for a period of 30 years from the implementation of artificial insemination and to provide information on the health status of the anonymous donor to an infertile couple or an adult born from assisted reproduction upon written request.*



procurement, testing, processing, preservation, storage and distribution of human tissues and cells (Tissue Directive).<sup>20</sup> It states these ethical principles in its introduction (No. 18): *As a matter of principle, tissue and cell application programmes should be founded on the philosophy of voluntary and unpaid donation, anonymity of both donor and recipient, altruism of the donor and solidarity between donor and recipient. Member States are urged to take steps to encourage a strong public and nonprofit sector involvement in the provision of tissue and cell application services and the related research and development.* The European Commission carried out an evaluation of the Tissue Directive,<sup>21</sup> talking about “strong growing demand and significant commercialization, such as plasma and egg donation. donated gametes. Certain gaps in the protection of offspring born from donated gametes have also been identified.” The first steps towards reformulation have begun.

The 3<sup>rd</sup> party reproduction brings about a number of psychosocial, ethical and legal problems, some of which may overlap the described ways towards parenthood. **However, the main difference consists in the fact that in the former three ways (patchwork families, adoption, foster and guardian care), the institution deals with a situation which has arisen by itself – the child is already here – while in the case of the MAR, the institutions are present at the creation of such a situation, they enable the situation. It is therefore the guarantor of the whole process, including its consequences.** When discussing the access to MAR, experts stress the necessity of balancing gains and losses of the system’s individual members,<sup>22</sup> who are: MAR applicant/s, future child/ren, already living children of applicants, donors of human body parts including surrogate mothers, stakeholders, society as a whole.

### 3. INTERPRETATION OF THE RIGHT TO HAVE A FAMILY IN THE CONTEXT OF THE DEVELOPMENT OF REPRODUCTIVE TECHNOLOGIES

#### 3.1 Basic legal documents relating to the right to found a family

MAR applicant/s want a child. The basic human rights document, The Universal Declaration of Human Rights from 1948, deals with the family in the article 16: *(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is*

<sup>20</sup> Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells. In: *EUR-Lex* [online] [2021-04-10]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0023>>.

<sup>21</sup> Executive Summary of the Evaluation of the Union legislation on blood, tissues and cells. (SWD (2019) 375 final) In: *European Commission* [online]. 10. 10. 2019 [2021-04-10]. Available at: <[https://ec.europa.eu/health/sites/health/files/blood\\_tissues\\_organ/docs/swd\\_2019\\_375\\_summary\\_en.pdf](https://ec.europa.eu/health/sites/health/files/blood_tissues_organ/docs/swd_2019_375_summary_en.pdf)>.

<sup>22</sup> See ESHRE Task Force on Ethics and Law 3. Gamete and embryo donation. *Hum. Reprod.* 2002, No. 17, pp. 1407–1408. ESHRE Task Force on Ethics and Law 13. The welfare of the child in medically assisted reproduction. *Hum. Reprod.* 2007, No. 22, pp. 2585–2588. ESHRE Task Force on Ethics and Law 14. Equity of access to assisted reproductive technology. *Hum. Reprod.* 2008, No. 23, pp. 772–774.

*entitled to protection by society and the State.* European version of the Universal Declaration, the European Convention on Human Rights, expresses the views of the family in two articles: Art. 8: *Everyone has the right to respect for his private and family life, his home and his correspondence,* and Art. 12: *Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.* The Czech and the Slovak Republics enshrined these principles in their legislations by the following identical formulation: *Everybody has the right to the protection against an unjustified intervention in their private and family life.* The only difference is that, in the Czech Republic, this is contained in the Article 10 of the Constitution, while in the Slovak Republic in the Article 19. There is also the Charter of Fundamental Rights of the European Union from 2000. The Charter formulates the rights relating to the family in the following articles: Article 7 *Everyone has the right to respect for his or her private and family life, home and communications* and Art 9 *The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.*

### 3.2 Influence of reproductive technologies on the possible interpretations of the rights to found a family – theoretical analysis

The Universal Declaration and the European Convention, two basic human rights documents on which the European legislation has been based, were formulated soon after the World War II as a reaction to the War's horrors. They are formulated negatively, i.e. the government is not allowed to intervene in the family and the family formation, this is a purely private matter. Technologies, including medical technologies, however, have been created to interfere in some ways. What possible interpretations of the rights to found a family result from the new technologies?

