

Problems of Identifying Subjects in Inheritance Legal Relations: Recognition of The Embryo as A Subject

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Received: 12th Nov 2025 | Received Revised Version: 26th Nov 2025 | Accepted: 07th Dec 2025 | Published: 20th Dec 2025

Volume 07 Issue 12 2025 | Crossref DOI: 10.37547/tajpslc/Volume07Issue12-11

Abstract

The modern advancement of biomedical technologies, particularly in the field of assisted reproductive technologies (ART), has presented legal science and law enforcement practice with a number of entirely new issues related to determining the legal status of the human embryo. One of the most complex and controversial aspects is the problem of recognizing the embryo as a subject of inheritance legal relations. This problem stems from the contradiction between traditional approaches to legal capacity and the modern realities of reproductive medicine. The widespread use of ART in Uzbekistan and abroad has led to situations where embryos can be created and stored in a cryopreserved state for extended periods. This creates the possibility of having children even after the death of genetic parents. However, the current legislation of Uzbekistan lacks any specific norms regarding the legal status of the embryo, which may lead to legal uncertainty in matters of inheritance in the future.

Keywords: Legal capacity, assisted reproductive technologies, inheritance law, subject of inheritance legal relations.

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Cite This Article: Soliyeva Kamola Rustamjon-kizi. (2025). Problems Of Identifying Subjects In Inheritance Legal Relations: Recognition Of The Embryo As A Subject. The American Journal of Political Science Law and Criminology, 7(12), 63–68. <https://doi.org/10.37547/tajpslc/Volume07Issue12-11>

1. Introduction

To understand the legal problems associated with the understanding of the embryo as a potential subject of inheritance legal relations, it is first necessary to define the concept of the embryo from a medical and legal point of view. From a medical point of view, a human fetus, usually up to the 9th week of pregnancy, is considered an embryo[1]. From a medical and practical point of view, the embryo is defined as an organism in the early stages of development within the framework of assisted reproductive technologies (ART).

The concept of an in vitro embryo, developing in artificial conditions outside the mother's body, has special legal significance. The most complex legal problems are related to such embryos, as they can exist

indefinitely long in a state of cryopreservation and be used to give birth to children even after the death of genetic parents.

In modern legal science, three main approaches to determining the legal status of the embryo have been formed. The first approach considers the embryo as a subject of law and a full-fledged participant in legal relations equated with a person. Proponents of this point of view are based on the idea that the right to life is a natural inalienable human right, which must be protected from the moment of conception.

The second approach defines the embryo as an object of law that can manifest itself in various ways: as a part of the maternal organism equivalent to human organs and tissues, or as an entity that may give rise to legal relations

of a property nature.

The third, intermediate approach acknowledges the distinct legal status of the embryo. This status prevents the embryo from being classified as either a full subject or object of law. This approach envisions the creation of a special legal framework for embryos, taking into account their potential to develop into fully-fledged human beings.

The constitutional foundations of the legal status of the embryo in the Republic of Uzbekistan are characterized by certain contradictions. On the one hand, Article 25 of the Constitution of the Republic of Uzbekistan recognizes the right of every person to life as a fundamental and inalienable human right. On the other hand, Article 19 of the Constitution establishes that "the fundamental rights and freedoms of man are inalienable and belong to every person from birth." [2]

This constitutional contradiction creates legal uncertainty about when a person will begin to have the right to life and other fundamental rights. Literal interpretation of Article 19 of the Constitution of the Republic of Uzbekistan shows that rights arise from birth. This excludes the possibility of recognizing the embryo as a subject of constitutional rights.

However, such an interpretation contradicts the norms of branch legislation, particularly the provisions of the Civil Code of the Republic of Uzbekistan regarding inheritance by individuals who were conceived but not yet born. This necessitates finding a balance between the constitutional principles and practical needs of legally regulating inheritance relations involving embryos.

The constitutional basis for legally regulating the status of embryos in inheritance relations is founded on several fundamental principles. The principle of protecting the right to life, enshrined in Article 25 of the Constitution, creates a theoretical foundation for safeguarding the embryo as a potential bearer of this right. However, the principle that human rights and freedoms come into existence from the moment of birth significantly limits the possibilities of such protection.

