

Coparenting and intrarelational donation

Legal aspects

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Regulation of MAP / *Reminder*

Law on MAP of 6 July 2007 ([here](#))



Article 2

Large definition of **intended parents** : anyone who wants to become parent through MAP may qualify as intended parent.



Article 5

Freedom of the **fertility centres** : centres have to be transparent about what they do (or not) and may refuse projects that do not fit.



Article 7

MAP agreement : the agreement must be signed by the fertility centre and either a sole intended parent (woman) or by both intended parents when AMP is used for a couple.



Article 56 :

The **normal rules of the Civil Code** apply to parenthood
The **sperm donor is not a parent**

Parenthood after MAP / *Reminder* Belgian Civil Code (1804) ([here](#))



Article 312

The **mother** is always the woman who gives birth



Articles 315 et seq.

The mother's husband is the **father**. Or paternity may be established by voluntary recognition or judicial decision.



Articles 325/1 et seq.

The mother's wife is the **co-mother**. Or comaternity may be established by voluntary recognition or judicial decision.



Article 356-1

After a **full adoption**, the link with the birth parents is broken.



Article 353-9

After a **simple adoption**, the link with the birth parents is maintained but the original parents lose parental responsibility.



CoparentaLys

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Co-parenting

Limited legal literature

Prof. Nathalie Massager (ULB)

“Gestation pour autrui, uniparenté et coparentalité en droit belge”, in *Procréation médicalement assistée et gestation pour autrui. Regards croisés du droit et de la pratique médicale* (dir. N. Massager et N. Gallus), Limal, Anthemis, 2017.

Prof. Ingrid Boone (KUL)

“Coparenting before conception. The Low Countries’ approach to intentional multi-parents families”, *Family & Law*, February 2018, (www.familyandlaw.eu).

Nola Cammu (Uantwerpen)

“We Are Three Parents, but Legally Two”: Absent Legality, Present Display”, *Journal of Family Issues*, 2021, pp. 1007-1028 (www.journals.sagepub.com).

Co-parenting Non-couples / *Case study*

**Case reported by Dr Candice Autin – GGOLFB 5
December 2020**

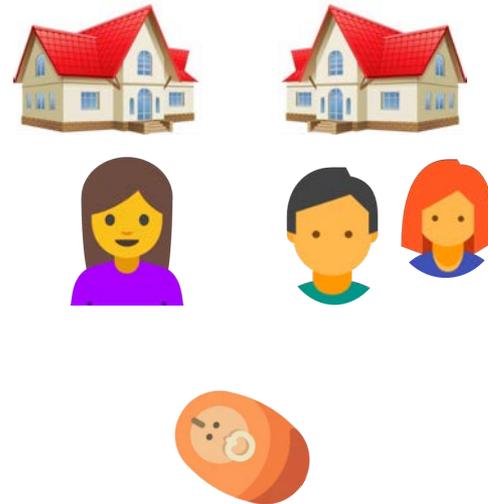
A **woman and her ex-husband** want to become parents together through MAP at CHU Saint-Pierre.

The woman is now single whereas the ex-husband is in a new relationship.