The possibility to terminate an unwanted pregnancy safely and legally using reproductive technologies. This possibility has brought about an essential change of thinking on the way of: I have the right to use these technologies. Thus, the formulation of the right is positive: **though I am expecting a child, I have the right not to have him or her** (intervention of technologies) if it does not suit me. There are long discussions on whether this right is not in contradiction with the child's right to life – Art. 3 of the Universal Declaration: *Everyone has the right to life, liberty and security of person.* So far not all the legislations contain the right to abortion. The Czech and Slovak legislations enable abortion from social reasons up to the week 12 of the pregnancy if a woman applies for it.<sup>23</sup>

The prenatal diagnostics reveals more and more early and exactly whether the expected child will be healthy or not. It offers, in combination with the safe and accessible abortion, the **right to have a healthy child.** Even in this case, there are long discussions on what the reason for abortion is and what it is not. In the Czech Republic, pregnancy can be terminated within 24 weeks due to health reasons.<sup>24</sup>

The prenatal diagnostics can determine the expected child's sex, and, therefore, offers the possibility whether to give birth to a child with the non-preferred sex – possible **right**

<sup>23</sup> Act No. 66/1986 Coll., on abortion, and implementing Decree No. 75/1986 Coll.

<sup>24</sup> Ditto.



**to have a girl or a boy.** So far, the abortion because of the child's sex is regarded to be a criminal offence, which, however, does not imply that it is not performed, under various pretexts, in some clinics. We do not have any information of violating the ban in the Czech Republic or the Slovak Republic.

The isolation of hormones, together with the possibility to manipulate gametes and embryos, has created a new discipline – medically assisted reproduction. The MAR does not mean a therapy in the original sense of the word – it does not repair a defect and does not bring back “the health.” There is a **right to get round the inability to get pregnant, to bear and to deliver a baby**, there are just long discussions on who has the right and under which circumstances. In the Czech Republic, it is only legal for a woman and a man as a couple to ask for the MAR. In other countries, however, the legislations are different: e.g. in the UK, even a single man may ask for MAR.<sup>25</sup>

The possibility to handle gametes has brought about the possibility of choice from whom the gametes or embryos should be. Originally, the health of the donors was taken into consideration. However, in 2002, the discussion was substantially influenced by the requirement of an American lesbian couple, which requested the sperm from a congenitally deaf donor from the sperm bank.<sup>26</sup> Both of them were deaf and wanted to have a deaf child. The sperm bank stated that they had only healthy donors but in the opinion of the applicants, deafness is not an illness but an alternative life scenario. They contributed to an extremely complicated discussion on what an illness is and what it is not, which can be also formulated as a **right to an autonomous definition of an illness**. This discussion is not of course limited only to the MAR.

A huge development of genetic diagnostics has brought about the possibility of a genetic diagnosis of embryos. The method was originally developed for situations of a serious monogeneous disease in a couple planning parenthood. The embryo which is not a carrier of the disease is chosen from available embryos, and implanted in the uterus. In this way, the preimplantation genetic diagnostics (PGD) can replace prenatal diagnostics. Undesirable result can result in the abortion request. Therefore, it definitely represents a more ethical option. The development of genetics enables to recognize more than serious monogeneous diseases. It enables the **right to choose a child with special characteristics**. It is discussed what can be chosen, and by whom it can be chosen. In many countries, including the Czech Republic and the Slovak Republic, there are lists of genetic diseases in which the embryo selecting is legally acceptable. These lists are more and more extended, and it is very probable that, due to the vague definition of a disease, they will be extended even more significantly. The sex selection (the possibility of choice has already been mentioned in association with prenatal diagnostics) is an example of “special characteristics”. In the Czech and Slovak Republics, the PGD for the purpose of the sex selection

