

## POST HUMAN REPRODUCTION (POST MORTEM): PARENTAL STATUS AND INHERITANCE STATUS OF THE CHILD

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### **Abstract**

Reproductive freedom and the right to found a family is a fundamental human right, which enjoys protection and guarantee in the Constitution of every country. Technological developments now enable a child not only to be born but also to be conceived after the death of one of the spouses or partners, so through this method it is possible for people to freeze their genetic materials in order to use them for reproduction after death.

This artificial way of reproduction presents a series of bio-ethical, social and legal problems, since most states have interpreted it in different ways, either with partial legislation or with partial legislation that needs interpretation. However, the fear of new technologies exists and is not new since in practice it represents a field loaded with case studies and the question arises: "Is the decision to have the child of the deceased a proper and welcome decision since the woman goes through the process of suffering and does not think rationally"? What is the legal status of the child and how is the issue of paternity/maternity handled after the death of one of the spouses?

We can say that in cases where natural reproduction becomes impossible for health reasons, artificial reproduction can be viewed as welcome as it creates a new life and the use of new technologies for reproduction is mainly in the interest of the parents in their choice if they want to move on and lead a new life.

***Keywords:** Post-human reproduction, Legitimate persons, Parental status, Legal status of the child*

### **1. Introduction**

Post human reproduction is one of the methods of artificial reproduction which enables the conception and birth of a child after the death of one or both parents.<sup>1</sup> (Bakiu, 2002, p. 34) Through these methods, the issues of the potential parent's choice whether to become a parent now or at a later time, whether to have a child with certain genetic characteristics or to use their reproductive abilities to create embryos that will be used for research purposes, however this is a power that man possesses and it has consequences. Seeing the complexity of the very nature of this reproduction, many ethical, moral or legal debates are opened which question the interest of the child born after the death of one of the parents. The right to reproduction being a right protected in<sup>2</sup> (Rights, n.d.) the Universal Declaration of Human Rights and the European Convention on Human Rights gives rise to the need of potential

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<sup>1</sup> Prof. Arta Selmani-Bakiu "Të drejtat e fëmijëve: Sfidat dhe perspektivat e reja" South East European University, Tetovo, 2002, pg 34

<sup>2</sup> Article 16 of the DEDNJ "Men and women of adult age have the right to marry and give birth to children, without any hesitation regarding race, nationality or religion"  
<https://www.humanrights.com/>

parents to have<sup>3</sup> (Commission, n.d.) their genetic children through the concept of reproductive freedom, where part of most of the authors are in favor of this method, justifying it with the fact that the child's highest interest is to be born and come into this world.

The ability to preserve one parent's genetic material through technology adds to the complexity raised by artificial insemination, such complexity is the arrival of the "posthumous" child. Creating a life with stored reproductive material raises moral and legal issues that focus on whether the law or policies allow such a thing and whether a *posthumous child* should enjoy inheritance rights and in such a case court decision might not be lenient by looking at the period of time during which a *posthumous child can be conceived*. Cases of post-mortem reproduction since the 1980s have made legislation slow to address artificial reproduction issues, leaving courts to face challenges they may not be prepared for.

A significant number of jurisdictions have considered the issue of reproduction after death and have prohibited the use of the genetic material of the deceased, for example: the law no. 2011-814 of July 7, 2011 relating to bioethics, only allows reproduction for couples and excludes individuals who have a surviving partner, it also prohibits same-sex couples, this to avoid the transmission of any disease to the child, however, this law is still under review to analyze who can be part of artificial reproduction. Also, the state of Pakistan forbids reproduction after death, since death extinguishes the marriage bond, and according to Islamic law all forms of artificial reproduction are allowed, except for post-mortem reproduction. (Source, n.d.)<sup>4</sup>

In jurisdictions that have an "opt-in" system, requests for the use of genetic material after death may present an obstacle if the deceased person is not registered as a donor, and based on this case it has been suggested that if the majority of cases for the use of genetic material happen to be received after death (and this death is sudden) then the request is accepted. This would reflect the importance of the regulations being clear as postmortem retrieval of genetic material for reproductive purposes is a unique case and requires specific regulations.