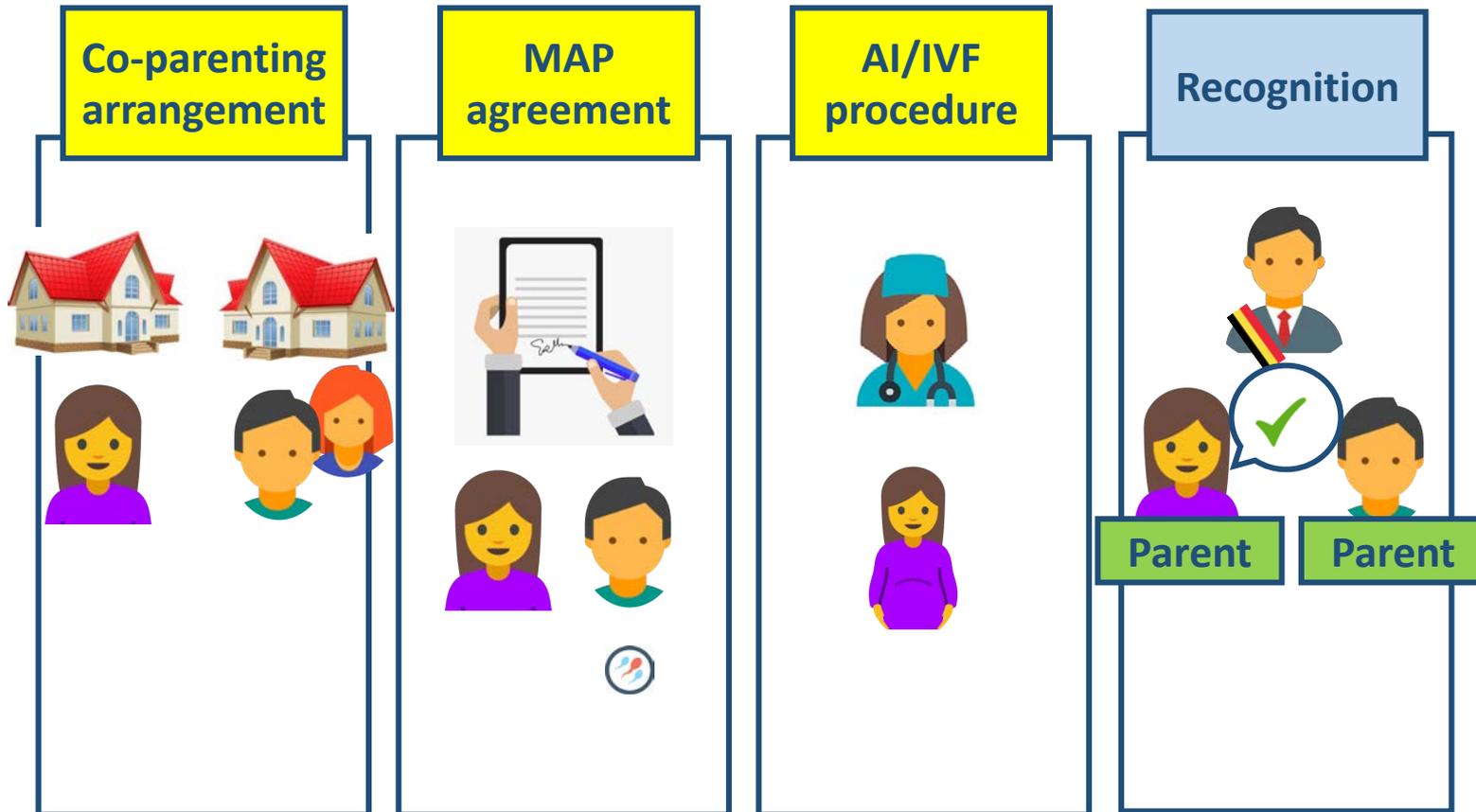
They enter a cycle of legal and psychological consultation.

After a psychological consultation, the ex-husband leaves the project. The woman starts a sole parent project.

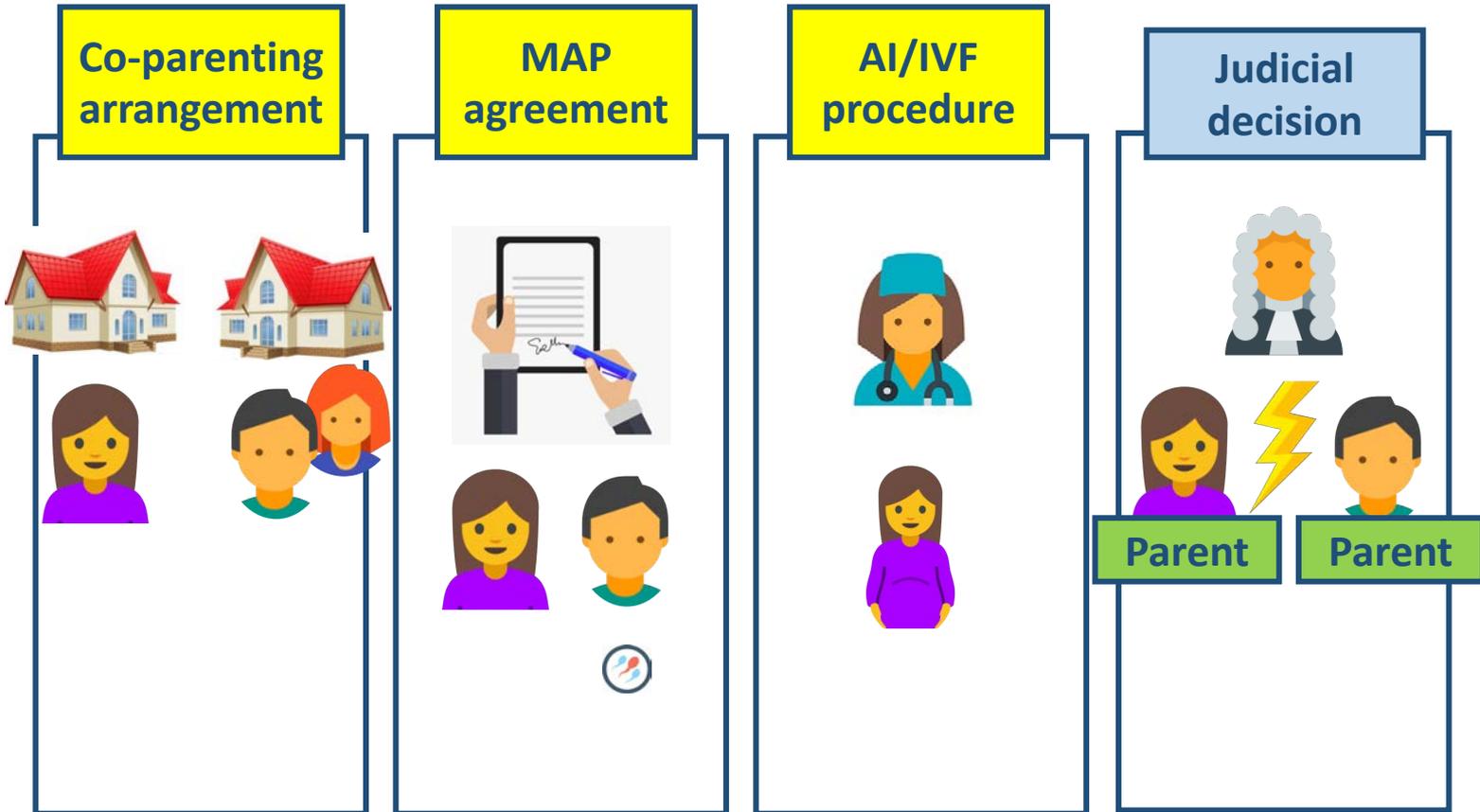
Critical point : the sperm provider must not be identified as a donor (Massager)