<sup>25</sup> “While there are no legislative acts or strategies that reference an individual's right to infertility treatment, there are also no legal restrictions to the availability of MAR based on marital status or sexual orientation,” claims A Policy Audit on Fertility. ESHRE and Fertility Europe. In: *Fertility Europe* [online]. 2017 [2021-04-10]. Available at: <<http://www.fertilityeurope.eu/our-projects/policy-audit/>>. (Human Fertilisation and Embryology Act, 2008)

<sup>26</sup> Spriggs, 2002.

is possible in the cases in which the child could demonstrably suffer from a hereditary disease which would not affect a child of the opposite sex. As examples, haemophilia or muscle dystrophy can be mentioned. Long ethical discussions are held about the socially ‘balancing family.’<sup>27</sup>

Undeveloped uterus is a serious disease preventing motherhood. The disorder is most commonly connected with the Mayer-Rokitansky-Küster-Hauser (MRKH) syndrome. The woman is healthy but she has no uterus or possibly no vagina and fallopian tubes. However, she has oocytes. In some countries healthy children have been born after the transplantation of uteri from donors, an experimental project is also under go in the Czech Republic.<sup>28</sup> From the medical point of view, this is a very complicated surgery for both women. From the legal point of view, the situation is not new: transplantation is a common practice in medicine. However, the future of the method is being discussed: it can be expected that sooner or later, uterus will be transplanted in a male. This can result in the **male’s right to pregnancy and delivery**.

The latest technology is called “gene editing”, the possibility of manipulation inside a particular DNA. When it is possible to interpret correctly the purpose of individual DNA parts, it will be possible to create an embryo with special characteristics and transfer it directly into a woman’s uterus. The **right to design babies** can be expected. The first genetically modified twins were born in China in 2018; long discussions of the ethicality and safety of this method followed.<sup>29</sup>

Artificial gametes are being developed, i.e. eggs and sperms are produced artificially.<sup>30</sup> Various sorts of cells, from stem cells to somatic cells, are used. Theoretically, it will be possible in the future to create an egg from a man’s somatic (e.g. dermal) cell, and to use a man’s sperm to fertilize it.<sup>31</sup> The same is true for women. The **right to have a genetically related child with oneself of with one’s homosexual partner** can be expected.

Legislations change; “social changes” are usually an argument for the changes towards liberalization. Expert medical societies have responded to societal changes by changing definitions. While infertility was still defined as a heterosexual couple’s disease in 2009,<sup>32</sup> the latest glossary defines it as follows:<sup>33</sup> “A disease characterized by the failure to establish

<sup>27</sup> (McGowan & Sharp, 2013; Malpani, 2001).

<sup>28</sup> CHMEL, R., PASTOR, Z., MATĚCHA, J., JANOUŠEK, L., NOVÁČKOVÁ, M., FRONĚK, J. Uterine transplantation in an era of successful childbirths from living and deceased donor uteri: Current challenges. *Biomed Pap.* 2020, Vol. 64, No. 1, pp. 115–120.

<sup>29</sup> CYRANOSKI, D. The CRISPR-baby scandal: what’s next for human gene-editing. In: *Nature* [online]. 26. 2. 2019 [2021-04-10]. Available at: <<https://www.nature.com/articles/d41586-019-00673-1>>.

<sup>30</sup> HENDRIKS, S., DANCET, E. A., PELT, A. M., HAMER, G., REPPING, S. Artificial gametes: a systematic review of biological progress towards clinical application. *Human Reproduction Update.* 2015, Vol. 21, No. 3, pp. 285–96.

<sup>31</sup> SMAJDOR, A., CUTAS, D. Artificial Gametes. Nuffield Council on Bioethics. Background paper. In: *Nuffield Council of Bioethics* [online]. 2015 [2021-04-10]. Available at: <<http://nuffieldbioethics.org/wp-content/uploads/Background-paper-2016-Artificial-gametes.pdf>>.

