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HUMAN REPRODUCTION BY IN VITRO
FERTILIZATION METHOD - VERSUS ADOPTION**

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CONCEPTUAL LANDMARKS OF RESEARCH

The topicality and importance of this topic is determined by its increasingly frequent use in social life. To ensure that the interests of both parties are certain to be realized, the legislator has developed the institution of adoption by regulating it through the articles of the Civil Code of the Republic of Moldova¹, but also through:

- Constitution of the Republic of Moldova²,
- Law no. 99 of 28.05.2010 on the legal regime of adoption³,
- Civil Procedure Code, chap. XXV⁴,
- Hague Convention of 29.05.1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, ratified by Parliament Decision No 1468-XIII/1998⁵,
- Convention on the Rights of the Child (20.11.1989), ratified by Parliament Decision No 408-XII/1990⁶,
- Bilateral treaties on legal assistance in civil and family matters, concluded with the Russian Federation (1993)⁷, Ukraine (1993)⁸ and within the framework of the CIS (1993)⁹,

¹ Civil Code of the Republic of Moldova, adopted by Law No. 1107 of 06 June 2002, published in the *Official Gazette of the Republic of Moldova*, No. 82-86/661 of 22 June 2002.

² Constitution of the Republic of Moldova, adopted on 29 July 1994, published in the *Official Gazette of the Republic of Moldova*, No. 1 of 12 August 1994.

³ Law No. 99 of 28 May 2010 on the Legal Regime of Adoption, published in the *Official Gazette of the Republic of Moldova*, No. 155-158/549 of 30 July 2010, with subsequent amendments and completions.

⁴ Civil Procedure Code of the Republic of Moldova, adopted by Law No. 225 of 30 May 2003, published in the *Official Gazette of the Republic of Moldova*, No. 111-115/451 of 12 June 2003. See Chapter XXV.

⁵ Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, adopted in The Hague on 29 May 1993, ratified by the Republic of Moldova by Parliament Decision No. 1468-XIII of 29 January 1998, published in the *Official Gazette of the Republic of Moldova*, No. 44-46/280 of 21 May 1998.

⁶ United Nations Convention on the Rights of the Child, adopted on 20 November 1989, ratified by Parliament Decision No. 408-XII of 12 December 1990, published in the *Official Gazette of the Republic of Moldova*, No. 33 of 28 May 1993.

⁷ Treaty between the Republic of Moldova and the Russian Federation on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed in Moscow on 22 February 1993, ratified by Parliament Decision No. 260-XIII of 04 November 1994, published in the *Official Gazette of the Republic of Moldova*, No. 20/254 of 06 April 1995.

⁸ Treaty between the Republic of Moldova and Ukraine on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed in Chişinău on 13 December 1993, ratified by Parliament Decision No. 261-XIII of 04 November 1994, published in the *Official Gazette of the Republic of Moldova*, No. 21/265 of 13 April 1995.

⁹ Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, concluded in Minsk on 22 January 1993 between CIS member states, ratified by Parliament Decision No.

- Other legislative acts and government decisions concerning the protection of children's rights¹⁰¹¹.

In order to take shape, the framework of assisted human reproduction should be started from scratch as there is no law on reproductive health and medically assisted human reproduction. Several articles on medically assisted reproduction exist in the Republic of Moldova¹².

These normative situations, both on adoption and on assisted human reproduction, presuppose an effort of in-depth analysis of the regulations in the field as well as of initiating appropriate legislation for assisted human reproduction, regulations for a correct application without touching ethical and moral norms, but also for identifying possible inadvertences or legislative gaps.

At first glance, there is a real legislative effervescence in terms of normative regulations of the legal regime on both adoption and in vitro fertilization.

The importance of tackling this topic is also highlighted by the practical cases which show that the institution of adoption is generally accepted by the countries of the world, while the field of assisted human reproduction is very little developed from a legal point of view in most countries, perhaps also because it requires advanced interdisciplinary research.

The topicality of the subject is also highlighted by the fact that, in practice, the institution of adoption is of particular interest, as it is a response to the ratification of children's rights, which must be guaranteed both internally and internationally. At the same time, the number of couples suffering from infertility is increasing due to lifestyle, stress or environmental factors. So, solutions such as adoption or IVF are essential for building tomorrow's society.

Aim of the paper and research objectives. The aim of this paper is to provide a theoretical and practical justification of the importance and necessity of applying legal,

402-XIII of 16 March 1995, published in the *Official Gazette of the Republic of Moldova*, No. 26-27/296 of 18 May 1995.

¹⁰ Law No. 338-XIII of 15 December 1994 on the Rights of the Child, published in the *Official Gazette of the Republic of Moldova*, No. 20/238 of 20 April 1995, with subsequent amendments.

¹¹ Law No. 38 of 01 March 2012 on Health, published in the *Official Gazette of the Republic of Moldova*, No. 72/237 of 13 April 2012. See Chapter III – Provisions on Medically Assisted Human Reproduction.

¹² See Law No. 38 of 01 March 2012 on Health, *Official Gazette of the Republic of Moldova*, No. 72/237 of 13 April 2012, with subsequent amendments and completions, Chapter III – Reproductive Health. Medically Assisted Human Reproduction.

psychological and ethical-religious norms in the choice of forming a family through adoption or in vitro fertilization.

In order to achieve the above-mentioned purpose, the following research objectives were outlined: to substantiate the concepts of adoption and in vitro fertilization, to present the legislative framework by comparison (Republic of Moldova, Romania, Spain) regarding the adoption process, to make a legislative comparison (Republic of Moldova, Romania, Spain) regarding in vitro fertilization, determination of the most important criteria underlying the choice of one of the two procedures: adoption or in vitro fertilization, outlining the profile of the adoptive parent, but also of the adopted child from the perspective of the interests of the adopted child, analysis of the current legislative framework on adoption and in vitro fertilization, identification of practical problems encountered in these procedures and, last but not least, proposal of legislative solutions to improve the regulatory framework.

The scientific novelty of the results obtained lies in the integrative and comparative approach to adoption and in vitro fertilization, two legal institutions usually treated separately in literature. The work succeeds in linking them directly, investigating not only the normative framework but also the social, ethical and psychological impact of each option on the formation of family relationships.