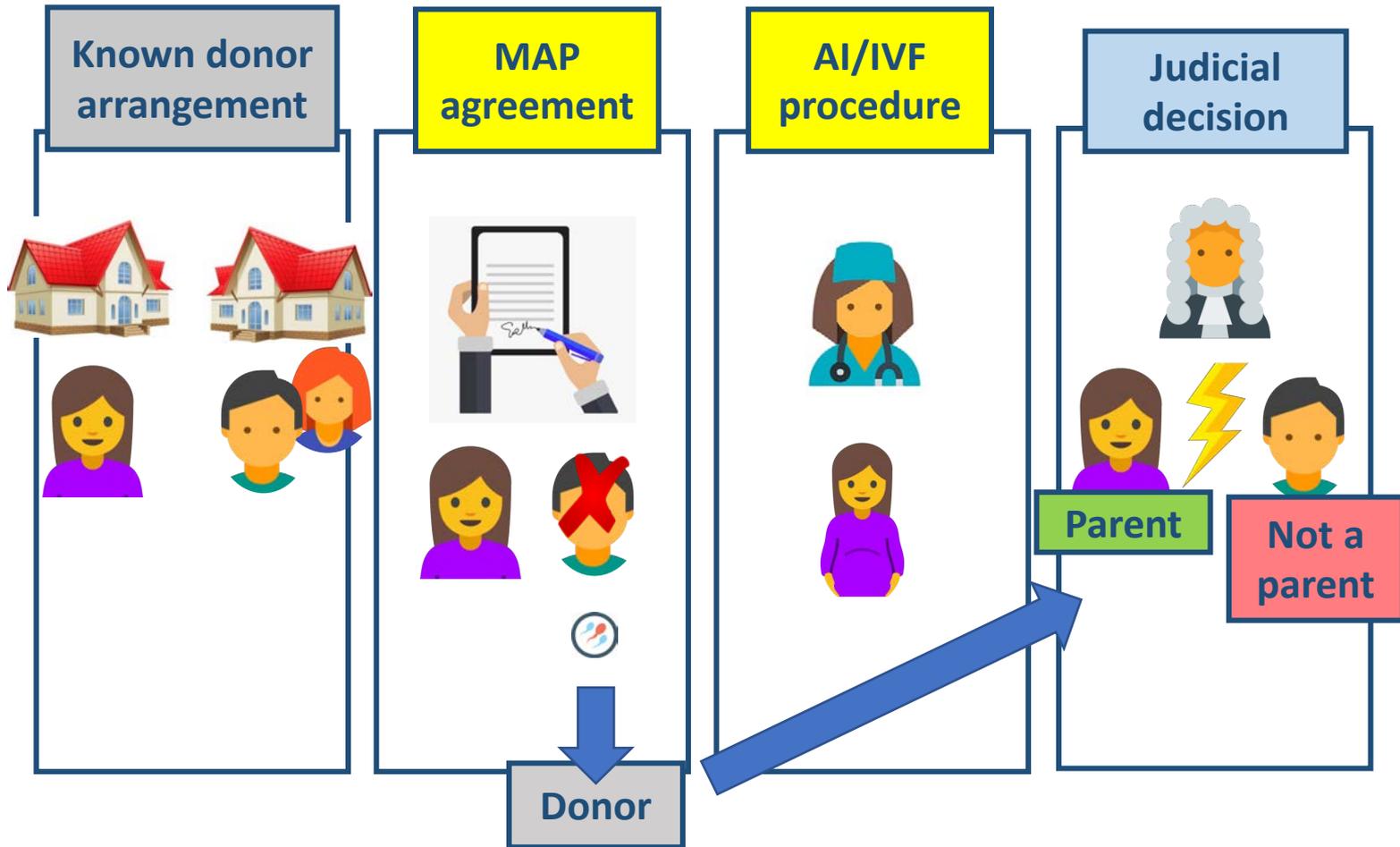
Co-parenting Non-couples / *Case study*



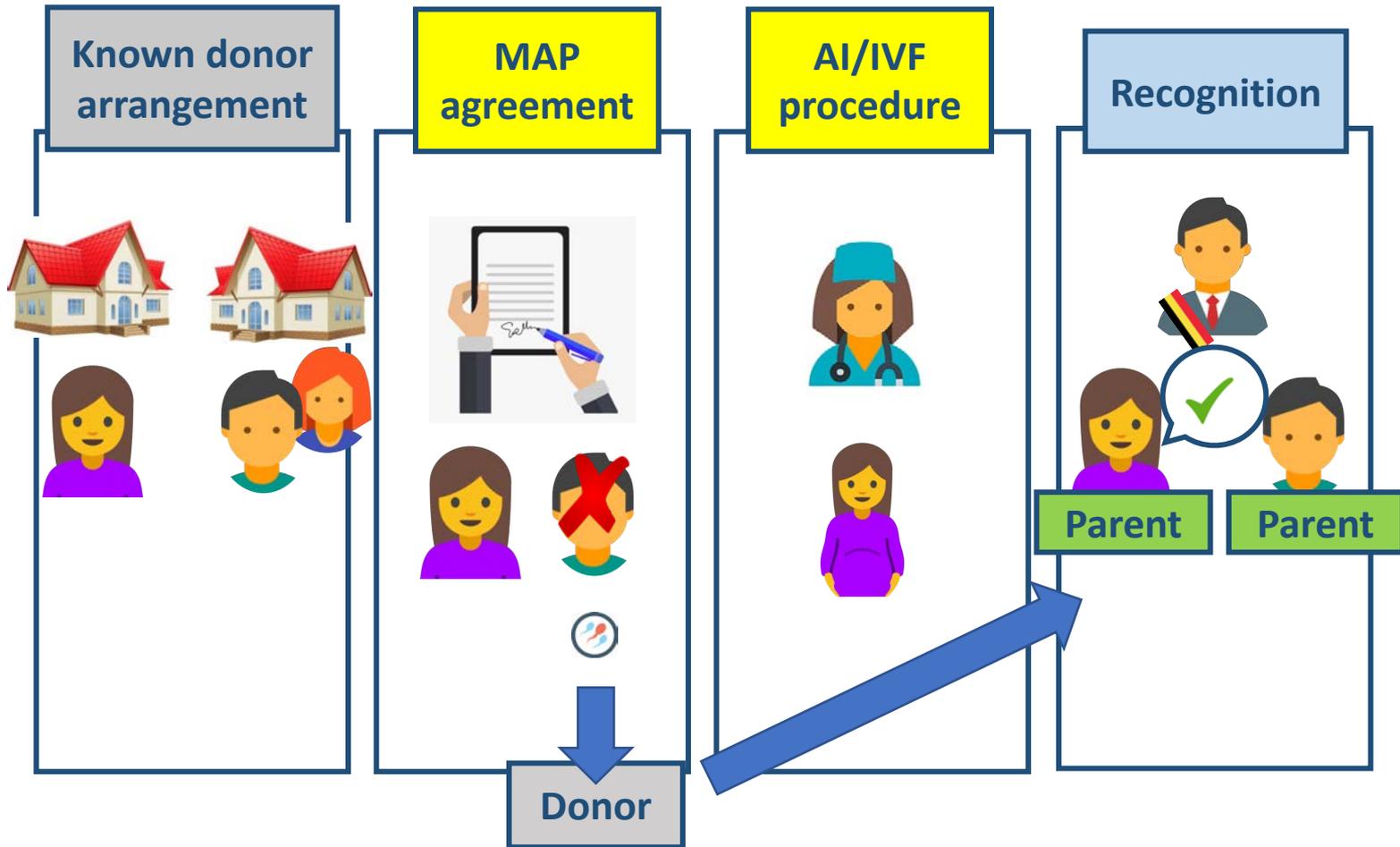
Co-parenting Non-couples / *Case study*



Co-parenting Non-couples / *Case study*



Co-parenting Non-couples / *Case study*



Co-parenting

Multiple parents / *Case study*

Case reported by Dr Candice Autin – GGOLFB 5
December 2020

A woman and two men who live together and want to become parents together through MAP at CHU Saint-Pierre.

They have a project of triple parenthood and prefer to do it through MAP as they consider it more “secured”.

They benefit from legal, psychological and medical consultation.

