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Law 3089

Medically assisted human reproduction

THE PRESIDENT
OF THE HELLENIC REPUBLIC

We publish at the Official Gazette the following law passed in the Parliament :

Article one

Articles 1455-1460 of the Civil Code which have been abrogated by article 17 of the Law 3089/2002, are replaced by Chapter Eight as follows:

"CHAPTER EIGHT
MEDICALLY ASSISTED HUMAN REPRODUCTION"

Article 1455

Medically assisted human reproduction (artificial fertilization) is permitted only in order to treat the incapacity to have children by natural way or to avoid the transmission of a severe genetic disease to the child. Such medical assistance is permissible up to the reproductive age of the assisted person. Human reproduction with the methods of cloning is prohibited.

Sex selection of the child to be born is prohibited, unless a severe hereditary sex-linked disease is to be avoided.

Article 1456

Medical acts that intend to assist human reproduction, pursuant to the stipulations of the previous article, are undertaken with the written consent of the persons who wish to have children. In the case of unmarried or single women, her consent or the consent of her partner –if such exists- are furnished by a notary document.

Consent can be withdrawn with the same way till the moment of transfer of reproductive material to the female body. Subject to the provisions of article 1457, the consent is considered to be withdrawn if one of the persons, who had already consented, died before the transfer.

Article 1457

Assisted reproduction after the death of the spouse or the partner is allowed by court authorization and only if both of the following requirements are met:

a. The spouse or the partner suffered from a disease that either could affect fertility performance or endangered his life.
b. The spouse or the partner had consented via a notary document for post-mortem fertilization.

Assisted reproduction is carried out not before six months and not after two years from the death of the spouse or partner.

Article 1458

The transfer of fertilized ova to another woman and pregnancy by her is allowed by a court authorization issued before the transfer, given that there is a written and, without any financial benefit, agreement between the involved parties, meaning the persons wishing to have a child and the surrogate mother and in case that the latter is married of her spouse, as well. The court authorization is issued following an application of the woman who wants to have a child, provided that evidence is adduced not only in regard with the fact that she is medically unable to conceive but also with the fact that the surrogate mother is in good health condition and able to conceive.

Article 1459

Persons resorting to assisted reproduction should decide in common, declare their will in a written form and address it to the doctor or the responsible of the fertility clinic

before starting the relevant treatment, whether any cryopreserved reproductive material that is not going to be used for their own treatment (surplus):

a) should be donated for fertility treatment of other persons that the doctor or the fertility clinic will decide,
b) should be used for research or therapeutic purposes,
c) should be destroyed.

In case there is no common declaration of the persons concerned, cryopreservation can last up to five years. After this period of storing, cryopreserved material can either be used for research and therapeutic purposes or be destroyed.

Non cryopreserved fertilized ova are destroyed after the completion of 14 days post – fertilization. Any intermediate cryopreservation period is neglected.

Article 1460

The identity of the donor of reproductive material is not disclosed to the persons wishing to have a child. Medical information concerning the donor is kept confidential with no identification. Access to this information is allowed only to the child and only for medical reasons related to the child's health.

The identity of the child and its parents is not disclosed to the donor.

Article two

1. Chapter Eight of the Part Four of the Civil Code referring to the relationship (articles 1463-1484) is replaced by Chapter Nine (articles 1461-1484). The articles 1461 and 1462 of this new Chapter have replaced the abrogated -by the article 17 of the law 3089/2002- articles. In this Chapter following amendments have been made:
2. Article 1461 is as follows:

"Article 1461

Meaning

Persons are between themselves blood relatives in lineal relationship where one is issued from the other (relationship between ascendants and descendants). Persons are blood relatives in collateral relationship if such persons without being lineal relatives are issued from one and the same ascendant. The degree of the family is determined by the number of births that connect the persons concerned."

3. Article 1462 is as follows:

“Article 1462

Alliance through marriage

Blood relatives of one of the spouses are allies through marriage in the same line and degree of the other spouse. An alliance through marriage shall subsist even after dissolution or annulment of the marriage which created the alliance.”

4. Article 1463 is replaced as follows:

“Article 1463

The relationship of a person with his mother and her relatives is deduced from the fact of birth. The relationship with the father and his relatives is deduced from the marriage of the mother with the father or is established by means of an acknowledgment either voluntary or through a Court decision”.

5. Article 1464 is replaced as follows :

“Article 1464

In case that the child is born after medically assisted reproduction of a surrogate mother, under the conditions of article 1458, it is presumed that mother is the one who has obtained the Court permission.

This presumption can be reversed by a legal action contesting the maternity, within six months from the birth of the child. The maternity can be contested by the legal action either by the presumed mother or by the surrogate mother, provided that evidence is produced that the child is issued biologically by the latter. The contesting must be proceeded with by the woman entitled to do so personally or by her specially authorized attorney or by the Court permission by her lawful representative.

