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PROSPECTS FOR REGULATING THE RIGHT TO POSTHUMOUS REPRODUCTION IN THE CONTEXT OF WAR IN UKRAINE: FOREIGN EXPERIENCE AND FORMATION OF LEGAL SUPPORT FOR THE REALISATION OF REPRODUCTIVE RIGHTS OF MILITARY PERSONNEL

Nataliia Kvit

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Nataliia Kvit
Dr. Sc. (Law), Associate Professor at the Civil Law and Procedure Department, Iwan Franko Lviv National University, Lviv, Ukraine nataliia.kvit@lnu.edu.ua https://orcid.org/0000-0002-4823-5541
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ABSTRACT

Background: *This article focuses on the analysis of posthumous reproduction regulation perspectives in Ukraine through the lens of war risks, considering how the reproductive rights of male and female military personnel could be best guaranteed. In particular, the peculiarities of different legal and ethical problems, like formal requirements for the disposal of reproductive biological material and embryos in case of death, as well as issues of inheritance and establishment of paternity/maternity, are disclosed. The problem of posthumous reproduction legal regulation unification in the application of technology of posthumous reproduction is considered. Attention is also focused on the possibility of reproductive tourism for the sake of posthumous reproduction.*

Methods: *The methodological framework of the study was a range of philosophical, general, and legal methods. The-dialectical method of cognition made it possible to investigate the problem's social and ethical content and legal form and conduct a systematic theoretical and legal analysis of the applying posthumous reproduction in practice, especially under the scope of risks for health and life, which are conditioned by war in Ukraine. Thanks to the comparative method, the diversity of posthumous reproduction regulation models worldwide was investigated and compared with current Ukrainian draft Laws, particularly considering which of the models listed could best fit the Ukrainian law and moral traditions and the current situation in our country. With the help of a formal-legal approach, the content and peculiarities of contractual and legal practice were analysed.*

Results and Conclusions: *It was comprehensively considered that posthumous reproduction should be allowed and regulated in the special law of Ukraine, which must perform the clear and justified legal framework to protect the rights of all participants of these sensitive relationships: consumers and performers of these reproductive services, as well as so-called postmortal children.*

1 INTRODUCTION

The war in Ukraine affects all spheres of social life and even those that are considered the most intimate and relate to procreation. The adoption of many regulations and the discussion of some draft Laws that directly relate to the exercise of reproductive rights of military personnel under martial law is evidence of this. In particular, nowadays, many reproductive medicine clinics offer free examination, selection, and preservation of reproductive cells of male military personnel and discounts for female military personnel on the same services. Draft Laws, which are aimed to secure coverage of these costs at the expense of the state budget and provide free services to this category of citizens, are under consideration. So, it is evident that active work is underway in this field, and we will face the urgent need to effectively regulate these relations soon.

Many countries have regulated these issues for a long time and can serve as an example to fill the existing gaps in the current Ukrainian medical, civil, and family legislation. The preservation of reproductive function is an acute problem for the young generation of Ukrainians who are currently involved or will be involved in the performance of military duty soon and for the future of the nation in general, which is currently under constant threat of extermination. It is known that service in the armed forces is associated with many risks that can cause significant deterioration or loss of reproductive function. However, it should also be remembered that the main risk here is the risk of death, and if a person has taken advantage of the proposed reproductive cell preservation programs for military personnel or has previously undergone a treatment program and has

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unimplanted embryos or gametes preserved in a cryobank, there may be a problem with the use of posthumous reproduction, which is not currently prohibited but is not regulated by the current legislation of Ukraine. Unfortunately, in light of recent events, Ukrainian reproductive specialists have already experienced the problem of law enforcement in practice since the number of patients requesting posthumous use of the biological material and/or cryopreserved embryos is growing rapidly. The legislation does not provide any answers to the questions of how to legally properly formalise this procedure, what conditions should be met, and what legal consequences the use of assisted reproductive technologies (hereinafter ART) will have. In general, the development of ART in Ukraine, including methods of posthumous reproduction and their proper regulation, will also be of great significance not only for citizens of Ukraine but also for foreigners in the field of reproductive tourism, especially from countries where their reproductive rights are limited by their personal law.

The issues that legislators should answer as soon as possible to properly regulate the field of posthumous reproduction in Ukraine include the following:

1. Permitting or prohibiting the posthumous use of reproductive biological material and/or cryopreserved embryos retrieved from a deceased person during life and determining the possibility of reproductive biomaterial retrieval from a deceased person for reproductive purposes.
2. Establishing comprehensible requirements for the conditions of use of posthumous reproduction, in addition to the procedure for formalising consent, a personal order, an application, so-called biological will, etc.
3. Establishing the period of permitted posthumous storage and use of reproductive biological material and/or cryopreserved embryos of a deceased person and resolving the issue of regulating the inheritance rights of a child born by using posthumous reproduction.
4. Regulating the issue of establishing paternity/maternity of a deceased person to a child born as a result of posthumous reproduction.
5. Possibility of using this method with foreigners on the territory of Ukraine and the permissibility of exporting reproductive biological material and embryos from Ukraine abroad, and thus the possibility of applying the posthumous reproduction method on request of Ukrainian citizens abroad.

Therefore, this article aims to analyse the prospects for regulating this ethically sensitive sphere of social relations according to the issues we have identified above and to propose ways to regulate them which will be organic and comply with the current legislation of Ukraine to ensure the observance of the fundamental rights and freedoms of our citizens in the reproductive sphere.

The methodological framework of the study was a range of philosophical, general, and legal methods. The-dialectical method of cognition made it possible to investigate the problem's social and ethical content and legal form and conduct a systematic theoretical and legal analysis of the applying posthumous reproduction in practice, especially under the scope of risks for health and life, which are brought by war in Ukraine. The diversity of the postmortal reproduction legal regulation in different countries worldwide was investigated thanks to the comparative method. With the help of a formal-legal approach, the content and peculiarities of contractual and legal practice were analysed. The use of all the scientific methods listed above, in their totality, provided an opportunity to comprehensively consider the best legal approach to solving the postmortal reproduction regulation gap, which is now present in Ukraine, and to present the possible ways of the development of bioethics and law in this

area to guarantee the reproductive rights for Ukrainian citizens, especially for military personnel, who risk their life and health defending us all.