<sup>32</sup> ZEGERS-HOCHSCHILD, F., ADAMSON, G. D., DE MOZON, J., ISHIHARA, O., MANSOUR, R., NYGREN, K. International Committee for Monitoring Assisted Reproductive Technology (ICMART) and the World Health Organization (WHO) revised glossary of ART terminology. *Fertility and Sterility.* 2009, Vol. 92, No. 5, pp. 1520–24.

<sup>33</sup> ZEGERS-HOCHSCHILD, F., ADAMSON, G. D., DYER, S., RACOWSKY, C., DE MOUZON, J., SOKOL, R., VAN DER POEL, S. The International Glossary on Infertility and Fertility Care. *Fertility and Sterility.* 2017, Vol. 108, No. 3, pp. 393–406.

a clinical pregnancy after 12 months of regular, unprotected sexual intercourse or due to an impairment of a person's capacity to reproduce either as an individual or with his/her partner." One can say, that the fact, that both, man and woman are needed to conceive a baby, is not in contradiction with a possibility, that just one of the sexual partners have medical problems leading to infertility and other is healthy. That is true. But this is reflected in the first part of the new definition. The second part is broadly interpreted (and intended) as the legal access of single persons and homosexual couples to ART.<sup>34</sup>

### 3.3 Influence of reproductive technologies on the possible interpretations of the rights of the child - theoretical analysis

Not only adults, children also have the right to a family: "A protective approach to the rights of the child results from the fact that it is focused on children as a group, it is not focused on the exercising the rights of a particular child, the subject of rights. The protection of children and their best interest comes, in according to this approach, before the freedom of choice and action."<sup>35</sup> The situation of a child being perceived as an "object" was changed by the adoption of the United Nations Convention on the Rights of the Child in 1989. The text contains an idea of the child's autonomy, the child becomes a subject, not the object of the rights. A certain deal of autonomy is needed for the implementation of the rights. One of important rights enshrined in this Convention is the right to know one's parents, Article 7: *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*, and the right to have a contact with both parents, Article 8: *States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*

The children's right to know their parents and the right to the right development of identity is currently interpreted as the right to know all persons who have contributed to the conception and birth of a particular child, i.e. genetic, biological, legal and psycho-social parents.<sup>36</sup> As we have already mentioned in the subchapter on adoptions, in the Czech Republic, e.g., it led to the transition from an anonymous adoption to cancelling the anonymity in the child's adulthood, § 838 of the Civic Code: *As soon as the adopted individual becomes competent (is enjoying full rights), he/she gets the right to get acquainted with the content of the document which was made in the adoption proceedings.* Czech experts in family law<sup>37</sup> comment on it as follows: "The child is an integral part of his or her

<sup>34</sup> Single men will get the right to start a family under new definition of infertility. In: *The Telegraph* [online]. 19. 10. 2016 [2016-10-20]. Available at: <<https://www.telegraph.co.uk/news/2016/10/19/single-men-will-get-the-right-to-start-a-family-under-new-defini/>>.

<sup>35</sup> KONEČNÁ, H., KUBÍNOVÁ, J., SUDOVÁ, M. Současný rodičovský diskurz a jeho dopad na právní rodičovství. In: Aleš Neusar (ed.). *Sborník z XII. česko-slovenské konference Kvalitativní výzkum a metody ve vědách o člověku "Hranice normality."* Olomouc: UPOL, 2013, pp. 139–150.

<sup>36</sup> For example BLYTH, E., FRITH, L. Donor-Conceived People's Access to Genetic and Biographical History: An Analysis of Provisions in Different Jurisdictions Permitting Disclosure of Donor Identity. *International Journal of Law, Policy and the Family*. 2009, Vol. 23, No. 2, pp. 174–191.

<sup>37</sup> KRÁLÍČKOVÁ, Z. Children, parents, parental responsibility and the civil liability of other people. *The Lawyer Quarterly*. 2019, Vol. 9, No. 2, pp. 124–139.

family of origin. .... Generally, it is necessary to respect the balance between legal, biological and social parentage.” In MAR in the Czech Republic, this way of interpreting the child’s right to know her/his parents has not yet taken place in the case of MAR.

