

*Original article*

**IVF Children Acquiring Emirati Citizenship by the Nationality of a Parent (*Jus Sanguinis*)**

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**Abstract**

**Objective.** The technology of in vitro fertilization (IVF) opened a new era in the treatment of infertility but at the same time it created new challenges for civil and international private law. This concerns the issues of determining and/or acquiring child citizenship and legal conflicts associated with this. **Materials and methods.** This study examines the aspects of obtaining UAE citizenship through the study of the UAE Citizenship Law and the principle of jus sanguinis (right of blood) when citizenship is acquired by a parent's nationality. The research aims to identify whether the current legislative regulation of the UAE meets the current challenges in the field of family relations against the backdrop of new medical advances in IVF. The paper considers the aspects of the UAE legal regulation in the scope of family law relationships. The above issues were considered from the critical evaluation prospects taking into account the potential ways for their improvement. **Results and Discussion.** The problems associated with determining the citizenship for those born as a result of IVF are the subject of discussion, while, as practice shows, the law often does not keep pace with the development of reproductive technologies. Based on the analysis of legal regulation and practice, the study summarizes the grounds for obtaining UAE citizenship by children conceived through IVF and refusals to obtain it. **Conclusion.** The paper recommends mitigating the requirement of proof of paternity as a condition to grant the nationality to an IVF child, especially in the case of purely medical errors in which father has no responsibility.

**Keywords:** citizenship; in vitro fertilization (IVF); nationality; private law; the right of blood

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**Introduction**

In vitro fertilization (IVF) technology has gone a long way in its development, and there is hardly a country without medical centers practicing it. IVF is assisted reproductive technology, which is used when conception in a natural way is not possible. Infertility is defined by the failure to achieve a natural pregnancy after 12 months or more of regular unprotected sexual intercourse.<sup>1</sup> According to the types of infertility it can be divided in to two, primary and secondary infertility. When the patient is unable to

conceive and having no history of miscarriages than it is primary where as when the couples having one or two babies or even having history of conceive or miscarriages but further they are unable to conceive and having any problem regarding infertility than it is called secondary infertility.<sup>2</sup> Infertility has profound psychosocial consequences for the 10-15% of couples who are affected with the condition.<sup>3</sup>

Being carried out through specific clinical and biological interventions IVF is a process of combining an ovum with sperm in vitro ("in a glass"), that is,

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outside a body. The process includes removing an egg (an ovum) from a woman's ovary and letting sperm fertilize it in a laboratory. After it, the fertilized ovum is implanted in the same or another woman's body to establish a successful pregnancy.<sup>4,5</sup>

Developing quite intensively, reproductive medicine creates a number of new legal relations, while legal regulation does not always keep pace with technology. New legal relations require appropriate legislative regulation. Against this background, a number of socio-ethical and legal issues arise for some countries. Difficulties occurred not only due to the legal system and the specifics of legislative regulation, but also, in some cases, traditional moral values and social principles and peculiarities.<sup>6,7</sup> According to Islam, not only the protection of the life of fetus in mother's womb but also the life of the embryo which is produced through artificial fertilization is significant and a great responsibility. In addition, from the beginning of fertilization, the embryo should be treated as a potential human being. Therefore, it should be considered that producing surplus embryos by IVF, destroying embryos for genetic diagnosis, sex selection or other reasons, and using others' sperm, oocyte and embryos involves many religious and ethical problems.<sup>8</sup>

Currently, one of the leaders in the field of infertility treatment with IVF is the UAE.<sup>9</sup> IVF has several issues requiring legal regulation, and perhaps the most prominent of these problems are related to the nationality of children of an Emirati citizen.