An original element is the comparative analysis of the legislation in Romania, the Republic of Moldova and Spain, which highlights the systemic differences and contributes to the formulation of concrete proposals for legislative harmonization and optimization of procedures in the field of adoption and medically assisted reproduction. This multidisciplinary approach is relatively scarce in domestic research, which gives the paper a distinct theoretical and applied contribution.

The scientific problem solved is to identify the legal, social and cultural causes of the growing preference of infertile couples for in vitro fertilization over adoption, in the context of a legislative framework that is deficient, fragmented and often inadequate to current realities.

The paper has shown that this trend is not driven solely by the desire for a biological bond, but mainly by bureaucratic obstacles, lack of transparency, excessive length of the adoption process and the absence of effective institutional support mechanisms. In parallel, it was highlighted that in vitro fertilization legislation, although incomplete in some respects, is perceived as more accessible, faster and more predictable.

Its theoretical importance lies in its contribution to the development and deepening of knowledge in the field of family law, with a focus on the intersection between adoption and medically assisted reproduction, two legal institutions at the center of profound social transformations. Through a comparative approach to the legislation of Romania, the Republic of Moldova and Spain, the research makes a significant contribution to the conceptual clarification and systematization of the applicable rules, offering an integrative vision of the existing regulations and their divergences. The paper provides a solid theoretical foundation for understanding how legislation influences individual and collective decisions on parenthood and reverses the usual perspective by introducing the social dimension into the analysis of legal institutions. This approach allows a reconceptualization of the relationship between law, society and reproductive technology, thus providing new directions for reflection and research in literature.

Summary of the research methodology and justification of the research methods chosen. The methodology used includes comparative analysis of legislation, case studies and interviews with legal and medical experts. These methods allow a detailed and critical assessment of the effectiveness of current legislation. Using an interdisciplinary approach, the research also examines the ethical, psychological and sociological implications of adoption and in vitro fertilization.

The approval of the research results took place at the University of European Studies of Moldova, where the doctoral thesis was evaluated within the Doctoral School of Legal Sciences and International Relations, specialization 553.01. During the research, the preliminary ideas, conclusions and resulting recommendations were presented and validated in national and international scientific conferences, being also published in specialized journals, thus strengthening the relevance and scientific value of the work.

THESIS CONTENT

The PhD thesis is structured in four chapters, preceded by an introduction and followed by conclusions and recommendations. Each chapter addresses specific topics in a logical sequence designed to support the overall objectives of the scientific approach. The entire content has been developed in accordance with the methodological and academic requirements imposed by the institutional framework.

In the **Introduction**, *the current importance of the investigated topic* is highlighted, emphasizing the gaps identified in the literature. The present research aims to investigate, in a complex and interdisciplinary manner, a social phenomenon with profound implications: the relationship between the alarming increase in the number of children without parental care, the legislative dysfunctions in the field of adoption and the increasingly frequent choice of infertile couples for medically assisted reproduction. This dynamic, in which in vitro fertilization is increasingly preferred over adoption, reveals the urgent need to reassess the regulatory framework and to understand the decision-making mechanisms involved. *The aim* of this paper is therefore to contribute to the deepening of knowledge in this field and to formulate relevant proposals for optimizing legal regulations and related public policies.

Several objectives have been formulated to realize this approach. The research aims, first of all, to conceptually clarify the two legal institutions - adoption and in vitro fertilization - with emphasis on the specificity, purpose and ethical-legal implications of each. Subsequently, a comparative analysis of the legislative regulations in the Republic of Moldova, Romania and Spain is carried out to highlight good practices, as well as possible shortcomings or contradictions of the legal systems analyzed.

The investigative approach continues with the identification of the determining criteria in the choice between adoption and medically assisted reproduction, starting from a multidimensional perspective - legal, social, psychological and economic. In this context, the profile of the adoptive parent and the adopted child is outlined, in close connection with the principle of the best interests of the child, which must prevail in any decision concerning the child's protection and integration into the family environment.

The paper also critically analyzes the current legislative framework and reveals the dysfunctions and practical difficulties encountered in the adoption process, respectively in the access to medically assisted reproduction techniques. Finally, proposals are put forward to improve the legal regulations in order to ensure a balance

between the rights of the child, the adoptive parents and the beneficiaries of in vitro fertilization procedures, and to promote coherent, effective public policies that are focused on the real needs of contemporary society.

The scientific novelty lies in the integrated and comparative approach of two fundamental legal institutions - adoption and medically assisted reproduction - in the context of current social challenges, marked by increasing infertility and the high number of children without parental care. The paper proposes a critical and comparative analysis of the legal framework applicable in the Republic of Moldova, Romania and Spain, highlighting the differences in regulation, good practices and existing gaps, which are insufficiently addressed in the local and regional legal literature.

An original element is the identification of the objective and subjective criteria that determine the choice between adoption and in vitro fertilization, through an interdisciplinary approach combining legal, psychological and social arguments. Furthermore, the profiling of the adoptive parent and the adopted child from the perspective of the best interests of the child provides an innovative framework of analysis that contributes to a deeper understanding of the implications of these processes.

The main *scientific problem* addressed by this research is to identify and analyze the reasons why more and more infertile couples choose medically assisted reproduction over adoption, in the context of a deficient and unharmonized legislative framework, both nationally and internationally.

The *theoretical value* of this paper lies in the deepening and systematization of the legal knowledge on two fundamental legal institutions - adoption and medically assisted reproduction - in an integrated, coherent and comparative conceptual framework. By critically analyzing the concepts, principles and regulations related to these institutions, the research contributes to the development of legal doctrine in the field of family law, bioethics and the protection of children's rights.

The paper provides a solid theoretical framework for understanding the relationship between emerging social needs (such as infertility or child abandonment), available legal options (adoption versus in vitro fertilization) and existing normative regulations. At the same time, the formulation of clear distinctions between concepts, the identification of legislative contradictions and the proposal of a rigorous terminology provide valuable support for further research in this area.

Through a comparative approach to the legal systems of the Republic of Moldova, Romania and Spain, the work enriches the theoretical foundations of comparative law and contributes to a better understanding of international trends in the regulation of social and biological filiation. Thus, it creates the premises for a broader academic reflection on contemporary transformations of the concept of family and parenthood.