## 4. DISCUSSION

The problems associated with the use of reproductive technologies, from the simplest (a wire with an eye to cause abortion) to the currently newest (genetic manipulations), are extremely complicated. For centuries, professional discussions are held on ethical aspects of external interventions in the creation of a family. In this discussion, it will be just suggested what is, in our opinion, to be particularly considered in discussions on using reproductive technologies when supporting the creation of non-standard or alternative family formations.

### 4.1 Donation of body parts

MAR beyond biological limits will be always based on gamete donation and surrogate motherhood, until artificial gametes are clinically used. The requirements of the numbers of donated eggs, sperms, embryos and surrogate mothers have been increasing by a geometrical progression. For example, the authors of the study “The ethical case for non-directed post-mortem sperm donation”<sup>38</sup> point out that in the UK the demand for donor sperm numbers has risen enormously, which British sources are not enough almost 60% of applicants are without a male partner. The UK therefore buys sperm from abroad. Referring to The Department of Health and Social Care, the authors estimate that 4000 samples were imported from the USA and 3000 from Denmark in addition to samples from other European Union (EU) countries in 2018. The authors propose to replace the deficiency with sperm of deceased donors (page 4): “Here we have argued that it is both feasible and morally permissible for men to volunteer their sperm to be donated to strangers after death in order to ensure sufficient quantities of sperm with desired qualities. Indeed, sperm donated postmortem may also be an attractive option for some intended parents and some potential donors.”

Of course, donated cells are also needed by heterosexual couples in the reproductive age, however, this accounts for less than 5 % of those who need the technology assistance to conceive a child, as we pointed out earlier. Nevertheless, it needs to be admitted that the below described problems relate to any donation, not only its use beyond biological limits.

The Convention on Human Rights and Biomedicine states in the Article 21: *The human body and its parts shall not, as such, give rise to financial gain.* Financial gain is regarded as a downgrading of a human being and the human being’s integrity. Donors can be reimbursed for the costs connected with the procedure. However, the height of the costs

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<sup>38</sup> HODSON, N., PARKER, J. The ethical case for non-directed postmortem sperm donation. *J. Med Ethics.* 2020, Vol. 46, No. 7, pp. 489–492.

must not be a motivation factor.<sup>39</sup> The number of actually altruistic donors is limited, they do not cover the requirements of the reproductive market. Moreover, the applicants' requirements for the donors' quality are increasing. At the congresses of the European Society of Human Reproduction and Embryology the number of exhibitors – sperm banks and banks with human eggs – increases every year. The exhibitors offer all kinds of brochures, e.g. a catalogue called “VIP Egg Donors. Premium egg donors with extraordinary beauty and high educational level,” which is full of photos looking like photos from fashion magazines and containing the donors' measures, the data of their health and hobbies. The same is offered for the choice of sperms. On the websites of this society “3D donor view” is even available.<sup>40</sup>

Questions can be heard asking why it could not be possible to sell one's sperms, eggs or embryos or become a surrogate mother for money. Hair is also a part of the body and is sold, isn't it? Some experts call the principle of altruism in question, such voices can be also heard in the Czech Republic:<sup>41</sup> “In my opinion, the ban on financial profit resulting from the donation of one's organ and limiting of amount of donors to those who have an altruistic motivation, is not supported by any serious ethical argumentation, and, finally, it will result in a disadvantage for both potential donors and recipients of organs.” The supporters of commercialization refer to autonomy: one can do with oneself what he/she wants.

Will it not lead to a situation where a human being will be regarded as a source of spare parts?

#### 4.2 Multiple parenting

Thanks to reproductive technologies, enabling, in a considerable range, the separation of genetic, biological (gestational), legal and psychosocial kind of parenthood, there may be a number of candidates for a parent relationship to a particular child.<sup>42</sup> It is nothing new – there used to be orphans who needed to be taken care of, there used to be children conceived with another man than the man with whom the relevant woman formed a family. The basic difference, however, consists in the fact that this situation has developed somehow spontaneously (somebody had died) or has been caused by an individual, on the woman's responsibility (the woman conceived the child outside the family). However, if the situation develops with the assistance of institutions, institutions have the main responsibility; they must balance the desire of adults to have children through MAR and interests of other participants in the process, including the society as a whole.