2 LIMITS, CONDITIONS, AND LEGAL CONSEQUENCES OF POSTHUMOUS DISPOSITION OF REPRODUCTIVE BIOLOGICAL MATERIAL

2.1 Conditions, procedure, and legal consequences of the use of posthumous reproduction (foreign experience and trends of Ukrainian law-making)

It is worth starting with the description of the general regulation, as it also applies to military personnel, who will be additionally entitled to certain benefits or special rules.

Nowadays, the field of assisted reproduction services in Ukraine is regulated only at the level of a special by-law, namely, the Procedure for the Use of Assisted Reproductive Technologies approved by the Order of the Ministry of Healthcare of Ukraine No. 787 dated 9 September 2013[1] (hereinafter Order No. 787), which does not contain any provisions that would directly regulate the issue of posthumous reproduction, leaving it to the responsibility and risk of reproductive medicine clinics and their patients, who may then face a lot of legal problems both in the course of exercising their reproductive rights and after their exercise, namely after the birth of a child.

Unfortunately, work on the preparation of a special law that would regulate this extremely complex and sensitive sphere of public relations has been going on for many years and has not reached its logical conclusion yet. Therefore, it is advisable to start with the recent trends that can be identified when analysing the latest draft Laws, namely 'On assisted reproductive technologies' No. 6475 dated 28 December 2021,[2] 'On the use of assisted reproductive technologies' No. 6475-1 dated 11 January 2022,[3] and 'On the use of assisted reproductive technologies and surrogate motherhood' No. 6475-2 of 13 January 2022.[4] If these draft Laws are improved, it will be possible to fill the existing gaps in the current legislation and properly regulate these relations at the level of the law in the future.

2.2 Scope of rights and conditions of the use of posthumous reproduction

Since Ukrainian legislation does not currently regulate the issue of posthumous reproduction, it is worth starting with an analysis of foreign experience in regulating this sphere. Israel's legislation pays the most attention to the posthumous reproduction of military personnel, so we will try to highlight its main provisions and assess the possibility of using this method of regulation.

1 Order of the Ministry of Healthcare of Ukraine No 787 'On Approval of the Procedure for the Use of Assisted Reproductive Technologies in Ukraine' of 9 September 2013 <https://zakon.rada.gov.ua/laws/show/z1697-13> accessed 10 February 2023.

2 Draft Law of Ukraine No 6475 'On Assisted Reproductive Technologies' of 28 December 2021 <https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73524> accessed 10 February 2023.

3 Draft Law of Ukraine No 6475-1 'On the Use of Assisted Reproductive Technologies' of 11 January 2022 <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73571> accessed 10 February 2023.

4 Draft Law of Ukraine No 6475-2 'On the Use of Assisted Reproductive Technologies and Surrogate Motherhood' of 13 January 2022 <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73585> accessed 10 February 2023.

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Israel's approach to regulating posthumous reproduction is an example of a flexible regulation. The Attorney General Guidelines on sperm retrieval after death and its use (2003) assist courts in making determinations of requests for extraction of sperm from deceased men. The regulations require: a request from the female partner (married or unmarried) of a dying or deceased man for the extraction of his sperm; and court authorisation to use the sperm, determined on a case-by-case basis, taking into consideration the deceased man's dignity and presumed wishes. In 2012 a Public Committee on Legislation Governing Fertility and Birth in Israel made recommendations for unified legislation on assisted reproduction and that posthumous reproduction must also be permitted for deceased women, but this has yet to be enacted. Israel's courts have also permitted parents to remove the sperm from their deceased sons, using a surrogate to create biological grandchildren.[5]

So, Israeli legislation and judicial practice are using the approach, which is based around the 'presumed wish', which means 'that a man who lived in a loving relationship with a woman would wish her to carry his child after his death'. Court-authorised sperm retrieval requested by parents is unique in Israel's regulatory landscape because, in the 2003 Guidelines, parents have no legal standing regarding the gametes of their deceased children. The recognition of a parent's right to extract gametes from a deceased son has not yet been recognised in any other jurisdiction reviewed. Such an approach, in our view, could not be accepted and used in the Ukrainian legislation.

So, in some legal systems, as in Israel, the principle of priority of the interests of living partners-donors is embodied, according to which posthumous retrieval of gametes is possible without the written informed consent of a deceased person. However, this approach is not compliant with the practice of the European Court of Human Rights (hereinafter the ECtHR), which in the case of *Evans v. United Kingdom,* pointed out that the right to paternity did not take precedence over the right to maternity and vice versa.[6] Therefore, this should be taken into account when regulating the right to posthumous reproduction in Ukraine to avoid possible discrimination that may arise if, due to the restriction of the use of surrogate motherhood only to married couples, men will be deprived of the right to posthumous use of gametes or embryos, transferred to them by their partner/wife in the relevant personal order in case of her death as required by the law.

So, as we can see, the existence of 'critical interest' was derived from the concept of human rights and defined as a person's concern about what happens after his death, a moral conviction or a requirement to make decisions with a posthumous effect,[7] but it is impossible to form guarantees for the realisation of the relevant right based on interest alone.

In this context, the case law of the United States is interesting, namely the decision in the case of posthumous reproduction in *Hecht v. Superior Court*.[8] In this case, the courts of the first and higher instances resolved the case in different ways, and as a result, concluding actions of a person during his lifetime, namely bequeathing gametes to a partner, contact with a cryobank, were interpreted as a desire to exercise his reproductive rights posthumously and biological material was considered as the property of a person. So, it implies the possibility of disposing of it at own discretion.

5 Shelly Simana, 'Creating Life After Death: Should Posthumous Reproduction be Legally Permissible Without the Deceased's Prior Consent?' (2018) 5 (2) Journal of Law and the Biosciences 329, doi: 10.1093/jlb/lsy017.

6 Jon B Evans, 'Post-Mortem Semen Retrieval: A Normative Prescription for Legislation in the United States' (2016) 1 (1) Concordia Law Review 133.

7 Hilary Young, 'Presuming Consent to Posthumous Reproduction' (2014) 27 (1) Journal o f Law and Health 63.

8 Hecht v Superior Court (Kane) (California Court of Appeal, Second District, Division Seven, 17 June 1993) <https://law.justia.com/cases/california/court-of-appeal/4th/16/836.html> accessed 10 February 2023.

