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BROCHER SYMPOSIUM: PERSPECTIVES ON ACCESS TO REPRODUCTIVE HEALTHCARE

Changing direction: the struggle of regulating assisted reproductive technology in Austria☆

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Abstract From 1992 until 2015, Austria had a very restrictive Reproductive Medicine Law (FMedG, 1992) that prohibited a number of treatments such as egg donation, preimplantation genetic diagnosis (PGD), heterologous sperm donation for IVF/intracytoplasmic sperm injection (ICSI) as well as general access to assisted reproductive technology for same-sex couples. As one consequence of this rather prohibitive law, Austrian physicians active in the area of assisted reproductive technology co-operated with, or had daughter institutes in, countries with less restrictive legislation such as the Czech Republic and Slovakia, which are only a few hours' drive away. For a long time, liberalisation of the Reproductive Medicine Law was blocked by the fierce and seemingly unresolvable struggle between the restrictive conservative party (ÖVP) and the permissive social democrats' party (SPÖ). In 2014 the impasse, which had lasted for decades, was finally resolved in favour of a more liberal Reproductive Medicine Law that permits egg donation, PGD in some cases and heterologous sperm donation for IVF/ICSI and lesbian couples. Assisted reproductive technology treatments for single women and surrogate motherhood remain prohibited. The new Reproductive Medicine Law was heavily opposed by the Catholic Church, by some conservatives and by disability associations. By applying the concept of political culture, this paper explains why a liberalisation of the Reproductive Medicine Law was blocked for decades, and how the sudden policy change came about.

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Introduction

This paper analyses how and why the Austrian political regulation of assisted reproductive technology, which, compared internationally, has been rather restrictive for more than 20 years was liberalised in 2014. In detail, the paper: (i) sketches the content and rationale of the past regulation; (ii) describes the impact of the restrictive law on couples and women seeking assisted reproductive technology treatment; (iii) describes the political configuration that was responsible for the restrictive law and outlines the underlying aspects of Austrian political culture that blocked liberalisation for so long; (iv) presents the activities of individual couples who appealed to national and European courts for change and describes the societal and political developments that supported the policy change; and (v) it sketches potential impacts of the new law on the practice of assisted reproductive technology in Austria.

Materials and methods

This paper is based on research carried out between 2007 and 2012 as part of the research project 'Genetic Testing and Changing Images of Human Life' (LIFE), which looked at the political and clinical domain of preimplantation genetic diagnostics, prenatal genetic diagnostics, abortion and assisted reproductive technology in Austria. A sub-project on assisted reproductive technology studied the political debate in 2011 concerning the liberalisation of the Austrian Reproductive Medicine Act of 1992 (FMedG 1992). For this analysis, a total of 16 semi-structured qualitative interviews were carried out in the winter of 2010/2011 with subjects in the political domain. This sample included ten politicians (three members of parliament, one minister, two assistants to members of parliaments, two assistants to the minister and one member of a non-governmental organization (NGO), three senior civil servants, one member of the Austrian Bioethics Commission and two NGO representatives. The interviews were recorded, fully transcribed and analysed with thematic analysis by EG (Griessler, 2012a). The paper also draws on a document analysis (by MH) of official statements of various stakeholders made in 2014 during the pre-parliamentarian evaluation process on the draft bill (Parlament, 2014) as well as on media reports of the decision-making process. Finally, the article draws on literature on aspects of Austrian political culture and previous work by the authors on assisted reproductive technology and biomedicine in Austria. Newspaper articles were used to sketch the immediate effects of the new law in 2015.

The prohibitive law of 1992

While Austria was amongst the vanguard of Western European countries when it liberalised its abortion law in 1974 and introduced a regulation that can be considered as highly permissive in international comparison[1] (Gindulis, 2003; Knill et al., 2014), the Austrian law on assisted reproductive technology of 1992 was very restrictive in comparison to other European countries (Busardò et al., 2014; Hadolt, 2007, p. 295). The FMedG was discussed in the political arena for a decade, namely between 1982 and 1992. The debate was mainly dominated by two questions: First, what forms of assisted reproductive technology should be permitted, and second, who should get access to these technologies (Hadolt, 2007)? The FMedG expressed and reinforced conservative attitudes by limiting assisted reproductive technology to traditionally structured families, and consequently was rejecting the creation of new family forms and discriminating against same-sex couples. Moreover, it banned certain procedures such as egg donation and surrogacy to protect women from exploitation. Accordingly, the law permitted assisted reproductive technology only within strict limits: (i) assisted reproductive technology was allowed Medical Ultimo Ratio only, i.e. if pregnancy by sexual intercourse is impossible because the woman and/or her partner have a medical condition; (ii) access to assisted reproductive technology was limited to married or co-habiting heterosexual couples; (iii) sperm donation was in general prohibited except for heterologous insemination, i.e. insemination with donor sperm if the husband or established partner is infertile; (iv) egg donation, donation of embryos and surrogacy were not allowed; and (v) preimplantation genetic diagnosis (PGD) was not explicitly regulated, but the FMedG only allowed genetic analysis if it was necessary to accomplish pregnancy. Therefore, analysis of the fertilized egg (blastocyst) was illegal but polar body diagnostics, which is, in a strict sense, not based on analysis of the fertilized egg and provides similar information, was not covered by the law (Bundeskanzleramt Österreich, 2012, pp. 16ff; Parlament, 1992).

Impact of FMedG 1992

What effects did the restrictive law have on individual citizens in terms of access to assisted reproductive technology? First, as stated above, the restrictive FMedG banned a number of procedures that were permitted elsewhere. Second, it excluded certain groups. Third, in Austria, assisted reproductive technology is partly funded by a public fund, the Austrian IVF Fund, which covers 70% of the cost. The combination of legal provisions and funding rules created a number of inequalities between user groups. Austrian women, couples,

[1] Gindulis (2003, pp. 43ff.) developed a "liberality index" to compare abortion regulations in OECD countries. The index has a range from 0 (=abortion prohibited) to 7 (=liberal abortion regulation, costs covered by social insurance and no waiting period). In this index, Austria scores with 6.5 of a possible 7 points among the most liberal countries. Women in Austria can demand and decide on an abortion within the first three months of pregnancy, there is no waiting period for abortion, but social insurance does not cover the cost of abortion on demand within the first three months.

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