The principle of equality before the law and in court is also crucial for the issue under consideration. If an embryo is recognized as a subject of law, this principle would require ensuring equal legal guarantees for all embryos, regardless of their method of origin and development.

Article 1118 of the Civil Code of the Republic of Uzbekistan plays a central role in the civil law regulation of the embryo's status in inheritance legal relations. According to paragraph 1 of this article, "citizens who were alive on the day the inheritance was opened, as well as those who were in utero during the testator's lifetime and were born alive after the inheritance was opened, may be heirs" [3].

This norm traces back to Roman law and the principle of "nasciturus pro iam nato habetur" (when it comes to its interests, the fetus is considered already born). However, the modern interpretation of Article 1118 of the Civil Code creates a number of problems in the application of assisted reproductive technologies.

The main issue lies in the ambiguity of the concept of "pregnancy" in relation to embryos created through ART (Assisted Reproductive Technologies). The traditional understanding of fertilization as the moment when an egg cell is fertilized does not account for the specifics of extracorporeal fertilization, as in this case, a significant amount of time may pass between fertilization and the transfer of the embryo into the mother's body.

The family legislation of the Republic of Uzbekistan does not contain provisions that directly address the legal status of embryos.

However, Article 60 of the Family Code stipulates that the presumption of paternity is established if a child is born within three hundred days after a woman's marriage or after the marriage has ended due to the husband's death, divorce, or the marriage being declared invalid. This provision is important for the inheritance rights of children conceived through ART after the father's death.

The Law "On the Protection of Reproductive Health of Citizens" is the main and only regulatory document governing the use of ART in Uzbekistan. Article 15 of this law states that "Some or all stages of fertilization using assisted reproductive technologies are carried out outside the woman's body" [4].

The law establishes the right of every adult woman of childbearing age to artificial insemination and embryo implantation, but does not clearly define the legal status of the embryo. This creates a gap in legal regulation, which is especially evident in inheritance matters.

Regulating embryo cryopreservation issues is also of great importance. The law does not specify precise

storage periods for embryos, which creates the potential for using them to bring children into the world long after the death of their genetic parents.

One of the main problems in recognizing the embryo as a subject of inheritance legal relations is the fundamental contradiction between the constitutional right to life and the principle that legal capacity emerges at birth. Article 19 of the Constitution strictly establishes that fundamental human rights and freedoms belong to everyone "from birth," which precludes the possibility of recognizing the embryo as a full-fledged subject of constitutional rights.

However, Article 1118 of the Civil Code actually acknowledges certain rights of the embryo by allowing inheritance of property by persons who were conceived but not yet born. This creates a legal conflict that lacks a clear resolution in the current legislation.

The fact that modern ARTs (Assisted Reproductive Technologies) challenge traditional concepts of pregnancy further complicates the issue. While in natural pregnancy, the time of egg fertilization coincides with the onset of pregnancy, in IVF, a significant time may pass between these events. This raises the question: should the embryo be considered to exist from the moment of in vitro fertilization or from its implantation into the mother's body?

The ambiguity of the concept of "pregnancy" in the context of ART (Assisted Reproductive Technology) is one of the most complex problems in the legal regulation of inheritance relations involving embryos. Article 1118 of the Civil Code uses the term "in embryo state during the lifetime of the testator," but does not provide a definition for the concept of "pregnancy."

In medical terms, fertilization is the process of an egg cell being fertilized by a sperm cell. However, in the context of ART (Assisted Reproductive Technologies), this process can occur outside the female body, and the resulting embryo can be stored in a cryopreserved state for a long time.

The results of studying foreign countries' legislation and practices on this issue show that Russian judicial practice advances the opinion that in ART, the moment of pregnancy should be considered as the time when the embryo is implanted into the mother's body. This position was reflected in the appellate ruling of the Moscow Regional Court, which indicated that if the embryo was

not implanted before the opening of inheritance, it could not obtain heir status [5, 124].

However, such an approach leads to discrimination against embryos created naturally and through ART. If a naturally conceived embryo has potential inheritance rights from the moment of fertilization, then an embryo created through IVF does not have such rights until the moment of implantation.