The Belgian reproductive technology legislation allows the conduction of posthumous reproduction after the death of one of the couple if both partners have given consent to it. In this case, this reproductive technology can be implemented no earlier than six months and no later than two years after the death of the partner. Those few months after the death of a partner are given so that the living partner can make an informed decision about the future fate of the embryos.[9] On the one hand, this regulation of the timeframe for the possible posthumous conception of a child establishes a clear understanding of when such a child may be born and, accordingly, how to regulate the issue of inheritance after a deceased parent. On the other hand, the period of two years seems rather long if the future child will retain inheritance rights, which has a direct impact on the heirs who are already subjects of inheritance law. However, the positive aspect here is that the legislator gives time to think and to make a conscious and non-impulsive decision.

The experience of the Australian posthumous reproduction regulation is also interesting. In the Australian state of Victoria, the Human Tissue Act (1982) regulates the retrieval of gametes as the definition of tissue 'includes an organ, or part, of a human body or a substance extracted from, or form a part of, the human body'. Victoria's Assisted Reproductive Treatment Act (2008) has specific provisions concerning the use of posthumous gametes and embryos. These two pieces of legislation require that:

- the deceased provided consent in writing or consented, during his last illness, orally in the presence of two witnesses;[10]
- the procedure is requested by the deceased's partner or, if the deceased is a woman, her male partner uses a surrogacy arrangement;[11]
- the Patient Review Panel has approved it;[12]
- the woman must complete counselling before starting ART treatment.

The Patient Review Panel is required to consider the 'possible impact on the child to be born as a result of the treatment procedure', as well as 'any research on outcomes for children conceived after the death of the child's parents'.

This model seems to be very balanced and well-considered. Firstly, certain freedom is granted to the patient in the formulation of the personal order, which can be either written or oral, but given in the presence of two witnesses. Secondly, this freedom would be possible if the Patient Review Panel makes an additional decision that should not only approve the use of this method but also evaluate the possible consequences for the future child in the best interests of the child. Thirdly, it considers the possibility of posthumous reproduction in case of the death of a man and a woman, and, therefore, the issue of discrimination against reproductive rights does not arise, as it might be in our country if a restriction is established, without an appropriate exception, on the use of surrogate motherhood for the partner of a deceased woman, provided that she has the personal order for the posthumous use of her gametes or their joint embryos for posthumous reproduction. Therefore, it seems that this approach could be taken as a model, if not literally, then at least conceptually.

9 Guido Pennings, 'Belgian Law on Medically Assisted Reproduction and the Disposition of Supernumerary Embryos and Gametes' (2007) 14 (3) European Journal of Health Law 251, doi: 10.1163/092902707x232971.

10 Australian state of Victoria 'Human Tissue Act 1982' No 9860, s 26 <https://www.legislation.vic.gov.au/in-force/acts/human-tissue-act-1982/045> accessed 10 February 2023.

11 Australian state of Victoria 'Assisted Reproductive Treatment Act 2008' No 76, s 46 <https://www.legislation.vic.gov.au/as-made/acts/assisted-reproductive-treatment-act-2008> accessed 10 February 2023.

12 Ibid, s 85 (1) (c).

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There is a stricter procedure in Canada. It concerns the written consent to the posthumous use of human reproductive material, and this issue is regulated by the Assisted Human Reproduction Act, 2004, which stipulates that without the written consent of the donor (deceased person) to perform appropriate actions for a clearly defined purpose, no person may use the donor's reproductive material to create an embryo or remove reproductive material from the donor's body after his death to create an embryo and use the existing embryo in vitro.[13] Undoubtedly, this position of the legislator also has the right to exist and is obviously intended to protect bodily integrity and inviolability and ensure decent treatment of a deceased person. And in view of the special sensitivity of reproductive material and the rapid development of reproductive technologies and biomedicine, such a restriction forms a barrier to the abuse and illegal use of reproductive technologies.

A number of countries chose a more radical approach to solving this problem, which we consider unacceptable for the current situation in Ukraine. They took the way of prohibiting posthumous reproduction. For example, the Swiss Federal Act of 18 December 1998 on Medically Assisted Reproduction (Reproductive Medicine Act, RMA) in Art. 3 prohibits the use of reproductive cells or impregnated ova after the death of the person from whom they were obtained or after the death of any one of the couple, as it is concerned to be a practice that is contrary to the basic principle of the wellbeing of the future child. The exception is sperm cells obtained from donors.[14]

The German Embryo Protection Act (Embryonenschutzgesetz) explicitly prohibits the use of gametes of a deceased person for artificial insemination, punishing the practitioner for up to three years of imprisonment or a fine (Gesetz zum Schutz von Embryonen, 1990).[15] However, where the sperm has already been introduced into the egg (a zygote, the stage before embryo), this zygote could be returned to the wife for her use because the sperm had already been used before he died and were now inseparable.[16]

The French law on Bioethics first allowed assisted reproduction only for couples and only in cases of medical infertility (thus excluding same-sex couples).[17] However, after revising this law in June 2021, the range of people who can access ART was expanded and now includes also same-sex couples and individual women.[18]

However, the law-making trend and military realities that unfortunately take the lives of young Ukrainians do not allow us to consider the possibility of establishing a prohibition on posthumous reproduction in Ukraine. Instead, there are countries where this method is prohibited. Thus, we should consider the possibility of citizens of these countries applying for posthumous reproduction services at Ukrainian clinics, which will require separate regulations and the resolution of many issues, including the applicable right, paternity/

13 Valerie Thomas, 'Life After Death: Regulating Posthumous Reproduction' (How to Regulate?: The Regulatory Institute's Blog, 17 April 2019) <https://www.howtoregulate.org/posthumous-reproduction-2> accessed 10 February 2023.

14 Swiss Federal Act 'On Medically Assisted Reproduction (Reproductive Medicine Act, RMA)' of 18 December 1998 <https://www.fedlex.admin.ch/eli/cc/2000/554/en> accessed 10 February 2023.

15 Federal Republic of Germany 'Act for Protection of Embryos (The Embryo Protection Act)' of 13 December 1990, ss 2 (1), 4 <https://www.gesetze-im-internet.de/eschg/BJNR027460990.html> accessed 10 February 2023.

16 Yael Hashiloni-Dolev and Silke Schicktanz, 'A Cross-Cultural Analysis of Posthumous Reproduction: The Significance of the Gender and Margins-of-Life Perspectives' (2017) 4 Reproductive Biomedicine & Society online 21, doi: 10.1016/j.rbms.2017.03.003.

17 Law of the French Republic No 2011-814 'On Bioethics' of 7 July 2011, art 33 <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000024323102> accessed 10 February 2023.