Following the irrevocable Court decision that admits the legal action, mother of the child is considered to be the surrogate mother with retroactive effect as from the fact of its birth.

“6. Article 1465 is replaced as follows:

"Article 1465

Presumption issue from marriage

A child born during the marriage of his mother or within three hundred days from the dissolution or the annulment of such marriage is presumed to have as father the spouse of the mother (child born in marriage).

A child born after post-mortem fertilization, provided that the requested -according to article 1457- Court authorization exists, is presumed to be born during the marriage of his mother and father.

If the child has been born after the three hundredth day from the dissolution or the annulment of the marriage the proof that the father is the ex-husband of the mother shall burden the person who makes such assertion. This last provision is also applicable as regards the case of post-mortem fertilization, even if no Court authorization exists."

7. Article 1471 is replaced as follows:

"Article 1471

Any contesting of paternity shall be excluded also after the child's death, unless the relevant legal action had already been taken before its death.

The contesting of paternity shall be excluded: 1. by the husband of the mother if the latter had acknowledged the child as his child, before the Court decision about the contesting of paternity became irrevocable. 2 by any of the persons entitled to contest the paternity, mentioned in article 1469, given that the husband has consented to the medically assisted reproduction of his spouse."

8. Article 1475 is replaced as follows:

"Article 1475

Voluntary acknowledgment

A father may acknowledge as his own a child born out of wedlock provided that the mother gives her consent. If the mother has died or has no legal capacity, the acknowledgment shall be effective by the sole declaration of the father.

In case of medically assisted reproduction, the notarial consent of the man, referred to in article 1456 par. 1, section b΄, has the same legal effects as the voluntary acknowledgment. The woman's consent shall also apply as consent in the voluntary acknowledgment.

If the father has died or has no legal capacity, the acknowledgment may be effected by the grandfather or the grandmother on the father's side.
If the child has died, an acknowledgment shall be effective in favour of its descendants.

9. Article 1478 is replaced as follows:

"Article 1478

Any contestation of acknowledgment shall be excluded if three months have elapsed since the plaintiff was informed of the acknowledgment. In any case, any contestation shall be excluded if two years have elapsed since the acknowledgment or in the matter of contestation by a child which was under age at the time of the acknowledgment two years after it came of age.

"10. Article 1479 is replaced as follows:

"Article 1479

A mother has the right to demand through a legal action the acknowledgment of the paternity of her child born out of wedlock as a result of intercourse with its father. The same right also belongs to the child. Where the mother refuses her consent referred to in the first paragraph of article 1475 the right to a judicial acknowledgment shall also belong to the father and in the case contemplated in the third paragraph of article 1475 the above mentioned right shall belong to the grandfather or the grandmother on the father's side.
If medically assisted reproduction is conducted with reproductive material of a donor, the judicial acknowledgment of the paternity shall be excluded, even if his identity is already known or it is known afterwards."

Article three

1. Article 1711 of the Civil Code is replaced as follows:

"Article 1711

May become an heir only a person who at the time of devolution of the estate was. May also become an heir a person who is born after post-mortem fertilization.
Time of devolution is the time of death of the principal."

2. Article 1924 of the Civil Code is replaced as follows:

"Article 1924

Subject to the provisions of article 1711 section b΄, where a testator has instituted as heir a person not yet conceived at the time of the testator's death, such person shall be considered as a beneficiary under trust.

The same rule shall apply in regard to a juristic person instituted as heir which at the time of the testator's death had not been constituted."

Article Four

Article 121 of the Introductory Law of the Civil Code is replaced as follows:

"Article 121

In the cases contemplated in articles 42, 46, 79, 105, 111, 1350 par. 2, 1352 section b΄, 1368, 1407, 1441, 1457, 1458, 1522, 1525, 1526, 1532, 1533, 1660 – 1663, 1667, 1865, 1866, 1868, 1908, 1913, 1917 par. 2, 1919, 1920, 1956, 1965, 2021, 2024, 2027, 2028, 2031 of the Civil Code, and in every court action pertaining to adoption, guardianship, judicial assistance or custody of foreign cases, the proceedings of the ex parte jurisdiction of the Code of Civil Procedure is applied."

Article five

1. The article 614 paragraph 1 of the Code of Civil Procedure is completed as follows:

" Disputes concerning: a) the contestation of paternity, b) the contestation of maternity, c) the recognition of the existence or of the non-existence of the relation between father and child or of the existence or of the non-existence of parental care, d) the recognition of the paternity of a child born out of wedlock, e) the recognition of the existence or of the non-existence or of the nullity of the voluntary acknowledgment of a child born out of wedlock or of its complete assimilation with the child born in marriage resulting from the marriage that followed its birth and the contestation of the voluntary acknowledgment as well, f) the recognition of the existence or of the non-existence of adoption or of its dissolution, g) the recognition of the existence or of the non-existence of guardianship, are handled through the particular proceedings of the articles 615 – 622, in which also apply the articles 598, 600, 601, 603 and 606.