The research hypothesis on which this paper is based is based on the premise that the inadequacies and rigidities of the legislative framework on adoption contribute significantly to the orientation of infertile couples towards medically assisted reproduction, to the detriment of adoption. It is assumed that, in the absence of an efficient, transparent and prospective adoptive parent-friendly system, in vitro fertilization becomes an option perceived as more accessible, predictable and quicker, despite the associated costs and ethical implications. Comparative analysis of the legal framework in relation to social realities and the actual decisions of couples faced with the choice between the two options helps to identify gaps and to formulate proposals to strengthen the legal framework, thus ensuring the protection of the rights of the parties involved.

The present research uses a methodological approach of a theoretical-analytical and comparative type, complemented by elements of doctrinal and normative interpretation, appropriate to the subject of study located at the intersection between family law, bioethics and social policies. As the topic involves both conceptual and legislative dimensions as well as practical aspects, the scientific approach is structured around several complementary methods.

The main method used is the legal analysis of the relevant legal framework in the field of adoption and medically assisted reproduction, with a focus on the legislation of the Republic of Moldova, Romania and Spain. For this purpose, domestic and international legal acts, including conventions, directives, treaties, as well as relevant case law have been examined.

The comparative method made it possible to identify differences and convergences between the selected legal systems to extract good legislative practices that can be used as a basis for proposals for harmonization and regulatory reform.

The paper also resorted to the method of doctrinal analysis, by consulting national and international literature, in order to capture the conceptual developments, controversies and dominant theoretical approaches in the field.

To formulate the conclusions and recommendations, the logical method (deductive and inductive) was used to structure the argumentation and scientific substantiation of the research hypothesis.

As a subsidiary, the research included an exploratory dimension, by analysing reports, statistics and case studies published by public institutions, international organizations or non-governmental organizations involved in the field of child protection and in vitro fertilization. These sources provided the factual context necessary to understand the applicability and limitations of the legislation analyzed.

In **Chapter 1**, entitled "Analysis of the normative and doctrinal situation in the field of adoption" the legislation of three countries is presented in a comparative way: the Republic of Moldova, Romania and Spain.

The first references to adoption date back before our time. They were found in Hammurabi's Babylonian Niche Code. "In the Middle Ages, adoption was a way of protecting children without parents, and so the elements found in Roman law are justified"¹³.

"The concept of adoption, directly or indirectly, is related to the concept of family, which in different countries, depending on the historical period, has been expounded differently, and the legislation of the states is not identical in this respect"¹⁴.

Adoption is a legal process by which a relationship of filiation is established between adopter and adoptee, conferring all the rights and obligations similar to those between parents and biological children. In Romania, adoption is governed by the Civil Code and Law 273/2004 on the legal regime of adoption¹⁵. In the Republic of Moldova, the main law regulating adoption is Law No. 99/28.05.2010 on the legal regime of adoption, which establishes procedures and conditions necessary for adoption both nationally and internationally.

In Spain, adoption is governed by the Civil Code (Art. 172-180), the Code of Civil Procedure (Art. 779-781), Organic Law 1/1996 on the Legal Protection of Minors and Law 54/2007 on Intercountry Adoption¹⁶.

¹³ Obreja, A., & Soci, A. (2022). *Obstacles in the Adoption Procedure*. Arena Iuris, Vol. 1, No. 1/2022, p. 29. Available at: <https://drept.ase.ro/wp-content/uploads/2023/02/Impedimente-privind-procedura-adoptiei.pdf>

¹⁴ Avornic, Gh., & Cojocaru, V. (2005). *National and International Adoption under the Principles of the Rule of Law*. Chişinău: Reclama Publishing House, p. 11.

¹⁵ Law No. 273 of 21 June 2004 on the Legal Regime of Adoption, published in the *Official Gazette of Romania*, No. 557 of 23 June 2004.

¹⁶ LAW 54/2007, dated 28 December, concerning International Adoption. Available at: http://www.hcch.net/upload/wop/adop2010_es1.pdf, accessed on 11 September 2024

Adoption is seen as a durable solution for children without families, providing them with stability and security. The adoption process involves numerous legal steps, including assessing the parental capacity of the adopters, obtaining the consent of the biological parents and issuing a final judgment.

Adoption must be carried out in the best interests of the child, and this principle is essential when assessing adoption applications. In Romania, intercountry adoption is strictly regulated to prevent child trafficking and protect children's rights.

The issues of domestic and intercountry adoption are wide-ranging and have been the subject of numerous treatises, studies, monographs and articles. In recent decades, the qualitative change in private international law has been closely linked to the development of international economic relations with a foreign element and has brought about changes in both doctrine and practice. The new directions, trends and changes in concepts reflected in judicial practice and the improvement of norms have naturally prompted concerns related to the study of these cases, especially in some European countries, such as the Republic of Moldova. The theoretical and practical aspects related to the international recognition of private international law are little studied in the Republic of Moldova.

Although the main definitions and purposes are similar internationally, there are variations in the adoption process, the requirements for adopters and the eligibility criteria for adoptable children. These differences are influenced by socio-cultural factors and each country's child protection priorities.

The analysis of the comparison of legislation between Romania, the Republic of Moldova and Spain revealed significant similarities, mainly due to the influence of international conventions on children's rights. However, each country has its own particularities. In Romania, the adoption procedure is strictly regulated and takes place in several stages to ensure maximum protection for the child. The Republic of Moldova, although following a similar model, faces challenges in terms of adoptability of children and effective implementation of legislation. In Spain, adoption has a decentralized character, with each autonomous community having specific competences, which leads to procedural diversity.

Therefore, based on our analysis, we can propose the following:

- 1) Proposals related to the adoption process

Because we live in an age of technology, a first proposal is to digitize the adoption process by creating a single adoption management platform. This would reduce time, all information would be in one place and files would be much easier to manage.

Another proposal is to set shorter deadlines for processing applications. This also benefits children, who no longer have to spend a long time in institutions.

2) Proposals to support families adopting children

Financial incentives for adoptive parents, extra days off and free psychological counseling are just some of the proposals that could solve the problems in the adoption system.

3) Proposals related to adoptable children

In order to come to the aid of both children and adoptive families, we recommend the introduction of special educational programs aimed at facilitating the bonding between the adopted child and the adoptive family. Such programs help both parties to build a relationship based on communication and trust.