However, in many states the regulations bind this part by considering the best interest of the child. Usually such a review occurs when a child exists and in these cases of reproduction after death the child does not exist and the consequence of the birth of a child without a mother or father will be severe, taking into account the social or economic damage. Likewise, the Courts have tried to give decisions in the best interest of the child, but they have been based more on the ability of the parent who will raise the child, family support, financial and emotional support.<sup>5</sup> (Dwyer, 2000)

Regulation of posthumous reproduction raises questions about legal parents because even if the embryo is preserved, insemination may not occur after a certain time leading to problems in some legislations because a genetic parent may not be a legal parent of a child of who comes to life after a period of time after the death of the parent, the law is bound to set a time limit on when the embryo can be used, and the purpose of a legal limit is related to the ability to inherit. (Embriology, n.d.)<sup>6</sup>

According to ESHRE, which is a scientific association that promotes the interest and understanding of reproductive medicine, emphasizes that reproduction after death is a very controversial issue and this happens due to the lack of data on the psycho-social development of children born after this procedure.

*Post-mortem* artificial reproduction brings into question two important principles;

**First:** The right to autonomy, which affects both partners, on the one hand, is the right of the partner to freeze his gametes and decide their fate after his death, and on the other hand, the right of the partner to reproduce.

**Second:** the best interest of the child who is destined to be deprived of the other biological parent.

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<sup>3</sup>Article 12 of the ECHR "Man and woman who have reached the age of marriage have the right to marry and create a family according to the national laws that regulate the exercise of this right"/ <https://www.equalityhumanrights.com/>

<sup>4</sup> The "opt-in" system means donor consent usually through a national donor registry system.

<sup>5</sup> Laura A. Dwyer "Dead Daddies: Issues in Postmortem Reproduction", Rutgers Law Review, Spring 2000, pp. 920-928/ <https://pubmed.ncbi.nlm.nih.gov/>

<sup>6</sup> ESHRE – European Society of Human Reproduction and Embryology

Bioethics being a discipline that analyzes organizes and regulates issues from the field of medicine, psychology, law, where it can be seen as a source of arguments that serves the legislator to change existing norms or to create new ones. So, in a way, bioethics helps legislation to the extent that legal norms related to medicine can be evaluated from a moral point of view.

The doctrine of natural law recognizes the obligation of the state to provide and promote what are considered "natural goods", such as the right to health where individuals have the right to be informed and make their own medical choices.

## 2. Legitimation of person

The idea of *post-mortem* reproduction was born in 1866 by the Italian scientist Montegazza who discovered that the male genetic material can be stored frozen for a long time and according to him this is useful for women and their spouses who went to war and could lose their lives. One of the most common cases of *post mortem reproduction* is the use of frozen sperm, but now with the advancement of technology, embryos and egg cells can also be used. The method of postmortem reproduction only affects married or unmarried couples who give you the opportunity to freeze their genetic material in order to use it after death for reproduction, so this method allows a child to be born post mortem of:

- father;
- mother;
- both parents.

In most cases, this method is applied when the male partner suffers from a serious illness and chooses to freeze his genetic material in order to use it after death, this method is also used when the woman presents major complications, such as a serious illness, which prevents her from natural reproduction, and for this reason she chooses to freeze her egg cell and use it after death in a surrogate mother. In the last case, i.e. the death of both parents, there is the possibility of freezing the embryo and placing it in another woman after the death of the genetic parents.<sup>7</sup> (Frantzana, 2019)

In accordance with the legislation on artificial reproduction, reproduction after the death of one of the spouses is allowed only if the following conditions are met:

1. The woman's husband or partner has suffered from a condition related to the possible risk of infertility or the risk of death;
2. The woman's husband or partner has given written consent to assisted reproduction after death.

