Making Bodies, Persons and Families
Normalising Reproductive Technologies in Russia, Switzerland and Germany
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Foreword: Making bodies, persons and families

The birth of Louise Brown in Oldham, near Manchester, in the north-west of England, in July of 1978, was the culmination of a lengthy process of investigation into the mechanisms of mammalian development and in particular the exploration of these processes in vitro. It was not until the postwar period that the ability to culture mammalian ova enabled reproductive biologists, embryologists, and medical scientists to observe and manipulate the very earliest stages of human life. These experiments were extremely labour-intensive and interdisciplinary. Nearly a decade separated the first successful fertilisation of human ova in vitro, at Cambridge in 1969, from the birth of the first offspring from this technique.

The field of reproductive biology is also notable, as Adele Clarke (1998) has noted in her pioneering account, Disciplining Reproduction, for both its proximity to social controversy and its wide variety of applications. The same techniques used to develop birth control led to the basic discoveries necessary for IVF. The ability to manipulate mammalian embryos in vitro was largely directed to agricultural applications for much of its contemporary history, and this area of applications in turn results from a shift in emphasis toward biological development that is one of the hallmarks of the modern life sciences.

Given the complex, and largely untold, history of clinical IVF, with its origins in agriculture and the veterinary sciences as much as in medicine and biology, we would expect it to have the strong regional character that social scientists have confirmed in the growing number of studies of assisted conception. The first studies of IVF in the late 1980s and early 1990s have been succeeded, like the delivery of IVF services, by a period of more rapid expansion in the late 1990s and early ‘noughties’, so that by the end of the first decade of the twenty-first century there is a comparatively well-established subdiscipline of what we might call biosocial studies of assisted reproduction.

Thus, along side the expansion of IVF as a predominantly private, increasingly international, and rapidly expanding sector of healthcare
Assisted reproduction in Russia: legal regulations and public debates

Olga Brednikova, Nadya Nartova, Olga Tkach

In this chapter we aim to provide a background picture of assisted reproductive technologies (ARTs) in Russia. The analytical material is drawn from two national newspapers: Rossiiskaia Gazeta (RG), the Russian Newspaper; and Argumenty i Fakty (AIF), Arguments and Facts, which publishes state rules and regulations. We begin by outlining the development of in vitro fertilisation (IVF) and other types of assisted reproduction, showing the popularisation of this topic in scientific, medical, and especially public domains. Then we show how, and in what forms, ARTs found their way into legislation.

The popularisation of ARTs: scientifically, medically and publicly

In Russia, ARTs in their contemporary form appeared in the late 1980s. Although these technologies were intensively investigated and tested through experimentation in the USSR, results never went beyond laboratory doors. The births of the first test tube children in 1986 were milestones in the development of ARTs in Russia. Since then, artificial insemination and extra corporal fertilisation have become widely publicised and increasingly used medical practices. However, in Russia, these technologies are restricted to infertility treatment. Human cloning, one of the most delicate issues in this area, is prohibited. In 2002, the Federal Law ‘On The Temporary Human Cloning Ban’ declared a five year moratorium on implementing any new research and conducting experiments with cloning. There is currently public debate, involving politicians, representatives of Russian Orthodox Church, and lay people, about prolonging this moratorium.

There are about fifty clinics that provide ARTs in Russia: thirty in Moscow; six in St. Petersburg; the others in various cities. In 2003,
about eleven thousand IVF procedures were carried out across the country. There is an increasing demand each year for such treatments. According to the Ministry of Health, one in six married Russian women of reproductive age cannot conceive and bear a child without medical intervention. With these figures in mind, two or three times more ART clinics would be needed to serve approximately thirty thousand married couples a year (AiF 26.10.2005). The average age of patients is 34 years (RG 7.7.2006). The success rates for 2003 - 2004 in St. Petersburg clinics and 32% on average across Russia were evaluated by Vladimir Korsak, President of the Russian Association of Human Reproduction, as 'relatively high', especially when compared with the European success rate of 27.9% (AiF 1.11.2006).