4) Proposals on intercountry adoption

Intercountry adoption can be a sensitive subject especially when it is accompanied by child abuse or trafficking. Strict monitoring of adoptive families and adopted children over a much longer period is therefore imperative. Cooperation between states is also important and their involvement must be prompt whenever necessary.

5) Media proposals

Promotion of adoption also plays a key role. An important first step could be to create an information campaign to encourage adoption and counter negative perceptions of adoption.

Adoption can also be promoted by showcasing positive examples (successful adoptions), but also by involving parents in support groups where they can learn about the happy experiences of others who have made their family through adoption.

In **Chapter 2**, entitled "In vitro fertilization in civil law", we define and analyze in vitro fertilization from an interdisciplinary perspective in order to outline a clear conceptual and normative framework.

In vitro fertilization has become an increasingly widely used procedure, although the first mention of it dates back to 1890, when Cambridge University (UK) professor Walter Heape reported the first embryo transplantation in rabbits¹⁷.

Legal regulations vary between Romania, the Republic of Moldova and Spain, influenced by cultural and social factors. In Romania, there is no framework law on assisted human reproduction, but IVF procedures are regulated by certain normative acts and orders issued by the Ministry of Health. Recall in this regard, Order No. 1318/2012 of the Ministry of Health¹⁸ regulating in vitro fertilization and embryotransfer.

In Romania certain practices such as surrogacy are not clearly regulated and can raise legal and ethical issues.

In contrast, the Republic of Moldova and Spain impose stricter restrictions, limiting access to IVF to certain categories of people.

This difference in regulations reflects the different cultural and religious attitudes in the three countries, as well as political priorities on reproductive health¹⁹.

The ECtHR has presented various IVF cases emphasizing the importance of balancing private and public interests. Recall the case of *S.H. and Others v. Austria* where the ECHR ruled that Member States may decide on restrictions on sperm and egg donation and the case of *Mennesson and Labassee v. France* (2014) where the ECHR ruled that France must recognize the filiation of children born abroad through surrogacy.

We therefore recall the following important documents, applicable at EU level:

- **Directive 2004/23/EC** on standards of quality and safety of human tissues and cells, which includes requirements for the donation and use of ova and sperm in IVF.
- **Directive 2006/17/EC** and **Directive 2006/86/EC** detailing aspects of anonymous donation, donor selection criteria and traceability.

¹⁷ Barac, L. Some Considerations Regarding the Legal Implications of Medically Assisted Human Reproduction Techniques (MAHRT). Available at: <https://www.juridice.ro/311847/cateva-consideratii-privind-implicatiile-juridice-ale-tehnicilor-de-reproducere-umana-asistata-medical-ruam.html>

¹⁸ Order No. 1318/2012 of the Ministry of Health approving the rules for implementing the National Program for In Vitro Fertilization and Embryo Transfer, published in the *Official Gazette of Romania*, Part I, No. 466 of 9 July 2012.

¹⁹ Dr. Camelia Kaminski, *International Pro-life Conference held in Vienna, 10–12 October*, entitled "*Doctors Trying to Take the Place of God – The Deviations of Modern Medicine*", cited in: Dr. Crista Todea Gross, p. 275.

- **Regulation (EU) 2017/746** on in vitro diagnostic medical devices
Regulation governing genetic tests used in IVF.

IVF involves numerous rights and obligations for the parties involved. Couples undergoing the procedure have the right to decide on the use of the genetic material and embryos created. At the same time, sperm and egg donors have clearly defined legal rights and obligations, which vary from one legal system to another²⁰.

Adoption involves an extremely complex process in terms of ensuring the rights of the child and transferring parental responsibility to the adopters. In the situation of IVF with donated embryos, in many countries, the law requires anonymity of the donors, with the parents having to sign legal documents concerning the rights of the resulting child.

For example, in Romania, donors have the right to anonymity, while in the Republic of Moldova and Spain this right may be limited in certain circumstances. Legislation must ensure that the rights of all parties involved are adequately protected, preventing abuses and balancing their interests. In Romania, the rights and obligations of biological parents and donors are clearly regulated, ensuring legal protection for all parties involved in the IVF process. The legislation includes provisions on the financial and parental responsibilities of the parents, as well as the rights of the donors in terms of anonymity and the use of genetic material²¹.

The in vitro fertilization contract is a contract for the provision of medical services, and, like any contract, it has certain features which distinguish it from other legal acts. These features can be found in national law and differ from one country to another.

Obtaining informed consent has ethical, legal and, last but not least, practical implications and consequences that both doctors and patients should be aware of in order to apply them properly.

In vitro fertilization is not only a medical process but also one that involves ethical considerations. It is essential to look at the ethical aspects of IVF, such as the

²⁰ Pușcă, F. *Criminal Protection of Human Life Regarding Modern Biomedical Techniques* [Accessed: 14 February 2023]. Available at: http://evidentacercetare.univ-danubius.ro/Surse/Set_009/Vbk8g20EHh.pdf.

²¹ Moșin, V., & Eșanu, A. *Ethical Aspects of Medically Assisted Human Reproduction* [Accessed: 23 March 2023]. Available at: https://repository.usmf.md/bitstream/20.500.12710/16839/1/ASPECTE_ETICE_ALE_REPRODUCERII_UMANE_ASISTATE_MEDICAL.pdf.

rights of embryos and the moral dilemmas related to the donation and use of genetic material²².

Current legislation does not cover all cases, leaving many important questions unanswered, including the following:

- "Can the genetic material of a donor be used to conceive how many children?
- How long can a donor's genetic material be kept?
- Can a donor's genetic material be used after the donor's death?
- If the use of the genetic material of the donor's spouse or partner is introduced after the donor's death, will the child born using the donor's genetic material be related to the deceased?
- Can the known donor (spouse or partner) revoke his consent to donate genetic material to a particular woman (spouse or partner)?
- A donor's genetic material can be used to conceive several children by strangers, but it can also be used to conceive 'also the children of one'. Is there a danger that biological siblings, who do not know each other, will meet and marry?
- It could happen that because of this marriage, the siblings could conceive of their own children?"²³.

The increasing use of medically assisted reproduction procedures, particularly in vitro fertilization, is slowly but surely transforming the procreation of a significant percentage of the human species. The likelihood that in the near future, 10% of all children will be conceived through this procedure is quite high.