18 Johnny Cotton, 'French Bioethics Body Backs IVF for All Women Who Want Children' (Reuters, 25 September 2018) <https://www.reuters.com/article/us-france-bioethics-law/french-bioethics-body-backs-ivf-for-all-women-who-want-children-idUSKCN1M51TM> accessed 10 February 2023.

maternity, the procedure for transporting reproductive materials, and/or embryos across the customs border, etc.

It seems that it would be advisable to prohibit the provision of such services to foreigners/stateless persons in Ukraine, regardless of whether their country permits or prohibits the use of ART methods. This should be done primarily in the interests of the future child and to prevent abuse.

Since the current legislation of Ukraine contains a gap in the regulation of the conditions for the use of posthumous reproduction, the providers of ART services solve the problem on their own and at their own risk, forming a law enforcement practice without a special legal basis. The legislative activity that has been going on for many years allows us to identify the latest trends in the possible way to regulate these issues in Ukraine soon.

It is interesting to compare the provisions of the existing drafts regarding the general conditions for the use of ART, in particular, para. 1 of Part 1 of Art. 7 of draft Law No. 6475 establishes the possibility of using assisted reproductive technologies only for married couples; thereby, it restricts the reproductive rights of unmarried persons. In addition, para. 2 of Part 1 of Art. 7 includes provisions of a certain discriminatory nature regarding the reproductive rights of unmarried men that give the right to a woman who is not married for medical and social reasons and has no medical contraindications to use assisted reproductive technologies listed in Art. 4 of this Law. The current regulation does not contain such a restriction. In particular, para. 1.7 of the Procedure for the Use of Assisted Reproductive Technologies establishes that adult women and/or men have the right to undergo ART treatment programs based on medical grounds.

A similar, but one might say graduated, the approach is embodied in Parts 3 and 4 of Art. 6 of draft Law No. 6475-1, which allows the use of all methods, except for surrogate motherhood, to spouses or to a man and a woman who are not officially married or to an unmarried woman. So, unmarried men are again not included in the circle of subjects which can be customers of ART services. And surrogate motherhood is allowed solely for spouses (husband and wife) who are in a registered marriage.

Instead, the newest legislative initiative, namely Part 1 of Art. 7 of draft Law No. 6475-2, also does not contain such a restriction. In particular, it states that 'an adult natural person due to medical indications and in the absence of medical contraindications has the right to use assisted reproductive technologies to treat infertility'. This wording is preferable in terms of expanding the circle of potential customers of assisted reproduction services but still limits the use of ART exclusively to the treatment of infertility, which in turn limits the possibility of using ART to preserve fertility or for posthumous reproduction since posthumous reproduction can hardly be considered as a treatment for infertility. Therefore, it would be advisable to expand the aim, adding the prevention of infertility, delayed fatherhood/motherhood, and posthumous reproduction.

It is worth paying attention to the fact that the general provision of Art. 7 of draft Law No. 6475 on exclusive access to ART of spouses is continued in the regulation of certain ART methods. In particular, in accordance with Part 3 of Art. 23 of draft Law No. 6475, 'the spouse can use the right to cryopreservation if there is a joint written application for cryopreservation in which the owner of reproductive cells, embryos and tissues in case of a divorce or invalidation of the marriage is indicated'. At the same time, unmarried persons are not granted such a right. The provision of Part 2 of Art. 22 of draft Law No. 6475-1 indirectly but still limits the circle of persons who can use this method. In particular, it is established that 'cryopreservation of reproductive cells and embryos is carried out on the basis of a joint written application of patients for cryopreservation in healthcare institutions where assisted reproductive technologies are used'. Thus, it is obvious that the demand for

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a joint application and the use of the word 'patients' prove that the developers of the draft do not allow this method to be used by individuals but only by men and women as patients. And this approach directly contradicts the current trends, in particular, to stimulate the development of the sphere of reproductive biological material preservation, especially in the interest of preserving the fertility of military personnel.

Draft Law No. 6475-2 proposes a more progressive regulation of these issues, and Art. 17 stipulates that:

> cryopreservation and further storage of reproductive cells, reproductive tissues and embryos, provided by the patient and/or patients for use for their own needs when using assisted reproductive technologies, are carried out based on a written application of the patient(s) for cryopreservation and storage in healthcare institutions where assisted reproductive technologies are used, and should be carried out at the expense of the patient(s).

Thus, as we can see, in this model of regulation, by using the general term patient/patients', the legislator did not limit the scope of this type of ART only to married couples but rather expanded the circle of service consumers of personal storage of reproductive cells, tissues, and embryos.

In addition, the aforementioned Part 3 of Art. 23 of draft Law No. 6475, as well as Art. 23 of draft Law No. 6475-1 and Art. 16 of draft Law No. 6475-2, contain another wording that may cause discussions and problems in law enforcement. The developers bravely applied the concept of property to reproductive biomaterials and embryos, while the position of the current civil law on such special objects of civil rights is still unclear and should be regulated.

It is positive that all of these drafts aim to resolve this issue, as the current Procedure for the Use of ART contains only a general provision, namely para. 11.1, which states that 'patient gametes (sperm or eggs), testicular tissue or its appendages, ovarian tissue and embryos are biological material of the patient/patients, and the healthcare institution ensures their storage'. This is correctly interpreted in practice, including courts, as the disposal of material and embryos exclusively by mutual consent. But you must admit that such regulation cannot be called optimal, and this issue should be addressed.

Thus, Art. 23 of draft Law No. 6475 emphasises the need to determine a person who has a right to dispose of these objects in case of divorce or invalidation of the marriage. It is very important because the current legislation does not contain such a requirement and does not regulate the consequences of such significant legal facts that have a direct impact on relations regarding the disposal of such sensitive biological material. On the other hand, it is worth considering whether the consent given in the application at the stage of concluding an agreement on the provision of ART services to transfer the husband's reproductive cells to the wife after the divorce would have legal value if, at the time of the divorce, the husband has changed his mind and does not want to give consent to the use of his reproductive cells by his ex-wife for reproductive purposes. The determining factor here is the genetic connection between a man and a potential child, which implies a number of legal consequences for him as a biological father. Obviously, that is why Part 3 of Art. 2 of draft Law 6475-1 stipulates that the storage of cryopreserved embryos belonging to the spouses is terminated in case of divorce if there is no joint application issued after the termination of the marriage for their further use. Draft Law No. 6475-2 also uses the term 'termination of marriage', which is broader in content and covers any legal facts that result in the termination of marital relations, including the termination of relations of an unregistered marriage since in the same draft, the developers equalised the rights of spouses and persons in an unregistered marriage, and this is correct.