The management of parent-child conflicts has its own specifics in almost every foreign country. In particular, if we talk about the control of the personal non-property relations, then in certain countries, the law of a children's domicile is used as a conflict of law rule (including their protection); in others, the law of the place where the dispute arises; in others, the law of the state that governs the parentage of a child applies.<sup>10</sup>

The UAE law specifies cases when the Emirati nationality of a newborn can and cannot be proven. The study analyzed legal documents related to establishing the Emirati citizenship of a child, clarifying the conditions for establishing the nationality, and indicating any IVF cases in which these conditions are met. The research aims to study the Emirati nationality legislation, understand whether it can absorb medical progress in the field of reproduction, and whether there is a need to amend it

to keep pace with medical progress. Based on existing theoretical groundwork, it should be noted that current research related to the citizenship of children conceived with IVF is rather limited. This applies even more to the application of the *jus sanguinis* principle. Contemporary studies concerning the problems of citizenship acquisition caused by the advent of assisted reproductive technologies are devoted to such issues as:

- assisted reproductive technology (ART), surrogacy, and *jus sanguinis* principle in the USA, Australia, and Canada,<sup>11</sup>
- socio-ethical issues in the aspects of citizenship and gamete donation,<sup>12</sup>
- an analysis of the market for reproductive tourism,<sup>13</sup>
- ethical, legal, and social issues of modern assisted reproductive technologies,<sup>14</sup>
- donation of embryos for human development and stem cell research,<sup>15</sup>
- gametes donor anonymity and compensation.<sup>16</sup>

The aim of the current research implies to examine the legal regulation of the UAE, considering the prospects for its improvement using method of structural and functional assessment from the critical evaluation prospects. The study has several conclusions and recommendations.

### Materials and Methods

The study is based on an analysis of the UAE legislation (in particular, Federal Nationality and Passports Law No. 17 of 1972 of the United Arab Emirates), as well as legislative acts of foreign countries (Jordan Nationality Law, and Egyptian Nationality Law No. 26 of 1975 and amended by Law No. 154 of 2004). To meet the research aims, the method of structural and functional assessment from the critical evaluation prospects was used. The structure and tools of the studied legislative regulation area in aggregate were analyzed. A personal view of improving the considered aspects of legislative regulation is provided. The work examines the legal regulation of the UAE, considering the prospects for its improvement. The study identifies the structural elements that make up the system of legislative regulation in the area under consideration, identifies the functions that are performed by the elements of this system, and considers legal phenomena of acquiring nationality by IVF children in its relationship with other social phenomena. In particular, the study

examines such issues as the condition of proving the origin and Emirati citizenship of an IVF child of an Emirati citizen. Based on the study results, the work provides several recommendations related to amending the current UAE legislation in terms of mitigating the requirement to prove paternity as a condition for granting citizenship to an IVF child, especially in the case of purely medical errors in which a father does not bear responsibility.

## Results and Discussion

### *Socio-Legal Context of the Issue of Granting Citizenship to a Child Born through IVF*

The relevance of the issue of acquiring Emirati (UAE) citizenship through father by IVF children is associated with the reform announced at the end of 2021 and being implemented in the field of family law.<sup>17</sup> The UAE is reforming its legal system to maintain a competitive edge in the region by opening itself up to foreign investment and talent and to make legislation in the area more attractive to expatriates. One change that appears to be new is the ratification of the Federal Crime and Punishment Law, which came into effect on January 2, 2022, aimed, among other things, at protecting the rights of women citizens and residents of the UAE.<sup>18</sup> Due to new legislative changes, a number of legal issues arise regarding the parental rights of parents who do not have Emirati citizenship. The UAE, having a reputation as a state with high standards of medicine and providing a range of IVF medical services, is currently attracting many applicants from abroad. At the same time, citizens of the UAE often resort to the IVF procedure. Marriages between UAE citizens and foreigners resorting to IVF, due to their specificity, give rise to an additional question about the nationality of a newborn. This issue is often exacerbated by differences in legal systems.