Given the rapid pace of technological change, it is extremely important that the regulated bodies devise a well-developed legislative framework.

The use of in vitro fertilization in same-sex couples should be regulated, the importance of this being driven by " [...] the rise of the LGBT movement and their fight for equal rights, including the right to family"²⁴.

²² Gheorghită, N. *The Issue of Infertility and Medically Assisted Reproduction in the Republic of Moldova: Medical, Ethical and Legal Aspects*, in *Vector European*, No. 1/2023, p. 24.

²³ Prague Fertility Center. *Why Is Preimplantation Genetic Testing of Embryos Important for Increasing Pregnancy Success Rates?* Available at: <https://www.pragueivf.com/ro/blog/importanta-testare-genetica-a-embriunilor-preimplantare> [Accessed on: 12 September 2024]

²⁴ Braga, C. *Some Bioethical Aspects of In Vitro Fertilization*. In: *Health, Medicine and Bioethics in Contemporary Society: Interdisciplinary and Multidisciplinary Studies*. Proceedings of the International Scientific Conference, 8–9 November 2019. Chișinău: Print Caro, 2019. 2nd Edition. ISBN 978-9975-56-701-5.

Chapter 3 discusses "The legal dimension of in vitro fertilization and adoption". It provides a detailed analysis of the legal effects of adoption and in vitro fertilization, focusing on how these institutions bring about changes in the legal structure of the family and on individual rights. The purpose of this chapter is to highlight the legislative implications, but also to analyze how these provisions are applied in practice through the relevant case law.

Adoption shall take effect from the date on which the court judgment granting it becomes irrevocable. Adoption shall have an effect in relation to parentage, custody of the child, the child's title, residence and domicile, guardianship, inheritance and nationality.

The sub-chapter entitled "The legal effects of adoption" presents the fundamental changes that adoption brings about in the legal relationship between the child and the adoptive parents. The acquisition of full filiation, identical to biological filiation, and the effects on the child's name, nationality and inheritance obligations are analyzed. It also emphasizes the final and irrevocable nature of adoption, except in certain situations expressly provided for by law.

Adoption can be annulled or terminated under certain conditions laid down by law. An adoption is null and void when the adoption procedure does not comply with the legal conditions, such as vitiated consent of the biological parents. Termination of adoption may occur when the relationship between the adopted child and the adoptive parents becomes unsustainable, for reasons including abuse or neglect.

In Romania and the Republic of Moldova, the legislation provides clear procedures for annulment and termination of adoption, thus ensuring that the rights of the child are protected. These procedures include further checks and the intervention of competent authorities to assess the situation and take the necessary measures.

Nullity of adoption has the effect of annulling all acts and decisions related to the adoption, restoring the previous legal situation. This may include reintegrating the child into the biological family or placing the child in the child protection system, depending on the specific circumstances.

Termination of adoption, on the other hand, involves the termination of the legal relationship between the adopted child and the adoptive parents, similar to divorce in the case of marriage. This process is strictly regulated to protect the best interests of the child and to ensure as smooth a transition as possible.

In vitro fertilization also involves a range of legal effects, including rights over genetic material, the legal status of embryos and the responsibilities of parents and donors. Legislation must ensure that the rights of all parties involved are adequately protected, preventing abuses and balancing their interests.

In Romania, the law provides for the rights and obligations of the parties involved in the IVF process, including the legal protection of embryos and regulations on the use of genetic material. These regulations are essential to ensure transparency and accountability in the IVF procedure.

The Republic of Moldova also imposes strict requirements for the legal protection of embryos and regulates the responsibilities of parents and donors. These requirements include additional checks and consent procedures, noting the importance of the ethical and moral aspects of IVF.

The fourth sub-chapter, "Jurisprudential interpretations and practical consequences", examines relevant decisions of national and international courts which have clarified or, on the contrary, highlighted ambiguities in the application of the rules on adoption and in vitro fertilization. It discusses differences of interpretation regarding the legal status of surrogacy, the recognition of parentage in cross-border cases and the effects of the mismatch between civil law and bioethical rules. These practical examples provide a sound basis for further legislative proposals.

Therefore, adoption and in vitro fertilization are legal institutions with major implications for individual rights and family protection. The regulations need to be constantly adapted to respond to new social and technological challenges, while striking a balance between the rights of the parties involved and the general interest of society. Jurisprudential interpretations and evolving legal rules play a crucial role in improving the protection afforded to these processes and ensuring that fundamental principles of law are respected.

In Chapter 4, entitled "Analysis of the social influence on adoption and in vitro fertilization", the social dimension of adoption and in vitro fertilization choices is investigated by exploiting empirical research tools. The main aim of this chapter is to identify the perceptions, motivations and factors influencing the decision of couples most often experiencing infertility.

The research methodology included the application of two questionnaires addressed in particular to people who intend to adopt a child or to undergo in vitro fertilization procedures, and through which it was intended to find answers to questions

such as: *How difficult are the processes (both adoption and in vitro fertilization) in terms of bureaucracy?* and *How important is the sex of a child (whether an adopted child or a child procreated using in vitro fertilization)? What about race?*

Thus, the results of the two questionnaires highlight a number of relevant social trends and perceptions regarding adoption and in vitro fertilization, both in terms of child selection criteria and in terms of the reasons for choosing one of the two options.

In terms of the perceived importance of certain characteristics of the child, respondents indicated that ethnicity had a greater weight in the decision-making process than race (skin color) or gender, the latter being considered secondary aspects. Thus, in terms of relevance, the sex of the child is considered the least important criterion, followed by race, while ethnicity has a slightly higher influence, but is not decisive. This ranking reflects a relatively open attitude, but not without subtle cultural or social biases.

In terms of the influence of various aspects on the decision to opt for in vitro fertilization, the most important factor for respondents is the follow-up of the child's development and health from the intrauterine period. This is perceived as a guarantee of control and predictability, in contrast to the uncertainties associated with the adoption process. Next, in order of importance are the knowledge and acceptance of the biological parents and the question of paternity establishment, which strongly influence the perception of the future child's identity. The legal status of the surrogate child and the anonymity of the donor are considered less influential but are still relevant in the decision-making framework.

Most respondents supported the need for the State to develop a modernized legal framework, including financial support measures for adopted children, especially in situations where adoption takes place without the child's consent. The view that adoption can be an effective mechanism for the reintegration of minors who have found themselves in radical contexts abroad was also highlighted, which shows a widespread perception of the social function of this institution.

