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COMMENTARY

Overview of the Greek legislation regarding assisted reproduction and comparison with the EU legal framework

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Abstract The aim of this research was to ascertain how the opportunities now open by the Greek legislation regarding assisted reproduction fits with Greek society and how it compares with the wider EU legal framework. A revision of the Greek legislation took place a few years ago, with two new Acts. The different issues that arise from the two Acts and the relevant statements are examined. Issues such as the legal state of the newborn, involvement of a third party in the reproduction process, surrogacy, post-mortem fertilization and cryopreserved embryos are analytically presented. A pragmatic orientation seems to unfold, which is characterized by the prevalence of the benefits that can be obtained from the resources of reproductive technologies. The reality is that Greek society is still quite traditional, therefore specific parts of this new legislation do not fit with the current picture. A comparison with the other national legislative systems in existence within the EU has revealed specific differences. The creation of a common legislative framework covering most of the points raised through the implementation of assisted reproduction could provide guidance for any future legislative reforms or updates within a EU state, including Greece. 

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Introduction

One of the greatest medical achievements in the 20th century was the introduction and development of assisted reproductive technologies. Many years of effort were finally rewarded by the announcement in 1978 by Edwards and Steptoe of the birth of Louise Brown, the first child born after IVF treatment. Following the breakthrough, the new technique rapidly spread throughout the world. Nowadays the number of children born by IVF worldwide is estimated to exceed 3 million (Dickens and Cook, 2008). Currently, European registrations indicate that the proportion of infants born by assisted reproduction in 16 European countries comes to 3.9% of all live-born children (Andersen et al., 2009). These techniques have been widely developed in Greece, and, since 2005, 49 reproductive clinics have

been officially registered, a number greater than other European countries with the same population.

However, the techniques of assisting human reproduction are also having an impact on human relationships, which have become more complicated, regulated and litigated, and is raising issues of concern amongst practitioners regarding their liabilities (Dickens, 2008). Until now, most EU nations have adopted laws to define assisted reproduction. These laws reflect a variety of cultural, religious, political and economic values and preferences, testifying for the complexity of the nature of assisted reproduction.

The purpose of this study is to present the Greek legislation related to assisted reproduction and to compare it with what is happening elsewhere in Europe. Until 2002 there was no legal regulation for medically assisted reproduction, in spite of the fact that there were many IVF clinics. On 19

December 2002 the Greek parliament approved the Law 3089/2002 'Medical assistance in human reproduction' and on 18 January 2005 the Law 3305/2005 'Application of the methods of Medically Assisted Reproduction'. The first law mainly replaces the relevant articles of the Greek Civil Law Code (CLC). The second law was complementary to the first one, clarified some issues and established the National Authority of Medically Assisted Reproduction that, amongst other things, should have responsibility for the accreditation, designation, authorization, licensing and keeping a registry of activity, according to the Directive of the European Parliament and of the Council of 31 March 2004 (2004/23/EC). Up to this date, the above-mentioned Authority has not yet functioned.

General issues

The legal protection of a child born using the techniques of artificial reproduction is equal to a child born through the process of natural fecundation. Greece consents to artificial reproduction for cohabiting couples, married couples or to an unmarried or single woman. According to the legislative frameworks in other EU countries, whenever consent to use these techniques is given to single women, it also covers women who have identified themselves as homosexual. For example, this is the case in some Northern European countries such as Belgium, Denmark, Estonia, Finland and the UK (IFFS, 2010). Greek legislation seems to avoid such coverage as it is not compatible with the wider legislative practice and the social norm. Such medical assistance is permissible provided that the assisted person is within the reproductive age. In the 2005 Law, there is a definition of the potentially fertile age for a woman who wants to resort to these techniques; the maximum age is 50. The number of embryos transferred depends on the age of the woman. In fact, article 6 Appendix 1 clarifies that in the case of a woman aged up to and including 40 years of age the number of embryos transferred should be a maximum of three; in the case of an older woman the maximum number should be four.

Consent to these procedures must always be given in a written form and after appropriate information about the risks and consequences of the techniques of artificial reproduction has been provided. Gametes, embryos, gestation and relevant intermediations cannot be objects of a contract that involves financial retribution. The legislation is permissive enough regarding experimentation on embryos, accepts the concept of the 'pre-embryo' for the period between fertilization and the 14th day of the development and admits experimentation on the 'surplus' embryos in the second article 1459 of the CLC, Appendix 2 as 'Embryos will be used, without reciprocation, for research and therapeutic purposes'.

Human cloning is prohibited for reproductive reasons. In fact, there is an acceptable distinction between 'therapeutic' cloning and 'reproductive' cloning, so the law allows possible admission of therapeutic cloning, but 'Human reproduction with cloning methods is prohibited' (article 1455, CLC).