As a general rule, a child born in UAE out of wedlock acquires citizenship only after being legally recognized by the father. If the newborn's mother is a citizen of the Emirates, and the father is unknown, a child acquires UAE citizenship by origin as well. Herewith, the place of birth of a child does not matter.<sup>19</sup> At present, traditional laws, peculiar to the state before, are giving way to secular ones, becoming more and more liberalized. Thus, Emirati law decriminalizes consensual extramarital relationships and provides that any child conceived as a result of this relationship is considered legitimate and thus will be legally recognized and cared for.

However, the law requires the couple to either marry or individually or jointly acknowledge a child. At the same time, the current features of legislation and legal practice create space for discrepancies. The issues of legislative regulation of certain aspects related to IVF have become part of this process.

It should be noted that for today, legislative regulation related to the issues of IVF children's citizenship is usually formed based on legal precedents. One illustrative example of such a statement is the example of a native of Chicago, Ellie Lavi, who applied to a reproductive medicine clinic in Israel. The woman was faced with the need to prove that the sperm donor was a US citizen. According to the information she received from representatives of the diplomatic department, it turned out that her children are not eligible for citizenship if she cannot prove that the egg or sperm used to create the embryo belongs to an American citizen.<sup>19,20</sup>

As can be noted, the presence of a foreign element is often due to the prohibition of concluding a surrogacy contract in the country of citizenship of the genetic parents. In this regard, in addition to the moral aspect of concluding such an agreement, it is also necessary to consider its further impact on the legal status of a newborn. The use of IVF by genetic parents whose state of nationality does not allow surrogacy may result in the genetic parents being forced to resort to adoption. At the same time, it should be borne in mind that the adoption procedure itself has a number of obvious and non-obvious obstacles if it is complicated by a foreign element. Potentially, a situation may arise when, as a result of the use of IVF, a child may appear who de facto has parents and de jure is deprived of them. At the international level, there is a rather extensive base of international documents regulating issues related to assisted reproductive technologies. Among them, for example, are the Universal Declaration on the Human Genome and Human Rights (1997), the Resolution of the UN General Assembly *Principles of Medical Ethics* (1982), and many others. Yet, despite this, there is a lack of international agreements that would clearly regulate the issues of the origin of children born with the help of IVF.<sup>10</sup>

Turning to the issues of personality and citizenship of the donor father, it is necessary to note the problem of anonymous donation. The global trend is the prevalence of a child's right to know their biological parents over the donor's right to remain anonymous. The first country to ban anonymous donation in 1984

was Sweden. Many countries followed suit, including Switzerland, Germany, Austria, the Netherlands, Great Britain, Norway, New Zealand, and some states of Australia.<sup>16,21</sup> At the same time, despite the ban on anonymous sperm donation, residents of some countries, in particular Switzerland and Italy, are increasingly bypassing the law and going abroad. To protect the rights of a child, experts call for regulation of this aspect of “reproductive tourism” at the international level.<sup>13,22</sup> The opinion above was shared by PACE.<sup>21</sup>

### ***Jus Sanguinis Principle and the Acquiring of Emirati Citizenship of a Newborn***

Jus sanguinis, or the right of blood, is the acquisition by a person at birth of the citizenship of the state of which his/her parents are citizens, regardless of the his/her birth place. The birth of a child in a state that applies the “law of the soil” principle, while parents are citizens of a state that applies the “law of blood” principle may lead to the appearance of a child’s dual citizenship. At the same time, the birth of a child in a state applying the “law of blood” principle, while parents are citizens of a state applying the “Jus soli” (law of the soil) principle can make such a child stateless.<sup>23</sup> The UAE legislation adheres mostly to the *jus sanguinis* principle, which follows from the Roman law.<sup>24</sup> Turning to legal regulation instruments, first of all, it is worth noting the UAE Federal Law on Citizenship and Passports No. 17 of 1972 (paragraph b of article 2) (a legislative act regarding the conditions for establishing citizenship by the nationality of a parent). According to the legal act above, to prove the Emirati nationality of a newborn it is necessary to meet two conditions: Emirati nationality of a parent at the time of a child’s birth, and the burden of proof regarding the relationship with a child. Article 2b of the aforementioned law has established the *jus sanguinis* principle in proving the nationality in the UAE, and this principle in proving the nationality is used in most Arab countries. In the context of this study, the legal aspects of each of the above should be considered.