If we compare Art. 24 of draft Law No. 6475, Art. 22 of draft Law No. 6475-1, and Art. 17 of draft Law No. 6475-2, we can conclude that the developers of the latter draft paid much more attention to the issue of regulating the use of reproductive cells, tissues, and embryos, having regulated most of the situations that are currently not regulated by existing legislation. Unlike draft Law No. 6475, which established an imperative norm prohibiting the use of cryopreserved embryos in case of the death of a spouse, Part 3 of Art. 22 and Parts 1 and 2 of Art. 24 of draft Law No. 6475-1 regulated the storage and use of cryopreserved embryos and reproductive cells in case of death or recognition of spouses (a male spouse or a female spouse) as incapacitated or deceased in court or termination of the marriage. Also, Art. 17 of draft Law No. 6475-2 did not establish such a restriction. Therefore, the potential possibility of enshrining such a restriction excludes any use of cryopreserved embryos of deceased spouses, which automatically means that posthumous reproduction cannot be used in this case, which, in our opinion, is absolutely correct in the context of the best interests of the future child. But it also excludes the possibility for spouses to make arrangements for the transfer of their embryos in case of their death for donation or for research purposes, which seems to be wrong and restricts their rights. Instead, the wording of the rights to dispose of cryopreserved cells, tissues, and embryos in Parts 1 and 2 of Art. 24 of draft Law No. 6475-1 and Parts 2 and 3 of Art. 17 of draft Law No. 6475-2, in our opinion, forms an overly broad framework that can cause many problems in the future, if implemented. Let us consider them in more detail.

We fully support the fact that the developers distinguished between rules on the disposal of reproductive cells/tissues and the use of cryopreserved embryos because, in the first case, it is easy to determine a person who is authorised to decide on disposal, and in the second case, the object of these relations is the embryo, which has genetic parents (customers of ART services) who can determine its future only by mutual consent. But would it be legislatively advisable to give consent to the unlimited disposal of an embryo in case of death, or will this primarily ensure the best interests of the future child who may be born by using such posthumous reproduction? In our opinion, no. Firstly, because it is unlikely that our society is morally ready for the practical application of such norms, and secondly, because the drafts themselves refer to genetic parents, at least one of whom the embryo must be related to when using surrogate motherhood (which is the only way to conceive such a child posthumously in this case). Therefore, it seems that these provisions should be more structured, prohibiting the use of posthumous reproduction in case of death of both spouses or of both partners (customers of ART services), and suggesting in case of death, declaration of death, incapacity or termination of marriage or partnership relations the provision of consent in the form of a written notarised order (application) on the possibility of their use for reproductive purposes by the other spouse/partner, as a donor or for research purposes.

It seems more proper to enshrine in the law a general rule from which persons authorised to dispose of reproductive biomaterials, by mutual agreement, can deviate and enter into a written agreement to transfer the rights of disposal to their partner after the termination of marriage or partnership. Namely, it would be advisable to restate this provision in the following wording:

An adult man and/or woman, as well as spouses, who have used assisted reproductive technologies, are the persons who have a right to dispose of the reproductive cells, tissues, embryos obtained from them based on a sole or joint written application for their cryopreservation and storage for use for their own use. A person authorized the right to dispose of cryopreserved reproductive tissues and cells for his/her own use is the person from whom they were obtained unless he/she gives another written notarized order. The persons authorized the right to dispose of cryopreserved embryos are the patient/patients, for whose treatment such embryos were created, unless he/she gives a written notarized order regarding the possibility of their use for reproductive purpose by a partner, as a donation, or for research purposes.

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At the same time, in Art. 17 of draft Law No. 6475-2, the developers first included an essential provision stating that 'in case of a change of the decision to use reproductive cells, reproductive tissues and embryos by the spouses or one of the spouses, such a decision should be notarized'. This provision will significantly facilitate solving these issues in practice. Also extremely important is the novelty of both drafts regarding the direct prohibition of growing embryos for research purposes, which the current Procedure for the Use of ART does not contain, contrary to the provisions of international law.

Therefore, we can conclude that law-making activity in Ukraine shows a steady tendency toward the legalisation of posthumous reproduction. However, it is worthwhile to understand whether the proposed regulatory mechanism will be effective in terms of law enforcement and what exactly needs to be changed to ensure the smooth implementation of this method.

2.3 Formal requirements for the disposal of reproductive biological material and embryos in case of death (problems of practical application)

In this context, it is interesting to consider the recommendations of the Committee on Ethics and Law of the European Society for Human Reproduction and Embryology (ESHRE), issued on 21 August 2006, which sets out the following requirements:

1) Consent to the use of biomaterial after death must be made in writing before cryopreservation or the start of the ART cycle;
2) In case of the death of one of the spouses, the other spouse must receive detailed advice on the use of the frozen biomaterial of the deceased spouse;
3) There should be a minimum period of 1 year before the use of the deceased person's biological material.

The ESHRE Committee also emphasises the legal and ethical issues that may accompany the use of posthumous reproduction. These issues include the possibility of using gametes and embryos without the consent of the biological parents (since the person foresaw the possibility of their use); determining the circle of persons who have the right to use frozen gametes or embryos (all close relatives of the first degree of kinship of the deceased or only the second spouse); how to achieve an appropriate balance between respect for the autonomy of a deceased person's will and the best interests of a future child; whether such newborn children have the right to inherit the deceased's property, etc.

The analysis of the given recommendations leads to the following conclusions: when deciding on the fate of frozen gametes and embryos, the fundamental role is undoubtedly given to the will of a deceased person, which must be formalised in one form or another, which will have legal force in case the patient's death. And the actual issue of formalising such an expression of will in case of death raises the most questions and discussions, primarily among practitioners.

The civil legislation in force excludes the possibility of transferring the right to use and dispose of biological material to another person posthumously by issuing a notarised power of attorney since, in accordance with Art. 248 of the Civil Code of Ukraine (hereinafter the CCU),[19] representation under power of attorney is terminated in case of the death of the person who issued a power of attorney. In addition, it is also impossible to apply the provisions governing posthumous transplantation since, in accordance with the Law of Ukraine 'On the

19 Civil Code of Ukraine No 435-IV of 16 January 2003 (as amended of 1 January 2023) <https://zakon.rada.gov.ua/laws/show/435-15#Text> accessed 10 February 2023.