So, it is a prerequisite that the husband or partner of the woman has specifically approved this procedure, in the form of a notarial deed. The law allows the wife or partner of the deceased to decide within a period of 6 (six) months if she will undergo the procedure. The reason for this time limitation is related to the need to decide the issue of post mortem reproduction in a short period of time so that the rights of other relatives are not long-term.<sup>8</sup> (Aikaterini Frantzana, 2019) But beyond these reasons, post mortem reproduction has been opposed several times as it contradicts the child's interest to be born as it is planned to be born losing one parent and the right to be raised by two parents, is lifted.

For *posthumous reproduction*, the partners themselves decide according to their free will and this decision depends only on the will and desire to have a child with his/her partner, as an expression of love, since it happens that the spouse suffers from a serious illness and freezes his genetic material in an authorized medical facility and after his death, the woman uses it for reproductive purposes. This method is also desired by the parents of the deceased who have the desire to have a grandson or granddaughter where we can mention the case when the partners cannot plan a child in the future due to fertility and decide to freeze the egg cells, the embryo, etc. The interest of the parents of the deceased

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<sup>7</sup> Aikaterini Frantzana "Ethical dilemmas in posthumous assisted reproduction", American Journal of Biomedical Science and Research/ DOI: [10.34297/AJBSR.2019.05.000902](https://doi.org/10.34297/AJBSR.2019.05.000902), pg 165

<sup>8</sup> Aikaterini Frantzana "Ethical dilemmas in posthumous assisted reproduction", American Journal of Biomedical Science and Research/ DOI: [10.34297/AJBSR.2019.05.000902](https://doi.org/10.34297/AJBSR.2019.05.000902), pg 168

has been increasing in recent years and studies have shown that parents continue this procedure to fulfill their child's interest in genetic continuity.

### 3. Parental status

The concept of parenting as an ancient institution has been based on the relationship parents have with their children. Many children are born to parents who do not have a marital relationship or to parents who, for biological reasons cannot reproduce and leave offspring and because of these the concept of parenthood has evolved and changed from a biological concept to a legal one.

The institution of parenthood dates back to Roman law, which recognized parentage, motherhood and paternity, based mainly on the biological ties between parent and child and the mother's marital status. Marriage was considered the essential condition to determine the paternity of the child, and the child born out of regular marriage <sup>9</sup>was (Mandro, 2007, p. 202) considered to have the mother's husband for *him and was accepted in a ceremony of a religious character*. While illegitimate children followed the status of the mother at the time of birth and to be recognized as legitimate and paternity presumed, the child had to be born after six months or 182 days from the celebration of the marriage and 10 months in case of divorce or after the death of the husband. In the event that the child's parents had not entered into a recognized civil marriage, but lived in concubines together, the presumption of paternity would not apply and the child would only be related to the mother's family. The mother's marital status was an important element to determine the child's paternity based on the principle that "*the father is the person to whom the mother is married*", this close connection between the mother's marital status and the legal determination of paternity is motivated by the need to preserve family unity as well as to protect the best interests of the child. Another form of establishing parental rights was through the adoption institute, which recognized two forms:

1. *Adoptio*, which was the act of gaining paternal authority over a child with a family in economic hardship or adoption from a family that had no children, to ensure continuity.<sup>10</sup> (Mandro, E drejta Romake, 2007)

According to the Roman concept of *patria potestas*, this was a power that was relinquished upon the death or incapacity of the father.

2. *Adrogatio*, which consisted of a ceremony where the father of the family placed himself under the authority of another father and became a son of the latter's family.

This form seems similar to adoption, but there are differences between them, since the purpose of adoption in Roman law was not only related to the possibility of giving children to someone who did not have one, but also for social or political reasons.

The concept of being a parent conveys different meanings such as biological, social or legal. If we see it as a social phenomenon, parenting determines the role that the child acquires in society, but also the relationship that is built with the whole society, the purpose of being a parent as well as the psychological and emotional motivation to build a parental relationship. In legal terms, the parent is the one who is recognized as the holder of the rights and obligations that the law recognizes the parent towards his child. The application of artificial reproduction techniques made the concept of parent move further and further away from its definition based on biological connection. The special forms of artificial reproduction also challenged the legal aspect of parenthood in two main aspects;

- first by making it possible for two or more people to be involved in the donation process, thereby challenging the presumption that a child must have two parents, a female and a male.
- Second: separation of parental rights and obligations.

