The progress of the science of medicine and the creation of new family structures

It is commonly admitted that a lot has changed regarding Medically Assisted Reproduction (hereafter MAR) in the last decades. The progress observed in MAR does not solely concern the techniques themselves in conjunction with the progress achieved in the science of medicine, but it also concerns – mostly one might say – the family structures within which access to medically assisted reproduction is allowed or as they are created upon recourse thereto. These new circumstances resulting in the incremental progress of medicine present us as a society with moral, social and legal issues. However, apart from the issue of legality or social acceptance of these new circumstances, deep concern is also raised by the difficulty in commonly addressing them in Europe due to lack of a common legislation, since the legislative regulations are the fruit of different moral approaches. Nowadays, the family has been reshaped, breaking the classic pattern: my mother (female) is the one who carried me and my father (male) is the one who she married, lives with or recognised me as his own child.

Taking into consideration the important differentiations family structures have experienced up until now, one may observe that there is a real biological kinship seen by another perspective: it is the fundamental right of transgender (or trans), and more specifically of transsexual persons, to reproduction.

First of all, it has to be clarified that by the term transsexual we mean persons who are fully identified with the gender different to the one assigned at birth while simultaneously rejecting the primary and secondary characteristics of their biological gender. The biological gender binary “male – female” is not identical with the social gender “masculine - feminine”. There is, in other words, a dimension of “gender identity”. They are people who intend to undergo or are undergoing or have undergone gender reassignment treatment which can include hormone therapy or
surgical intervention\(^1\). These persons, in order to be recognised on the grounds of their new desired gender\(^2\), they will have to undergo medical intervention which includes hormone therapy at first and subsequent surgical correction of external genitalia and sterilization depending on every European country’s legislation\(^3\).

Of course, it is a fact that, nowadays, the demands of trans persons are limited to the obvious: the right to the legal recognition of their gender and their social acceptance. Therefore, we could argue that the right to access MAR does not constitute their prime concern yet. Still, there is no doubt that such family structures have nowadays already been created.

It is worth commenting on the fact that reproductive medicine now provides everyone – therefore, these persons as well - with the possibility of cryopreserving gametes (spermatozoa and ova), fertilised ova and germinal tissue (ovarian and testicular)\(^4\) before undergoing hormone therapy or surgical reassignment in order to use them after partially or fully transitioning to the new gender. On the one hand, we do not know, for instance, if spermatogenesis is going to be restored after long-term estrogen treatment and on the other hand, in any case, gender reassignment surgery leads to irreversible loss of the natural reproductive capacity\(^5\). This process has not always been easy and accepted for these persons. We indicatively mention that in 2001 it was claimed that either way these persons should enjoy the same possibilities as persons risking losing their gametes, due to treatment for a malignant disease, from

\(^1\) ILGA-Europe: “Refers to people who identifies entirely with the gender role opposite to the sex assigned to at birth and seeks to live permanently in the preferred gender role. This often goes along with strong rejection of their physical primary and secondary sex characteristics and wish to align their body with their preferred gender. Transsexual people might intend to undergo, are undergoing or have undergone gender reassignment treatment (which may or may not involve hormone therapy or surgery)”. Available at http://www.ilga-europe.org/home/publications/glossary.

\(^2\) Case Goodwin vs UK constituted a turn for ECHR case-law and a subsequent crucial factor. As stressed in this case, a country’s failure to change the birth certificate of a person wishing to identify their gender with the one of their will constitutes a breach of Article 8 of the Convention, also stating that the change in these persons’ documents must be done without the requirement of gender reassignment surgery.

\(^3\) The various ways of addressing the issue on a European level is of particular interest. See http://tgeu.org/Trans_Rights_Europe_Map/ where one can see in which European countries hormone therapy, surgical correction and sterilization are compulsory.


the moment that, in fact, current reproductive techniques can offer these persons the possibility to be genetically connected to their children\(^6\).

In our days, many are the texts recognizing the right to a “new biological family”. It is indicative to mention the case of the opinion issued by the French National Academy of Medicine on 25 March 2014 entitled *Conservation of gametes of transsexual persons and potential parenting plan*\(^7\), which recognises the transsexual persons’ possibility to cryopreserve their genetic material with a view to carrying out their parenting plan so as to preserve their fertility.

Furthermore and according to the current medical practice, the attending physician ought to inform persons choosing the process of (medically) reassigning their gender about the possibility of cryopreserving genetic material, since these medical acts entail the serious risk of sterility due to the altering of the gonadal function as well as the testicular and ovarian tissue\(^8\).

From the point of view of these persons, it appears that they are not any different from the general population regarding their desire to reproduce. It is characteristic that in a survey conducted among transsexual men it appeared that many of them desired to become parents, while certain said that had they known of the possibility of cryopreservation prior to their gender reassignment they would have expressed their will to freeze their sperm\(^9\).

However, how does this appear in practice? Let’s examine some hypothetical scenarios or cases which we come across in the these persons’ everyday life. For example, before transitioning to the new sex, the man cryopreserves sperm and after

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\(^6\) *De Sutter* P, Gender reassignment and assisted reproduction: present and future reproductive options for transsexual people, Hum Reprod 2001 Apr; 16(4):612-614.


fully transitioning, as a single woman now, apart from applying for a surrogate mother and ova, she will be able to use the frozen spermatozoa. We are faced with a case where the same person is simultaneously considered to be both the legal/social mother and the biological father! The opposite could also happen in countries where an unmarried single man is granted equal access.

Some could characterize as quite particular the case of transsexual persons who undergo hormone therapy and then change their legal gender without having new genitalia created at the same time since they keep the ones they were born with. For instance, a person with female genitalia cryopreserves ova and then undergoes hormone therapy, changes their legal gender to masculine and resorts to MAR. In this case, the person will solely need sperm donation since “he” has internal reproductive organs and has frozen ova. The child born shall have as his/her legal/social father “him” who is legally a man, carried the child and is also the biological mother.

It is, thus, observed that the development of new reproductive medical techniques has not only created opportunities for preserving the fertility of transsexual persons, but it also provides them with the opportunity to start their own biological family allowing them to overcome the problem that the price of transitioning was the loss of their fertility. Any other interpretation of the respective regulations, which already exist in the Greek legislation, would violate the reproductive freedom of trans persons without serving any purpose of public interest whatsoever.

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10 Nosiska D. The democratizing of transgenderism: a conceptual and historical overview. The 18th World Congress on Controversies in Obstetrics, Gynecology & Infertility (COGI) All about Women’s Health, A comprehensive Congress fully devoted to clinical Controversies, debates and consensus, Session: Transsexuality, Vienna, Austria, October 24-27, 2013, Abstract Book p 9. Many times full transition can be due to the fear which these persons experience regarding their acceptance by health professionals since they worry about being rejected by the health system. On the contrary, in certain cases they terminate the process after hormone therapy or mastectomy in order to undergo the full process with a later sex reassignment surgery (SRS).

11 Sachinidou S. Christina, “Medically assisted reproduction and transsexual” for a further reference to various kinds of family structures, Available at http://repro.law.auth.gr/gr/studies.