2. The Article 615 paragraph 1 of the Code of Civil Procedure is formulated as follows:

   "The Court may order the production of all relevant evidence, including certain scientific methods of proving paternity or maternity. If, in the disputes of the first paragraph of the previous article, a party to the action, although he has no particular reasons concerning his health, refuses to undergo the appropriate medical test, the Court will presume that the allegations of the opponent have been proved."

3. The article 619 of the Code of the Civil Procedure is replaced as follows:

"Article 619

1. Any legal action concerning contestation of paternity of a child born during marriage is addressed : a) to the child or its mother and its special guardian, in case that the legal action is taken by the spouse of the mother or by any of his parents, b) to the child's mother and her spouse in case that the legal action is taken by the child, c) to the child or its special guardian and to the spouse in case that the legal action is taken by the mother ; if any of the above mentioned persons has died, the legal action is addressed to the heirs of the deceased, otherwise the legal action is dismissed. The exercise of the right of contesting paternity shall be excluded in the case that the child has died.

2. Any legal action concerning contestation of maternity is addressed : a) to the surrogate mother and her spouse in case that the legal action is taken by the presumed mother and also to the child or its special guardian, b) to the presumed mother and her spouse in case that the legal action is taken by the surrogate mother and also to the child.

3. Any legal action concerning the acknowledgment of the existence or of the non-existence of relationship between father and child, of the parental care, of the voluntary acknowledgment or of the child's assimilation with a child born during marriage as a result of the marriage of its parents after its birth, or of the nullity of the voluntary acknowledgment or similar assimilation, is addressed: a) to one of the parents and the child in case that the legal action is taken by the other one of the parents, b) to both of the parents in case that the legal action is taken by the child, c) to both of the parents and the child in case that the legal action is taken by a third person; in case that any of the above mentioned persons has died, the legal action is

addressed to the heirs of the deceased and in case that the acknowledgment right has been exercised by the grand father or the grand mother, the legal action is addressed to them as well; otherwise the legal action is dismissed.

4. Any legal action concerning contestation of the voluntary acknowledgment is addressed to the persons that had a part in it or to their heirs and in case that the legal action is not taken by the child or its descendants the legal action is addressed to them as well; otherwise the legal action is dismissed.

5. Any legal action concerning the acknowledgment of the existence or of the non-existence or of the nullity or of the dissolution of the adoption is addressed: a) to the adopted child in case that the legal action is taken by the adoptive parent, b) to the adoptive parent in case that the legal action is taken by the adopted child, c) to the adoptive parent and the adopted child in case that the legal action is taken by a third person; in case that any of the above mentioned persons has died, the legal action is addressed to his heirs; otherwise the legal action is dismissed.

6. Any legal action concerning the acknowledgment of the existence or of the non-existence of the guardianship is addressed to the person placed under guardianship in case that the legal action is taken by the guardian and to the guardian in case that the legal action is taken by the person placed under guardianship or by a third person; otherwise the legal action is dismissed."

Article six

The article 799 of the Code of the Civil Procedure has been abrogated by the article 42 of the Law 2447/1996. Another article of the same number has been added, as follows:

"Article 799

Where, as law provides, a woman requests the court authorization for post-mortem fertilization or she claims that another woman becomes surrogate mother, the court of the place where the claimant or the surrogate mother have their provisional residence, is the court of jurisdiction.

If the Court decides that the publicity during the trial could offend against the morals or that there are special reasons for the protection of the personal or family life of the opposing parties, the Court may order in camera proceedings.

Article Seven

A new section is added in paragraph 1 of the article 20 of the Law 344/1976 concerning "Registrations" (Official Gazette, no 143A΄), as follows:

"In the case contemplated in article 1464 of the Civil Code, it is also produced the Court authorization granted to the woman wishing to have a child."

Article eight

The articles 1458 and 1464 are applicable only in the case that the claimant (woman) and the surrogate mother have their domicile in Greece.

Article nine

This law comes into force as from its publication at the Official Gazette.

We order the publication at the Official Gazette and the enforcement of this law, as a law of the Greek State.

Athens, 19 December 2002

THE PRESIDENT OF THE HELLENIC REPUBLIC

KONSTANTINOS STEFANOPOULOS

THE MINISTERS

OF ECONOMY AND FINANCE	OF INTERIOR, PUBLIC ADMINISTRATION & DECENTRALIZATION
N. CHRISTODOULAKIS	**K. SKANDALIDES**
OF HEALTH AND WELFARE	OF JUSTICE
K. STEFANIS	**F. PETSALNIKOS**

It is authenticated and officially sealed

Athens, 20 December 2002

THE MINISTER OF JUSTICE

F. PETSALNIKOS