The decision is made to realise the project.

Critical point : one of the persons involved in the coparenting arrangement will remain a “back seat parent” (Boone / Cammu).



Co-parenting

Multiple parents ? / *Case study*

Co-parenting arrangement



MAP agreement



AI/IVF procedure



Recognition



Parent

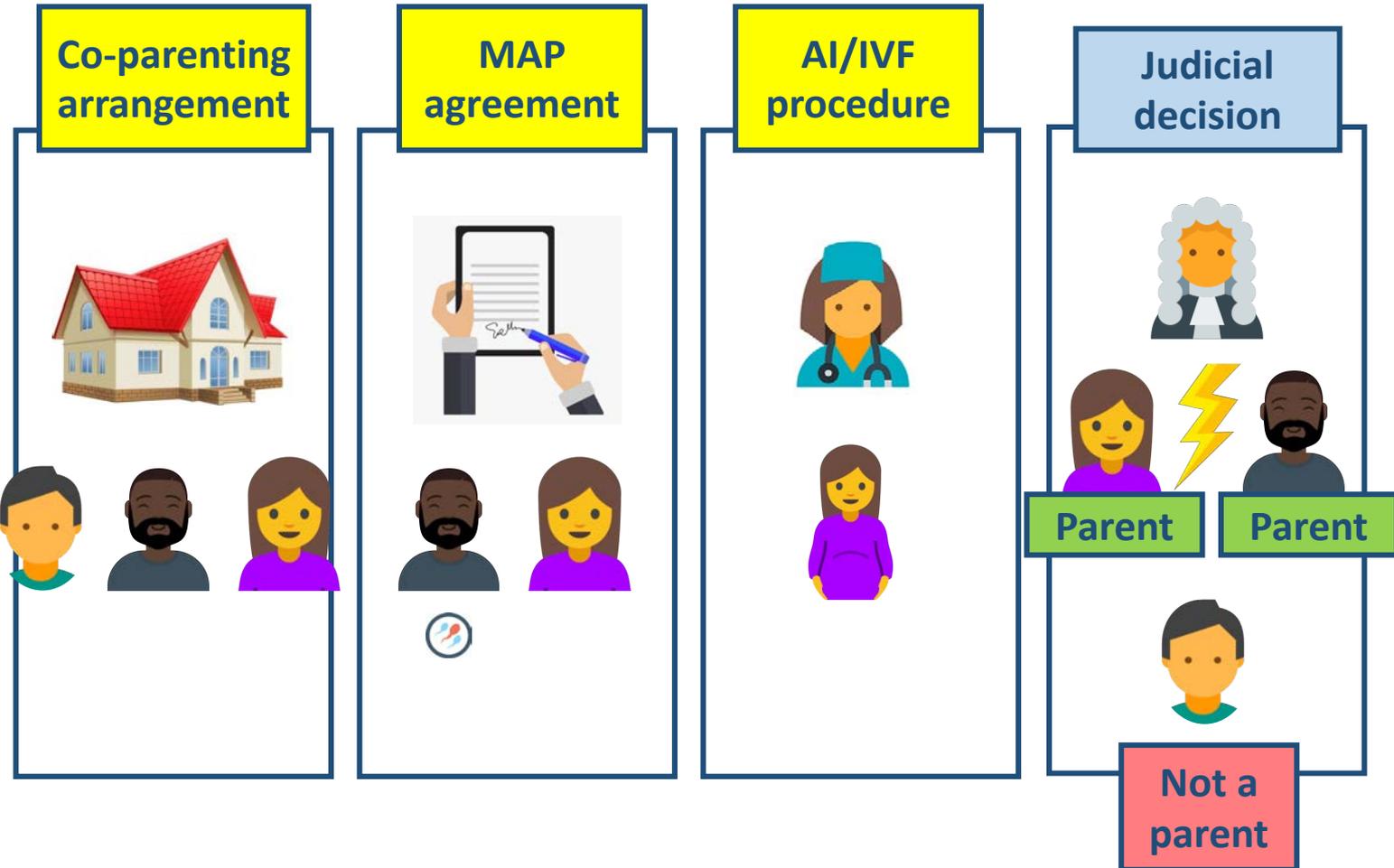