Despite the general perception that the adoption process is overly bureaucratic and cumbersome, respondents recognize efforts to adapt the legal framework to the new possibilities offered by the digital age, reflecting a hope for streamlining procedures in the future. However, in vitro fertilization is overwhelmingly preferred as an option for starting a family, mainly because of perceived advantages such as the possibility to

choose the sex of the child or the close monitoring of its development during the prenatal phase.

Another relevant aspect identified is the fact that more than 85% of the adopted children fall within the age range 2-7 years, which shows a clear preference for adopting children of a young age, most likely to facilitate integration and early bonding. Also, the majority of adopted children are clinically healthy, reflecting the reluctance of adoptive parents to take on the care of a child with health problems, regardless of their nature.

In most cases, adoptive parents know at least one of the child's biological parents, usually the mother, and this information is important not only for tracing the child's origin, but also for knowing physical, behavioral or medical history. This concern emphasizes the need for a symbolic connection with the child's past, even in the absence of a direct biological link.

Despite the difficulties associated with the adoption process, respondents report a high level of satisfaction and personal fulfillment following its completion, which confirms the profoundly transformative and humanizing function of becoming a parent through adoption.

The results must be seen in the light of several limitations. The limitations of the research therefore include:

- inconsistency of answers with reality (some people, even if they signed a consent form, were not completely honest).
- - data taken from physical questionnaires may contain transcription errors.
- - the number of people who have adopted a child is relatively small and access to them is quite difficult (the data, not being public, makes the process of identifying them difficult).

This research makes important contributions to our understanding of parents' decision to adopt children or to use in vitro fertilization, and the criteria that motivate their choice.

At the same time, it contributes to creating a comprehensive picture of the situation of adoptions in the Republic of Moldova, as well as to highlighting the legislative problems that negatively influence the number of adoptions.

The results of this research can be used to educate policy makers, the media and others about adoption. They can also be used to create positive representations of the adoption process necessary in maximizing the number of people who experience it. This

information can be used by counselors, families, and society to understand and deepen the phenomenon through its multidimensional approach.

A continuous approach to the subject is imperative to serve all parties involved (parents, children, legislators, social workers, etc.).

As a result of the study carried out in this paper, we have been able to determine several approaches that could improve our understanding of the field of study. Among these we can mention the following:

- to determine the extent to which society is involved in educating the public about adoption and in vitro fertilization through the media.
- assessing the mode and extent of ongoing communication within families.
- determining ways to stimulate ongoing communication in the parent-child relationship.
- understanding the relevance or irrelevance of biological, paternal relationships.
- determining alternative ways of disseminating information about adoption or in vitro fertilization by children throughout their lives
- determining the extent to which society is involved in
- analyzing how the terms 'birth mother', 'adoptive mother', 'surrogate mother' and 'mother' are understood by children and their ability to understand the differences.
- determining clearly defined developmental trends in understanding adoption.
- determining how words are chosen in providing explanations impact on children's development.

It is also more than useful to develop a guide of questions for parents to help them determine their strengths and create recommendations to help them develop their parenting skills.

The sub-chapter entitled "Successful adoption cases - practical perspectives" presents a number of successful adoption cases, giving a practical perspective on the benefits of the process and its positive impact on the child and the family.

The paper concludes with **general conclusions and recommendations**.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

In an ever-evolving society, the options for people who want children but have difficulty conceiving have diversified considerably. Two of the most important alternatives are in vitro fertilization (IVF) and adoption. These offer hope to families who want a child, but involve complex medical, emotional and legal processes.

In vitro fertilization can be seen as a scientific and medical "spark" because it represents a revolutionary advance in assisted reproductive technology. It offers hope to infertile couples and raises questions about the limits of medical ethics.

Adoption can be considered more emotionally and socially profound, as it changes the lives of both children and adoptive parents. It is an act of generosity and responsibility that can transform destinies.

A key link between in vitro fertilization and adoption is the ethical and emotional dilemma faced by infertile couples. In many cases, adoption is perceived as an alternative to assisted fertilization, but it is not always seen as an emotionally equivalent option. The study explores how social perceptions, and personal beliefs influence this decision, highlighting that both in vitro fertilization and adoption involve a complex process of acceptance and adaptation to new parenthood.

A point of maximum relevance of the present research is determined by the comparative analysis of the legislation in Romania, the Republic of Moldova and Spain on adoption and in vitro fertilization, highlighting the structural differences, legislative gaps and examples of good practice.

It also draws on relevant national and international court decisions, discussing the practical application of the law, judicial solutions in complex cases and the impact of judicial interpretation on the rights of children and parents.

In vitro fertilization is analyzed not only from a legal point of view, but also through the prism of bioethics, religion, psychology and sociology, reflecting the complexity of the phenomenon and its impact on individual identity and family structure.

Another important element addressed by this research was the extent to which society, culture, social pressure, media and family influence the choice between adoption and in vitro fertilization, providing an integrative perspective on the motivations and bottlenecks.

Following all the scientific work, the paper demonstrated that the choice between adoption and in vitro fertilization is not determined solely by medical or legal factors, but is the result of a complex interplay between legal norms, social perceptions, cultural values, emotional resources and access to information. The paper emphasizes the need to address these phenomena within a coherent legal framework, adapted to contemporary social realities, and proposes a series of legislative measures aimed at strengthening the protection of the best interests of the child, clarifying the legal status of the parties involved and bridging the gap between the legal norms and their practical applicability. Thus, the research contributes to the enrichment of legal doctrine and provides a solid foundation for future normative interventions and public policy initiatives.

Proposals for new laws

As a member of the Committee for Justice, Citizens' Rights and Freedoms of the Liberal Women's Organization, I have submitted to the Chamber of Deputies the following draft laws:

1) In view of the presented casuistry, as well as in view of the considerations set out above, we consider that it would be necessary to supplement and amend the provisions of Law 273/2014 with provisions on improving the matching process and giving priority to adoption to parents from the same ethnic, cultural or linguistic origin.

A major objective in the matching process would be to establish a genuine emotional connection between the child and the prospective adoptive parents and to assess their ability to overcome any difficulties that may arise later in the adoption process.