There is the issue of acquiring Emirati nationality based on the *jus sanguinis* principle when a parent’s nationality changes in the period between pregnancy and the birth of a newborn. Is a parent required to have Emirati citizenship at the time of conception and at the time of birth of a newborn? Should a parent have Emirati citizenship only at the time of a child’s birth? Is Emirati citizenship proven even if a parent at the time of pregnancy was a foreigner and became

Emirati at the time of birth? In fact, the nationality of a parent matters at the time of a child’s birth, as the nationality of a child is established as long as a parent has Emirati citizenship at the time of a child’s birth.<sup>25</sup> A child’s nationality is also proven if a parent dies during pregnancy.<sup>26</sup> However, if a parent changed the nationality after pregnancy and before birth, then the original nationality will not be proven in this case, as it is a parent’s nationality at the time of birth that matters. If a parent has Emirati nationality at the time of a child’s birth, regardless of the place of birth, whether it occurred in or outside the UAE, the UAE nationality of a legitimate child is proven.

The question arises regarding the requirement for a mother’s Emirati nationality to prove the Emirati nationality of a newborn.<sup>27</sup> It is clear from the Article 2b of the aforementioned law that the Emirati nationality of a mother is not required for a child to have Emirati nationality, so that the nationality of a child is proven as long as a father at the time of a child’s birth has it. Is the nationality of a child born to an Emirati citizen original or acquired? It is known that if entering the nationality coincided with the birth it is original nationality and if the nationality was entered into after the birth it is acquired nationality.<sup>28</sup> This practice is common for some other countries., 28-30

With regard to the subject of this study, there is no doubt that Emirati nationality is acquired by an IVF newborn if a parent is an Emirati citizen. At the same time, in a situation where a parent loses Emirati citizenship after the IVF procedure, this may become the basis for not obtaining Emirati citizenship by a child. On the contrary, if a parent at the time of IVF was a foreigner and at the time of a child’s birth became an Emirati citizen, then a child, in this case, would obtain Emirati citizenship. The ruling does not differ for an IVF performed inside or outside the UAE: as long as parents are the UAE citizens in a marital relationship, a child will obtain Emirati citizenship based on the *jus sanguinis* principle. The nationality of an IVF newborn depends on a parent’s nationality, that is, a newborn is considered to have acquired nationality if a parent’s nationality is acquired, and a newborn is considered naturalized if a parent is naturalized.

### ***The Condition of Proving an IVF Child’s Emirati Citizenship***

It is agreed in Arab jurisprudence.<sup>4,31-33</sup> and thus in Emirati law that nationality is established for a

child when their paternity is established, regardless of when the paternity was established, where that nationality was confirmed, whether proven at birth or later.

The paternity in UAE is defined in accordance with the Emirates Personal Status Law in Marriage.<sup>34-36</sup> Article 89 of the Federal Personal Status Law of the United Arab Emirates No. 28 of 2005 states that the paternity is established by approval, evidence, or scientific methods if marriage is established. The first paragraph of Article 90 of the law stipulated that a child is recognized as legal if the current marriage contract has been concluded within the minimum gestational age. The explanatory note of the aforementioned law defines marriage one of the most important reasons for proving paternity, which means the legal marriage based on the contract if its conditions stated in Article 90 of the same law are met. Herewith the Court of Cassation in Abu Dhabi reached in its ruling that what is meant by marriage is a legal marriage contract between a woman and a man according to the terms of the marriage contract stipulated in Article 48 of the Personal Status Law.