*Post mortem* reproduction topics have raised a series of ethical and legal dilemmas about the attribution of parentage through this procedure and what has been observed in recent years is the

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<sup>9</sup> Prof. Assoc. Dr. Arta Mandro "E drejta romake", third ed, "Emal" press, 2007, pg 202

<sup>10</sup> Mandro A. pg 203: The law of the XII Tables determined "If the father had sold his son three times, the latter became free and another power could be established over him". The adopted person leaves the family of origin by severing ties with it and in return acquires the status of a son in the family of the adopter and has the right to name, honor and inheritance.

abandonment of the principle of biological connection (Panno, 2019)<sup>11</sup> in favor of the concept of parental responsibility where children born from the application of these methods have the status of children born out of wedlock or of children known by the couple that has expressed the will to use these techniques.<sup>12</sup> (Brake, 2012)

Parents having moral and legal rights for their children have the freedom to make decisions on behalf of the children regarding matters such as education, socializing with others until the children acquire decision-making skills. Historically, parenting has often been considered a possessive (or proprietary) relationship.

Parenting as a social and legal concept affects not only the parent but also the child and the latter's position constitutes an interest, as mentioned above, the highest interest of the child, which is important for resolving conflicts where the child is most affected. So we can say that parenting and family have different meanings. The word "family" has been used in the Greco-Roman sense since ancient times to indicate the community as a basic unit of society or used in other social and cultural meanings such as: monogamous, polygamous families, etc. With the evolution of times, the family took on a different meaning by defining the roles of man and woman as mother and father with responsibility for children. With new reproductive methods, as in the case of<sup>13</sup> PMR, it is the parents or other partners who provide the genetic material and give birth to a child after death, but according to some researchers this method makes the separation between the genetic and social aspects of parenting and raises questions about parental authority. Usually the woman who gives birth to the child is recognized as the mother of the child, regardless of the genetic relationship between the woman and the child and the birth of the child is a *prima facie condition* for<sup>14</sup> (Committee, 2019) legal motherhood, this is based on the principle of Roman Law "*mater semper certa est*" (the mother is always known, this is also supported by biological facts.

One of the main debates caused by artificial reproduction is whether a biological fact such as reproduction becomes a legal fact and whether the right to have children constitutes a legal right or duty, based on the fact that for centuries women were viewed in the sense that their only role was reproduction, limiting them to other domestic or conjugal roles.<sup>15</sup> (Efrat Ram-Tiktin, 2019)

But apart from one of the spouses, what constitutes a discussion is whether the parents of the deceased can use his genetic material and if we refer to the legislation of Israel as an example, it presents enough problems and there is no concrete legislation to regulate this area, except for some specific regulations that determine that only the partner of the deceased has the right to receive and use the genetic material. In the table below, the Ethics Commission presents some recommendations that should be taken into account in order to avoid conflicts and ambiguities.

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<sup>11</sup>Federica Panno "Fecondazione post mortem: il figlio nato a seguito del ricorso a tecniche di pma dopo la morte del padre ha diritto del cognomen paterno", *Questione Giustizia*. <https://www.questionegiustizia.it/>

<sup>12</sup>Parenthood and Procreation, *Stanford Encyclopedia of Philosophy*, Jan 26, 2012. <https://plato.stanford.edu/>

<sup>13</sup>PMR- Post Mortem Reproduction

<sup>14</sup> Report of the IBC on assisted reproductive technologies (ART) and parenthood, Dec 2019/ SHS/IBC-26/19/2 Rev. <https://unesdoc.unesco.org/>

