

# **A CHAIN IS ONLY AS STRONG AS ITS WEAKEST LINK – THE PROTECTION OF THE CHILD BORN AS A RESULT OF THE USE OF MEDICALLY ASSISTED TECHNIQUES**

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**ABSTRACT:** In a growing number of legal systems, the use of medically-assisted techniques is now accepted, as a way of creating new human beings. Rules governing access to these techniques should be designed “in such a way as to safeguard the dignity of the human person”, as it can be derived from legal principles applicable in those legal systems and is expressly stated in article 67, n° 2, (e) of the Constitution of the Portuguese Republic. To substantialize such a guarantee is a complex challenge as all the individuals involved in the process must be encompassed in this aim, not only the adults who intend “to assume a parental role” for a child, but also the child that will be born from the medically assisted technique. In point of fact, this new kind of parentage cannot serve only the interests of the grown-ups that decide to have access to those techniques: in Portuguese Medically-Assisted Procreation Law (Law n° 32/2006, dated 26 July 2006 and deeply amended in 2016) they are called “beneficiaries” of the medically-assisted procreation techniques. Nevertheless, in spite of the grounds that favour the materialization of this “intentional parentage”, the promotion of the best interest of the child cannot be put at stake or neglected. It is to be discussed if the legal systems have already devised a way to adequately address the array of legal issues that may arise from the birth of child through the use of medically-assisted techniques, especially when those interests are not harmoniously in line. As a consequence, attention will be drawn to the rules regarding the establishment of affiliation and the possibility of challenging it. Particularly complex problems – which will be addressed – arise when surrogacy takes place and the possibility of revoking the consent has been awarded to the surrogate until after the birth of the child, in order to guarantee the exercise of her right to the development of personality. Taking into account the latest developments in this field in Portuguese legal system (namely the Decision n° 225/2018 of the Portuguese Constitutional Court), in the light of a comparative approach with other legal systems (namely the English, the German and the Greek), this intricate subject will be addressed, aiming to add my critical contribution to the discussion.

**Keywords:** Medically-Assisted Procreation; Rights of the new born; Human Rights; Affiliation; Surrogacy.