The aforementioned explanatory note stated that if a child is born to a married couple, then their parentage is attributed to parents without the need for evidence or approval. Besides, the two conditions stipulated in Article 90/1 should also be met, namely, the marital relationship between parents and the passage of the minimum period of pregnancy (one hundred and eighty days), which is defined by Article 91 of the Personal Status Law (“The shortest period of pregnancy is one hundred and eighty days and the longest period is three hundred and sixty five days, unless a committee of medical physicians decides otherwise”). The Court of Cassation in Abu Dhabi indicated in one of its rulings that a marriage is considered valid from the date of entry to the date of divorce. Accordingly, the paternity, as mentioned above, is established by the marriage and legal evidence attesting to the birth of a newborn during the period of marriage by Sharia as indicated in Article 90 of the aforementioned Personal Status Law. Origin is also confirmed, as Article 92 of the Federal Personal Status Law stipulates, unless a parent is out of marriage. The paternity is also proved by avowal of paternity, which is a special type of acknowledgment issued by a parent. The Federal Personal Status Law does not require proving the existence of a legal relationship between spouses to prove paternity. The Court of Cassation in Abu Dhabi

stated that if a man confirms the child belongs to him, the child’s paternity is established, and it is not important whether there is a valid marriage between a child’s mother and a father who accepted a child. The rulings on establishing the paternity are different from the rulings on establishing the marriage, as the Islamic Sharia is lenient in the rulings on establishing the paternity. Returning to the text of Article 89 of the Federal Personal Status Law, pedigree is also proved by scientific methods if marriage is established; pedigree is not established according to this Law by scientific means if marriage is not established, even if biological parents of a newborn are revealed by modern scientific methods.

The UAE Court of Cassation paid attention to this issue in many of its rulings. Judicial practice has a number of examples describing complexity of the proof process. In a case, a plaintiff (married woman) asked a court to prove the paternity of her daughter to a man other than her husband, pleading to verifying this fact by scientific means. The plaintiff had ten children from her husband; her daughter was born during their marriage and lived with her family for four years. After four years, the appellant claimed that she committed adultery with a foreigner being the biological father of the girl. The court decided on admissibility of resorting to the methods of scientific evidence to prove whether the paternity was established legally or illegally.

The UAE Court of Cassation had another case in which the appellant stated that the contested person sexually assaulted her, which caused her pregnancy. She demanded from the court to confirm that the contested person is the biological father of a child through the DNA test. The court ruled that the paternity is established by a marriage, but if it is not a marriage like in this case, then one does not resort to scientific methods.

Based on the foregoing, it is not sufficient to acquire or prove Emirati nationality for an IVF child based only on *jus sanguinis*. One needs the proof of the paternity of an IVF newborn according to Sharia. If this condition is not met, the offspring will not have the UAE citizenship based on *jus sanguinis*.

As mentioned above, the paternity is established in the UAE by marriage, admission, evidence, and by scientific methods if marriage is established. If a child is born to a married couple, the paternity is attributed to the parents without the need for evidence or approval if the two conditions stipulated

in Article 90/1 of the UAE Personal Status Law are met. Namely, the presence of a marital relationship between spouses and the passage of a minimum period of pregnancy (one hundred and eighty days) in the marriage, which is specified by Article 91 of the Personal Status Law.

If a married couple conducted an IVF, the consanguinity is proved without the need for evidence or approval. As long as IVF took place during the established marital relationship, the consanguinity of a child was established for parents, and a child obtained the nationality of parents. The date of IVF is easy to prove by a third party, which is a fertilization center. IVF is a medical process that requires specific procedures and is carried out through specialized centers. On legal grounds, one can contact such a center to verify the time of IVF and, accordingly, verify whether the IVF participants were in the marital relationship at the time of IVF.

It is worth noting that the Federal Fertility Centers Licensing Law No. 11 of 2008 obliges a center licensed under the provisions of the Law when practicing reproductive techniques to ascertain several issues, including (as stipulated in the third paragraph of Article IX of the Law) to oblige a center to ensure that the marital relationship between the spouses is officially established before IVF.