The Russian state began to finance ARTs several years ago. Now, IVF treatments can be carried out for free in cases of female infertility; but only one cycle is supported, which is insufficient in practice. Some European states finance reproductive services more extensively. In Finland, for example, three free attempts to conceive are available; in Slovenia, four; and in Belgium, six (AiF 26.10.2005). In Russia, the so-called federal quota of free IVF treatments is limited to 150 couples per year for the whole population. In 2005, St. Petersburg—a city with five million inhabitants—was provided four quotas, but only one patient was able to take advantage of free treatment (AiF 1.11.2006). Moreover, quotas are exclusively distributed between four state clinics: two in Moscow, one in Yekaterinburg, and one in Rostov. Thus, patients from other cities or from rural areas must make long and expensive journeys. Their travel expenses and lodging are not reimbursed. Even if a procedure is formally free, it has costs. Though the Head of the Ministry of Health and Social Development has declared that the government has been considering the possibility of free access to IVF for twenty-five to thirty thousand married couples annually, this idea still does not work.

In order to receive permission for free IVF treatments, it is necessary to obtain a referral from the special Commission of the Ministry of Health and the Russian Academy of Medical Sciences, and to collect a set of health certificates, which requires standing in many different queues for a long time. A common criticism of Russian fertility clinics is that they lack highly skilled staff and financial support. Basically, these technologies are employed in the realm of commercial medicine. Even the seven state-run clinics openly offer ART services on a market basis. It is not accurate to say that wide access is available for ARTs, as these treatments are expensive compared to average salaries in Russia. For the majority of patients, procedures must be paid for out of their own pocket as ARTs are not covered by the state medical insurance. The cost of IVF is relatively high, between sixty to eighty thousand RRUB (2,000-2,500 USD), and half of this expense goes toward medical support of the procedure (AiF 26.10.2005). The price of artificial insemination varies between twenty and thirty thousand RRUB (800-1,000 USD). The cost of a surrogate mother’s services frequently depends on real estate prices, which vary considerably in different regions of Russia. As a rule, a surrogate mother obtains from the prospective parents a room, or a one-room apartment, for bearing the baby and giving birth.

The problematic infrastructure of ARTs and the newness of these technologies keep them on the public agenda. Within the last two decades, social attitudes toward the application of these technologies have been gradually changing. In the late 1980s and early 1990s popular science discourse dominated in the media, describing ARTs in metaphorical language such as a ‘sacrament of science’ or a ‘triumph of the human mind’ over ‘nature’s disadvantages’ (RG 14.08.1991). Later on, public debate about ARTs became influenced by morality and ethics. Assisted reproduction became mainly negatively valued, and debates about these topics created a moral panic. The mass media, the church, and medical practitioners, as actors in the debate, argued from their specific perspectives, e.g. the topic of surrogacy turned into the problem of baby trafficking. Since motherhood is normative, and nearly obligatory, in Russian culture, issues around reproduction and fertility are highly morally charged. This cultural framing of reproduction and motherhood moves debate about ARTs from the realm of human rights and individual choice, and locates it in the context of cultural problems, demographic crisis and national risks.
The development of ARTs intensified civil activism by both medical doctors and their patients. In St. Petersburg, doctors established an NGO called the ‘Russian Association of Human Reproduction’. This organisation focuses on the peculiarities of medical ethics in the practice of ARTs. The representatives of this group have accumulated political influence because they also participate in public debates as experts on procreation. Consumers of ARTs form another stream of civil activism. A group of female patients created a website called Probirka, which means test tube (www.probirka.ru). Besides spreading important practical information on ARTs, this site serves as a platform for lively debates. More than a thousand visitors discuss urgent social and medical ART problems. The activities of women that resort to the help of reproductive medicine produce a specific alternative communicative space for ART consumers. We define this space as alternative in three ways. First, cyberspace is an alternative to offline communicative communities. Second, this community emerged as a network that contests formal organisational structures of traditional NGOs. Finally, this online community provides a space for solidarity, as opposed to individual consumerist strategies. Participants exchange information, attempt to control doctors’ activities and implementation of medical procedures, and support each other emotionally. A recent event initiated by the moderators in cooperation with the magazine Hochu Rebenka (I Want to Have a Baby) and the interregional public fund of social solidarity Nash Vybor (Our Choice), was the creation of the Crystal Test Tube Award for fertility clinics. The list of clinics nominated for the award was compiled by the visitor’s voting results. This example of civil activism by ART consumers reveals the mechanisms of interaction with medical institutions, which were until recently were totally closed against external interventions.