<sup>15</sup> Efrat Ram-Tiktin, Roy Gilbar, Einat Shalom-Paz "Expanding the use of posthumous assisted reproduction technique: Should the deceased's parents be allowed to use his sperm?", *Sage Journal*/  
<https://doi.org/10.1177/1477750918820648>

Use of sperm from:	Reason for use	Spouse	Conditions	Legal provision	Recommendations of the Ethics Commission
consort	To become a mother		The deceased did not express that his material should not be used	It is allowed even though there is no will expressed in the form of a notarial deed	Allowed even though he did not express his will
Parents of the deceased	The desire to become a parent			Prohibited by the Supreme Court	Prohibited
	The desire to become a grandfather	No	The wish of the deceased is known	The regulations are unclear	Allowed as the use defines it
			The deceased did not leave any explanations	The guidelines prohibit it, the lower courts allow it, and the Supreme Court didn't come with a decision	Allowed even though parents may oppose it
		Wife who has no interest in using sperm	The wife opposes the use of the genetic material by the parents	Prohibition by the Supreme Court	Some members allow the taking of genetic material from the spouse and some other members allow it from the parents

Like many forms of artificial reproduction, *post mortem reproduction* in the United States is not regulated, except in a few regulations or protocols. This legal loophole has left doctors as the front-line responsible for whether to accept or reject requests for RPM, even though these protocols are intended to provide third parties (doctors) with guidance on post-mortem reproduction, they are not binding, in the sense that the doctor is free to decide whether to be included in the procedures of this reproduction.<sup>16</sup> (Gan-or, 2019) What is questioned is that some protocols allow the reproduction procedure when the deceased has left a written statement about what his genetic material will be used for, there are also some protocols that do not have the written statement, but the fact is taken for granted that he has deposited his material and it will be used for this purpose, so in a way not leaving much "evidence" if he agreed to this procedure. Also, in these instructions, it is determined that the wife is the person who can withdraw the genetic material and use it for reproduction, also in cases where both partners or spouses have died, the parents have the right to take the genetic material and use it for

<sup>16</sup>Nofar Yakovi Gan-or "Securing posterity: The right to postmortem grandparenthood and the problem for law", Columbia Journal of Gender and Law, pg 120-123/ <https://doi.org/10.7916/cjgl.v37i2.2784>

reproduction, also in cases where both partners or spouses have died, the parents have the right to take the genetic material and use it for reproduction by giving this material to single women and thus fulfilling their desire to become grandparents and legal parents of the child. So almost in most legislations there are regulations that allow the current partner to use the material and not the parents (except in the above-mentioned case), this with the reason that the partner has an interest while the parents remain in the wish.<sup>17</sup> (Gibbons, 1998) In *Alain v CECOS*, where Alain expressed a desire to preserve his genetic material before undergoing chemotherapy with the intention of using it for fatherhood, he tragically died on the plane and his wife wished to use his material leading to a legal battle since Alain did not leave instructions regarding their use and CECOS refused to hand over his genetic material to his wife based on the contract with the argument that "*genetic material is an indivisible part of the body and cannot be inherited in absence of instructions for use by the donor himself*". The French court refused to apply the principles of the contract on the grounds that genetic material is not immovable property, linking it to the fundamental freedom of a human being to reproduce.

Alain's case expresses the legal problems in relation to post-mortem reproduction where the technology allows the preservation of genetic material but the legal framework is powerless to deal with the consequences.<sup>18</sup> The progressive nature of medical technology and the approach of the legal framework together with the observance of "stare decisis" bring complications in such cases.

In order to prevent such a situation, legislation should provide that the duty to protect the interests of the deceased must be fulfilled only when it is foreseen and expressed and is in the interest of other persons, in this case (living partner or parents). However, we can say that there are three reasons why people are interested in genetic continuity and how valuable this interest is.<sup>19</sup> (Simana, 2018)

**First:** Autonomy-which is often understood as one's ability to live one's life according to the objectives one sets, this means that an individual is free to make choices and develop a life plan based on values and concepts of the good life.