Accordingly, a newborn, resulting from IVF carried out for a man and a woman who do not have a marital relationship at the time of IVF or between a husband and a woman other than wife, does not have the Emirati nationality, and the cases envisaged in this regard are:

- 1) the IVF is carried out between a husband and a woman other than wife, then the baby is carried by the wife.
- 2) the IVF takes place between a man other than husband and a wife, and the baby is carried by the wife.
- 3) the IVF is carried out between a husband and a wife, and the baby is carried by another woman.
- 4) the IVF is between a man other than husband and a woman other than wife, and the baby is carried by another woman.

Article 10 of the UAE fertilization centers law prohibits any IVF with one of the aforementioned methods, and according to the Article 29 of the same law, anyone who carries out IVF with one of the aforementioned methods is punished with

imprisonment for a period of no less than two years and not more than five years and/or a fine of no less than two hundred thousand dirhams and not more than five hundred thousand dirhams.<sup>37</sup>

The Islamic Fiqh Council (the Council) considered in its eighth session, held at the headquarters of the Muslim World League in Makkah Al-Mukarramah, the IVF methods to be prohibited in Islamic law. It was stated that these methods cannot be allowed unless a male and a female are a married couple; it was also decided not to permit IVF through a donation of the fertilized egg even if the donor woman is one of the wives of the man.

It is worth noting that the Council had approved this method (in which the gametes are taken from a married couple and the baby is carried by another wife of the same husband) in the seventh session in 1404 H. However, the decision was withdrawn in its eighth session.

The Council withdrew its decision as it considers such IVF method to be forbidden by Sharia, and accordingly, an IVF child does not have Emirati nationality; such IVF method is prohibited and punished according to the UAE law and Islamic law.

Accordingly, a newborn conceived through IVF will obtain Emirati nationality where the IVF was carried out between a male Emirati citizen and his wife, irrespective of her nationality. An IVF child's paternity is proved by a husband's approval that a newborn is his son, and a husband is to confirm his marital relationship prior to IVF to facilitate the identification of a child's paternity, but if the relationship is not proved at the time of IVF, the paternity is not proved.

The paternity of an IVF newborn can be proved by way of evidence and scientific methods.<sup>38</sup>

There is no doubt that the paternity of an IVF newborn can be established by legal evidence, such as the experts' testimony of the birth, the presence of a marriage contract, and the consent of the spouses. As for proving the paternity by scientific methods, such as proof by DNA test, it is restricted according to Article 89 of the Federal Personal Status Law. These methods are not suitable as proof of paternity if a man and a woman were not in a marital relationship at the time of IVF.

The explanatory note of the UAE Personal Status Law stated that genetic tests are among the scientific means that prove the relationship between a child and

their parent, but the paternity cannot be proved only by medical examination. Article 89 of the Personal Status Law has linked the affiliation with marriage, avowal, and medical examination.

However, if the paternity of an IVF child is proved, then the lawsuit denying the paternity is not accepted. Scientific methods can be used to verify some things, such as to make sure after a child's birth that there is no error by a fertilization center during the IVF process. For example, it is confirmed that the used gametes belong to the parents and not to other people.

### ***Problems of Proving Emirati Citizenship for IVF Children***

IVF raises many problems in proving the Emirati nationality of an IVF newborn, especially in relation to establishing the paternity. Assigning the UAE citizenship to a child born through IVF requires two conditions: first, the parents must be citizens of the Emirates, and second, the paternity of a child born as a result of IVF must be proven. To confirm paternity, a mandatory criterion is proof of marital relations. At the same time, in accordance with the Personal Status Law, proof of the existence of these relationships is not in itself sufficient to confirm the paternity of a child born through IVF. In addition to the fact of having a marriage contract, there must be a minimum gestation period. There are two separate IVF problems:

#### **First: The problem related to the time of IVF**

The IVF time in relation to proving the Emirati paternity and nationality of an IVF newborn raises many questions, such as: Are the paternity and Emirati nationality proved if the IVF was carried out after the death of one of the spouses? Can the paternity and Emirati nationality of a newborn be proved if IVF was carried out using frozen gametes of a husband after divorce or after the husband's death?