A separate category of problems relates to cryopreserved embryos and postmortem reproduction. Modern technologies allow storing embryos in a frozen state for an almost unlimited time, which creates the possibility of children being born years and even decades after the death of their genetic parents [6, 28-32].

In Uzbekistan's legislation, there is no clear regulation of the inheritance rights of children born as a result of postmortem reproduction. Article 1118 of the Civil Code requires that the heir "be conceived during the lifetime of the testator," but this requirement does not specify how it applies to embryos created during the testator's lifetime but implanted after their death.

To date, there is no judicial precedent on this matter in our country. However, several court cases have taken place in the Russian Federation, a member state of the CIS, regarding this issue. According to Russian judicial practice, in some cases, courts have refused to recognize the inheritance rights of children born as a result of postmortem reproduction, arguing that the embryo cannot be considered viable until the moment of implantation [7, 284].

Recognizing the embryo as a subject of inheritance legal relations creates significant procedural difficulties. In cases where cryopreserved embryos exist at the time of inheritance discovery, the problem of determining the circle of heirs arises.

According to part 4 of Article 1151 of the Civil Code, if there is an heir who is conceived but not yet born, the division of inheritance may be carried out only after the birth of such an heir. However, applying this norm to cryopreserved embryos creates a paradoxical situation, in which the inheritance may remain undistributed for an indefinite period.

Additionally, practical difficulties arise in determining representatives for the interests of the embryo in inheritance legal relations. If the embryo is recognized as

a subject of law, its interests must be represented in court and in notarial proceedings, but the legislation does not specify who can act as such a representative.

European practice of legal regulation regarding the status of embryos in inheritance legal relations is characterized by a significant diversity of approaches. The "European Convention for the Protection of Human Rights and Fundamental Freedoms" does not contain specific instructions on when the right to life begins, which allows participating states to independently determine their positions on this issue.

The European Court of Human Rights has affirmed in several decisions that the embryo is not a subject of law in the sense of the Convention. In the case "Parrillo v. Italy" (2015), the court found the Italian authorities' refusal to authorize the use of embryos for scientific research as legitimate and noted that national legislation could establish a special regime for the protection of embryos [8].

The national legal systems of European countries demonstrate various approaches to regulating embryonic status. France traditionally maintains a liberal position, viewing the embryo as part of the mother's organism. Germany, on the contrary, imposes strict restrictions on embryo manipulation in accordance with its 1991 Law on the Protection of Embryos [9].

The US legal system is characterized by a federative approach to regulating embryonic status, where individual states can establish their own rules. Some states recognize certain rights of the embryo, including inheritance rights, while others view the embryo only as an object of law.

The 1998 case "Davis v. Davis" set an important precedent, in which the court ruled that the embryo "is not recognized as a person for constitutional purposes and does not have the right to special respect." However, US law permits the adoption of embryos, which indicates recognition of their special status [10].

Israel is demonstrating one of the most liberal approaches to assisted reproductive technologies and embryo inheritance rights. Israeli law explicitly provides for the possibility of inheriting biological material and using it for posthumous reproduction.

There are no unified standards for the legal status of embryos in international legal documents. The Universal

Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) [11] link the emergence of human rights to birth.

However, some regional documents take a different position. Article 4 of the American Convention on Human Rights (1969) stipulates that the right to life is protected "in general, from the moment of conception" [12]. The Declaration of the Rights of the Child (1959) [13] and the Convention on the Rights of the Child (1989) [14] also contain provisions on the need to protect the child "both before and after birth."

The European Convention on the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (1997) [15] establishes the requirement to ensure adequate protection of embryos in research. However, this Convention does not define the specific legal status of the embryo.

Among CIS countries, legal precedent regarding the determination of an embryo's inheritance status exists in Russia. The most significant case on this issue was considered by the Moscow Regional Court in 2022. In this civil case, the court examined the possibility of recognizing the inheritance rights of a child born to a surrogate mother after the death of the child's biological mother [16]. After reviewing this case, the court concluded that if an embryo was not implanted before the opening of inheritance, it cannot acquire the status of an heir under Article 1116 of the Civil Code of the Russian Federation. This view is based on a literal interpretation of the requirement that the heir "must be in utero during the testator's lifetime."