Legal backgrounds of ARTs

The use of ARTs is legally regulated on different levels. Above all, according to the Constitution of Russia (article 38 ‘State Protection of

Assisted reproduction in Russia: legal regulations and public debates

Mother and Child’) every woman can exercise her right to be a mother. One of the possible ways of securing this right is to make use of ‘artificial insemination or embryo implantation’. The legalisation of motherhood and fatherhood while using ARTs is vested in the Family Code of Russia. Details of these rules and their application are provided by the Decree of the Ministry of Health of Russian Federation (2003: No. 67) entitled ‘On the use of ARTs in the treatment of female and male infertility’. The main points of this decree and some other laws that have important social outcomes for the use of ARTs are examined below.

Access to the procedures

Clinics and special medical centers are permitted to carry out ART procedures if they possess a state certificate and license according to the ‘Legislative basis for the protection of national health’ (Ministry of Health of the Russian Federation, 1993: No. 5487-1, article 35). Married couples and single women are welcomed to make use of extracorporeal fertilization (IVF) and artificial insemination (AI). The usual diagnostic criteria for undergoing IVF and AI with one’s husband’s sperm is incurable infertility, or if other methods have not worked properly. Besides these medical requirements, conducting AI with a donor’s sperm is allowed for a woman who has no sexual partner.

Gynecological, oncological and other diseases can prevent the application of ARTs. Other contraindications are mental diseases, as well as syphilis, HIV, and hepatitis. Preimplantation genetic diagnosis (PGD) is used to detect monogenic and chromosome embryo defects, as well as to determine the sex of an embryo to prevent certain inherited genetic diseases. PGD is used for women with a high risk of giving birth to children with genetic pathologies and is considered an alternative to prenatal diagnosis.

Informed consent is required of all ART patients. Medical centers providing these procedures collect and archive a wide variety of patient data. The Ministry of Health has developed and approved a special questionnaire called ‘Individual patient file for the period of ART
treatment’. Besides assessments of patient health, this document contains personal information such as passport data, age, nationality, home address, place of work, profession, work position, marital status, and material about the spouse, if it is available.\(^5\)

**Biomaterial donations: illegal and permitted**

In Russia, donation of sperm and oocytes (undeveloped ova, or eggs) is legal:

Donors provide their genetic cells to other persons for treating infertility, and do not take up parental duties and responsibility towards a future child. (Ministry of Health of the Russian Federation, 2003: No. 67)

The possibility of twenty births from one donor is the reason for dissolving any agreements with the donor. ‘Non-anonymous relatives or acquaintances, or anonymous donors can donate oocytes’ (RG 14.08.1991). The donation of oocytes requires informed consent from donors, and is effectuated through the induction of super-ovulation and ovariocentesis. Donors are required to be 20-35 years old, physically healthy, and to have one healthy child.

Donor sperm can be used for both IVF and AI.\(^6\) A sperm donor is required to be 20-40 years old. He should not have ‘deviations in normal organometric and phenotypic characteristics’ (Ministry of Health of Russian Federation, 2003: No. 67). The documents required by sperm donor programs are: signed informed consent forms; donor questionnaires; individual medical files; and catalogues with descriptions of donors’ anthropometric data and phenotypic portraits that are offered to patients. Besides medical data, the questionnaire designed for the donors of sperm and oocytes, like the questionnaire for the patients, also contains social information such as date of birth, address, education, profession, marital status and children.\(^7\) All questionnaires and documents are filled out and coded by medical doctors and are kept in a safe for fifty years. Patients have the right to choose a donor independently and voluntary. Donor catalogues contain detailed description of anthropometric data and phenotypic portrait, but

not a donor’s profession, bad habits, inherited diseases and sexual preferences.

Embryo donorship is also permitted. Embryo donors can be patients using IVF who have surplus cryo-preserved embryos that are being kept in a bank after having obtained a completed family (giving birth to a child) (Ministry of Health of Russian Federation, 2003: No. 67). The phrase ‘completed family’ implicitly demonstrates the final goal of the governmental regulation of ARTs, namely the creation of families consisting of a mother, a father, and a child. Based on the voluntary decision and the informed consent of parent donors, these embryos can be used by a childless married couple or single woman. Embryos for donation may also be created as a result of fertilisation of a donor’s oocyte with a donor’s sperm. According to regulations, patients must be informed that the success rate of using cryo-preserved embryos left over from IVF is lower than that using embryos created from donor gametes. Moreover, recipients should also be provided with phenotypic portraits of the donors. The price of biomaterial for donation is not regulated by law but defined by the clinics and medical centres, according to market demands. The relationship between the clinics implementing ARTs and their patients is regulated by the law ‘On Consumer Rights Protection’ (amendments of 17.12.1999, 30.12.2001).