First of all, the UAE Fertilization Centers Law prohibits fertilization centers from retaining gametes for a period of more than five years. A center is obliged to take the consent of spouses annually to retain gametes. A center is to destroy unused gametes upon the death of one of the spouses or in the event of divorce. The violation of the above is punished by imprisonment for a period of no less than a year and/or a fine of no less than one hundred thousand dirhams and no more than three hundred thousand dirhams. However, it is acceptable for a spouse to store the gametes at a fertilization center for future use in the event of the death of the other spouse.<sup>39</sup>

There is no doubt that the paternity is not proved in these assumptions according to the UAE law, and if the paternity is not established, the Emirati nationality is not proven as well. It has been already stated that in accordance with the Emirati Personal Status Law the paternity is established if the marital relationship at the time of IVF is proved. If IVF is performed on people who are not in a marital relationship, the child will not be able to acquire Emirati citizenship based on *jus sanguinis*.

The same applies to the Fertilization Law, which prohibits the implantation of a zygote in a woman other than the owner of the ovum, even if it was one of the wives of a husband. If the marital relationship is not proved, Article 3/9 of the same law prohibits the implantation of a zygote in a wife, even if IVF took place previously for the wife and her husband.

The previous ruling applies to the IVF that takes place after the divorce; the legitimacy of IVF is restricted by the existence of a marital relationship between the spouses at the time of IVF.<sup>40</sup> Proof of paternity is related to the establishment of the marital relationship. If this relationship was broken up with death or divorce and there was no pregnancy before death or divorce, then pregnancy after the death of a husband or after divorce cancels the paternity.<sup>41</sup> There was a case when a husband denied the paternity of a newborn claiming that he divorced his wife before the IVF was performed.

The UAE judiciary answered this question in several rulings issued in the case of denial of paternity, in which a person denied the paternity of a newborn of his divorced wife claiming that IVF pregnancy took place after divorce and without his approval. The rulings that followed in that suit ended in not accepting the denial of paternity, since IVF was conducted before the divorce and the court relied on the fact that a child was born approximately seven months and two weeks after the divorce date. The spouses decided to resort to IVF, after which the wife became pregnant. The husband filed a lawsuit against his wife in the Court of First Instance in Abu Dhabi in 2010, claiming that he divorced his wife, and that the IVF was conducted after the divorce without his consent. The court of first instance examined the case and found out that the divorce took place on 1 Mar 2010, and the birth took place on 15 Oct 2010, and after referring to the hospital documents, it became clear that the husband attended the hospital; gametes were taken from him to perform IVF of his wife (the defendant). The court concluded that IVF was

conducted before the divorce and thus the defendant gave birth to a child during the legal period (Art. 90 of the Personal Status Law states that a child is legitimate if the correct marriage contract has been valid for the least period of pregnancy and Art. 91 of the same Law states that the minimum period of pregnancy is one hundred and eighty days). The court denied the plaintiff's request due to the lack of legal conditions. The plaintiff was not satisfied with this ruling, and he appealed it before the Abu Dhabi Court of Appeal on 4 Jan 2011, and on 16 Feb 2011 the Court of Appeal ruled to support the ruling of the Court of First Instance and obliging the appellant to pay the fees and expenses.

### Second: The problem related to the condition of a marital relationship of a couple

The existence of a marital relationship of a couple is not sufficient alone to establish the paternity of an IVF newborn in accordance with the UAE Personal Status Law, as there must be another condition, which is the passage of the minimum period of pregnancy. The first paragraph of Art. 90 of the UAE Personal Status Law stipulates that a child is born to a married couple if the correct marriage contract has been valid for the minimum period of pregnancy. An IVF child's paternity is established, and they obtain the nationality of a parent if the latter proves the existence of the marital relationship.