The child's right to know his/her parents and the right to the right development of identity is currently interpreted as the right to know all the persons who contributed somehow

<sup>39</sup> Guide for the implementation of the principle of prohibition of financial gain with respect to the human body and its parts from living or deceased donors. In: *Council of Europe* [online]. 9. 3. 2018 [2021-04-10]. Available at: <<https://rm.coe.int/guide-financial-gain/16807bfc9a>>.

<sup>40</sup> In: *first-egg-bank.com* [online]. [2021-04-10]. Available at: <<https://www.first-egg-bank.com/en/>>.

<sup>41</sup> ČERNÝ, D. Umožnit prodej vlastních orgánů není neetické. In: *Zdravotnické právo a bioetika* [online]. 2018 [2021-04-10]. Available at: <<https://zdravotnickepravo.info/umoznit-prodej-vlastnich-organu-neni-neeticke/>>.

<sup>42</sup> KONEČNÁ, H., SVATOŠ, R. Issues in determining parenthood in “surrogacy.” *Human Affairs*. 2019, Vol. 29, No. 2, pp. 129–144.

to the conception and birth of the particular child. As we have already mentioned, it leads to cancelling the anonymity of gamete donation and surrogacy, because institutions must not prevent a child from accessing information that is considered important. In countries that have enacted this approach, the child's right to find out the donor's identity ranges between 16 and 18 years of the child's age. This is also recommended by the draft document "Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children,"<sup>43</sup> currently being passed by the Council of Europe, which states in the Article 7.1: "*Anonymity should be waived for all future gamete donations in Council of Europe member States, and the use of anonymously donated sperm and oocytes should be prohibited. This would mean that (except in exceptional cases, when the donation is from a close relative or friend) the donor's identity would not be revealed to the family at the time of the donation, but to the donor-conceived child upon their 16<sup>th</sup> or 18<sup>th</sup> birthday. The donor-conceived child would be informed at that time (ideally by the State) of the existence of supplementary information on the circumstances of their birth.*"

The children's parents are recommended to explain children the circumstances of their conception and birth since their early childhood, there is a lot of information materials available explaining how to manage the situation as good as possible.<sup>44</sup>

At the two-day ESHRE seminar "Moving on from individual connections to networks: new challenges in donor conception" in the February 2020, presenting psychologists and counsellors from around the world recommended lifelong psychological support to "donor" children, their parents, siblings and grandparents, and similarly to gamete donors and their extended families.<sup>45</sup> In Victoria, an Australian state, where the anonymity of gamete donation was abolished retrospectively, the donor linking service offered by the Victorian Assisted Reproductive Treatment Authority (VARTA) was established. Their two-year experience is summed up as follows:<sup>46</sup> "Engagement with counsellors tends to be lengthy in these situations." (Johnson, 2019).

Registers need to be kept and updated so that the child can be informed on the donor's or donors' identity. The above mentioned (so far not in power) Recommendation 2156 (2019) expresses it in the Article 7.3 as follows: "*Council of Europe member States which permit sperm and oocyte donation should set up and run a national donor and donor-conceived person register with a view to facilitating the sharing of information. ... Clinics and service providers should be required to keep and share adequate records with the register, and a mechanism should be established to provide for cross-border exchanges of information between national registers.*"

It can be argued that legislation in "un-anonymised" countries allows a child to contact genetic or gestational parents only in adulthood, so multiple parenting is just a kind of virtual reality, the „nuclear“ family is not disturbed. In our opinion, however, the situation

<sup>43</sup> CoE Recommendation 2156(2019). In: *Council of Europe – Parliamentary Assembly* [online]. [2021-04-10]. Available at: <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27680&lang=en>>.