Additionally, Russian court practice has addressed disputes regarding the inclusion of embryos in inheritance. In 2018, the Rostov District Court considered a case where a woman sought recognition of cryopreserved embryos as part of her deceased husband's inheritance. The court rejected the claim, stating that embryos, as objects of civil rights, cannot be included in the inheritance estate [17].

As a result of the increasing use of assisted reproductive technologies, numerous problems are anticipated in future practice regarding inheritance issues involving embryos. Consequently, there are currently no clearly defined rules and norms in legislation for resolving modern inheritance disputes concerning:

1. Determining the gestational period for embryos

created using Assisted Reproductive Technology (ART);

2. Defining the circle of heirs in cases involving cryopreserved embryos;

3. Representing the interests of embryos in inheritance legal relations.

Legal practice identifies a number of systemic problems in regulating the inheritance rights of embryos and their inclusion within the scope of inheritance subjects. The main issue is the lack of a unified approach to interpreting the concept of "pregnancy" in the context of ART.

Currently, many legal scholars interpret the testator's requirements for embryos created with the help of ART differently when considering their fetal state during the testator's lifetime. Some legal practitioners consider pregnancy to begin at the moment of egg fertilization, while others consider it to start when the embryo is placed in the mother's body.

Furthermore, the problems of law enforcement are compounded by the absence of specific procedural norms for cases involving embryo inheritance. The current legislation lacks special provisions for determining representatives of the embryo's interests, establishing waiting periods for the heir's birth, and protecting the rights and interests of the embryo during the prenatal period.

To address the identified problems, it is necessary to adopt comprehensive legislative measures.

The primary task is to amend the legislation regulating the healthcare sector, as well as the Civil Code, to clarify the concept of "pregnancy" in relation to assisted reproductive technologies.

It is also necessary to adopt the Law "On the Legal Status of Embryos," which will define:

- a unified concept and rights of the embryo for all fields;
- legal status of embryos at different stages of development;
- rights and obligations of persons carrying out the storage and use of embryos;
- the procedure for protecting the rights and interests of embryos.

To effectively implement the proposed legislative changes, it is necessary to create appropriate legal mechanisms.

The effectiveness of the proposed solutions can be assessed according to the following criteria:

- Formulation of specific legislation for legal disputes regarding whether future embryos fall within the scope of subjects in inheritance legal relations;
- Increasing legal certainty in the field of ART;
- Ensuring compliance with international human rights standards.

However, it should be taken into account that the proposed changes may encounter resistance from various social groups. It is necessary to conduct broad public discussions and consultations with stakeholders, including the medical community, religious organizations, and human rights groups.

The conducted research shows that the problem of recognizing the rights of the embryo as a subject of inheritance legal relations is one of the most complex and urgent issues in modern law. The development of assisted reproductive technologies is creating new legal realities that are not reflected in the current legislation.

The main problems of legal regulation include the contradiction between the constitutional principles of rights emerging from birth and civil law norms on the inheritance of persons in the state of pregnancy, the ambiguity of the concept of "pregnancy" in the context of ART, the lack of special regulations on the status of cryopreserved embryos, as well as the absence of procedural norms for protecting the rights of embryos in inheritance legal relations.

Analysis of international experience shows that there are no unified standards for the legal regulation of embryo status. Different legal systems demonstrate various approaches, ranging from full recognition of the embryo to rejecting any special status as a subject of rights. This necessitates the development of our own national approach, taking into account the specifics of Uzbekistan's legal system and socio-cultural traditions.

The absence of clear legal norms on this issue creates legal uncertainty and hinders the effective protection of the rights of all participants in inheritance legal relations.

To address the identified problems, it is necessary to take comprehensive legislative measures, including amendments to the Civil Code of the Republic of Uzbekistan, adopting a special law on the legal status of embryos, creating effective mechanisms for representing the interests of embryos, and establishing specific procedural rules.

The proposed solutions should ensure a balance between protecting the potential rights of embryos and the practical needs of legal regulation of inheritance relations. It is also important to consider the ethical aspects of the problem and the need for broad public consensus on this issue.

Further development of biomedical technologies creates new challenges for regulating the status of embryos. Therefore, adopted legislative decisions must be sufficiently flexible to adapt to future technological changes while maintaining the basic principles of human rights protection and legal certainty.

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