Parent



Not a parent

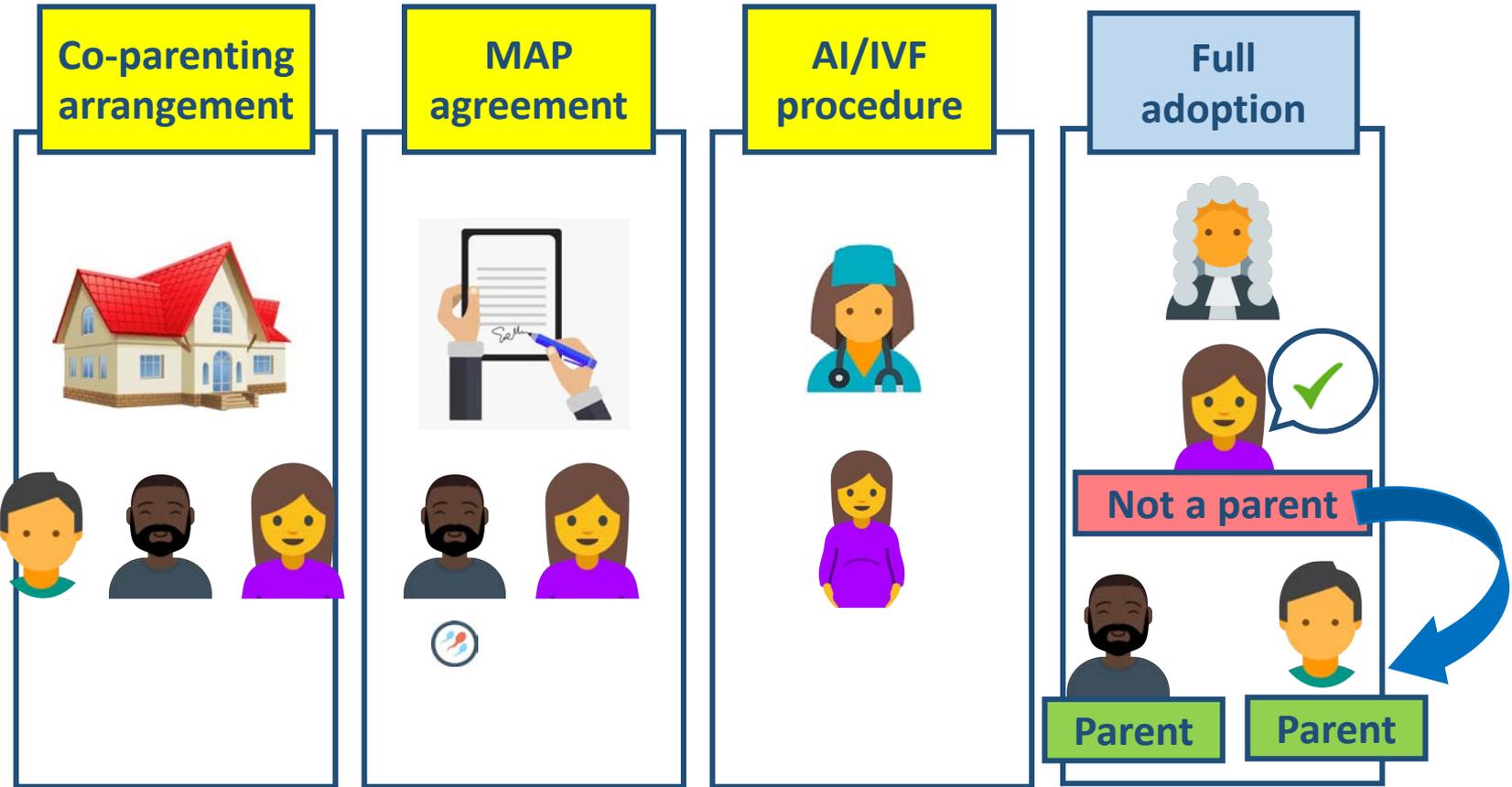
Co-parenting

Multiple parenthood / *Case study*



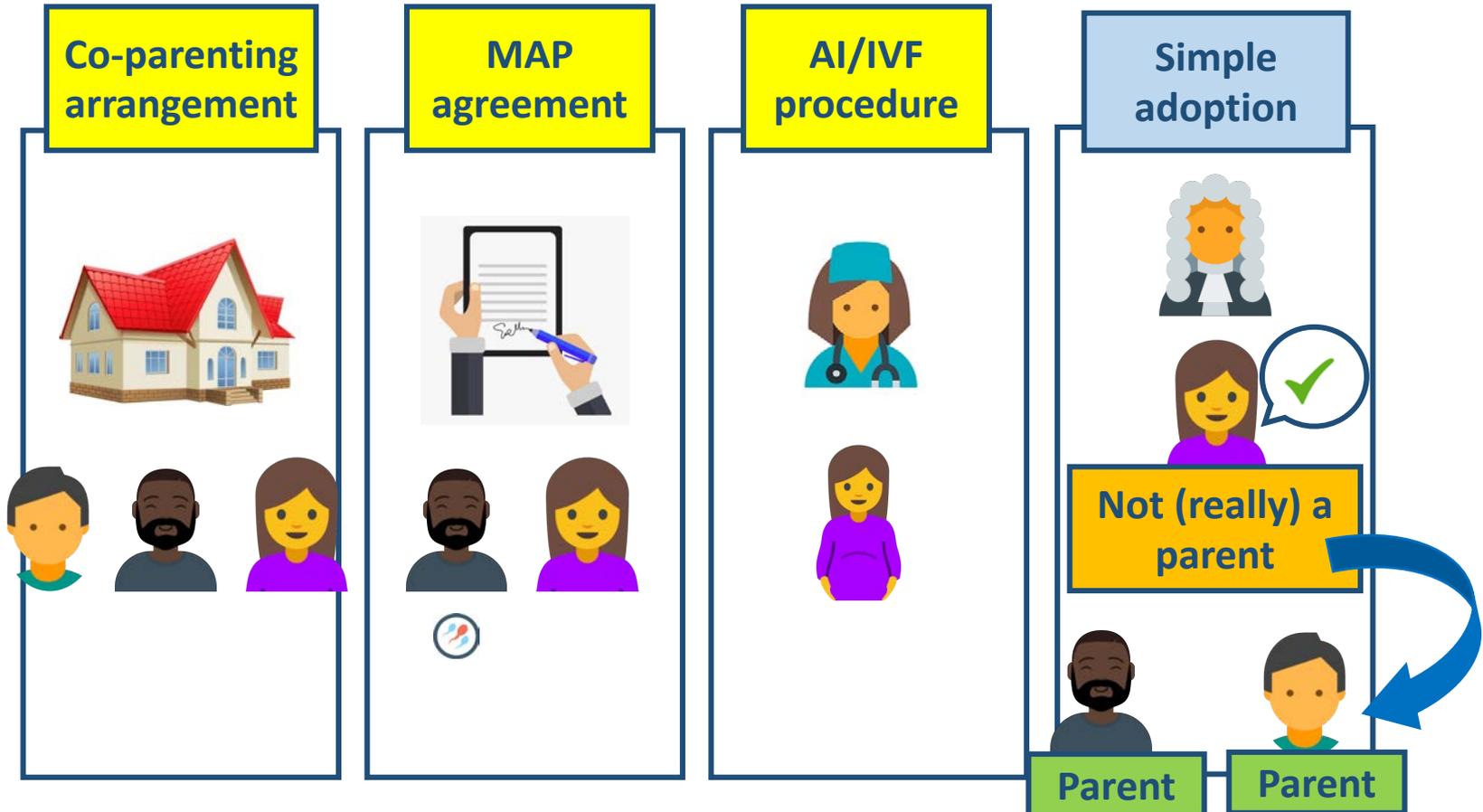
Co-parenting

Multiple parenthood / *Case study*



Co-parenting

Multiple parenthood / *Case study*



Intrarelational donation

An astonishing request ?