This prohibition is compatible with the reference on this subject in the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on

the Prohibition of Cloning Human Beings (article 1 para 1). This protocol has been fully adopted by Greece by including its articles into national legislation (Law 2619/98) as well as a Ministerial Announcement in the same year (article of the government newspaper, Official Government Gazette A' 244).

In addition, it is worth noting that the Greek law of medical deontology (Law 3418/2005) allows doctors the possibility of raising conscientious objections on the grounds of personal morality or religious beliefs, while participating in procedures of artificial reproduction.

Homologous artificial reproduction

Article 1455 specifies that medically assisted human reproduction (artificial fertilization) is permitted only in the case of inability to have children in a natural way or to avoid the transmission of a severe genetic disorder to the child.

Article 1456 demands written consent from the persons that want to have children. In the case of an unmarried or a single woman, the consent(s) is signed as a notary document. The persons resorting to assisted reproduction should decide in common and declare in written form their desire for the future of the cryopreserved reproductive material.

Heterologous artificial fertilization

The resort to heterologous artificial-fertilization techniques is also allowed. Article 1460 indicates that the identity of the donor of reproductive material is not to be disclosed to the persons who want to have a child. Medical information concerning the donor is kept confidential. Access to this information is permissible only for the child's medical benefit. The identity of the child and its parents is not disclosed to the donor.

Artificial reproduction post mortem

In Greece, medically assisted reproduction after the death of the spouse or the partner is permitted only if both of the following requirements are met, as indicated in article 1457: 'a. The spouse or the partner suffered from a disease that either could affect fertility performance or endangered his/her life. b. The spouse or the partner had consented via a notary document for post mortem fertilization. Assisted reproduction is carried out not before six months and not after two years from the death of the spouse or partner'.

There is no common policy on a EU level on this subject; 15 legislative frameworks in other EU countries appear to be in agreement – under some conditions – with the Greek legislation, while 11 of them prohibit altogether the artificial reproduction post mortem (ESHRE, 2010).

Surrogate maternity

Greek legislation uses two terms: carrying maternity and replaced maternity. The first term concerns the situation in which a woman (relative, friend or stranger) puts herself forward for the transfer to her uterus of an embryo produced *in vitro* with gametes of the couple (applicant or the assignee). In this case it can also be regarded as a 'loan'

or 'rent' of the uterus. The second term concerns the situation in which a woman puts forward both her oocytes and the uterus. After pregnancy and delivery, the woman is engaged to deliver the baby to the third party that it had been 'commissioned from'. In fact, the second situation is prohibited by Greek law, however the 'rent of uterus' is permitted: 'The transfer of fertilized ova to another woman and her pregnancy is permitted by court authorization before the transfer, given that there is a written contract between the persons who wish to have a child and the surrogate mother, and that the latter is married as well. The court authorization is issued after an application by the woman who wants to have a child, given that it is confirmed she is medically unable to conceive' (article 1458, CLC).

With this clause, Greek legislation differs substantially from the vast majority of European countries whose legislations prohibit any form of surrogate maternity (ESHRE, 2010).

Surplus and cryopreserved embryos

The two issues are not necessarily connected. The production of a surplus can occur when their use is not needed or when the woman postpones the pregnancy. Cryopreservation of embryos is usually for the purposes of future use, donation to a third party or experimental research.

In fact, Greek law indicates that the persons resorting to assisted reproduction should decide in common, declare their will in written form and submit it to the doctor or the fertility clinic responsible before starting the relevant treatment. Any cryopreserved reproductive material that is not going to be used for their own treatment (surplus) should be: (i) donated for fertility treatment of other persons that the doctor or fertility clinic decides; (ii) used for research or therapeutic purposes; or (iii) destroyed. In case of no common declaration of the persons concerned, cryopreservation can last up to 5 years. After this period of storage, cryopreserved material can either be used for research and therapeutic purposes or be destroyed. Non-cryopreserved fertilized ova are destroyed after the completion of the 14th day post fertilization; even if there were cryopreservation for a short while before that day (article 1459, CLC).

Discussion

The recommendations of the Greek National Bioethics Commission were in favour of the proposed bill. On the contrary the Orthodox Church criticized severely the new legislation, although they appear to accept the use of technological means in reproduction when the couple cannot conceive in a natural way. According to the official statements of the Bioethics Committee of the Holy Synod of the Church of Greece (*The Holy Synod of the Church of Greece – Bioethics Committee, 2007*), the Greek Orthodox Church positively views homologous artificial reproduction; however, its opposition was mainly against heterologous fertilization, single motherhood, post-mortem fertilization, surrogate maternity and embryo experimentation. In addition to the publicly expressed reservations and objections of the Church, academic researchers have also expressed their concerns towards this legislation, interpreting it as under-

mining the institution of marriage, weakening family bonds and altering the character of family ethics (Nikolaos, 2008). However, in spite of these reactions, Greek legislation has remained unchanged.

