

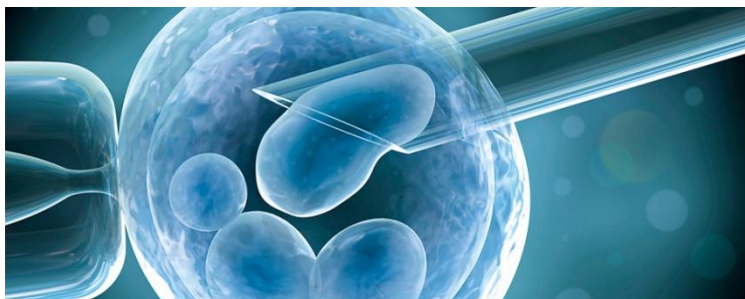


HELLENIC NATIONAL BIOETHICS COMMISSION

RECOMMENDATION

Regarding age limits in medically assisted reproduction

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After a question submitted by two Members of the Parliament, Mr. Skouroliakos and Mr. Oikonomou, and within its jurisdiction, the Hellenic National Bioethics Commission examined a potential change of the maximum age limit for females to have access to medically assisted reproduction.

According to the current legislation, only women up to 50 years old may have access to medically assisted reproduction, with no exceptions applying (art. 4, par. 1, pas. b, law 3305/2005). Therefore, the question pertains to whether the absolute wording of the aforementioned law leads, in certain cases, to the harsh treatment of women whose family life has been disrupted gravely (e.g. due to their child's demise). Thus, the Members of the Parliament who raised the issue suggest the alteration of this particular ordinance for people who have experienced such issues and who could, possibly, be able to procreate again, to have access to medically assisted reproduction.

1. Provision of maximum age limit for access to medically assisted reproduction

The Commission would like to highlight the main direction of Greek legislation regarding assisted reproduction, according to which medical assistance *“is allowed only in order to combat inability to conceive children naturally or to avoid the transmission of a serious disease”* (civil code, art. 1455). It is obvious that the legislature's intent is to use medical procedures in order to address pathological problems and not to provide alternative ways of procreation. Medically assisted reproduction is regulated similarly worldwide.

It is under these terms that a maximum age limit is provisioned by article 4 of law 3305/2005. For males this limit is described as “the age up to which natural reproduction is possible” whereas for females the limit is set at their 50th year of age. According to this particular wording, even if a woman remains fertile after her 50th birthday, she cannot have access to any method of medically assisted reproduction. However, it should be stated that such cases are very rare statistically.

The legislature combines the provision of a maximum age limit with the equally important issue of the well-being of the future offspring. In accordance with adoption

legislation, which also includes age limits, the current legislature intends to form families with reasonable age difference between parents and children, so that families serve their social role in the best interest of their children. Indeed, excessive age difference is not an ideal condition towards this intent, if not for anything else, due to the greater possibility of losing a parent while the child is still at an early and critical age.

2. Potential approval of exceptions

The Commission agrees that the inelastic maximum age limit of 50 years old for females to have access to assisted reproduction methods can deprive people, who would like to create a family, even later in their life, of such a fundamental right. The Commission takes also into consideration that under exceptional circumstances, such desire may be the result of unexpected tragic incidents and not a manifestation of personal egoism. However, the Commission advises against the alteration of the ordinance for the following reasons:

a) The risks for the women subjected to medically assisted reproduction and subsequent pregnancy are objectively high. Under all circumstances, these risks must be taken into more serious consideration than the desire for procreation, since it concerns the health not only of the women involved but possibly of the children they will bear.

b) The best interest of children regarding their normal socialization sets moral boundaries to the exercise of one's rights to reproduce and create a family. Exercising these rights means forming delicate and abiding interpersonal bonds with important consequences to the children to be born; consequences more important than the satisfaction of the desire to exercise these rights. Most importantly, since children do not actually "have a saying" on the matter, the responsibilities of the potential parent regarding the exercise of said rights are greater.

c) Finally, as the Commission has already stated in a previously published Recommendation, the Greek legislation -among the most flexible legislations globally- has not been paired, at least for the time being, with effective control practices, essential for its reliable implementation. Only recently, the possibility of organized and permanent

control mechanisms has arisen, a possibility whose results are to be seen. From this point of view, any further facilitation of the access to medically assisted reproduction is considered as premature by the Commission. In the current phase, the utmost priority, legally and politically, should be to seek the institutional stability that will ensure the regulation of medically assisted reproduction.

Athens, February 14th 2017