<sup>44</sup> All books and films. In: *Donor Conception Network* [online]. [2021-04-10]. Available at: <<https://www.dcnetwork.org/catalog/all-books-and-dvds>>.

<sup>45</sup> The archive of presentations is available from the main author of this article.

<sup>46</sup> JOHNSON, L. Removing donor anonymity retrospectively in Victoria, Australia – two years on. In: *BioNews* [online]. 2019 [2021-04-10]. Available at: <[https://www.bionews.org.uk/page\\_142862](https://www.bionews.org.uk/page_142862)>.



of waiting for D-day is highly problematic, perhaps more absurd than the drama „Waiting for Godot“. If knowledge of the identity of other parents is considered essential for the proper development of the child's identity (we are not in favor of this view), we believe that these people should be a natural part of the child's wider family from birth. Moreover, by abolishing the anonymity at the age of 18, we paradoxically violate the Convention on the Rights of the Child. It states in the aforementioned Article 7 that *the child... has, from birth..., as far as possible, the right to know his or her parents. In adoptions, we know the genetic parent from birth, in ART even before, so why keep it a secret? Article 1 provides for the purposes of this Convention, a child is any human being below the age of eighteen years.* In the adulthood, the offspring is no longer a child.

### 4.3 International element

A free movement of patients, guaranteed by the Directive 2011/24/EU of the European Parliament, leads to a free movement of patients for MAR using donated gametes. CR is one of important target countries, almost 90% of the IVF cycles with donated eggs are done for foreigners.<sup>47</sup>

Patients' travelling for the purpose of MAR brings about two basic problems. The first problem is the situation concerning donation. The travelling is directed to countries where the donated gametes are more accessible, and usually cheaper, than in the home country. It commonly means that the applicants travel from a rich country to a poorer country. The second problem relates to the non-anonymity of the donation and to the child's right to know the identity of his/her parents. E.g., it is not an exceptional situation that a multiple donation is used: the sperm may come from Denmark, the egg from the Czech Republic, and the surrogate mother can come from the Ukraine. One of the applicant couple can be British and the other Italian. Which country will inform the child? The home country – most likely not – in many cases home countries do not even know about donor involvement. The country where the procedure was executed? But how will they keep track of the actual information on the residence and contact of the child? We do not even need to contemplate the difficulty that could arise should the donor and the child not share the same language.

### 4.4 Definition of an illness

The WHO has defined in 1946 the health as follows:<sup>48</sup> *“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”* (1946). Moral philosophers say about illness:<sup>49</sup> *“It implies that one does not necessarily*

<sup>47</sup> The donors are exclusively Czech women. *National Register of Assisted Reproduction (Národní registr asistované reprodukce)*, kept by the Institute of Healthcare Data and Statistics. In: *Institute of Health Information and Statistics of the Czech Republic* [online]. [2021-04-10]. Available at: <<https://www.uzis.cz/index.php?pg=vys-tupy—tematicke-rady&id=965>>.

<sup>48</sup> In: *World Health Organization* [online]. [2021-04-10]. Available at: <<https://www.who.int/about/who-we-are/constitution>>.

<sup>49</sup> SMAJDOR, A. Naturalness and unnaturalness in contemporary bioethics: Preliminary background paper. Nuffield Council on Bioethics. In: *Nuffield Council on Bioethics* [online]. 2015 [2021-04-10]. Available at: <<http://nuffieldbioethics.org/wp-content/uploads/Naturalness-preliminary-background-paper.pdf>>.

have to demonstrate a clinical pathology in order to have a claim for medical treatment. Therefore the reliance on natural or biological facts as a basis for determining need, or for distinguishing between correction and enhancement, is diminished.” It is definitely a good thing that one does not necessarily have to demonstrate a clinical pathology to draw the attention of doctors. However, the loss of clear criteria causes serious problems with the definition of an illness at both ends: what an illness is and what it is not. The two deaf lesbians asking for the sperm of a deaf donor have already been mentioned above, they do not regard deafness to be an illness. The problems concerning prenatal and pre-implantation diagnostics have also been mentioned: What characteristics of the embryo or the unborn child will be considered so negative and so threatening the quality of life of the future child, that they will be an argument for abortion? And what characteristics of the embryo or the unborn child will be considered positive, requested, that the embryo will be selected or the foetus carried to the delivery?