In recent years, one can observe that the representation of the family through the media seems to have moved from the 'traditional' model and this can affect a gradual change in the social norm. However, the media also promote 'sensational' stories, such as the one of a 66-year-old Romanian woman giving birth to a child using donor gametes, which divided public opinion (Mutler, 2005). Other such cases reported are models' gametes being sold to the highest bidder in the USA and attempts to clone human beings by maverick scientists in other countries (Borger, 2001; Carter, 1999; English, 2006). In such cases, a 'backlash' reaction occurs and the public appears more protective of the 'traditional family values'.

Greek law prohibits such extreme cases as those reported above, but in the balance between autonomy versus protection, there is a clear preference for autonomy. Consequently, a pragmatic orientation seems to unfold, which is characterized by the prevalence of the benefits that can be obtained from the resources of reproductive technologies. The existence of a large number of IVF clinics in the country has probably influenced this orientation.

As has been observed, Greek legislation is synchronized with the current EU Directives and the corresponding Conventions. However, Greek legislation also appears to differ on many related points and subjects related to assisted reproduction when in comparison with the other national legislative frameworks of other European countries. This is the consequence of the fact that assisted reproduction legislation varies considerably across Europe. From a legislative survey of 14 European countries, it emerges that there is a clear division amongst the legislative frameworks of these countries and on issues such as preimplantation genetic screening, oocyte sharing and insemination of single women, as seven out of the 14 allow the aforementioned techniques while the other seven forbid them (Ziebe and Devroey, 2008).

In particular, it is very interesting to compare the Greek and Italian legislative framework (another South European country where religion still plays a key part in its society) on the five subjects analysed in this research paper (homologous artificial reproduction, heterologous fertilization, post-mortem fertilization, surrogate maternity and surplus embryos). The legislative frameworks' only common point seems to be on the homologous artificial reproduction which is allowed in both countries, while on the remaining four subjects they have completely opposite approaches, as Italian legislation forbids them while Greek legislation allows them under certain conditions (Bennagiano and Gianaroli, 2004; Boggio, 2005).

As is evident, some subjects related to assisted reproduction have divided opinion amongst the European states while other subjects, such as surrogate maternity for example, appear to unite, as the majority of countries seem to agree that surrogate maternity should be forbidden. These differences exist because the national legislative frameworks are drawn based on many factors, such as the social norms, societal characteristics and behaviour. However, when a closer look at Greek society is taken, it is found that the picture is a more traditional one compared with the one

supported by the legislative framework. Greeks, very much like other Southern Europeans, are strongly attached to the family bond. The Greek household model has three relatively distinct characteristics. Firstly, young adults leave their parents' home relatively late and it usually happens when they get married. Thus, the link between leaving home and marriage is strong. Living on one's own and unmarried cohabitation are rare. In fact, Greece has a very low rate of cohabiting couples (1.7%) when the average in OECD countries is 6.8% (Organisation for Economic Co-operation and Development, 2008). Secondly, when Greeks get married, they rarely get divorced. For example, in the Europe of the '25 countries' in 2004, there were an average of 2.1 divorces per 1000 inhabitants and Greece ranked third from the lowest (1.1 divorce ratio), after Ireland (0.8) and Italy (0.8) (Eurostat, 2006). Thirdly, childbearing is delayed as it is always connected with creating a nuclear family. This fact leads to very low levels of fertility and at the same time the absolutely lowest proportion of births out of marriage in Europe. As it emerges from these research and surveys, the Greek family and social reality is quite different in particular from the picture encountered in Northern European countries.

The specific legislation does not fit with the current picture of Greek society. On the one hand, it may lead to breakage of the traditional Greek family bond, and on the other, it attempts to impose foreign processes within Greek reality. Future studies should focus on the practical application and implication of this specific legislation. This may be a case, perhaps, for moving towards a common EU legislative framework that can combine the vast mosaic of the legislative frameworks from the different social, religious and other characteristics of the societies of the EU countries and provide some clarity and cohesion. The creation of such a common legislative framework could provide useful guidance for any future legislative reforms or updates related to assisted reproduction within a EU state, including Greece. Particularly for Greece, a revision may be necessary so that the legal framework of assisted reproductive technologies can be embraced by the whole of Greek society in the future.

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