It is conceivable that a man can deposit his gametes at a fertilization center and authorize a center to conduct IVF of his wife, thus, there is no need for a physical presence of both a husband and a wife during IVF. Namely, IVF can be conducted even if a husband is imprisoned or traveling outside the state. Thus, a husband, in this case, must acknowledge the paternity of a newborn even if he was imprisoned or was in another country since IVF was carried out using his and his wife's gametes deposited by them at a fertilization center while being in an existing marital relationship.

Summing up the research, several main recommendations were made. Medical progress in IVF changed some of the concepts that prevailed before. The Emirati legislator is to keep pace with this progress and reconsider the conditions for proving the paternity and nationality of a child for the following reasons:

1. Nationality is a link between an individual and a state and it does not always adhere to the necessity of proving the paternity of a newborn. The study

suggests easing the requirement to establish the paternity of a newborn to prove nationality due to medical developments in the field of IVF.

2. The legislator is to change some concepts in matters of proving paternity that were not known at the time the nationality legislation was established and were not within the expectations of the legislator in that period. Maintaining this situation and the requirement of proving paternity to prove nationality might lead to an event when an IVF newborn becomes stateless.
3. The nationality of a newborn is to be proved even if the paternity is not established. Thus, taking into consideration the medical developments in the field of artificial reproduction, the study suggests mitigating the requirement to prove the paternity of a newborn so that a newborn can obtain their parent's nationality if IVF was carried out between a male Emirati citizen and his wife, but a newborn was carried by a woman other than a wife. In this case, if Emirati nationality through a mother cannot be proved, a newborn will become stateless; a newborn also becomes stateless if a donor mother is stateless. An IVF child may be deprived of Emirati nationality due to medical errors, in cases when an IVF center takes gametes from a male citizen to fertilize his wife, but an error occurs, and his gametes are used for IVF of another woman who is not the wife of the citizen. In this case, an IVF newborn does not have the Emirati citizenship because a woman who carried the child does not have a marital relationship with a male Emirati citizen.

Therefore, the study proposes to amend the paragraph b of Article 2 of the Nationality Law to include proof of nationality in some cases of IVF, especially those that result in the statelessness of a newborn and in cases where medical errors occur. The proposed text comes as follows: "A child (an IVF child) is considered a citizen by virtue of the law if they were born in the state or abroad to a citizen by law".

### Conclusions

This study, based on an analysis of the current UAE legislation and judicial practice, shows what difficulties the Emirati legal process faces in the process of proof in establishing paternity and assigning citizenship to a child conceived through IVF. The paper analyzes the specifics of UAE legislative regulation in the context of the research object in terms of adaptability to new challenges



generated by new achievements and, accordingly, the emergence of new legal relations. The Emirati nationality law stipulates that Emirati citizenship can be acquired through *jus sanguinis* and that a child's paternity is to be legally proved. For an IVF child to obtain Emirati nationality, the paternity must be established. It was found that an IVF child obtains Emirati citizenship if IVF was carried out between a married male citizen and his wife.

It was also clear that if the paternity of an IVF newborn is not proved, then the latter cannot obtain Emirati citizenship in the following cases:

- a) the IVF is carried out between a husband and a woman other than wife, then the baby is carried by the wife,
- b) the IVF takes place between a man other than husband and a wife, and the newborn is carried by the wife,
- c) the IVF is carried out between a husband and a wife, and a child is carried by another woman;
- d) the IVF is between a man other than husband and a woman other than wife, and a child is carried by another woman.

Among the conditions for establishing paternity according to the UAE Personal Status Law are the establishment of a marital relationship (marriage) and the passage of the minimum period of pregnancy during marriage. IVF does not require a physical presence of both a husband and a wife. IVF is carried

out after the consent of both spouses at an IVF center.

As noted in the study, the main recommendation related to the acquisition of citizenship through a parent (*jus sanguinis*) by IVF children is to mitigate the requirement to prove paternity as a condition of granting citizenship to an IVF child, especially in the case of purely medical errors, in which there was no parent's fault.

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