Application of Transplantation of Human Anatomical Materials',[20] transplantation of gonads, reproductive cells, and live embryos is excluded from the scope of this law.

Draft Law No. 6475-2 proposes, in particular, in Part 2 of Art. 17, that in case of death, recognition of death, and incapacity of a person whose reproductive cells or reproductive tissues are cryopreserved, their further use is prohibited unless there is a written notarised order (application) of the patient regarding their further use. At the same time, the developers stipulate in the same provision that the certification of such an order (application) is carried out in the manner prescribed by law for the certification of wills.

Will this regulation, if adopted, make life easier for notaries? According to the CCU, a will is a personal order of an individual in case of his or her death. Under the current Civil Law, the inheritance may include the rights and obligations belonging to the testator at the time of death, and the will may also stipulate the performance of certain non-property actions, among which the CCU establishes an exhaustive list of specific actions, including the disposal of personal papers, as well as the determination of the place and form of burial. Unfortunately, such objects as biological/anatomical material and embryos are not included in this list, and their legal regime as objects of civil rights remains undetermined.

Thus, notaries today emphasise that this problem leads to the absence of a mechanism for the execution of such a will after the death of the testator because the legal regime of reproductive cells/tissues and embryos is not identified in the law. The current Procedure for the Use of ART determines that patients' gametes, reproductive tissues, and embryos are 'biological material of the patient/patients'. Therefore, it seems logical to assume that reproductive cells/tissues and embryos are objects of law, although they are not included in the list of objects of civil rights defined in Art. 177 of the CCU (things, including money and securities, other property, property rights, results of work, services, results of intellectual and creative activity, information, as well as other tangible and intangible benefits). We should take into account that, first of all, gametes and embryos, through the prism of the potential birth of a future human being, should be granted the status of objects of rights with special properties at the legislative level in order to enable the realisation of rights and obligations of the subjects of legal relations for the provision of assisted reproductive technologies.

At the same time, we should emphasise that the current legislation does not contain a direct prohibition on the certification of a will regarding the disposal of cryopreserved biomaterial of a person, so the issue of law enforcement practice in this sphere remains open. The doctrine of national inheritance law has already made the first attempts to propose the possibility of regulating biological wills. In particular, in the study of M. O. Mykhailiv, it is proposed to supplement the CCU with a new type of a will – a 'biological will' – and define it as a testator's order aimed at transferring the right to use his/her biological material to the heir (heirs) for further use in compliance with the conditions determined by the testator and under the procedure established by law.[21] Undoubtedly, the introduction of such a new type of a will requires systemic changes to both inheritance legislation and acts regulating notarial activities, but first of all, the legislator will again have to decide on the regulation of the regime of these special objects of civil legal relations.

The existing gaps in the current legislation have forced reproductive medicine clinics to independently develop methods to fill them. In particular, over the last year, the contractual practice has developed special forms of contracts with consumers of reproductive services

20 Law of Ukraine No 2427-VIII 'On the Application of Transplantation of Human Anatomical Materials' of 17 May 2018 (as amended of 7 January 2022) <https://zakon.rada.gov.ua/laws/show/2427-19#Text> accessed 10 February 2023.

21 MO Mykhailiv, Legal Regulation of Inheritance Relationships in International Private Law (Ivan Franko National University of Lviv 2022).

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that include conditions for the use of cryopreserved biological materials and embryos in case of the customer's death. Along with this, customers also should sign a statement of consent to the use of biological material in case of death. However, there is still no consensus on the need for notarisation of such documents since the time constraints of persons liable for military service often exclude this possibility, and these documents are drawn up in a simple written form but in the presence of the head of the healthcare institution providing the relevant services. However, it is definitely that the notarised form has many advantages which are important for both the service provider and the customers.

In practice, citizens' appeals to notaries to certificate documents on posthumous disposal of separated biological material have become much more frequent, so notaries already provide such services at their own risk. At the same time, it is important to note that the application form has significant drawbacks. First of all, there is the fact that when the signature is certified, the notary does not leave a copy of it. That is, according to the rules of keeping notarial documentation, it is not supposed to keep in the notary's archive applications certifying the authenticity of a person's signature on the disposal of his biological material after death and documents on the basis of which such applications were certified (in particular, the person's passport). The problem is that the loss of the original of such a document automatically deprives the person who could dispose of such objects on the basis of the right granted to him by this document. In addition, such applications are not subject to registration in any electronic notary register, except the Register for Notarial Acts, which does not allow to determine the content of the certified document. The solution to this problem would be, firstly, to enshrine in civil law a biological will that would be registered in the Register of Wills, and secondly, to enter the content of such a personal order into the Electronic Healthcare System, to which, for example, a family doctor will have access, who will be able to certify the issuance of such a disposal in the event of loss of the document in question. An important drawback of the application form is also the absence of a mechanism to revoke such a document in the current legislation, the authenticity of the signature certified by a notary. Such a problem would not arise if we were talking about a biological will since there is a fixed procedure for its revocation.

We should also not forget about the possibility of resolving the issue of establishing the fact of consent to the posthumous use of biological material in court. However, it is quite understandable that this is the most complicated and time-consuming method; the prospect of its effective application in practice is rather illusory and may be appropriate only in some of the most difficult cases.

2.4 Issues of inheritance and establishment of paternity/maternity

The current civil legislation of Ukraine does not include children conceived and born after the death of the testator among the heirs, and the introduction of posthumous reproduction will force an amendment of the current legislation and the formation of new provisions that will ensure the interests of the so-called 'posthumous children'. The civil law doctrine is already working on this issue. In particular, Mykhailiv substantiates the position on the need to include in the circle of heirs by will and by law individuals who were conceived using reproductive technologies after the opening of the inheritance within six months, subject to the testator's lifetime order in the will or agreement on the use of reproductive material after his death, and were born alive after the opening of the inheritance.[22] We also propose

22 Myroslava M Diakovych, Mariya O Mykhayliv and Volodymyr M Kossak, 'Features of the Inheritance Rights of Children Born as a Result of Artificial Insemination' (2020) 27 (4) Journal of the National Academy of Legal Sciences of Ukraine 214-30, doi: 10.37635/jnalsu.27(4).2020.

to introduce a new type of will, namely a biological will, which can also be used to dispose of gametes and embryos. However, the author emphasises that even if such amendments are made to the legislation, a systematic approach is needed, and the issue of the specifics of the execution of such wills and orders should also be regulated.