**Reduction of embryos and fetuses**

To prevent obstetric and perinatal complications arising from multiple embryos, legislation allows reduction when three or more embryos are in the womb. Reduction can be implemented on the basis of informed consent from the pregnant woman. Based on a doctor’s recommendations, the woman also defines the number of embryos to be reduced. Certain legal rules have been established to control biomaterials: sperm, oocytes and cryo-preserved embryos. These rules mainly cover recording and archiving information on biomaterials,\(^8\) which must be kept for fifty years.
Surrogate motherhood

The principle legal basis for regulating surrogate motherhood is the Decree of the Ministry of Health 'On the use of ARTs in treating female and male infertility' (No. 67, 26.02.2003). According to this document, a married couple and a surrogate mother must provide informed consent to participate in a surrogate motherhood program. Access to this program is restricted to married couples having problems with fertility, and is strictly prohibited for single women. Surrogate mothers are recruited on a voluntary basis. A potential surrogate mother is required to be 20-35 years old, psychologically and physically healthy, and to have her own healthy child. Unlike sperm and oocyte donation programs, which maintain the patient confidentiality of donors, married couples are provided with detailed information on the physical and psychological health of the woman who is hired to bear their baby.

Surrogate motherhood is also regulated in the Family Law of the Russian Federation (articles No. 51 ‘Registration of a child’s parents in the birth registration book’ and No. 52 ‘Contesting fatherhood or motherhood’, 29.12.1995), and in the Federal Law ‘On Civil Status Acts’ (article 16). A child born after the use of surrogacy on the basis of a written agreement has to be regarded as the child of the mother and her husband only if the biological (surrogate) mother does not recognize the child as hers (Family Law of the Russian Federation, Section 4, Chapter 10, article 51). According to the Federal Law on ‘Civil Status Acts’ (15.11.1997), several documents must be submitted in addition to the birth certificate to register a child born from a surrogate mother. These documents include an official statement from the surrogate that the couple who hired her are the parents of the child. In the event that a surrogate wishes to keep the baby, Russian Family Law protects her rights as the legal mother, as mentioned above. According to article No.16 of the Civil Status Acts, an application for a child’s birth registration should be submitted no later than one month after the birth. A surrogate mother must make her decision within this period. As a rule, her written consent should be validated by a medical clinic, usually by a maternity hospital. It is prohibited for both the married couple, who gave their consent for the implantation of their embryo into another woman, and the surrogate mother to contest motherhood and fatherhood after the information about the parents has been filed and written in the birth registration book.

Legislation of surrogate motherhood is ambiguous and contains a number of hidden dangers. A surrogate mother can change her mind and may refuse to register the bio-parents as the child’s parents. In this case, she enjoys legal priority as the biological mother. If a surrogate mother wants to keep the baby, she submits papers from the medical clinic where she gave birth, then legally registers herself as the child’s mother. The rights of the child’s biological parents are not protected under the law. Russian legislation also does not allow any payments for a surrogate mother’s service, such contracts are arranged informally. Formal contracts guarantee only the transfer of civil rights and responsibilities from one parent to another.

Another problem with the legislation of surrogate motherhood is that these regulations presuppose the implantation of an embryo conceived through fertilisation of a bio-mother-waife’s oocyte by a bio-father-husband’s sperm. Other variants of artificial insemination are not covered. For example, the use of donated oocytes or sperm makes the registration of the child extremely complicated. According to this regulatory framing, use of surrogacy is restricted to female infertility. Thus, a fertile woman who does not want to bear a child and give birth, and who would like to delegate this work to another woman, does not receive legal support. Moral and ethical issues around surrogate motherhood have been hotly debated in Russia. There is a threat of commercialisation of surrogacy because of inappropriate legislation and the low living standards of the majority of the population. Therefore, different actors search for possibilities to reduce the commercial dimension of surrogacy, while trying to strengthen its moral component. Recruiting relatives from different generations as surrogate mothers is seen as a means of emphasizing mothering and de-emphasising commercial relationships. Although the fundamental right of a child to know his or her parents is approved by the Family Law, the
applications of ARTs and the various forms of donorship are not yet regulated according to this principle.

