NEWS AND VIEWS

REPRODUCTIVE HEALTH CARE POLICIES AROUND THE WORLD

The Austrian Act on Procreative Medicine: Scope, Impacts, and Inconsistencies

INTRODUCTION

On July 1, 1992, the Austrian Act on Procreative Medicine (1) went into effect after several years' discussion in expert circles consisting mainly of academics in the legal field, scientists, and physicians. This essay discusses the act's main principles, outlines its provisions—which cover both treatment and research—and indicates their possible impacts on assisted reproduction practice. With respect to the latter, the discussion of the act itself is preceded by a summary of the results of an in-depth statistical survey on Artificial Insemination with semen derived from a Donor (AID) in Austria (2).

As shown in the concluding outlook, the methodological conception of the Austrian approach differs widely from Germany's. On the other hand, both Austrian and German substantive law embodies social values by far more conservative than England's regulations.

EMPIRICAL DATA ON ASSISTED REPRODUCTION

In April 1986, Bernat and Schimek (2) conducted the first extensive statistical survey of all 707 gynecologists registered in Austria at the time, covering the distribution and relevance of AID in practice as well as the information level and attitudes of gynecologists regarding this mode of procreation. Comparable data on in vitro fertilization (IVF) or gamete intrafallopian transfer (GIFT) are not available, since there is still no central register in Austria of gynecologists practicing in the field of assisted procreation. The survey can be deemed representative because of both its response rate of 54% and its respondents' composition (2).

Distribution and Relevance. Nine percent of the gynecologists reported having carried out AID (hereinafter, "AID-experienced"). Only 12% said that they had not yet been confronted with the question of AID, while two-thirds of the AID-inexperienced gynecologists had had inquiries from at least one patient. It is worth noting that 45% of the AID-inexperienced gynecologists point out the possibility of AID as a therapeutic method to their patients, when indicated, and according to the survey, 63% know colleagues who practice AID.

Attitudes. The fundamental social disagreement prevailing with regard to AID (3) also is seen among Austrian gynecologists: 40% of the AID-inexperienced view medically indicated AID applied at the request of a married couple as "very or rather negative"; 45%, as "very or rather positive." On the other hand, 91% of AID-experienced gynecologists see AID as "positive," which reveals vast ethical incongruencies both between AID-experienced
and AID-inexperienced and within the latter group itself. In contrast to the new regulation (see below), 62% of AID-inexperienced and 86% of AID-experienced declare themselves as opposed to the child's right to know his/her genetic roots.

**Practice of AID In Austria.** These statements and percentages refer to AID-experienced gynecologists only. Seventy-four percent report fewer than 20 insemination patients (only three gynecologists reported more than 100); the typical number of inseminations is 10 per gynecologist. The typical birth rate is six. On the basis of the survey's findings it can be extrapolated that, until 1985, 1,115 children had been conceived by means of AID in Austria, 196 in 1985 alone, accounting for 0.23% of all live births in Austria that year.

**Donated Semen—Origin and Selection Criteria.** Thirty percent obtain semen from their colleagues or acquaintances, 30% from sperm banks, and 22% from college students, while 18% list other sources. The main selection criteria are noncontamination by sexually transmissible diseases or hepatitis B (25%), resemblance in phenotype (30%), and sociocultural origin (15%). Only 37% declared that they usually document donor data; 31% stated that this was impossible since they obtained semen from sperm banks.

The statutory provisions outlined below will have considerable repercussion on several aspects of the gynecological practice described above.

**PROHIBITIONS**

In accordance with its conception as a comprehensive state regulation of medically assisted reproduction, the Austrian Act on Procreative Medicine (1992) (1) seeks to answer all possible legal questions related to reproductive medicine. This aim is pursued through the following approach:

(a) introduction of a wide range of prohibitions,
(b) regulation of the treatment services which remain lawful (this represents a "partial turn-about" of the right of liberty; for discussion and further references, see Ref. 4), and
(c) status and relationship stipulations.

**Leading Principles.** Therefore, the core of the act can properly be found in those sections which stipulate the permissibility and the corresponding prohibitions of treatment. From these, two main principles can be deduced and summarized as follows:

(a) Reproductive medicine is permissible only within the boundaries of marriage or cohabitation. Single women are not eligible [unlike in Israel (5), for example].
(b) Only oocytes and sperm derived from a married couple or cohabitants may be used for their assisted reproduction. However, AID (in vivo) is allowed only when the husband's or cohabitant's gametes are not reproductive.

Apart from this exception, all heterologous methods of assisted procreation are prohibited (for discussion of the resulting inconsistencies, see Refs. 5 and 6). This leads to the odd consequence that the use of donor semen continues to be prohibited in the process of IVF or GIFT, although this may be indicated just the same—if, for instance, a woman whose husband is afflicted with azoospermia suffers from tubal sterility.

**Surrogate Pregnancies.** A legal ban on surrogate mothers is provided by the act in that it prohibits (heterologous) embryo transfer and embryo donation. Furthermore, ova are to be used only for women from whom they have been derived. Finally, all treatment services may be carried out only for the benefit of a couple who suffers from sterility.

**Nonmarried Couples.** Interestingly enough (in view of the drafters' otherwise more conservative approach), the act does not require a minimum duration of extramarital cohabitation.

**Ultima Ratio Clause.** Besides the above requirements, medically assisted reproduction may be performed only if "according to science and experience, all other possible and reasonable treatments for inducing a pregnancy by means of sexual intercourse have failed or are deemed futile" (translation by the authors).

**Sanctions.** The act seeks to prevent contraventions of these provisions by treating violations as breaches of administrative regulations, which incurs fines up to 500,000 Austrian shillings.

**PROCEDURAL SAFEGUARDS**

**Licensing and Hospital Standards.** The standards are as follows.