When considering the issue of determining legal paternity/maternity concerning a child conceived and born after the death of one of the parents, it is advisable to get familiarised with foreign experience in regulating this issue and then, taking this into account, propose a method of regulation, which will be consistent with the current legislation of Ukraine and fit within the framework of our legal tradition.

In the Australian state of Victoria, the Status of Children Act (1974) Part V concerns the posthumous use of gametes. Section 40 of the Act confirms that a deceased person whose gametes are posthumously used in a treatment procedure will be treated in law as a parent of any child born as a result of that procedure but only for the purpose of being registered on the child's birth certificate.[23] This presumption does not, however, preclude a person from making specific provisions in a will for any child conceived posthumously.

The UK's Human Fertilisation and Embryology Act (2008) (HFEA) follows similar lines as the Australian legislation that the deceased would be treated as a parent for the purposes of birth registration. However, the deceased is not regarded as the legal parent of the child who is thus excluded from claims in intestacy and under the UK's Inheritance (Provision for Family and Dependents) Act 1975.[24]

So, in both the UK and Australian regulations, we can see the legal parentage presumption, but the so-called postmortal children are not heirs of deceased parents by law but can only inherit according to the will. This is an interesting way to solve the problem for the living heirs when there is no will because they do not have to wait to see if and when such a postmortal child or children will be born.

The United States Uniform Parentage Act provides that an individual is the father of a child born as a result of assisted reproduction if:

- a person who intends to become the father of a child conceived by ART dies between the transfer of gametes or embryos and the birth of a child;
- a person who consents to ART from a woman who has agreed to have a child dies before the transfer of gametes or embryos;
- a person agreed in writing that if ART had occurred after his death, the person would have been one of the child's parents or clear and convincing evidence demonstrates the person's intention to be the child's father.[25]

The US Uniform Parentage Act also sets a deadline for the legal paternity of posthumous reproduction, i.e., the child is born no later than 45 months after the person's death (s 708 (b) (2)). After 45 months, the deceased will not be the legal father of any child born by using his gametes.

Ukrainian legislation does not regulate the issue of determining the paternity/maternity of the deceased concerning a child conceived and born after his/her death as a result of

23 Australian state of Victoria 'Status of Children Act 1974' No 8602 <https://www.findandconnect.gov.au/ref/vic/biogs/E000590b.htm> accessed 10 February 2023.

24 Neil Maddox, 'Inheritance and the Posthumously Conceived Child' (SSRN, 29 October 2017) Conveyancing and Property Lawyer <https://ssrn.com/abstract=3061579> accessed 10 February 2023.

25 US ULC 'Uniform Parentage Act (2017)', s 708 <https://www.uniformlaws.org/committees/community-home?communitykey=c4f37d2d-4d20-4be0-8256-22dd73af068f&tab=groupdetails> accessed 10 February 2023.

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posthumous reproduction. This may lead to problems with the registration of the child and contradict the principle of ensuring the best interests of such a child. Therefore, relevant amendments and additions should also be made to family law, in particular, first of all, to the Family Code of Ukraine (hereinafter referred to as the FCU).[26]

In particular, Part 4 of Art. 123 of the FCU, which regulates the issue of determining the origin of a child born by using ART, can be supplemented with the following provision:

In the case of conception and birth of a child by using posthumous reproduction techniques, paternity/maternity of the parent who died and was declared dead in court will be determined according to the rules of Article 133 if the parents were married at the time of notarization of the order (application) on the transfer of gametes and embryos for reproductive purposes to the other spouse in case of death, based on a marriage certificate, death certificate and notarized order (application) on the transfer of the right to posthumous use of gametes and/or embryos to the other spouse, as well as a certificate issued by a healthcare institution certifying the success of the posthumous reproduction method. If a person whose paternity/maternity is established concerning a child born by using posthumous reproduction was not married at the time of submitting an order (application) for the posthumous use of his/her gametes/embryos, the fact of paternity/maternity is established based on a court decision under the procedure provided for in Articles 130, 132, based on genetic expertise confirming kinship, as well as upon submission of a death certificate, a notarized order (application) for the transfer of the right to posthumous use of gametes or/and embryos to the partners, and a certificate provided by a healthcare facility certifying the success of the posthumous reproduction method.

For partners of servicemen or servicewomen who have not been married, this procedure should not cause problems, as it is possible to use the DNA database created on the basis of the Law of Ukraine 'On State Registration of Human Genomic Information' dated 9 July 2022.[27]

2.5 Analysis of the conceptual framework (advantages and disadvantages)

One of the progressive and significant novelties that can be found in all analysed draft Laws is that they define the concept of genetic parents in the context of reproductive medicine. In particular, genetic parents are defined as spouses (a husband and a wife) whose reproductive cells form an embryo that has a genetic connection with both or one of the spouses (a husband and/or a wife). The significance and progressiveness of this provision lie in the fact that the legislator here emphasises that the genetic parents of a conceived embryo will be considered not only those persons who directly have a genetic connection with it, which at first glance should be implied by the term itself but also those persons who, as a result of the exercise of their reproductive rights, give birth to this embryo. In addition, this definition also emphasises that the embryo created by using ART must have a genetic connection to at least one of the genetic parents, which excludes the possibility of creating embryos entirely from donor biological material and indirectly sets an obstacle to abuse and the creation of embryos for other than the reproductive purpose. In other words, this could also facilitate posthumous reproduction, if properly regulated, for military personnel who did not have time to use the ART program but gave their consent in the prescribed form to the use of donor biological material during their lifetime, for the birth of a child after their death, who will be considered their genetic child. Also, the clarification added to this definition in draft

26 Family Code of Ukraine No 2947-III of 10 January 2002 (as amended of 19 February 2022) <https://zakon.rada.gov.ua/laws/show/2947-14#Text> accessed 10 February 2023.

27 Law of Ukraine No 2391-IX 'On State Registration of Human Genomic Information' of 9 July 2022 <https://zakon.rada.gov.ua/laws/show/2391-20#Text> accessed 10 February 2023.

Law No. 6475-2 is important and claims that genetic parents can be not only spouses but also a man and a woman who do not necessarily have to be in a registered marriage, which significantly expands the circle of participants in these relationships and makes it impossible to discriminate against unmarried couples.