Medical ethics
Besides Russian legislation, medical activities for procreative purposes are regulated by professional codes, including international ones. Russian medical doctors signed 'The Declaration on Artificial Insemination and Embryo Transplantation' passed by the 39th World Medical Assembly in 1987 in Madrid. According to this declaration, doctors carrying out ARTs should follow the norms of medical ethics, such as the following:
- ‘(...) careful attitude to the health of a future mother and embryo from the first days of life (...)’
- Patients and donors should be informed of the goal, method, risks, troubles and possible failure of ART treatments. Consent for participation in the procedure should be ‘voluntary and informed’.
- ‘(...) patients have the right to confidence and protection of privacy, as with any other medical treatment’
- If carrying out IVF results in a surplus of oocytes that are not immediately used for the infertility treatment, the donors should also decide about their disposal. Surplus oocytes can be: a) disposed of, b) cryo-preserved and then kept frozen, or c) fertilised and then cryo-preserved.
- ‘(...) a doctor cannot neglect his/her moral principles, but should be attentive and respectful with regard to the moral and ethics principles of patients’
- The fertilisation process should not be interfered with to choose a fetus’ sex, except for those cases when such interference allows the avoidance of inherited pathologies correlated with sex.

Conclusion
Today the legal status of ARTs in Russia is relatively liberal. Although highly regulated, treatment possibilities – including surrogate motherhood and cryo-preservation of oocytes and embryos – are legally permitted and currently practiced. The only significant restriction to artificial procreation treatments is the priority given to married couples. At the same time, the medical infrastructure is insufficient for physicians and can not meet the increasing demands for fertility treatment. Prospective patients also do not have adequate access to these services. Thus, the implementation of ARTs has become increasingly commercialised, though mechanisms of the market do not work precisely to enhance the situation. Increasing civil activism, initiated both by physicians and consumers of ARTs, brings these problems into public awareness. These topics disappear neither from the media nor from politics, and these debate occur within an overlapping space of medicine, legislation, market and morality, with an emphasis on the last realm.

Notes
1 They were born one-by-one in the Moscow Centre for Obstetrics, Gynaecology and Perinatology, in February, and in the Academies of Medical Sciences in Leningrad and in the Scientific Research Institute of Gynecology and Obstetrics, in September.
2 Data on the number of artificial inseminations for the same period are not available.
3 Statistics on male infertility are not available, perhaps because there is hardly any debate on the reproductive health of men.
4 These are numbers of 2005. The numbers of IVF cycles and quotas supported by the state are slightly higher in 2009.
5 Interestingly, this questionnaire presupposes questions on professional health danger and bad habits only for husbands. The last issue refers only to smoking and alcohol abuse, but does not include drug abuse.
The use of anonymous donor sperm is only allowed when frozen or unfrozen sperm had passed two negative HIV, syphilis, and hepatitis tests. The use of frozen or unfrozen sperm prevents transmission of HIV, syphilis, hepatitis, and other infections. It also prevents the possibility of a meeting between the donor and the recipient.

In the questionnaire, sperm and oocyte donors interestingly differ in the phenotypic characteristics section. The male variant contains the following items: height, weight, hair (straight, wavy, curly), hair color, eye shape (European, Asian), eye color (blue, green, grey, brown, black), nose (straight, hopped, aquiline, wide), face (round, oval, narrow), forehead (high, low, regular). The female variant includes the following criteria, besides the above mentioned items: build (normal, slender, hyperslender), clothing, foot and breast size.

The Decree No. 67 of the Ministry of Health declares that all medical centers offering ARTs should keep special files: Record of the registration, keeping and using of patients’ (and donors’) oocytes; Record of the registration, keeping and using of patients’ (and donors’) sperm; Record of the registration, keeping and using of cryoreserved embryos; Individual file of patients using ARTs; Individual file of sperm (and oocyte) donors; Register of Artificial Insemination Treatments.


Source material

1. Constitution and law
   - Constitution of Russia (article 38 ‘State Protection of Mother and Child’)
   - Legislation basis for the protection of national health’ (No. 5487-1, article 35, 22.07.93)
   - Decree of the Ministry of Health of Russian Federation (No. 67, 26.02.2003)
     - ‘On the use of ARTs in the treatment of female and male infertility’
   - Federal Law ‘On Civil Status Acts’ (article 16)

2. Public initiatives
   - www.probirk.ru (last accessed July 22, 2009)