**Second:** The opportunity to leave descendants - since people are aware that one day they will die, they have the opportunity to carry out genetic succession. Using the deceased's genetic material after death is a way for people to leave a part of themselves alive.

**Third:** As per personal identity, in the existing philosophical literature, a distinction is made between two identities, physiological and psychological.

Physiological identity focuses on biological organisms and sees continuity as a bodily characteristic, while psychological identity is concerned with access to beliefs, desires, memories and sees continuity as evolved from these features. Genetic identity may offer a third approach to understanding personal identity and human continuity. It contains elements of both approaches since genes influence both physical and psychological traits, while genetic continuity is not a necessary component of parenting as it is about passing on one's genes as a liberal expression of personal identity and an expression of family heritage.<sup>20</sup> (Simana, Creating life after death: should posthumous reproduction be legally permissible without the deceased's prior consent, 2018, pp. 350-51)

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<sup>17</sup> John A. Gibbons "Who's your daddy? A constitutional analysis of post mortem insemination", Journal of contemporary Health Law and Policy, pg 192-193/<https://scholarship.law.edu/jchlp/vol14/iss1/10/>

<sup>18</sup> Different countries have responded in different ways to these problems, for example France adopted the law on "Biotech" which prohibits any type of artificial insertion after death as well as any other type of artificial reproduction method".

Likewise, other countries Germany, Canada, Sweden have legislation that prohibits post mortem reproduction, while countries such as Belgium and the USA allow post mortem reproduction even without the written consent of the deceased.

<sup>19</sup> Shelly Simana "Creating life after death: Should posthumous reproduction be legally permissible without the deceased's prior consent?", Journal of Law and the Biosciences, doi:10.1093/jlb/lisy017

<sup>20</sup> Ibid., pp. 350-351 "In many cases we can say that the partner of the deceased has interests in reproducing and becoming a parent through this method, where the main reason lies in becoming a parent. This interest is about people's desire to create a safe nest and have a stronger bond in memory of the deceased. Having a serious relationship generates strong expectations for reproduction, especially if the partners have made plans for a future together and to expand the family.

The development of medicine and new reproductive techniques, especially post-mortem, brings the need to discuss a right that is or is being created, also if we compare it with religious influences, we notice that Catholics reject the possibility of conceiving a child after death since according to them, post mortem reproduction is not included in intimate relationships, but in the possibility of a single woman, without a husband, to be fertilized. Islam also does not allow this method, since according to them fertilization takes place after the end of the marriage (which ends with the death of the spouse) and therefore other rights are extinguished along with it.

A legal right comes into existence when an individual has a sufficiently strong and important interest that is justified, where the theories for the existence of rights in post mortem reproduction are based on the fact that the *theory of interest* is a theory that legally protects the form of rights and is often used to support the deceased's prior consent to post-mortem reproduction and opposition to this consent coincides with opposition to the wishes of the deceased.

#### 4. Hereditary status of the child

The issue of the legal status of a child born through artificial reproduction techniques has been the subject of doctrinal debate in recent years, since in the absence of legislation for interpretation, there is a need to proceed with the assessment of the rights of children born from the use of such practices.

A child born after the death of his biological father through these methods provides a new opportunity and presents legal complexity and uncertainty regarding the child's ability to inherit.

If you refer to the Portuguese legal system <sup>21</sup> (Goa, 2018) dealing with inheritance issues in the case of artificial methods, it states that if the reproduction is done in accordance with the appropriate provisions, the child born is considered the child of the deceased. Likewise, in the inheritance law it is defined that "*Only the person who was born alive at the time of the testator's death or was conceived while the testator was alive can be an heir*".

In the *common law system*, there is a possibility of interpretation since having a legal vacuum, this system tries to regulate through instructions whether children born through this method are capable of inheriting and the courts can interpret the law in favor of certain requests, or using powers such as guardian of the child or by extending the *nasciturus doctrine*. The basic need for providing support for any category of a child born by this method is based on the fact that if a claim for inheritance is raised why not accept the child born through the post mortem method. However, this brings ambiguity and it is not known whether a Court in the common law system could accept or extend the parental function, for example (South Africa), since in their law legal personality is only given at birth.