The deliberately sharpened discussion will be closed by an almost funny paradox. The Convention on the Rights of the Child states in the Article 17: *States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.* This is even reflected in educational programs, including sexual education. In some countries, discussions were initiated after publishing the book for sexual education, which is – it has soft washable boards – intended for preschool children. There are very explicit pictures in it.<sup>50</sup>

While children are provided with very exact information on the fact that a woman and a man are needed to conceive a baby, so that they can recognize and announce sexual abusing in time, expert societies define infertility as an individual's disease.

## 5. CONCLUSION

“...support, counselling and privacy (but not anonymity) should be available to all parties, the fertility sector should take on more responsibility, the time has come for a” new paradigm “of co-parenting, involving both biological and non-biological parents,” was told in June 2019 in London in a professional debate on donation, organized by the Progress Educational Trust.<sup>51</sup> (Apparently it is based on the saying “more heads know more” and it is expected that a larger number of parents can communicate more easily than a quarrelsome couple).

The use of all technologies, not only medical ones, is widely discussed. The opponents to the extending the use of technologies draw attention to risks, and describe worst-case scenarios. Promoters say that even trains would not go if the opponents' worries were taken into consideration, and request for evidence based arguments, not just speculations.

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<sup>50</sup> DÍAZ MORFA, J. R. *My first book about sexuality*. Madrid: Editorial Libsa Sa, 2008.

<sup>51</sup> COLLINS, Y. Donor conception and direct-to-consumer DNA testing. In: *BioNews* [online]. [2021-04-10]. Available at: <[https://www.bionews.org.uk/page\\_143527](https://www.bionews.org.uk/page_143527)>.

They describe advantages resulting from the development of technologies, and depict bright prospects. In most cases, however, it can be mentioned as an argument or counterargument that these are just estimations of the development usually based on thought experiments. The actual impacts of the use of technologies can be often evaluated as late as after many years.

In the reproduction, the time perspectives are usually much longer. Moreover, the evaluated criteria (the quality of life) are defined and measured with great difficulties. E.g., the study evaluating the development of “unwanted children” lasted 35 years.<sup>52</sup> However, it would be needed to study two generations to be able to evaluate better the parental potential, success at work, satisfaction in the old age, impact on other people as a whole, etc.

The problems described in this text relate to some extent to the general use of reproductive technologies, not only in the case of non-standard family formations. The use of 3rd party reproduction in biologically and socially defined infertility is technically identical (we insert some gametes into a woman's body), but legally, psychosocially and ethically the situation is diametrically different: in the first case we supply the missing gamete / gametes, in the second the missing parent. Moreover, while the use of the 3rd party reproduction within the medically defined infertility is rather exceptional and the problems can be dealt with individually, its use beyond the medical definition of infertility or beyond the medically perceived definitions of other diseases is increasing enormously, and brings the necessity of a large-scale world-wide regulation. In our opinion, the 3rd party reproduction causes much more serious problems than problems that are intended to be solved. Therefore, a question is asked whether those who want to create alternative family formations would have chosen this way if they had realized the whole situation.

Alternative family formations have always emerged and will emerge in the future. It is necessary to respect the right of a person to organize his/her life according to his/her own, of course at his/her own risk. But s/he must not endanger another. **In most cases of alternative families, the institution deals with a situation which has arisen by itself: the child is already here. In the case of the MAR, the institutions are present at the creation of such a situation, they enable the situation. It is therefore the guarantor of the whole process, including its consequences. If society is to take responsibility for something, to legislate for it, it must be sure that it will bring good to all.**

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<sup>52</sup> DAVID, H. P., DYTTRICH, Z., MATĚJČEK, Z. Born Unwanted: Observations From the Prague Study. *American Psychologist*. 2003, Vol. 58, No. 3, pp. 224–229.