Case reported by Dr Laurie Henry and Sylvie Roberti – GGOLF 5 December 2020

A woman and a man live together.

She is 31 years old and has no child.

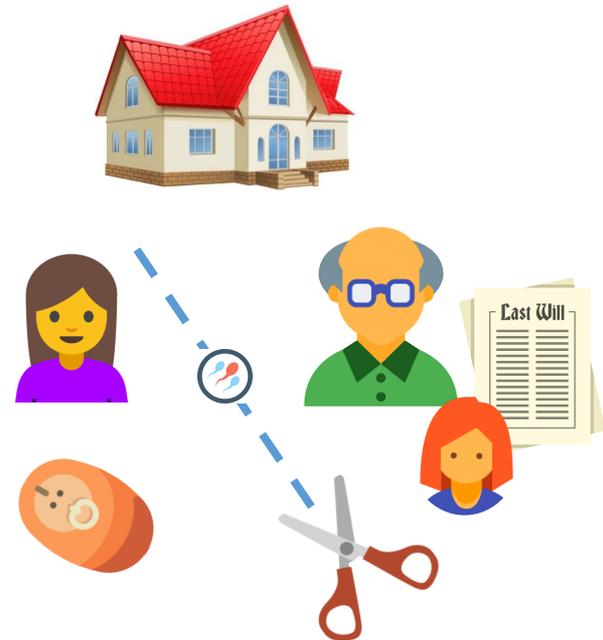
He is 63 years old and has a 30 years old child.

He has some frozen sperm in another centre.

She wants to become parent, but he does not.