The very narrow definition of assisted reproductive technologies given in Art. 1 of all the draft Laws raises certain concerns. This definition is limited to 'solving the problem of infertility', but what about the so-called 'deferred parenthood/maternity' and posthumous reproduction, which cannot be considered infertility treatment, including for military personnel? Therefore, it seems appropriate to expand the content of this concept and give the definition in the following wording: 'Assisted reproductive technologies is a system of methods used to solve the problem of infertility, planning of future fatherhood/motherhood and posthumous reproduction, in which some or all stages of fertilization (for example, obtaining, storing or using germ cells or embryos) occur outside the human body (in vitro)'.

2.6 Controversial and debatable provisions of potential laws

The question of whether the husband or wife of a military spouse can use his/her reproductive cells or cryopreserved embryos after his/her death to carry a future child by a surrogate mother is worthy of attention if, for example, the wife cannot bear a child herself for physiological reasons or if her husband has the right to dispose of the reproductive biomaterial or embryos based on her personal order given during her lifetime. The same issue ultimately applies to the possibility of using posthumous reproduction by one of the spouses (husband and wife) after the death of one of them under similar circumstances.

An analysis of the provisions of the draft laws regulating the conditions and procedure for the use of surrogate (replacement) motherhood, namely Art. 8 of draft Law No. 6475 and Art. 20 of draft Law No. 6475-2, allows us to conclude that the legislator's position in this situation is quite categorical. Despite the different wording of these provisions, the common feature is that exclusively a married couple can use this method, and draft Law No. 6457-2 additionally establishes the requirement that the marriage relationship of such a couple must last at least two years. What, in our opinion, if such provisions enter into force in the form that exists today, will contradict, in particular, Part 3 of Art. 24 of draft Law No. 6475 and Parts 2 and 3 of Art. 17 of draft Law No. 6475-2, which establish that in case of death, recognition of one of the spouses as deceased in court or termination of marriage, the use of cryopreserved reproductive tissues/cells or embryos is possible in the presence of a written notarised order (application) of the deceased spouse, given during his/her lifetime, and in the absence of such an order, the use is prohibited and the material and/or embryos are subject to utilisation.

Thus, on the one hand, it is proposed to establish a permit for posthumous reproduction, while in certain situations mentioned above, due to the prohibitions enshrined in the same law, in particular, regarding the use of surrogate motherhood, such a right will be impossible to exercise in practice. It is worth mentioning the experience of regulating this issue in Australia, where surrogate motherhood is permitted in such cases as an exception. Therefore, it would be advisable to establish an exception in the article regulating surrogate motherhood, in particular, regarding the possibility of using surrogate motherhood if it is the only opportunity for one of the spouses (husband or wife) due to the death of the other spouse, which must be certified by a duly executed order of a deceased person and a death certificate or a court decision declaring him/her dead, to conceive and give birth to a child using the surrogate motherhood method.

Another debatable issue is the prospect of future problems with the regulation of reproductive tourism for the purpose of using the posthumous reproduction method. In particular, whether

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it is advisable to establish in a special law the permission or, conversely, the prohibition of such services to foreigners or stateless persons – and also, whether it is reasonable to create conditions for Ukrainian citizens to seek such reproductive services abroad.

As for the first question, none of the analysed drafts provides an answer. However, it seems that this prospect may have negative consequences, as in the case of surrogate motherhood, primarily for children born as a result of these methods due to the impossibility of legalising their status in the country of origin of one of the parents. Incidentally, if we analyse the provisions of Part 3 of Art. 7 of draft Law No. 6475-2, it prohibits the provision of ART services to stateless persons, while Art. 20 regulates the procedure for using surrogate motherhood services for foreigners and stateless persons. One provision contradicts the other.

As for the possibility of Ukrainian citizens travelling abroad to receive posthumous reproduction services, the current legislation does not contain a direct prohibition on this. Analysing the trends in law-making, we can conclude that no consensus has been reached on this issue so far, as each draft Law has a different approach to solving this issue. In particular, Part 2 of Art. 19 of draft Law No. 6475-2 proposes to prohibit the export and sale of human reproductive cells, reproductive tissues, and embryos abroad. Instead, draft Law 6475-1 does not suggest any prohibitions in Art. 25 on the transportation of reproductive cells/tissues and embryos. Therefore, if the first option is adopted, the possibility of reproductive tourism for Ukrainian citizens, as well as for foreigners who have stored reproductive tissues/cells or embryos in Ukraine, will become impossible. In our opinion, this will solve many problematic issues, including those related to conflict law, which have already arisen or may arise in the future.

3 CONCLUSIONS

In sum, to **appropriately** respond to the challenges posed by full-scale war, in particular in the field of ensuring barrier-free access for military personnel to the exercise of their reproductive rights, it is necessary to quickly complete the law-making process that has been going on for years, improving the proposed provisions and creating optimal conditions for the posthumous use of cryopreserved gametes and embryos to realise the right of families of persons liable for military service to procreate.

It is necessary to amend and supplement the relevant legal acts of Ukraine, which will aim to:

- define in civil law the legal regime of reproductive cells, tissues, and embryos as objects that have a non-property connection with customers of the relevant reproductive services and are the result of the exercise of their reproductive rights;
- define the range of persons to whom a deceased person may transfer the right to use his or her gametes and/or embryos during his or her lifetime and ensure barrier-free access to the exercise of such a right (exception for surrogate motherhood);
- establish a minimum and maximum period during which posthumous disposal of gametes and embryos is allowed, which will have a direct impact on inheritance relations;
- define in civil law the inheritance rights of children conceived and born after the testator's death (setting a maximum period of six months from the date of opening the inheritance for a posthumous conception of a child who, if born alive, will be an heir by law);

- define in family law the procedure for establishing paternity/maternity concerning a child conceived and born after the death of one of the parents;
- develop standard forms of patient/patients' orders (applications) that will be subject to mandatory notarisation before the procedure of biological material preservation and, until the adoption of a special law, will provide for the conditions of its use in case of death;
- determine the procedure for performing notarial acts in the context of certifying the authenticity of a person's signature for the disposal of their biomaterial as a separate special act with the possibility of storing other copies of orders (applications) in the notary's archive;
- regulate the mechanism for cancelling orders (applications) for the disposal of biomaterial by submitting a relevant application to the notary who certified the previous action;
- solve the issue of reproductive tourism by prohibiting the provision of posthumous reproduction and surrogate motherhood services to stateless persons and foreigners whose personal/joint personal law prohibits the use of these methods and prohibiting the export of reproductive cells/tissues and embryos from Ukraine.

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