It is well known that the easiest way for children to get to know and learn is through play. This being so, this tool can also be used successfully in the matching process, all the more so as the relaxed framework created by the joy of play can dissolve any relational difficulties or tensions that might arise from formal interaction.

At the same time, another element that should be taken into account would be the natural attraction that could be created between the children and the future parents. This would eliminate from the outset any undesirable situations that might arise after the child is placed in the family selected in accordance with the provisions of Art. (3) of Law 273/2014.

In our opinion, it would be much more appropriate to select the most suitable family or individual after several meetings, facilitated and supervised by the childminders and at least one psychologist, in play centers/playgrounds.

It would be useful to have several adoptable children in these meetings, by age segments (between 4 and 6), as well as families identified as suitable for them. In the playful interaction between children and parents, the psychologist can easily identify preferences or connections within the group. In this way, it is possible to observe natural affinities, eliminating the tensions of the formal, one-to-one matching relationship, and to observe the degree of determination of each parent in building a genuine relationship.

2) With regard to the "principle of continuity in the upbringing of the child, taking into account his/her ethnic, cultural and linguistic origin", provided for in art. (c) of Law 273/2004, we consider that it should be made effective by inserting in Article 39 of Law 273/2004 to add a new category of persons who have priority for adoption, after the categories set out in paragraph (2), namely "relatives of the child within the extended family, other persons with whom the child has enjoyed family life for a period of at least 6 months, and families/persons who have adopted siblings of the child or who are in the process of adoption with a sibling/s of the child, insofar as this is not contrary to the child's best interests".

This new priority category would be people from the same ethnic, cultural or linguistic background.

The introduction of this new category of priority people appears necessary based on studies and case studies of psychogenealogy, which has proven to be a real "guiding thread to understand your life, professional and personal choices, to light your way, without necessarily being about any trauma. "Because psychogenealogy, let's not forget, means first of all taking on the past, but also gathering nectar from the family garden to make honey from it".

Our proposal has already been registered and has been submitted for opinion to the Legislative Council - Senate of Romania to change the adoption law. The legislative project is at the beginning of its journey and will go through a series of legislative steps until it becomes a reality.

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21. **Carmen Ion**-lead author Legal Presumptions of Paternity Article published in EIRP 2022 European Integration -Realities and Perspectives. Proceedings, pp.331-336, of the Danubius University of Galati/Romania. 2022
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 25. **Carmen Ion**- Alexandra Novac-Leca The Adoption- Regulation within the National Criminal Legislation that Contribute to the Protection of the Rights of the Adopted Minor. The Cross-Border Effects of Adoptions. Article published in Journal of Danubian Studies and Research, Vol.12, no.1/2022 2022
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6. **Carmen Ion** The Impact Parental Migration on the Adoption of Children. 2023

ADNOTARE

ION Carmen, „Regimul juridic al reproducerii umane asistate medical prin metoda fertilizării *in vitro* – versus adopție”, teză de doctorat în drept, Chișinău, 2025

Structura tezei: introducere, cinci capitole, concluzii și propuneri legislative, bibliografie din 159 titluri, 7 anexe, 87 pagini de text de bază.

Cuvinte cheie: adopție, fertilizare *in vitro*, minor, adoptat, adopție internațională, familii adoptatoare, copil adoptat, părinte adoptiv, interesul superior al copilului.

Domeniul de studiu: specialitatea 553.01 – Drept civil.

Scopul tezei de doctorat constă în justificarea teoretico-practică a importanței și necesității aplicării normelor juridice, psihologice și etico-religioase în alegerea formării unei familii prin intermediul adopției sau a fertilizării *in vitro*.

Obiectivele: analiza comparativă a legislației privind adopția și fertilizarea *in vitro* în România, Republica Moldova și Spania, determinarea efectelor juridice și sociale ale adopției și fertilizării *in vitro*, explorarea implicațiilor etice, medicale și sociale ale fertilizării *in vitro*, investigarea nulității și desfacerii adopției și formularea recomandărilor pentru îmbunătățirea legislației în domeniul adopției și fertilizării *in vitro*.

Noutatea și originalitatea științifică a lucrării rezidă din analiza completă a doctrinei a legislației care reglementează adopția ca instituție juridică a dreptului privat. Îmi propun prin această lucrare să realizez un studiu cuprinzător al regimului juridic a unei astfel de proceduri, în toată amploarea sa în care se manifestă și în același timp aduc argumente puternice pentru a fi abordate cu încredere procedurile adopției, care au fost mult simplificate în ultima perioadă, scoțând în evidență avantajele și dezavantajele fertilizării, respectiv inseminării, raportat la posibilitățile adopției.

Problema științifică importantă soluționată prin cercetarea desfășurată se referă la cercetarea reglementărilor naționale și internaționale, urmărindu-se clarificarea unor ambiguități în legislația națională privind fertilizarea *in vitro* dar și adopția precum și umplerea, pe cât posibil, a unui vid legislativ în acest domeniu.

Semnificația teoretică a lucrării constă în aprofundarea și sistematizarea cunoștințelor privind reglementările juridice referitoare la adopție și fertilizarea *in vitro*, printr-o analiză comparativă între România, Republica Moldova și Spania. Studiul contribuie la clarificarea unor concepte juridice fundamentale și la evidențierea unor aspecte critice ale legislației naționale și internaționale. De asemenea, oferă o perspectivă doctrinară asupra modului în care normele juridice evoluează pentru a răspunde provocărilor etice și sociale din domeniul reproducerii asistate și al protecției copilului.

Valoarea aplicativă a lucrării se reflectă în recomandările propuse pentru îmbunătățirea legislației și a politicilor publice privind adopția și fertilizarea *in vitro*. Studiul oferă soluții juridice concrete pentru optimizarea procedurilor, protejarea drepturilor părților implicate și reducerea incertitudinilor legislative. De asemenea, analiza jurisprudențială și studiile de caz incluse în lucrare pot fi utilizate ca reper în practică de către juriști, factori decizionali și specialiști din domeniul protecției copilului și al reproducerii asistate.

Implementarea rezultatelor științifice. Rezultatele științifice au fost utilizate în procesul educațional al Facultății de Drept din cadrul Universității de Studii Europene din Moldova și al Facultății de Drept din cadrul Universității „Danubius” din Galați, România.