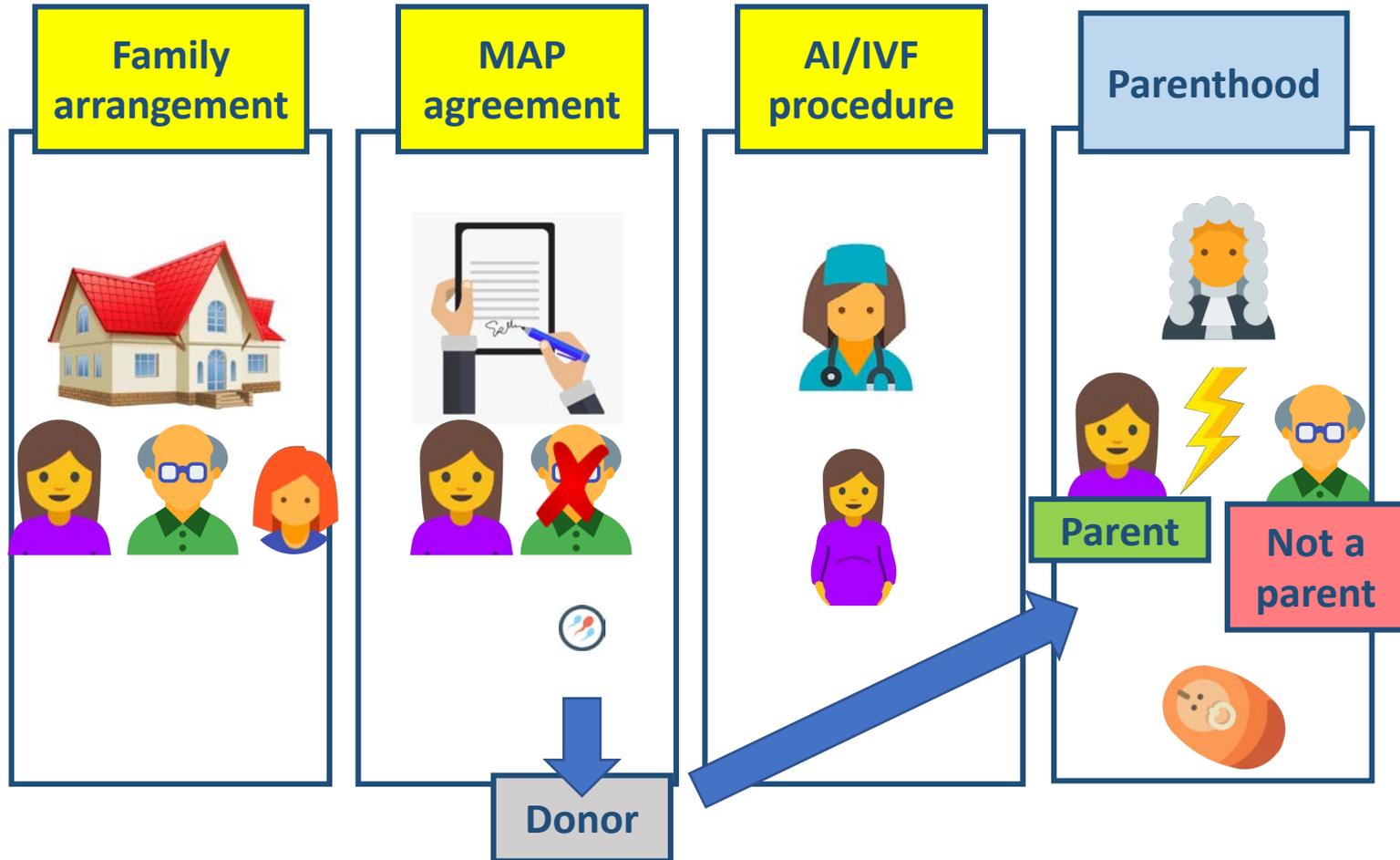
Their project is that she would carry a child conceived with his frozen sperm, but he would identify as a known donor so he will not be designated as the legal father (he has already organised his succession).

Critical point : should a biological and socio-affective father be able to refuse legal parenthood



Intrarelational donation

Technically ... it could work



Intrarelational donation Constitutionnally ... it probably won't

On several occasions, the **Constitutional Court** censored absolute obstacles to establishing parenthood :

In the context of natural procreation :

- Preexisting parenthood : the child could challenge it ONLY between 12-22 years old in 1 year following disclosure of truth AND if the preexisting father had not behaved as a father ("Boël" case)
- No preexisting parenthood : the child's legal claim must be introduced before 48 years old

In the context of assisted procreation :

- In cases where the intended father who did not provide sperm could not/ did not want to recognise the child (death/conflict), his legal parenthood could not be established by court decision

Common rationale : There should not be absolute obstacles to establishing parenthood, a case-by-case balancing of the competing interests should be allowed.



Application to
IR donation?

Possibility of establishing
the donor's parenthood
at least in **exceptional
circumstances** :
e.g. when the status of
sperm donor seems
entirely "artificial"?

Conclusion

Need for reform ?

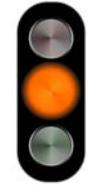
Coparenting – 2 parents situation :

OK, but the sperm provider cannot identify as sperm donor



Coparenting – 3 or 4 parents situation :

Right, but there will be “front-seat” and “back-seat” parents



Intrarelational donation – 1 parent situation :

Why not (but why ?), but there is no guarantee that the male partner will be allowed to escape legal parenthood if at some point the mother or the child want him to become the legal father



>>> Reforms of legal parenthood under consideration