

European legislation concerning reproductive medicine and research

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Reproductive Medicine and Embryological Research. A European Handbook of Bioethical Legislation 1997-1998, edited by Calum MacKellar, published by European Bioethical Research, Edinburgh.

The growth of genetic knowledge, medical skills and the advance of clinical practice in the field of medical assistance to human reproduction and prenatal genetic diagnosis call for regulation, be it legal or by the medical orders themselves. All parties involved, women or parents, physicians and clinical staff, scientists doing research on the treatment of infertility and genetic diagnosis, and finally the public as a whole need to know how to act, under which circumstances, with what responsibility and with what effects. On more basic level, the new reproductive technologies affect human self-understanding and call accordingly for its formulation in legal terms, namely what being human means legally in the context of genetics, embryological research, and medical assistance to procreation. So in the last ten years many if not all European countries have created laws and other norms regulating in the area of reproductive medicine and the treatment of human embryos and germ-line material. Depending on different constitutional principles and emerging from different legal and moral traditions, these regulations vary considerably among these countries. For patients, researchers and clinicians, it is indispensable to know the legal framework of their actions, but it is not less important for philosophers and ethicists. Jurisprudence and morals are interdependent, each of them proceeding in their own way: legal norms reflect the society's moral attitude towards reproduction and early human life and try to formulate it coherently with other and more general principles of the legal system, and, by regulating societal practice, have an ef-

fect on the social perception of the human beings involved and their common values. So ethical reflection has to take legal regulation of reproductive medicine and embryo research into account, to reflect on its inherent moral principles and their tenability and on the moral effect on the public's attitude.

Many problems in this field have evoked heated debates in the recent past and continue to do so in the present, e.g. surrogate motherhood, the storage of super-numerary embryos and their fate, research on embryos, prenatal genetic screening, etc. An actual comprehensive study in European comparative law, scrutinising the different legal regulations and exposing their foundational principles, is still lacking today, at least to my knowledge, although detailed studies and collections of laws have been undertaken.

The booklet published by European Bioethical Research in Edinburgh does not satisfy this long-felt need and this is not its purpose. As the editor underlines, the handbook is neither a collection of legal texts nor does it compare the different legal systems. It is an information tool which provides an overview of the legislation of twenty European countries and additionally the European legislation concerning reproductive medicine and embryological research at a glance. Each country has its own chapter, in alphabetical order. At the end of the chapters, useful addresses are furnished where the reader can get further information directly from the national administration. This useful and informative publication contains finally selected general references and a glos-

sary of medical and scientific terminology. In order to make possible comparisons simpler, the legal material has been systematised for each country according to seven paragraphs: 1) Abortion; 2) Assisted Procreation; 3) Storage (of sperm, oocytes and embryos); 4) Pre-implantation Diagnosis; 5) Prenatal Diagnosis; 6) Surrogacy; 7) Research on Embryos. Where no legislation was found, the corresponding paragraph was omitted. One could wonder why the legislation on abortion has been included since it is not systematically connected with reproductive medicine and embryological research. However, prenatal genetic diagnosis intrinsically contains an option for abortion, and, at another level, pre-implantation diagnosis and embryo research touch on the legal status of early human life. So the juxtaposition of the regulation of abortion and the latter can be justified and is informative for recognising the legal system's inherent understanding and valuing of being human.

The first result of the booklet's analytical exposition of the legal material is that the different extent of legislation with regard to reproductive biomedicine and research in Europe is easily recognised. Some countries, among them not surprisingly the Eastern European countries but also Finland, Luxembourg and Greece, apparently do not have any specific legislation in reproductive medicine, others have implemented partly detailed regulations varying from strong restriction (like Germany) to a more permissive prospect (e.g. Belgium). The specific range of the legislation of the European Parliament is obvious as well: chapter IV of the European Convention on Human Rights and Biomedicine, to which here reference is made, only affects the issues of embryo research and of primary sex selection within medically assisted procreation. Sometimes, however, the reader is in doubt as to

whether there is in one particular country simply no legislation or whether the editor did not obtain information about it. So it is surprising that according to the booklet Austria has apparently not legislated on abortion. However, there is legislation: §97 of the Austrian penal code states that voluntary abortion is not persecuted by law if it is undertaken by a physician within 12 weeks after conception or for reasons of the protection of the mother's health or if the child will probably be severely handicapped or if the mother was under age at the time of conception.

As stated in the foreword, the editor intends to follow closely the legal evolution in biomedicine and to work it in constantly. This will especially be welcomed by scientists and ethicists since it is to be expected that legislation in this field will rapidly be extended by the promulgation of new laws and the modification of previous regulation. Regular future editions of the handbook will then accompany and reflect the ever growing biomedical legislation and provide quickly up-dated information. One suggestion for the next edition might be that the legal sources could be named in order to facilitate access to specific regulations and to inform of what kind it is, e.g. incorporated in the penal code, separate penal laws, other laws, or regulation by ethical councils or the medical orders. The handbook may be recommended as an accessible instrument providing quick, easy and comparative information on European legal regulation in biomedicine, particularly interesting for people not trained in law – in other words, for most of us.

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