Post mortem reproduction raises two problems:

- First: Can the child inherit from the method of reproduction post mortem?
- Second: Should the spouse be recognized as the father or mother of the child?

In the United Kingdom, the husband can be recognized as the father of the child, but the child is not recognized as his heir, and the problem in this case lies in the fact that this rule can be considered as discrimination in relation to children born to living parents. Taking this into consideration, it is proposed and considered that children born through artificial reproduction be considered as legal heirs and that the frozen material must be used within a period of 5 years from the date of death of the deceased.<sup>22</sup> (Hai Tanh Doan, 2020)

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The American Society for Reproductive Medicine has argued that as long as no evidence shows that the deceased was against reproduction, the lack of prior consent cannot necessarily preclude reproduction after death.

<sup>21</sup> Article 2023/1 of the Portuguese Civil Code "Apart from the state, all persons born or conceived at the time of the opening of the inheritance, who are not excluded by law, as well as persons conceived according to the provisions of the law in the framework of the procedure of reproduction after death, have the ability to inherit".

<sup>22</sup> Hai Tanh Doan, Diep Thi Phuong Doan, Ngujem Kim the Duong "Post-mortem reproduction Vietnamese perspective-an Analysis and Commentary", [Asian Bioeth Rev.](#) 2020 Sep;12 /https:// doi: [10.1007/s41649-020-00137-z](https://doi.org/10.1007/s41649-020-00137-z)

"The case Estate of Kolacy-New Jersey Supreme Court which is the case where two twin daughters were born 18 months after the death of the father and raised the claim for inheritance, the Court decided that the children benefit based on the law of inheritance and also based on the statement of the deceased who had expressed or given prior



The Vietnamese legal system is sufficiently unclear about the inheritance of children post mortem, but they think that through some directives that clearly define the cases as cited below, the child should be the subject of inheritance in cases where:

1. The deceased person has left a written statement and stated that the partner can perform PMR and designates the child born after the death as one of the heirs of his property, in this case the child can inherit through the will, referring to the inheritance law by will;

2. The deceased person who did not leave a written statement and his partner performs PMR, the child of the deceased together with the spouse and parents of the deceased should be included in the inheritance as he is in the first category of heirs to inherit, this being also based on the fact that the child is a genetic child of the deceased, born according to the wishes of the deceased and there is no compelling reason not to be part of the circle of heirs;

The US is one of those states that have accepted post mortem reproduction, but most states do not regulate the possibility that a child born by this method can inherit, except for the state of Florida, which provides for the child as an heir only if the deceased included it in the will. The state of California has more scope for the protection of children's rights by requiring that the declaration of the deceased has defined the share of the inheritance and for a child to be recognized as an heir must be born within 3 years of the donor's death.

### Conclusion

The advancement of medical technology already to the point where many people manage to consider more seriously the possibility of having a child through artificial reproduction methods opens up a series of problems for solutions in the future, since the legislations are very ambiguous. What is observed in other legislations is the unstopping of this process, but for this process to be as complete as possible, the following conditions must be defined in order to avoid the consequences:

**First:** The consent of the deceased, i.e. leaving a written statement about the use of his genetic material after death and what it should be used for;

**Second:** The partner must be given a period of time up to one year to think about what he will do with the genetic material; this term also comes as a result of the partner being in better psychological shape and the decision being well thought-out;

**Third:** The period for the inheritance procedure should have a term of 3-5 years, so that the frozen material is not forever in the bank where it is stored but is used after a certain period, so that the child inherits from his father.

**Fourth:** The inheritance law must be revised to include children born through artificial reproduction as legal heirs.

If these conditions are not provided for, their absence creates difficulties in determining the fatherhood and motherhood of children born through assisted reproduction, as well as the impossibility of regulating inheritance relationships that can be created through children and legal and biological parents.

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consent to be the father of the child that will be born in the post mortem reproduction"/  
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