ANNOTATION

ION Carmen ION, "The legal regime of medically assisted human reproduction by *in vitro* fertilization method - versus adoption", PhD thesis in law, Chisinau, 2025

Structure of the thesis: introduction, five chapters, conclusions and legislative proposals, bibliography of 159 titles, 7 annexes, 87 pages of basic text.

Keywords: adoption, *in vitro* fertilization, minor, adopted, international adoption, adoptive families, adoptive families, adopted child, adoptive parent, best interests of the child.

Field of study: specialty 553.01 - Civil Law.

Aim consists in the theoretical-practical justification of the importance and necessity of applying legal, psychological and ethical-religious norms in the choice of forming a family through adoption or *in vitro* fertilization.

Objectives: comparative analysis of the legislation on adoption and *in vitro* fertilization in Romania, the Republic of Moldova and Spain, determining the legal and social effects of adoption and *in vitro* fertilization, exploring the ethical, medical and social implications of *in vitro* fertilization, investigating the nullity and undoing of adoption and formulating recommendations for improving the legislation in the field of adoption and *in vitro* fertilization.

The novelty and scholarly originality of the work lies in the complete doctrinal analysis of the legislation governing adoption as a legal institution of private law. I aim through this work to make a comprehensive study of the legal regime of such a procedure, in all its extent in which it manifests itself and at the same time I bring strong arguments for a confident approach to adoption procedures, which have been greatly simplified in recent times, highlighting the advantages and disadvantages of fertilization, respectively insemination, in relation to the possibilities of adoption.

The **important scientific problem solved** by the research carried out refers to the research of national and international regulations, aiming to clarify some ambiguities in the national legislation on *in vitro* fertilization and adoption as well as to fill, as much as possible, a legislative vacuum in this field.

The **theoretical significance** of the work consists in deepening and systematizing the knowledge on the legal regulations regarding adoption and *in vitro* fertilization, through a comparative analysis between Romania, Republic of Moldova and Spain. The study helps to clarify some fundamental legal concepts and to highlight some critical aspects of national and international legislation. It also provides a doctrinal perspective on how legal rules are evolving to respond to ethical and social challenges in the field of assisted reproduction and child protection.

The **applied value** of the paper is reflected in the proposed recommendations for improving legislation and public policy on adoption and *in vitro* fertilization. The study offers concrete legal solutions to optimize procedures, protect the rights of the parties involved and reduce legislative uncertainties. The case law analysis and case studies included in the paper can also be used as a benchmark in practice by lawyers, decision-makers and professionals in the field of child protection and assisted reproduction.

Implementation of scientific results. The scientific results have been used in the educational process of the Faculty of Law of the University of European Studies of Moldova and the Faculty of Law of the "Danubius" University of Galati, Romania.

АННОТАЦИЯ

Ион Кармен Ион, «Правовой режим репродукции человека с медицинской помощью посредством экстракорпорального оплодотворения - против усыновления», докторская диссертация по праву, Кишинев, 2025 г.

Структура диссертации: введение, пять глав, выводы и законодательные предложения, библиография из 159 наименований, 7 приложений, 87 страниц основного текста.

Ключевые слова: усыновление, экстракорпоральное оплодотворение, несовершеннолетний, усыновленный, международное усыновление, усыновители, приемные семьи, усыновленный ребенок, приемный родитель, наилучшие интересы ребенка.

Область обучения: специальность 553.01 - Гражданское право.

Цель диссертации состоит в теоретико-практическом обосновании важности и необходимости применения правовых, психологических и этико-религиозных норм при выборе создания семьи путем усыновления или экстракорпорального оплодотворения.

Цели: сравнительный анализ законодательства об усыновлении и экстракорпоральном оплодотворении в Румынии, Республике Молдова и Испании, определение правовых и социальных последствий усыновления и экстракорпорального оплодотворения, изучение этических, медицинских и социальных последствий экстракорпорального оплодотворения, исследование недействительности и отмены усыновления, формулирование рекомендаций по совершенствованию законодательства в области усыновления и экстракорпорального оплодотворения.

Новизна и научная оригинальность работы: заключается в полном доктринальном анализе законодательства, регулирующего усыновление как правовой институт частного права. В данной работе я ставлю перед собой цель всесторонне исследовать правовой режим такой процедуры, во всей полноте его проявления, и в то же время привожу весомые аргументы в пользу уверенного подхода к процедуре усыновления, значительно упрощенной в последнее время, выделяя преимущества и недостатки оплодотворения, соответственно, инсеминации, по отношению к возможностям усыновления. Новизна и научная оригинальность работы представлена, в частности, анкетным исследованием усыновления и экстракорпорального оплодотворения. На протяжении многих лет эти темы не рассматривались вместе, и не было найдено никакой связи между ними, особенно в Республике Молдова.

Важная научная проблема, которую решает проведенное исследование: оно касается изучения национальных и международных норм, направленных на прояснение некоторых неясностей в национальном законодательстве по экстракорпоральному оплодотворению и усыновлению, а также на заполнение, насколько это возможно, законодательного вакуума в этой области.

Теоретическая значимость работы: заключается в углублении и систематизации знаний о правовых нормах, касающихся усыновления и экстракорпорального оплодотворения, посредством сравнительного анализа Румынии, Республики Молдова и Испании. Исследование помогает прояснить некоторые фундаментальные правовые понятия и выделить некоторые критические аспекты национального и международного законодательства. Оно также дает доктринальное представление о том, как развиваются правовые нормы в ответ на этические и социальные вызовы в области вспомогательной репродукции и защиты детей.

Прикладное значение работы отражена в предложенных рекомендациях по совершенствованию законодательства и государственной политики в области усыновления и экстракорпорального оплодотворения. В исследовании предлагаются конкретные правовые решения, направленные на оптимизацию процедур, защиту прав участвующих сторон и снижение законодательной неопределенности. Анализ прецедентного права и примеры из практики, приведенные в работе, также могут быть использованы в качестве ориентира на практике юристами, лицами, принимающими решения, и специалистами в области защиты детей и вспомогательной репродукции.

Внедрение научных результатов. Научные результаты были использованы в учебном процессе юридического факультета Университета европейских исследований Молдовы и юридического факультета Университета «Danubius» г. Галац, Румыния.

ION, CARMEN

**THE LEGAL REGIME OF MEDICALLY ASSISTED
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